
General Participation Requirements

CHAPTER

2

A school that participates in the FSA programs must meet certain requirements for participation. Participation standards are important because all FSA funds received by a participating school are held in trust by that school for the intended student beneficiaries (except for allowed administrative expense reimbursement). This chapter explains many of the institutional participation requirements. Additional specific participation standards are discussed in the following chapters.

If the Department determines that a school has met the eligibility requirements (discussed in chapter 1), the Department then assesses the school's financial responsibility and administrative capability. These evaluations are used to determine whether the school may be certified for participation in the FSA programs. For more information on administrative capability and financial responsibility, see chapters 3 and 4 respectively.

Once the Department certifies a school to participate in the FSA programs, the school is bound by the requirements of those programs. To begin its participation, a school must enter into a Program Participation Agreement.

THE PROGRAM PARTICIPATION AGREEMENT

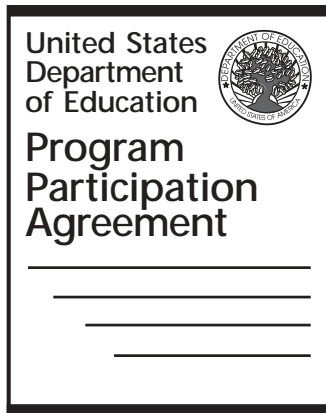
An eligible school must enter into a Program Participation Agreement (PPA) with the Department to participate in the following programs: Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan (Perkins), Federal Direct Loan Program (DL) and Federal Family Education Loan (FFEL).

Program Participation Agreement cites

Sec. 487, 34 CFR 668.14

Purpose and scope of the PPA

Under the PPA, the school agrees to comply with the laws, regulations, and policies governing the FSA programs. After being certified for FSA program participation, the school must administer FSA program funds in a prudent and responsible manner. A PPA contains critical information about a school's participation in the FSA programs. In addition to the effective date of a school's approval, the date by which the institution must reapply for participation, and the date on which the approval expires, the PPA lists the FSA programs in which the institution is eligible to participate.



After enumerating the FSA programs in which an institution is authorized to participate, a PPA states the General Terms and Conditions for institutional participation. By signing the PPA a school agrees to

1. comply with the program statutes, regulations, and policies governing the FSA programs;
2. establish a drug abuse prevention policy accessible to any officer, employee, or student at the institution;
3. comply with
 - a. the Campus Security Policy and Crime Statistics disclosure requirements of the HEA;
 - b. Title VI of the Civil Rights Act of 1964, as amended, barring discrimination on the basis of race, color, or national origin;
 - c. Title IX of the Education Amendments of 1972, barring discrimination on the basis of sex;
 - d. Section 504 of the Rehabilitation Act of 1973, barring discrimination on the basis of physical handicap; and
 - e. The Age Discrimination Act of 1975;
4. acknowledge that the Department, states, and accrediting agencies share responsibility for maintaining the integrity of the FSA programs and that these organizations may share information about the institution without limitation; and
5. acknowledge that the institution must, prior to any other legal action, submit any dispute involving the final denial, withdrawal, or termination of accreditation to final arbitration.

PPA Requirements

In addition to the general statement that an institution will comply with the program statutes, regulations, and policies governing the FSA programs, a PPA contains references to selected important provisions of the General Provisions Regulations (34 CFR Part 668). Some of the specific requirements in 34 CFR 668 enumerated in a PPA are discussed below. Others are discussed elsewhere in this Handbook. The PPA specifies that:

1. The institution will use funds received under any FSA program as well as any interest and other earnings thereon solely for the purposes specified for that program.
2. If the institution is permitted to request FSA program funds under an advance payment method, the institution will time its requests for funds to meet only the institution's immediate FSA program needs (see chapter 5).

3. **Schools cannot charge for processing or handling any application or data used to determine a student's FSA eligibility.** For instance, the school may not charge (or include in the student's cost of attendance) a fee to certify a loan application, complete a deferment form, process a Pell Grant payment, verify an application, or send or request a financial aid transcript.

A student uses the Free Application for Federal Student Aid (FAFSA) to apply for FSA program funds. However, a school may require additional data that are not provided on the federal form to award institutional or state aid. Institutional charges for collecting such data must be reasonable and within marginal costs.

4. The institution will comply with the provisions of 34 CFR 668 relating to factors of **financial responsibility and administrative capability** (see chapters 3 and 4).
5. The school will **provide timely information** on its administrative capability and financial responsibility to the Department and to the appropriate state, guaranty, and accrediting agencies (see chapters 3 and 4).
6. The school must, in a **timely manner**, complete reports, surveys, and any other data collection effort of the Department including surveys under the Integrated Postsecondary Education Data System (IPEDS).
7. The institution will not provide any statement to a student or certification to a lender that qualifies the student for a loan or loans in excess of the annual or aggregate loan limits applicable to that student according to the appropriate regulations.
8. The institution will provide information concerning **institutional and financial assistance information** as required to students and prospective students (see chapter 7).
9. If the school advertises **job placement rates** to attract students, it must provide a prospective student with any relevant information on state licensing requirements for the jobs for which the offered training will prepare the student. Also, the school must provide a statement disclosing the most recent available data concerning employment statistics, graduation statistics, and other information to substantiate the truthfulness of the advertisements.
10. If the institution participates in the FFEL program, the institution will provide borrowers with information about **state grant assistance** from the state in which the institution is located, and will inform borrowers from other states of the sources of information about state grant assistance from those states.

11. If the institution provides financial assistance to students under the **ability to benefit** provisions, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma (For additional information, see the section *GED preparatory program required* later in this chapter.).
12. The school cannot deny FSA funds on the grounds that a student is **studying abroad** if the student is studying in an approved-for-credit program (see chapters 1 and 9).
13. To begin participation in the FFEL programs (or if a school **changes ownership** or changes its status as a parent or subordinate institution), the school must develop a **default management plan** for approval by the Department and must implement the plan for at least two years (see chapter 3, and *Volume 8 — Direct Loan and FFEL Programs*).

A school is exempt from submitting a default management plan if (a) the parent institution and the subordinate institution both have a cohort default rate of 10% or less and (b) the new owner of the parent or subordinate institution does not own, and has not owned, any other school with a cohort default rate over 10%.

14. The school must **acknowledge the authority of the Department** and other entities to share information regarding fraud, abuse, or the school's eligibility for participation in the FSA programs (see chapter 11).
15. The school **may not knowingly employ or contract** with (in the administration of or receipt of FSA funds) any individual, agency, or organization that has been convicted of or pled guilty or nolo contendere to a crime or was judicially determined to have committed fraud involving the acquisition, use, or expenditure of federal, state, or local government funds or has been administratively or judicially determined to have committed fraud or any other material violation involving federal, state, or local government funds.
16. In the case of an institution that offers athletically related student aid, it will **disclose the completion and graduation rates of student athletes** and the athletic program participation and financial support pursuant to 34 CFR 668.47 and 34 CFR 668.48 in conformance with the EADA (see chapter 7).
17. The school **cannot penalize** in any way a student who is unable to pay institutional costs due to compliance with the FSA program requirements or due to a delay in federal aid disbursement caused by the school.

18. The school cannot pay or contract with any entity that pays commissions or other incentives based directly or indirectly on securing enrollment or financial aid (except when recruiting foreign students ineligible for FSA program funds) to persons engaged in recruiting, enrolling, admitting, or financial aid administration (For additional information, see the section *Incentive Compensation* later in this chapter.).
19. The school must comply with the requirements of the Department as well as those of accrediting agencies (see chapter 1).
20. The school must comply with the requirements for the **return of Title IV funds** when a student withdraws (see chapter 6).
21. The **institution is liable** for all improperly administered funds received or returned under the FSA programs including any funds administered by a third-party servicer.
22. If the stated objectives of an educational program offered by the institution are preparing students for **gainful employment in a recognized occupation the institution** will
 - a. demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation, and
 - b. establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.
23. Either the institution or the Department may terminate a PPA.

Voter registration required

When a school signs a PPA it agrees to make a good faith effort to distribute voter registration forms unless the school is located in a state that has in effect the motor vehicle–voter registration provision of the National Voter Registration Act. Schools are to request the forms from the state 120 days prior to the deadline for registering to vote within the state. A school must make an effort to distribute the forms to each student attending the school, and must make the forms widely available to students who are enrolled in a degree or certificate program.

The voter registration requirement applies to general elections and special elections for federal office including the election for governor or other chief executive within a state. Schools in Puerto Rico are not subject to this provision because Puerto Rico is not a state under the National Voter Registration Act.

Members of the Executive Branch (e.g., the Department) are prohibited from instructing schools concerning the implementation of these provisions.

The above list is not exhaustive; schools must carefully review all of the requirements listed on their PPA and those specified in 34 CFR 668.14. In addition, a school must meet any requirements for participation specific to an individual FSA program.

GED preparatory program required

As mentioned above, a school that admits students without a high school diploma or its recognized equivalent (except home-schooled students) must make a GED preparatory program available to its students. The school must provide information about the availability of the GED program to affected students. The course does not have to be provided by the school itself, and the school is not required to pay the costs of the program. The GED program must be offered at a place that is convenient for the students and the school must take reasonable steps to ensure that its students have access to the program, such as coordinating the timing of its program offerings with that of the GED program. The GED program must be proven successful in preparing its students to obtain a GED—such programs include GED programs that are conducted by state and local secondary school authorities, as well as programs for which the school has documentation that statistically demonstrates success.

The law does not require a school to verify that a student is enrolled in a GED program or to monitor the student's progress in the program. A student admitted based on his or her ability to benefit who does not have a high school diploma or its recognized equivalent is not required by law to enroll in a GED program, but the school may choose to make this an admission requirement. A student may not receive FSA program funds for the GED program although he or she may be paid for postsecondary courses taken at the same time as the GED coursework, including remedial coursework¹ at the secondary level or higher.

Civil rights and privacy requirements

When a school signs the PPA, it also agrees to comply with the civil rights and privacy requirements contained in the Code of Federal Regulations (CFR) that apply to all students in the educational program, not just to FSA recipients (see chapter 8).

ACADEMIC CALENDARS

Schools organize their academic calendars in a variety of ways, and the methodology used affects the eligibility of students for and delivery of Title IV program funds.

A term is a segment of an academic calendar. In a term-based program, the academic calendar is divided into at least two

¹ It is the school's responsibility to determine whether a remedial program is at the secondary level. However, if the state, the school's accrediting agency, or the state agency recognized for the approval of public postsecondary vocational education determines that a remedial program is at the elementary level, the school must abide by that determination. For more on remedial coursework, including the admission of ability-to-benefit students, see *Volume 1 — Student Eligibility*.

segments. Terms are discrete periods during which all classes are scheduled to begin and end.

Standard terms

Standard terms include quarters, trimesters, and semesters, and the terms are approximately the same length. Semesters and trimesters are approximately 15 weeks long; full-time enrollment is at least 12 semester credits, and academic progress is measured in semester credit hours. Quarter terms are approximately 10 to 12 weeks in length; full time is at least 12 quarter credits, and academic progress is measured in quarter credit hours. Note that the length of the term helps determine the type of credits awarded in a standard term.

In a standard term, the payment period is the semester, trimester, or quarter as applicable.

Nonstandard terms

In a nonstandard term, while all coursework is expected to begin and end within a discrete period of time, that period may not be a semester, trimester, or quarter. In addition, the terms may be of unequal length. Some nonstandard terms are the length of a semester (15 -16 weeks) but award quarter credits. Others are the length of a quarter (10 - 12 weeks) but award semester credits.

In a nonstandard term, the payment period is the nonstandard term.

Nonterm

An academic calendar may be classified as nonterm for a variety of reasons. The following are characteristic of nonterm calendars:

- courses do not end within a discrete period of time,
- courses overlap terms,
- self-paced and independent study courses span terms,
- there are sequential courses that do not end within a term, and
- progress may be measured in clock hours.

For a thorough treatment of payment periods in nonterm programs see the discussion that follows.

DEFINITION OF A PAYMENT PERIOD

The definition of a payment period is applicable to all FSA programs except FWS. The common definition is integral to requirements for the administration of FSA program funds. For example, FSA program disbursements (except FWS payments) generally must be made on a payment period basis (for more

Payment period cite

34 CFR 668.4

Disburse by period cite

34 CFR 668.164(b)

Loan periods cite

34 CFR 682.604(c)(6) and (7)

Payment periods and eligibility for a second disbursement of a Title IV education loan

34 CFR 668.164(b) requires that an institution disburse Title IV, HEA program funds on a payment period basis. 34 CFR 668.4 defines payment periods for the Title IV, HEA programs.

For programs that have terms and are measured in credit hours, the payment period is the term. For programs that measure progress in credit hours without terms, payment periods are defined by completed hours **and** weeks. For programs that measure progress in clock hours, payment periods are defined by completed clock hours.

For credit hour term programs (including nonstandard term programs), there is no requirement that a student successfully complete a certain number of credits to progress to the next payment period. A student is paid for completing courses even though s/he received an "F" grade.

However, if the program is measured in credit hours without terms or in clock hours, the student must complete successfully (pass) the number of credit hours (and weeks) or clock hours necessary to progress to the next payment period.

Consider a program with no terms that is 24 credit hours long and offered in successive 4-hour modules with two 12-hour payment periods. The student can not progress to the second payment period until the student successfully completes 12 hours. If the student fails the first module, s/he cannot progress to the next payment period until s/he has completed successfully 3 additional modules (12 hours).

information, see chapter 5). Note that FFEL and Direct Loan disbursements must still be made in accordance with the specific disbursement rules for those programs (see *Volume 8 — FFEL/DL* for specific information on FFEL and Direct Loan disbursements).

Under the payment period definition, there are three sets of requirements: one for term-based credit hour programs, one for nonterm credit hour programs, and one for clock hour programs. There is no separate definition for clock hour programs that are offered in terms.

Payment period for term-based credit hour programs

For a program offered in semester, trimester, quarter, or other nonstandard academic terms and measured in credit hours, the payment period is the term. For example, if a loan period includes all three quarters of an academic year, the loan must be disbursed in three substantially equal payments.

Term-Based Credit Hour Programs

<i>Program offered in . . .</i>	<i>Payment Period is . . .</i>
<ul style="list-style-type: none">• semester• trimester• quarter• other academic term	<ul style="list-style-type: none">• semester• trimester• quarter• other academic term

Programs that are offered in modules are not necessarily counted as programs measured in terms. The phrase *other academic terms* (also known as nonstandard terms) refers to those structured educational intervals at a school that do not fit into a normally defined semester, trimester, or quarter term. For example, other academic terms could include six five-week terms. A school may choose to group modules together and treat the entire period as a standard term. (For example, grouping three five-week modules together to create a 15-week *semester*, or grouping four one-month modules into a 16-week *term* would be acceptable).

Payment period for clock hour programs

Payment periods for programs measured in clock hours vary depending on whether the length of the program is

- one academic year or less,
- a multiple of a full academic year,

- longer than an academic year with a remainder shorter than or equal to one half of an academic year, or
- longer than an academic year with a remainder shorter than an academic year, but longer than one half of an academic year.

Payment period for clock-hour programs of an academic year or less

If the program is an academic year or less in length, the first payment period is the period of time in which the student completes the first half of the program. The second payment period is the period of time in which the student completes the second half of the program.

Payment Period for Clock Hour Programs of One Academic Year or Less

First payment period

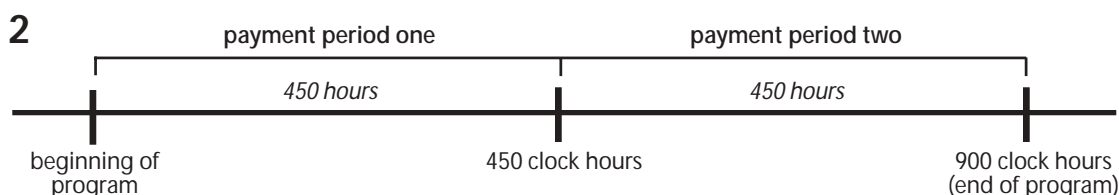
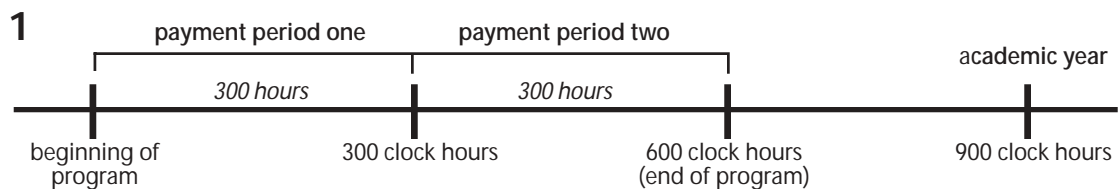
- period of time in which a student completes first half of the program

Second payment period

- period of time in which a student completes remainder of the program

For example, if a program is 600 clock hours and the academic year is defined as 900 clock hours, the first payment period is the period of time needed for the student to complete the first 300 clock hours. The second payment period would be the period of time needed for the student to complete the last 300 clock hours (see the example that follows). If the program were equal to the academic year (900 clock hours), the first payment period would be the period of time needed for the student to complete the first 450 clock hours. The second payment period would be the period of time needed for the student to complete the second 450 clock hours (see example 2 below).

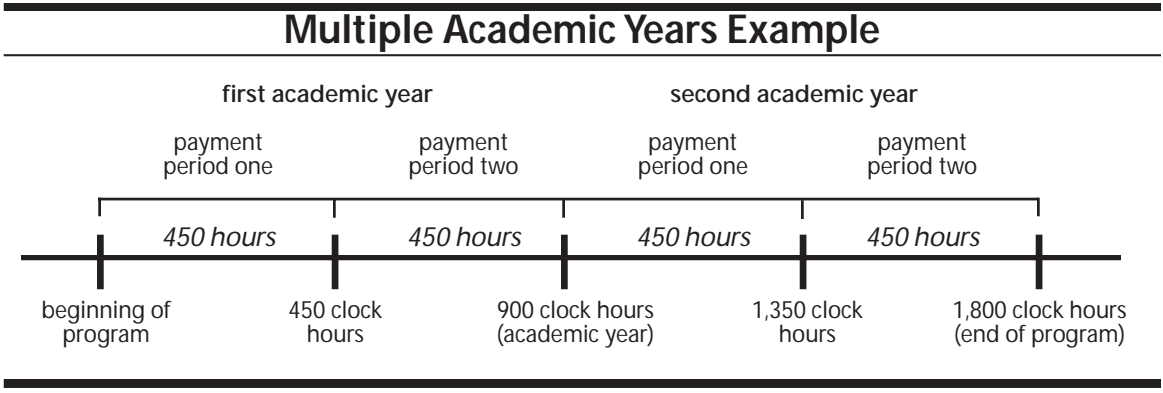
One Academic Year or Less Example



Payment period for clock-hour programs with two or more academic years

If the program is equal to two or more complete academic years, for the first academic year and any subsequent full academic year, the first payment period is the period of time in which the student completes the first half of the academic year, as measured in clock hours. The second payment period is the period of time in which the student completes the second half of the academic year as measured in clock hours.

For example, if a program is 1,800 clock hours and the academic year is defined as 900 clock hours, the first payment period for both the first and any subsequent academic year is the period of time needed for the student to complete the first 450 clock hours. The second payment period would be the period of time needed for the student to complete the next 450 clock hours (see example below).

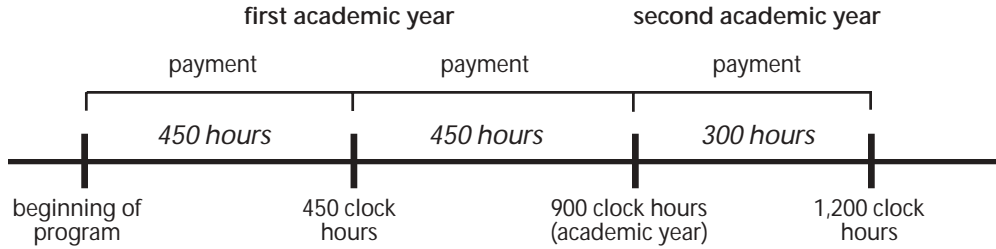


Clock-hour programs longer than an academic year with a remaining portion

If the program is longer than an academic year, but has a remaining portion of the program that is not equal to an academic year, for the first academic year and any subsequent full academic year, the first payment period is the period of time in which the student completes the first half of the academic year. The second payment period is the period of time in which the student completes the second half of the academic year. For the remaining portion of the program, if the remainder is equal to or shorter than one half of an academic year, the payment period is the remaining portion of the program.

For example, if a program is 1,200 clock hours and the academic year is defined as 900 clock hours, the first payment period for the first academic year is the period of time needed for the student to complete the first 450 clock hours. The second payment period is the period of time needed for the student to complete the next 450 clock hours. The first, and only, payment period for the second academic year is equal to the remaining portion of the program.

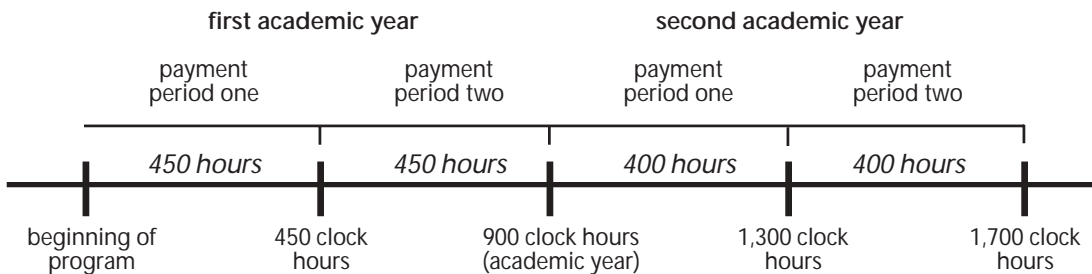
Remainder Equal To or Shorter Than Half an Academic Year Example



If the remaining portion of the program is more than one half of an academic year but less than a full academic year, for the remaining portion of the program the first payment period is the period of time in which the student completes the first half of the remaining portion of the program, as measured in or clock hours. The second payment period is the period of time in which the student completes the second half of the remaining portion of the program as measured in credit or clock hours.

For example, if a program is 1,700 clock hours and the academic year is defined as 900 clock hours, the first payment period for the first academic year is the period of time needed for the student to complete the first 450 clock hours. The second payment period would be the period of time needed for the student to complete the next 450 clock hours. The first payment period for the second academic year would be the period of time needed for the student to complete the next 400 clock hours. The second payment period for the second academic year would be the period of time needed for the student to complete the final 400 clock hours.

Remainder Greater Than Half an Academic Year Example



Payment Period for Clock Hour Programs Longer Than One Academic Year				
Program Length	First and subsequent full academic years		Remainder of program	
	First payment period	Second payment period	First payment period	Second payment period
multiples of a full academic year	period of time in which student completes first half of academic year	period of time in which student completes second half of academic year	N/A	N/A
longer than 1 academic year, remainder shorter than or equal to one half an academic year	period of time in which student completes first half of academic year	period of time in which student completes second half of academic year	period of time in which student completes remainder of program	N/A
longer than 1 academic year, remainder shorter than academic year, but longer than half an academic year	period of time in which student completes first half of academic year	period of time in which student completes second half of academic year	period of time in which student completes first half of remainder of the program	period of time in which student completes second half of remainder of the program

Payment periods for programs that measure progress in credit hours and do not have academic terms (nonterm credit hour programs)

Payment periods for programs measured in credit hours without terms vary depending on whether the length of the program is

New

- one academic year or less,
- a multiple of a full academic year,
- longer than an academic year with a remainder shorter than or equal to one half of an academic year, or
- longer than an academic year with a remainder shorter than an academic year, but longer than one half of an academic year.

Payment period for programs measured in credit hours without academic terms of an academic year or less

New

For a student enrolled in an eligible program that is one academic year or less in length, the first payment period is the period of time in which the student completes half the number of credit hours in the program **and** half the number of weeks in the program. The second payment period is the period of time in which the student completes the remainder of the program.

Payment periods for credit hour programs without academic terms that are two or more academic years

If the program is equal to two or more complete academic years, for the first academic year and any subsequent full academic year, the first payment period is the period of time in which the student completes half the number of credit hours in the academic year **and** half the number of weeks in the academic year. The second payment period is the period of time in which the student completes the academic year.

Payment periods for credit hour programs without academic terms that are longer than an academic year with a remaining portion

If the program is longer than an academic year, but has a remaining portion that is not equal to an academic year, for the first academic year and any subsequent full academic year, the first payment period is the period of time in which the student completes half the number of credit hours in the academic year **and** half the number of weeks in the academic year. The second payment period is the period of time in which the student completes the remainder of the academic year.

For any remaining portion of an eligible program that is more than one-half an academic year but less than a full academic year in length, the first payment period is the period of time in which the student completes half the number of credit hours in the remaining portion of the program **and** half the number of weeks remaining in the program. The second payment period is the period of time in which the student completes the remainder of the program.

For any remaining portion of an eligible program that is **not** more than half an academic year, the payment period is the remainder of the program.

Academic coursework

The term academic coursework does not necessarily refer to credits. It may refer to the lessons or other measures of learning within a course or a program. For instance, if a course or program is made up of 40 equal lessons, the student reaches the halfway point as follows:

- If the student completes the first 20 lessons before the calendar midpoint of the academic year, the second payment period does not begin until the calendar midpoint.
- If the student completes the first half of the academic year before completing the first 20 lessons, the second payment period does not begin until the student completes the first 20 lessons.

If an institution is unable to

determine when a student has completed half of the credit hours in a program, in an academic year, or in the remainder of a program; the student is considered to have begun the second payment period of the program, academic year, or remainder of a program at the later of--

- The date the institution identifies as the point when the student has completed half of the academic coursework in the program, academic year, or the remainder of the program; or
- The calendar midpoint between the first and last scheduled days of class of the program, academic year, or the remainder of the program.

When a school chooses to have more than two payment periods per academic year

For a program measured in credit hours without terms and for clock hour programs, an institution may choose to have more than two payment periods in the program or academic year, as applicable. If an institution so chooses, the requirements for completing a payment period are modified to reflect the increased number of periods. For example, if an institution chooses to have three payment periods in an academic year in a program that measures progress in credit hours but does not have academic terms, each payment period must correspond to one-third of the academic year measured in both credit hours and weeks of instruction. Each subsequent payment period cannot begin until the student completes the credit hours and weeks of instruction in the previous payment period. If a school chooses to have more than two payment periods per academic year, the school must have that policy in writing and must apply the policy to all students enrolled in the programs affected.

Payment periods and the return of Title IV funds

Schools that use payment periods as the basis for their return of funds calculations should note that making multiple disbursements within a payment period does not create a new or additional payment period. A student's Title IV education loan appropriately might be included as "Aid that Could Have Been Disbursed" even though under the late disbursement rules, the loan funds could not actually be disbursed. Please see Dear Colleague Letter DC-GEN-00-24 December 2000 and chapter 6 to see how multiple disbursements within a period affect the return of funds calculation.

Note: While the program regulations permit schools flexibility in making disbursements, schools should recognize the added complexity that making Pell disbursements over different periods than loan disbursements might cause if a student withdraws. To avoid overly complicating their Return of Title IV funds calculations, we recommend that, whenever possible, schools disburse all Title IV funds in the same payment periods.

ACADEMIC YEAR REQUIREMENTS

Thirty-week minimum of instructional time

Every eligible program, including graduate programs, must have a defined academic year. **The academic year is defined program by program.** A school, for example, might even have two versions (day and night, for example) of the same academic program and define the academic year differently for the two versions.

Academic year cite
34 CFR 668.3(b)

An academic year is a period that begins on the first day of classes and ends on the last day of classes or examinations during which an institution provides a minimum of 30 weeks of instructional time. For an *undergraduate* educational program, in an academic year, a full-time student is expected to complete at least:

- twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours; or
- 900 clock hours for a program measured in clock hours.

If an otherwise eligible program includes less than 30 weeks of actual instructional time, a school must make certain adjustments in calculating the eligibility of students for FSA funds (see Volume 3–Pell Grant Program and Volume 8 – Direct Loan and FFEL Programs for additional information).

The Department grants schools discretion to establish the number of credit hours a full-time *graduate or professional* student is expected to earn over an academic year.

Determining academic year length

A school may have different academic years for different programs or cohorts of students in programs, but must use the same academic year definition for

- calculating all FSA awards for students enrolled in a particular program, and
- all other FSA program purposes, such as the certification of loan deferments.

To determine the number of weeks of instructional time, a school must count the period that begins on the first day of classes and ends on the last day of classes or examinations.

A week of instructional time and an academic year

Unless an administrative reduction (as explained below) has been approved by the Department, an academic year is defined as containing at least 30 weeks of instructional time. If an otherwise eligible program includes less than 30 weeks of actual instructional time, the school must make certain adjustments in calculating the eligibility of students for FSA funds.

For all programs, a *week of instructional time* is any period of seven consecutive days in which at least one day of regularly scheduled instruction, examination, or (after the last day of classes) at least one scheduled day of study for examinations occurs. (Instructional time does not include periods of orientation, counseling, homework, vacation, or other activity not related to class preparation or examination.) A week in which there is not at least one scheduled day of instruction cannot be counted as one of the 30 weeks of instructional time. (see the discussion under *Week of Instructional Time* in chapter 1)

Week of instructional time cite

34 CFR 668.8(b)

The November 1, 2002 regulations

(effective July 1, 2003) eliminated the definition of a week of instructional time that was known as the 12-hour rule. There is now one definition for a week of instructional time. Schools had the option of implementing this rule as early as November 1, 2002.

Reductions in academic year length

Reductions in length of academic year cite

34 CFR 668.3

The law permits schools that provide two-year or four-year associate or baccalaureate degree programs to apply to the Department if they want to establish a full academic year of less than 30 weeks of instructional time. The Department is permitted to grant a reduction in the length of an academic year to no less than 26 weeks of instructional time. If a reduction is approved, a school is permitted to have an academic year of less than 30 weeks (but no less than 26 weeks) of instructional time, without any reduction in the amount of FSA funds that a student enrolled in an eligible program may receive for an entire academic year.

If the Department approves the request, the approval terminates when the institution's PPA expires. Schools that want to begin or continue to operate with a reduced academic year must reapply each time the school is required to apply for recertification.

When evaluating a school's application for a reduction, the Department will consider factors such as:

- the school's compliance with awarding and disbursement procedures based on the academic year requirements;
- the approval of the academic year by the school's accrediting agency or state agency;
- the hours of attendance and other coursework that a full-time student is required to complete in the academic year; and
- any unique circumstances that justify granting the request.

For further details on the information required for submission of a request for a reduction, see 34 CFR 668.3.

If a school that is ineligible for a reduction in the length of an academic year because the school has failed to comply with awarding and disbursement procedures wishes to apply for a reduction, the school first must make arrangements with the Department to recalculate awards as necessary and repay any resulting liabilities.

CONTRACTS WITH THIRD-PARTY SERVICERS

Third-party servicer cite

34 CFR 668.25

Schools are permitted to contract with consultants for assistance in administering the FSA programs. However, the school ultimately is responsible for the use of FSA funds and will be held accountable if the consultant mismanages the programs or program funds.

Section 668.25 of the General Provisions regulations contains requirements for all participating institutions that contract with third-party servicers. As defined by regulation, a third-party servicer is an individual or organization that enters into a contract (written or otherwise) with a school to administer any aspect of the institution's FSA participation.

Examples of functions that are covered by this definition are:

- processing student financial aid applications, performing need analysis, and determining student eligibility or related activities;
- certifying loan applications, servicing loans, or collecting loans;
- processing output documents for payment to students, and receiving, disbursing, or delivering FSA funds;
- conducting required student consumer information services;
- preparing and certifying requests for advance or reimbursement funding, preparing and submitting notices and applications required of eligible and participating schools, or preparing the Fiscal Operations Report and Application to Participate (FISAP); and
- processing enrollment verification for deferment forms or Student Status Confirmation Reports.

Excluded activities

Examples of functions excluded from this definition are:

- performing lockbox processing of loan payments;
- performing normal electronic fund transfers (EFTs);
- publishing ability-to-benefit tests;
- acting as a Multiple Data Entry Processor (MDE);
- financial and compliance auditing;
- mailing documents prepared by the institution or warehousing institutional records;
- participating in written arrangements between eligible institutions to make eligibility determinations and FSA program awards under 34 CFR 668.5(d)(2); and
- providing computer services or software.

Employees of a school

An employee of a school is not a third-party servicer. For this purpose, an employee is one who:

- works on a full-time, part-time, or temporary basis,
- performs all duties on site at the school under the supervision of the school,
- is paid directly by the school,
- is not employed by or associated with a third-party servicer, and
- is not a third-party servicer for any other school.

Requirements for contracting with a third-party servicer

A school may only contract with an eligible third-party servicer as specified by the regulatory criteria. Under such a contract, the servicer agrees to comply with all applicable requirements, to refer any suspicion of fraudulent or criminal conduct in relation to FSA program administration to the Department's Inspector General, and, if the servicer disburses funds, to confirm student eligibility and make the required returns to Title IV funds when a student withdraws.

If the contract is terminated, or the servicer ceases to perform any functions prescribed under the contract, the servicer must return all unexpended FSA funds and records related to the servicer's administration of the school's participation in the FSA programs.

Institutional liability

A school remains liable for any and all FSA-related actions taken by the servicer on its behalf.

Notifying the Department of contracts

Schools are required to notify the Department of all existing third-party servicer contracts. If a school has submitted information regarding its third-party servicers as part of an application for certification or recertification, no additional submission is required. A school is not required to notify the Department if it does not contract with any third-party servicers.

If a school has not notified the Department, the school immediately must do so by completing Section J of the *Application for Approval to Participate in Federal Student Aid Programs* (see chapter 10).

Schools are required to notify the Department if:

- the school enters into a contract with a new third-party servicer;
- the school significantly modifies a contract with an existing third-party servicer;
- the school or one of its third-party servicers terminates a contract;
- or a third-party servicer ceases to provide contracted services, goes out of business, or files for bankruptcy.

Notification to the Department (which must include the name and address of the servicer and the nature of the change or action) must be made within 10 days of the date of the change or action.

A school must provide a copy of its contract with a third-party servicer only upon request. A school is not required to submit the contract as part of the recertification process.

INCENTIVE COMPENSATION

The Department does not review or approve an individual institution's payment arrangements. ED developed the 12 permissible payment arrangements found in 34 CFR 668.14(b)(22)(ii) to provide an illustrative framework an institution may use to make its own determination about compliance with the HEA. The list is not exhaustive, and institutions that have additional questions should consult with their legal counsel when making this determination.

Section 487(a)(20) of the HEA prohibits an institution from providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions regarding the award of Title IV, HEA program funds. This statutory prohibition is implemented in 34 CFR 668.14(b)(22).

In response to numerous requests from schools, and after engaging in negotiations with the financial aid community, the Department amended the regulations on November 1, 2002. ED identified 12 types of payment and compensation plans that do not violate the statutory prohibition. These 12 safe harbors are divided into two categories.

The first safe harbor comprises the entirety of the first category, and describes whether a particular compensation payment is an incentive payment. It explains the conditions under which an institution may pay compensation without that compensation being considered an incentive payment.

The second category is composed of the remaining 11 safe harbors. It describes the conditions under which an institution may make an incentive payment to an individual or entity that could potentially be construed as based upon securing enrollments or financial aid. The safe harbors in this category describe the conditions under which such a payment may be made. If an incentive payment arrangement falls within any one safe harbor, that payment arrangement is not covered by the statutory prohibition.

The payment or compensation plans included in the safe harbors cover the following subjects:

1. adjustments to employee compensation;
2. recruitment into programs that are not eligible for Title IV, HEA assistance;
3. payment for securing contracts with employers;
4. profit-sharing or bonus payments;



Adjustments to fixed compensation cite
34 CFR 668.14(b)(22)(ii)(A).

Safe harbors cite
34 CFR.14(b)22(ii)(A through L)



5. compensation based upon students completing their programs of study;
6. payments to employees for pre-enrollment activities;
7. compensation paid to managerial and supervisory employees not involved in admissions or financial aid;
8. token gifts;
9. profit distributions;
10. Internet-based recruiting activities;
11. payments to third parties for services to the institution that do not include recruitment activities; and
12. payments permitted to third parties for services that include recruitment activities.

Adjustments to employee compensation cite

34 CFR 668.14(b)(22)(ii)(A)

Covered employee

One who is involved in recruitment, admissions, enrollment, or financial aid activities



Programs that are not eligible for Title IV, HEA assistance cite

34 CFR 668.14(b)(22)(ii)(B)

Contracts with employers cite

34 CFR 668.14(b)(22)(ii)(C)



Adjustments to employee compensation

This safe harbor strikes a balance between an institution's need to base its employees' salaries or wages on merit, and the Department's responsibility to ensure that such adjustments do not violate the statutory prohibition against the payment of commissions, bonuses, and other incentive payments. Under this safe harbor, an institution may make up to two adjustments (upward or downward) to a covered employee's annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. One cost of living increase that is paid to all or substantially all of the institution's full-time employees will not be considered an adjustment under this safe harbor. In addition, with regard to overtime, if the basic compensation of an employee is not an incentive payment, neither is overtime pay required under the Federal Labor Standards Act.

Enrollments in programs that are not eligible for Title IV, HEA assistance

This safe harbor recognizes that compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for Title IV funds is not covered by the incentive compensation prohibition.

Contracts with employers

In general, the business-to-business marketing of employer-provided education is not covered by the incentive compensation prohibition. This safe harbor addresses the payment of employees' tuition and fees by an employer (either directly to the institution or by reimbursement to the employee) under a contract arranged by a recruiter who is paid an incentive.

As long as there is no direct contact by the institution's representative with prospective students, and as long as the employer is paying at least 50 % of the training costs, incentive payments to recruiters who arrange for such contracts are not covered by the incentive payment prohibition, provided that the incentive payments are not based on the number of employees who enroll, or the amount of revenue generated by those employees.

Profit-sharing or bonus payments

Profit-sharing and bonus payments to all or substantially all of an institution's full-time employees are not incentive payments based on success in securing enrollments or awarding financial aid. As long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the institution's full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition. In addition, such payments can be limited to all or substantially all of the full-time employees at one or more organizational level at the institution, except that an organizational level may not consist predominantly of recruiters, the admissions staff, or the financial aid staff.

Compensation based upon program completion

This safe harbor recognizes that a major reason for the incentive compensation prohibition is to prevent institutions from enrolling unqualified students. Completing a program of education or, in the case of students enrolled in a program longer than one academic year, completing the first academic year of that program, is a reliable indicator that the students were qualified to enroll in the program. Therefore, compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter does not violate the incentive compensation prohibition.

Successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution. (Time may not be substituted for credits earned.) In addition, the 30 weeks of instructional time element of the definition of an academic year does not apply to this safe harbor. Therefore, this safe harbor applies when a student earns, for example, 24 semester credits, no matter how short or long a time that takes.

Pre-enrollment activities

This safe harbor recognizes that generally, clerical pre-enrollment activities are not considered recruitment or admission activities. Accordingly, individuals whose responsibilities are limited to pre-enrollment activities that are clerical in nature are outside the scope of the incentive payment restrictions.

Profit-sharing or bonus payments cite

34 CFR 668.14(b)(22)(ii)(D)



Compensation based upon program completion cite

34 CFR 668.14(b)(22)(ii)(E)



Credits must be earned in residence

For this purpose, an institution may not count transfer credits, credits awarded through successful completion of testing, credits for life experience, and any other credits not earned through attendance at that institution toward the successful completion of an academic year.

Pre-enrollment activities cite

34 CFR 668.14(b)(22)(ii)(F)



Buying third-party leads

Although buying leads from third parties for a flat fee is not a clerical pre-enrollment activity under this safe harbor, the activity is not covered under the incentive compensation prohibition.

Managerial and supervisory employees cite

34 CFR 668.14(b)(22)(ii)(G)



New

Token gifts cite

34 CFR 668.14(b)(22)(ii)(H)



New

The fair market value of an item

might be considerably greater than its cost. A high value item for which the school paid a minimal cost would not be considered a token gift.

Profit distributions cite

34 CFR 668.14(b)(22)(ii)(I)



New

Internet-based activities

34 CFR 668.14(b)(22)(ii)(J)



New

The Department considers that soliciting students for interviews is a recruitment activity, not a pre-enrollment activity, and individuals may not receive incentive compensation based on their success in soliciting students for interviews. In addition, since a recruiter's job description is to recruit, it would be very difficult for an institution to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities.

Managerial and supervisory employees

This safe harbor recognizes that the incentive payment prohibition applies only to individuals who perform activities related to recruitment, admissions, enrollment, or the financial aid awarding process and their immediate supervisors. Direct supervisors are included in this prohibition because their actions generally have a direct and immediate impact on the individuals who carry out these covered activities.

The incentive payment prohibition, therefore, does not extend beyond first line supervisors or managers.

Token gifts

Under this safe harbor, the regulations have been amended to take into account an increase in the value of what is considered a *token gift*. The Department has increased the maximum cost of a token, noncash gift that may be provided to an alumnus or student to \$100, provided that:

- the gifts are not in the form of money; and
- no more than one gift is provided annually to an individual.

The cost basis of a token noncash gift is what the institution paid for it. The value is the fair market value of the item.

Profit distributions

This safe harbor recognizes that profit distributions to owners are not payments based on success in securing enrollments or awarding financial aid. Therefore any owner, whether an employee or not, is entitled to a share of the organization's profits to the extent they represent a proportionate share of the profits based upon the employee's ownership interest.

Internet-based activities

This safe harbor recognizes that the Internet is simply a communications medium, much like the U.S. mail, and is outside the scope of the incentive compensation prohibition. This safe harbor permits an institution to award incentive compensation for Internet-based recruitment and admission activities that:

- provide information about the institution to prospective students;

- refer prospective students to the institution; or
- permit prospective students to apply for admission on-line.

Payments to third parties for non-recruitment activities

This safe harbor recognizes that the incentive payment prohibition applies only to activities dealing with recruiting, admissions, enrollment, and financial aid. Therefore, payments to third parties for other types of services, including tuition-sharing arrangements, marketing, and advertising are not covered by the incentive compensation prohibition.

Payments to third parties for non-recruitment activities

34 CFR 668.14(b)(22)(ii)(K)



Payments to third parties for recruitment activities

This safe harbor recognizes that the incentive compensation prohibition applies to individuals who work both for the institution and to entities outside the institution, and that the rules that apply to institutions apply equally to outside entities. Thus, if an institution uses an outside entity to perform activities for it, including covered activities, the institution may make incentive payments to the third party without violating the incentive payment prohibition as long as the individuals performing the covered activities are compensated in a way that would fall within the safe harbors of the regulations.

Payments to third parties for recruitment activities

34 CFR 668.14(b)(22)(ii)(L)



For example, if an institution established a group of employees who provided the institution with a series of services, and one of those services was recruiting, the incentive compensation prohibition would preclude only the individuals doing the recruiting from being paid on an incentive basis.

If that institution hired a contractor to provide these services, the same rules would apply. The outside entity could not pay the individuals performing the recruiting services on an incentive basis, but it could pay the other employees performing non-recruiting activities on an incentive basis.

ANTI-DRUG ABUSE REQUIREMENTS

The HEA requires a school to certify to the Department that it operates a drug abuse prevention program that is accessible to its students, employees, and officers. Two other laws added related requirements for postsecondary schools that receive FSA funds.

The Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act of 1988 (Public Law 101-690) requires a federal grant recipient to certify that it provides a drug-free workplace. Because a school applies for and receives its campus-based allocation directly from the Department, the school is considered to be a grantee for purposes of the Act. Therefore, to receive campus-based funds, a school must complete the certification on ED Form 80-0013,

which is part of the FISAP package (the application for campus-based funds). This certification must be signed by the school's CEO or other official with authority to sign the certification on behalf of the entire institution.

Requirements for a drug-free workplace

The certification lists a number of steps that the school must take to provide a drug-free workplace, including:

- establishing a drug-free awareness program to provide information to employees;
- distributing a notice to its employees of prohibited unlawful activities and the school's planned actions against an employee who violates these prohibitions; and
- notifying the Department and taking appropriate action when it learns of an employee's conviction under any criminal drug statute.

A school's Administrative Cost Allowance (ACA) may be used to help defray related expenses, such as the cost of printing informational materials given to employees.

Scope of the Act

The drug-free workplace requirements apply to all offices and departments of a school that receives campus-based funds. Organizations that contract with the school are considered subgrantees not subject to the requirements of the Drug-Free Workplace Act.

Drug-Free Schools and Communities Act

The Drug-Free Schools and Communities Act (Public Law 101-226) requires a school to certify that it has adopted and implemented a program to prevent drug and alcohol abuse by its students. Unlike the annual drug-free workplace certification, a school usually will only submit this certification to the Department once (on the Application). (A school that changes ownership is an exception; it must recertify.)

Distribution to students and staff

The drug prevention program adopted by the school must include an annual distribution to all students, faculty, and staff of information concerning drug and alcohol abuse and the school's prevention program.

Development and review of a drug prevention program

A school must review its drug prevention program once every two years to determine its effectiveness and to ensure that its sanctions are being enforced. The development of a drug prevention program, although a condition for receiving FSA funds, is usually undertaken by

the school administration at large, not by the financial aid office. The regulations originally published on this topic (August 16, 1990) were mailed to participating schools at the time; they offer a number of suggestions for developing a drug prevention program.

The effectiveness of a school's drug prevention program may be measured by tracking:

- the number of drug- and alcohol-related disciplinary actions,
- the number of drug- and alcohol-related treatment referrals,
- the number of drug- and alcohol-related incidents recorded by campus police or other law enforcement officials,
- the number of drug- and alcohol-related incidents of vandalism,
- the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse, and
- student, faculty, and employee attitudes and perceptions about the drug and alcohol problem on campus.

Consequences of noncompliance

A school that does not certify that it has a drug prevention program, or that fails to carry out a drug prevention program, may lose its approval to participate in the FSA programs.

Resources that schools can utilize in creating drug prevention programs are listed on the chart that follows.

Additional Sources of Information

The following resources are available for schools that are developing drug prevention programs.

- ***The Center for Substance Abuse Treatment and Referral Hotline.***
Information and referral line that directs callers to treatment centers in the local community. (1-800-662-HELP)
 - ***The Drug Free Workplace Helpline.***
A line that provides information only to private entities about workplace programs and drug testing. Proprietary and private nonprofit but not public postsecondary schools may use this line. (1-800-967-5752)
 - ***The National Clearinghouse for Alcohol and Drug Information.***
Information and referral line that distributes U.S. Department of Education publications about drug and alcohol prevention programs as well as material from other federal agencies. (1-301-468-2600)
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ANTI-LOBBYING CERTIFICATION AND DISCLOSURE

In accordance with Public Law 101-121 (and regulations published December 20, 1989), any school receiving more than \$100,000 for its participation in the campus-based programs must provide the following to the Department:

- Certification Form (combined with Debarment and Drug-Free Workplace Certifications, ED-80-0013). The school will not use federal funds to pay a person for lobbying activities in connection with federal grants or cooperative agreements. This certification must be renewed each year for a school to be able to draw down campus-based funds.
- Disclosure Form (Standard Form LLL). If the school has used nonfederal funds to pay a noninstitutional employee for lobbying activities, the school must disclose these lobbying activities to the Department. The school must update this disclosure at least quarterly and when changes occur.

Both of these forms are sent to schools with the campus-based fiscal report/application (FISAP) each summer. The certification form and the disclosure form must be signed by the CEO or other individual who has the authority to sign on behalf of the entire institution. A school is advised to retain a copy in its files.

Primarily, these certifications cover the use of the campus-based Administrative Cost Allowance (ACA). **Association membership is not a legitimate administrative cost of the FSA Programs.** Schools may not use the ACA to pay for their membership in professional associations (such as NASFAA, AICS, NACUBO, etc.), regardless of whether the association engages in lobbying activities.

The school is also responsible for payments made on its behalf, and must include the certification in award documents for any subgrantees or contractors (such as need analysis servicers, financial aid consultants, or other third parties paid from the ACA).