

Recordkeeping and Disclosure

CHAPTER

8

In this chapter, we discuss the requirements for maintaining and disclosing records for the FSA programs.

The General Provisions regulations require schools to maintain records related to their participation in the FSA programs. These records must be made available by schools to representatives of the Department and other specified individuals or organizations in the course of audits, program reviews, investigations, or other authorized reviews.

In addition to the general institutional recordkeeping requirements discussed here, a school must also comply with all program-specific recordkeeping requirements contained in the individual FSA program regulations.

This chapter also describes the rules governing disclosure, including a discussion of the Family Educational Rights and Privacy Act (FERPA). FERPA restricts the disclosure of student records to other parties and requires the school to give a student the opportunity to review his or her records.

REQUIRED RECORDS

A school must keep comprehensive, accurate program and fiscal records related to its use of FSA program funds. The importance of maintaining complete, accurate records cannot be overemphasized. Program and fiscal records must demonstrate the school is capable of meeting the administrative and fiscal requirements for participating in the FSA programs. In addition, records must demonstrate proper administration of FSA program funds and must show a clear *audit trail* for FSA program expenditures. For example, **records for each FSA recipient must clearly show that the student was eligible for the funds received, and that the funds were disbursed in accordance with program regulations.**

Recordkeeping cite

34 CFR 668.24

Program records

A school must establish and maintain on a current basis any application the school submitted for FSA program funds. A school must also maintain on a current basis program records that document:

- the school's eligibility to participate in the FSA programs,
- the FSA eligibility of the school's programs of education,
- the school's administration of the FSA programs,
- the school's financial responsibility,
- information included in any application for FSA program funds, and
- the school's disbursement and delivery of FSA program funds.

Program Records a School Must Maintain

The program records that a school must maintain include, but are not limited to:

- ✓ Program Participation Agreement
 - ✓ Accrediting and licensing agency reviews, approvals, and reports
 - ✓ State agency reports
 - ✓ Audit and program review reports
 - ✓ Self-evaluation reports
 - ✓ Other records, as specified in regulation, that pertain to factors of financial responsibility and standards of administrative capability
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FISCAL RECORDS

A school must keep fiscal records to demonstrate its proper use of FSA funds. A school's fiscal records must provide a clear audit trail that shows that funds were received, managed, disbursed, and returned in accordance with federal requirements. Schools are required to account for the receipt and expenditure of all FSA program funds in accordance with generally accepted accounting principles.

A school must establish and maintain on a current basis:

- financial records that reflect each FSA program transaction, and
- general ledger control accounts and related subsidiary accounts that identify each FSA program transaction and separate those transactions from all other institutional financial activity.

Fiscal Records a School Must Maintain

The fiscal records that a school must maintain include, but are not limited to:

- ✓ Records of all FSA program transactions
 - ✓ Bank statements for all accounts containing FSA funds
 - ✓ Records of student accounts, including each student's institutional charges, cash payments, FSA payments, cash disbursements, refunds, returns, and overpayments required for each enrollment period
 - ✓ General ledger (control accounts) and related subsidiary ledgers that identify each FSA program transaction (FSA transactions must be separate from school's other financial transactions)
 - ✓ Federal Work-Study payroll records
 - ✓ Records that support data appearing on required reports, such as:
 - Pell Grant Statements of Accounts
 - ED Payment Management System cash requests and quarterly or monthly reports
 - FSA program reconciliation reports
 - Audit reports and school responses
 - State grant and scholarship award rosters and reports
 - Accrediting and licensing agency reports
 - Records used to prepare the *Income Grid* on the FISAP
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General records

In addition, a school must maintain the records that pertain to the general administration of FSA program funds (listed on the chart on the following page.)

In addition, participants in the:

- Perkins Loan Program must follow procedures in Section 674.19 for documenting the repayment history for each borrower for that program (see *Volume 5 — Perkins Loans*);
- FWS Program must follow procedures established in Section 675.19 for documentation of work, earnings, and payroll transactions for that program (see *Volume 6 — Federal Work-Study Program*); and
- FFEL Program must follow procedures established in Section 682.610 for documentation of additional loan record requirements for that program (see *Volume 8 — FFEL/DL Loans*).

General Records a School Must Maintain

A school must maintain records for each FSA recipient that include, but are not limited to:

- ✓ The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine a student's eligibility for FSA loans
- ✓ Application data submitted to the Department, lender, or guaranty agency by the school on behalf of the student or parent
- ✓ Documentation of each student's or parent borrower's eligibility for FSA program funds (e.g., records that demonstrate that the student has a high school diploma, GED, or the ability to benefit)
- ✓ Documentation of all professional judgment decisions
- ✓ Financial aid history information for transfer students
- ✓ Cost of attendance information
- ✓ Documentation of a student's satisfactory academic progress
- ✓ Documentation of student's program of study and courses in which enrolled
- ✓ Data used to establish student's admission, enrollment status, and period of enrollment
- ✓ Required student certification statements and supporting documentation
- ✓ Documents used to verify applicant data
- ✓ Documentation relating to each student's or parent borrower's receipt of FSA program funds, including but not limited to:
 - The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of grant, loan, or FWS award;
 - The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;
 - The amount, date, and basis of the school's calculation of any refunds/returns or overpayments due to or on behalf of the student; and
 - The payment of any refund/return or overpayment to the FSA program fund, a lender, or the Department, as appropriate.
- ✓ Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations

In addition, a school must maintain records that include, but are not limited to:

- ✓ Reports and forms used by the institution in its participation in an FSA program, and any records needed to verify data that appear in those reports and forms
 - ✓ Documentation supporting the school's calculation of its completion or graduation rates, and transfer-out rates (See chapter 7.)
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RECORD RETENTION PERIODS

Schools must retain all required records for a minimum of three years from the end of the award year. However, the starting point for the three-year period is not the same for all records. For example, some campus-based program records must be kept for three years from the end of the award year in which the funds were awarded and disbursed. **Schools must keep the Fiscal Operations Report (FISAP) and any records necessary to support their data (e.g., the source data for the income grid) for three years from the end of the award year in which the FISAP is submitted.** The most current FISAP, which will contain 2002-2003 data, must be submitted during the 2003-2004 award year, will request 2004-2005 funds, and has a submission date of October 2003. Because this FISAP will be submitted during the 2003-2004 award year, records must be kept until at least June 30, 2007, three years from the last day of the 2003-2004 award year.

There are additional exceptions to the general record retention periods for repayment records for Perkins Loans and records related to a FFEL or Direct Loan borrower's eligibility and participation in those programs. There are also additional record retention requirements that apply to schools granted waivers of the audit submission requirements.

Different retention periods are necessary to ensure enforcement and repayment of FSA loans. Perkins Loan repayment records, including cancellation and deferment records, must be kept for three years from the date that the loan was assigned to the Department, cancelled, or repaid. Perkins original promissory notes and original repayment schedules must be kept until the loan is satisfied or needed to enforce the obligation (for more information, see *Volume 5 — Perkins Loans*). Records relating to a borrower's eligibility and participation in the FFEL and Direct Loan programs must be kept for three years from the last day of the award year in which the student last attended the school.

The chart on the next page illustrates the required minimum retention periods for records under the various FSA programs.

A school may retain records longer than the minimum period required. Moreover, a school may be required to retain records involved in any loan, claim, or expenditure questioned in any FSA program review, audit, investigation, or other review, for more than three years (see chapter 11 for information on program reviews and audits). If the three-year retention period expires before the issue in question is resolved, the school must continue to retain all records until resolution is reached.

Records cite

34 CFR 668.24

Additional record retention cite

34 CFR 668.27

Minimum Record Retention Periods

| FSA Program | <i>End of the award year in which the report was submitted</i> | <i>End of the award year for which the aid was awarded</i> | <i>End of the award year in which the student last attended</i> | <i>The loan is satisfied or the documents are needed to enforce the obligation</i> | <i>The date on which a loan is assigned to the Department, cancelled, or repaid</i> |
|---|--|--|---|--|---|
| Campus-based and Pell Grant | | 3 YEARS | | | |
| Except: | | | | | |
| • Fiscal Operations Report (FISAP) and supporting records | 3 YEARS | | | | |
| • Perkins repayment records (after 12/87, includes original repayment schedule, though manner of retention remains same as promissory note) | | | | | 3 YEARS |
| • Perkins original promissory notes (before 12/87, included original repayment schedule) | | | | UNTIL | |
| FFEL and Direct Loans | | | | | |
| • Records related to borrower's eligibility and participation | | | 3 YEARS | | |
| • All other records, including any other reports or forms | 3 YEARS | | | | |

RECORD MAINTENANCE

Acceptable formats

A school must maintain all required records in a systematically organized manner. Unless a specific format is required, a school may keep required records in

- hard copy
- optical disk
- microform
- CD-ROM
- computer file
- other media formats

Regardless of the format used to keep a record, all record information except for the Institutional Student Information Record (ISIR) must be retrievable in a coherent hard copy format (for example, an easily understandable printout of a computer file) or in a media format acceptable to the Department. The requirement providing for other media formats acceptable to the Department allows for the use of new technology as it is developed. The Department will notify schools of acceptable media formats; schools should not apply for approval of a media format.

Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format. This includes tax returns, verification statements, and Student Aid Reports (SARs) used to determine eligibility, and any other document when a signature seal, etc., contained on it is necessary for the document to be used for the purposes for which it is being retained.

A school may maintain a record in an imaged media format only if the format is capable of reproducing an accurate, legible, and complete copy of the original document. When printed, the copy must be approximately the same size as the original document.

Please note that promissory notes that are signed electronically, must be maintained electronically in accordance with the requirements of 34 CFR 668.24(d)(3)(i) through (iv).

Safeguarding electronic records

The Department is making a continuing effort to provide for the increasing use of technology in the administration of the FSA programs. As new regulations are written they will contain instructions for schools that wish to move toward maintaining FSA records in an electronic format.

As institutions begin developing plans for using electronic recordkeeping in administering other FSA programs, they should keep in mind the safeguards required for electronic certification in the FWS program. Those safeguards include:

- password protection,
- password changes at set intervals,
- access revocation for unsuccessful log-ins,
- user identification and entry point tracking,
- random audit surveys with supervisors, and
- security tests of the code access.

Special requirements for SARs and ISIRs

Special maintenance and availability requirements apply for SARs and ISIRs used to determine eligibility. It is essential that these basic eligibility records be available in a consistent, comprehensive, and verifiable format for program review and audit purposes.

Because the SAR is a hard copy document, it must be maintained and available in its original hard copy format or in an imaged media format. The ISIR, an electronic record, must be maintained and available in its original format, i.e., as it was supplied by the Department to the school on a magnetic tape or cartridge, or as it was

archived using EDExpress software supplied to the school. A school that uses EDExpress has the ability to preserve the ISIR data that it has maintained during the applicable award year by archiving the data to a disk or other computer format. A school that receives ISIRs on magnetic tapes or cartridges may make a copy of the file received from the Department.

A school is not required to maintain all required records in its financial aid office. For example, it may be more appropriate for a school to maintain some records in the business office, the admissions office, or the office of the registrar. The responsible administrator in the office maintaining the records should be aware of all applicable record retention requirements.

If a school closes, stops providing educational programs, is terminated or suspended from the FSA programs, or undergoes a change in ownership that results in a change of control, it must provide for the retention of required records. It must also provide for access to those records for inspection and copying by the Department. For a school that participates in the FFEL Program, the school must also provide access for the appropriate guaranty agency.

EXAMINATION OF RECORDS

Location

A school must make its records available to the Department at a location of the institution designated by the Department. These records must be readily available for review, including any records of transactions between a school and the financial institution where the school deposits any FSA funds.

Cooperation with agency representatives

A school that participates in any FSA program, and the school's third-party servicers, if any, must cooperate with the agencies and individuals involved in conducting any audit, program review, investigation, or other review authorized by law. This cooperation must be extended to the following individuals and their authorized representatives: an independent auditor, the Secretary of the Department, the Department's Inspector General, and the Comptroller General of the United States. A school must also provide this cooperation to any guaranty agency in whose program the school participates, and to the school's accrediting agency.

Timely access

A school must cooperate by providing timely access to requested records, pertinent books, documents, papers, or computer programs for examination and copying by any of the agents listed above. The records to which timely access must be provided include, but are not

limited to, computerized records and records reflecting transactions with any financial institution with which the school or servicer deposits or has deposited any FSA program funds.

REASONABLE ACCESS TO PERSONNEL

A school must also provide reasonable access to all personnel associated with the school's or servicer's administration of the FSA programs so that any of the agents listed above may obtain relevant information.

A school or servicer has not provided reasonable access to personnel if the school or servicer

- refuses to allow those personnel to supply all relevant information,
- permits interviews with those personnel only if the school's or servicer's management is present, or
- permits interviews with those personnel only if the interviews are tape-recorded by the school or servicer.

FSA RECIPIENT INFORMATION

If requested by the Department, a school or servicer must provide promptly any information the school or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of FSA program funds who attends or attended the school. A school must also provide this information, upon request, to a lender or guaranty agency in the case of a borrower under the FFEL Program.

DISCLOSING STUDENT INFORMATION

FERPA

To protect the privacy of students and families, federal law sets certain conditions on the disclosure of personal information from records kept by schools that participate in the FSA programs. The relevant law is the Family Educational Rights and Privacy Act of 1974. Do not confuse FERPA with the Privacy Act of 1974 that governs the records kept by government agencies, including the application records in the federal processing system.

FERPA restrictions on disclosure of records that are created and maintained by campus law enforcement units (for law enforcement purposes) are discussed in chapter 7.

Department regulations set limits on the disclosure of personally identifiable information from school records, define the responsibilities of the school, and define the rights of the student to review the records and request a change to the records. A school must give the student the opportunity to inspect and review his or her educational records, but does not have to provide copies of the records unless the requirement that the student come to the school to inspect and review the records would effectively deny access to the student. While the school may not charge a fee for retrieving the records, it may charge a reasonable fee for providing copies of the records, provided that the fee would not prevent access to the records.

The graphic below notes several important elements of the school's responsibilities and the rights of the student or parent. The regulations apply to all education records the school keeps, including admissions records (only if the student was admitted) and academic records as well as any financial aid records pertaining to the student. Therefore, the financial aid office is not usually the office that develops the school's FERPA policy or the notification to students and parents, although it may have some input.

The term *education record* does **not** include records that are kept in the sole possession of the maker of the record (often called sole possession records). Sole possession records are

1. used as a memory or reference tool,

A school is required to —

- ◆ develop an annual notification that contains the procedures a student or the student's parents must follow to review the education records of the student;
- ◆ notify parents and students of their rights with respect to education records; and
- ◆ document in the student's file each time personally identifiable information is disclosed to persons other than the student.

A student has the right to —

- ◆ inspect and review any education records pertaining to the student;
 - ◆ request an amendment to his/her records; and
 - ◆ request a hearing (if the request for an amendment is denied) to challenge the contents of the education records, on the grounds that the records are inaccurate, misleading, or violate the rights of the student.
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2. not accessible or revealed to any other person except a temporary substitute for the maker of the record, and
3. typically maintained by the school official unbeknownst to other individuals.

Records that contain information taken directly from a student or that are used to make decisions about the student are not sole possession records.

The FERPA regulations also establish rules governing the disclosure of student information to parties other than the student. The regulation lists 16 conditions under which *personally identifiable information* from a student's education record may be disclosed without the student's prior written consent. Several of these conditions are of particular interest to the financial aid office:

- Disclosure may be made to authorized representatives of the U.S. Department of Education, the Office of Inspector General, or state and local education authorities. These officials may have access to education records as a part of an audit or program review, or to ensure compliance with FSA program requirements.

Representatives of the Department include research firms that are under contract with the Department to conduct studies of financial aid procedures using student information provided by the schools selected for the study. The term also includes the SFAP Public Inquiry Contractor (PIC).

- Disclosure may be made if it is in connection with financial aid that the student has received or applied for. Such a request may only be granted if the student information is needed to determine the amount of the aid, the conditions for the aid, the student's eligibility for the aid, or to enforce the terms or conditions of the aid.
- The Immigration and Naturalization Service (INS) requires foreign students attending an educational institution under an F-1 visa to sign a *Form I-20*. The I-20 contains a consent provision that is sufficiently broad to permit an education institution to release personally identifiable information to the INS. Students attending school under an M-1 or J-1 visa have signed similar consent forms, and their education records also may be released to the INS.
- Recent amendments to FERPA permit educational agencies and institutions to disclose — without consent or knowledge of the student or parent — personally identifiable information to the Attorney General of the United States or his designee in response to an *ex parte* order in connection with the investigation of a crime of terrorism. An *ex parte* order is an order issued by a court without notice to the adverse party.

Clarification



Clarification

When information is supplied to the Attorney General or his designee pursuant to an *ex parte* order, an institution is not required to notify the student or keep a record of the disclosure. In addition, a school that supplies information pursuant to an *ex parte* order is not liable for that disclosure.

- A health and safety exception permits the disclosure of personally identifiable information from a student's record in case of an immediate threat to the health or safety of students or other individuals.
- Disclosure may be made to either parent of a dependent student (regardless of which parent claims the student as a dependent) if the student is a dependent as defined by the Internal Revenue Service (IRS). Note that the IRS definition of a dependent is quite different from that of a dependent student for FSA purposes. For IRS purposes, a student is a dependent of the parent(s) if the student receives more than half of his or her support from the parent(s).
- Disclosure may be made to organizations that are conducting studies concerning the administration of student aid programs on behalf of educational agencies or institutions.

There are two different FERPA provisions concerning the release of records relating to a *crime of violence*. One concerns the release to the *victim* of any *outcome* involving an *alleged* crime of violence. This is found in section 99.31 (a) (13) of the latest FERPA regulations. A separate provision, 99.31 (a) (14), permits a postsecondary institution to disclose to anyone the final results of any disciplinary hearing against an alleged perpetrator of a crime of violence where that student was *found in violation* of the institution's rules or policies with respect to such crime or offense.

Disclosure of requests for information

Schools are required to keep a record of each request for access and each disclosure of personally identifiable student information. The record must identify the parties who requested the information and their legitimate interest in the information. This record must be maintained in the student's file as long as the educational records themselves are kept.

Sample disclosure statement

If student records are requested by Department reviewers in the course of a program review, for instance, the school **must document in each student's file** that the student's records were disclosed to representatives of the Department. The easiest way for the school to do this is to photocopy a statement to this effect and include it in each student's file. A statement such as the following would be appropriate for a review of the FSA programs conducted by a Department regional

Exception to prior disclosure and recordation requirements

Schools are not required to notify a student in advance or keep a record of the disclosure when the request is received in conjunction with *ex parte* orders. In addition, schools are not required to notify a student in advance or keep a record of the disclosure made in conjunction with a grand jury subpoena, and other law enforcement subpoenas when this is specifically stated in the subpoena.

office: *These financial aid records were disclosed to representatives of the U.S. Department of Education, Region __, on (Month/Day/Year) to determine compliance with financial aid requirements, under 34 CFR Part 99.31(a)(4).*

Redisclosure to other authorized parties

When student information has been disclosed to one of the parties listed above, that party may redisclose that information to additional parties who are authorized to receive the information without prior written consent, provided that such redisclosure is included in the statement in the student's file. For instance, if a program review finds evidence that a student may have fraudulently obtained aid, this information may be redisclosed to the Department's Office of Inspector General (OIG) by the regional office. (Thus the OIG would not have to make a separate request to the school for the same information.) When redisclosure is anticipated, the additional parties to whom the information will be disclosed must be included in the record of the original disclosure. For instance, to continue the example for an FSA program review, the following statement might be added: *Case Management and Oversight may make further disclosures of this information to the Department's Office of Inspector General, and to the U.S. Department of Justice, under 34 CFR 99.33(b).* Schools should check with the program review staff to find out if any redisclosure is anticipated.

As mentioned earlier, the financial aid office is usually not responsible for developing the school's FERPA policy. However, anyone involved in developing a school's policy or anyone who would like a copy of the Department's model notification for postsecondary schools, may review and download the notification from the Family Policy Compliance Office Web site at

<http://www.ed.gov/offices/OM/fpc>

