

This chapter discusses the three types of institutions that are eligible to participate in the FSA programs.

A school that wishes to participate in the FSA programs must demonstrate that it is eligible to participate before it can be certified for participation. A school must apply to and receive approval from the Department of its eligibility to participate. Some schools apply only for a designation as an eligible institution (they do not seek to participate) so that students attending the school may receive deferments on FSA program loans, or be eligible for the HOPE/Lifetime Learning Scholarship tax credit, or so that the school may apply to participate in federal HEA programs other than the FSA programs. The same application form is used to apply for both eligibility and certification for participation (see chapter 2).

THE THREE DEFINITIONS OF ELIGIBLE INSTITUTIONS

The institutional eligibility regulations define three types of eligible institutions — institutions of higher education, proprietary institutions of higher education, and postsecondary vocational institutions. Under the three definitions, a school is eligible to participate in all the FSA programs provided the school offers the appropriate type of eligible program (see chart on next page). This section covers the key elements of the three definitions, giving special attention to those requirements that affect the definition of an eligible program.

Although the criteria for the three types of institutions differ somewhat, the definitions are not mutually exclusive. That is, a public or private nonprofit school may meet the definition of more than one type of eligible institution.

INSTITUTIONAL CONTROL

The *control* of an institution distinguishes whether the school is public or private, nonprofit or for profit. Under the institutional definitions, an *institution of higher education* or a *postsecondary vocational institution* can be either public or private, but is always nonprofit. A *proprietary institution of higher education* is always a private, for profit institution.

Definitions of eligible institutions of education cite

34 CFR 600.4, 600.5, and 600.6

Nonprofit institution

A school that is

- owned and operated by one or more nonprofit corporations or associations whose net earnings do not benefit any private shareholder or individual,
- legally authorized to operate as a nonprofit organization by each state in which it is physically located, and
- determined by the Internal Revenue Service (IRS) to be eligible for tax-deductible contributions in accordance with the IRS Code (26 USC 501(c)(3)).

ELIGIBLE INSTITUTION

To be eligible, all institutions must adhere to the following requirements:

It must be Legally Authorized by the state where the institution offers postsecondary education to provide a postsecondary education program.

It must be Accredited by a nationally recognized accrediting agency or have met the alternative requirements, if applicable.

It must offer Admission as a regular student only to individuals with a high school diploma or its recognized equivalent, eligible home-schooled students, or individuals beyond the age of compulsory school attendance in the state where the institution is located.

Types of Institutional Control

<p><i>Institution of Higher Education</i></p> <p>A public or private nonprofit educational institution located in a state</p>	<p><i>Proprietary Institution of Higher Education</i></p> <p>A private, for-profit educational institution located in a state</p>	<p><i>Postsecondary Vocational Institution</i></p> <p>A public or private nonprofit educational institution located in a state</p>
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Eligible Programs

<p>(1) Associate, bachelor's, graduate, or professional degree, or</p> <p>(2) At least a two-year program that is acceptable for full credit toward a bachelor's degree, or</p> <p>(3) At least a one-year training program that leads to a degree or certificate (or other recognized educational credential) and prepares students for gainful employment in a recognized occupation.</p>	<p>Program offered: must provide training for gainful employment in a recognized occupation, and must meet the criteria of at least one category below.</p> <p>(1) Provides at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. May admit students without an associate degree or equivalent.</p> <p>(2) Provides at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. Must be a graduate/professional program, or must admit only students with an associate degree or equivalent.</p> <p>(3) Provides at least a 10-week (instructional time) undergraduate program of 300-599 clock hours. Must admit at least some students who do not have an associate degree or equivalent, and must meet specific qualitative standards. Note: These programs are eligible only for FFEL and Direct Loan participation.</p>
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Additional Rules

	<p>"Two-Year Rule" (applicable to proprietary and postsecondary vocational institutions) — Legally authorized to give (and continuously has been giving) the same postsecondary instruction for at least two consecutive years.</p> <p>Special rule (applicable to proprietary institutions) — Derives no more than 90% of its revenues from FSA funds.</p>
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The following pages expand on the aforementioned requirements.

LEGAL AUTHORIZATION BY A STATE

With the exception of foreign schools (see the discussion under *Foreign Schools* later in this chapter), an eligible institution under any of the three definitions must be located in a state. Generally, the determining factor is the physical location of the main campus or place of instruction. For instance, if a school's main campus is in a state, the school can still have an additional location in a foreign country.

To qualify as an eligible institution under any of the three institutional definitions, a school must be legally authorized by the state in which it offers an educational program to provide the program. The state's legal authorization is the legal status granted to an institution through a charter, license, or other written document issued by an appropriate agency or official of the state in which the institution is located. It may be provided by a licensing board or educational agency. In some cases, the school's charter is its legal authorization.

Schools must provide evidence that they have the authority to operate in a state at the time of the school's certification to participate in the FSA programs. For more information on applying for participation in the FSA programs, see chapter 2.

ACCREDITATION

Generally, an institution must be accredited or preaccredited by a nationally recognized accrediting agency or association (both referred to here as agencies) to be eligible. The procedures and criteria for recognizing accrediting agencies are found in chapter 1.

The Department periodically publishes a list of recognized accrediting bodies in the Federal Register, based on criteria given in 34 CFR Part 602. The list of accrediting agencies recognized for Title IV purposes can be found on the Department's Web site at:

<http://www.ed.gov/admins/finaid/accred/index.html>

under the heading *On-line References*.

Copies of this list are also available from the Department at the following address:

**U.S. Department of Education
Accreditation and State Liaison
1990 K Street, N.W. (Room 7159)
Washington, DC 20006-8509**

State

"State" includes not only the 50 states, but also American Samoa, Puerto Rico, the District of Columbia, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. A "state" also includes the Freely Associated States, which include the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Nationally recognized accrediting agency or association

An accrediting agency or association which the Department has recognized to accredit or preaccredit a particular category of institution, school, or educational program in accordance with the provisions in 34 CFR Parts 602 and 603.

Preaccredited:

A status granted by a nationally recognized accrediting agency or association to a public or private nonprofit institution that is progressing towards accreditation within a reasonable period of time.

Alternatives to accreditation cite

34 CFR 600.4(a)(5)(ii)
34 CFR 600.6(a)(5)(ii)

Alternatives to accreditation

The law provides two statutory alternatives to accreditation. First, a nonprofit institution may be preaccredited by an agency or association that has been approved by the Department to grant such preaccreditation. Secondly, unaccredited public postsecondary vocational educational institutions may be eligible for FSA program funds if accredited by a state agency that the Department determines to be a reliable authority.

Primary accreditor

The primary accreditor is an accrediting agency whose scope is institution-wide rather than only programmatic. A participating institution must advise the Department which accrediting agency it wants to serve as it's primary accrediting agency for the purpose of Title IV eligibility.

Dual accreditation

If a school is accredited by two agencies at the same time, the school must designate which agency's accreditation will be used in determining institutional eligibility for FSA funds and must inform the Department via the E-App. Further, the school must provide to the Department (and to both agencies) all materials documenting the reasons and causes for dual accreditation before the school adds the additional accreditation. See chapter 12 for more on changes in accreditation and loss of eligibility.

ADMISSIONS STANDARDS

Regular student:

A person who is enrolled (or is accepted for enrollment) in an eligible program for the purpose of obtaining a degree, certificate, or other recognized educational credential.

Regular student cite

34 CFR 600.2

The Amendments of 1998 extended

eligibility to home-schooled students. Final regulations were published on October 22, 1999.

An eligible institution may admit as regular students only persons who have a high school diploma or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the state in which the school is located.

To be eligible for Federal Student Aid, students who are beyond the age of compulsory attendance but who do not have a high school diploma or its recognized equivalent must meet ability-to-benefit criteria or meet the student eligibility requirements for a student who is home schooled. (For more information on this student eligibility requirement, see *Volume 1 – Student Eligibility*).

High school diploma

Unless required by its accrediting or state licensing agency, the school is not required to keep a copy of a student's high school diploma or GED (the recognized equivalent of a high school diploma (see below)). Rather, the school may rely on the student's certification (including that on the FAFSA) that he or she has received the credential and a copy of the certification must be kept on file. This certification need not be a separate document. It may be collected on the school's admissions application. The school may also require the student to provide supporting documentation.

Recognized equivalent of a high school diploma

Generally, a recognized equivalent of a high school diploma is either a GED or a state certificate (received after the student has passed a state-authorized test) that the state recognizes as being equivalent to a high school diploma. However, the Department recognizes that there are special cases. If a student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree, the student's academic transcript is considered equivalent to a high school diploma. A student without a high school diploma who is seeking enrollment in a program of at least the associate-degree level, and who has excelled academically in high school and met formalized written admissions policies of the school, is also considered to have the equivalent of a high school diploma. These students may be eligible to receive FSA program funds without having to meet the ability-to-benefit requirements, provided the students are no longer enrolled in high school. A student who has neither a high school diploma or its recognized equivalent may become eligible to receive FSA program funds by achieving a passing score (specified by the Department) on an independently administered test approved by the Department. (For a complete discussion of the Ability-to-benefit provisions and additional discussion of home-schooled students' eligibility, see *Volume 1—Student Eligibility*.)

A school that admits students who do not have a high school diploma nor its recognized equivalent has some additional considerations. Unless the school provides a four-year bachelor's degree program or two-year associate degree program, it does not qualify as an eligible institution if, for its latest complete award year, more than 50% of its regular enrolled students had neither a high school diploma nor its equivalent. A waiver of this limitation is possible for some schools. See the discussion under *Ability-to-benefit limitation* later in this chapter for more information.

Ability-to-benefit cite

34 CFR 668, Subpart J

Ability to benefit limitation cite

34 CFR 600.7(a)(1)(iv)

Home schooling cite

34 CFR 668.32(e), and

DCL: GEN-02-11

Eligibility of Home-Schooled Students –

Institutional and Student Eligibility,

Nov.27, 2002

Clarification

Home schooling example

If your state requires children to attend school until age 17, you may admit as a regular student a home-schooled student who completes the secondary curriculum at age 16 if your state would not consider the student truant and would not require that student to go back to high school, or continue a home-school education until age 17.

Home schooling

Under the student eligibility provisions of the HEA, a student who does not have a high school diploma or GED is eligible to receive Title IV, HEA program assistance if the student completes a secondary school education in a home-school setting that is treated as a home school or private school under state law. However, a student must be enrolled in an eligible institution to receive Title IV, HEA program assistance, and the statute also requires that an eligible institution may admit as regular students only students with high school diplomas or GEDs, or students who are beyond the age of compulsory school attendance in the state in which the institution is located.

The Department considers that a home-schooled student is beyond the age of compulsory school attendance if the state in which the institution is located does not consider the student truant once he or she has completed a home-school program.

In documenting a home-schooled student's completion of secondary school in a home-schooled setting, an institution may rely on a home-schooled student's self-certification that he or she completed secondary school in a home school setting, just as it may accept a high school graduate's self-certification of his or her receipt of a high school diploma. Self-certification of the receipt of a high-school diploma is commonly done through an answer to a question on the Free Application for Federal Student Aid (FAFSA). However, because the FAFSA does not include a question regarding home-school completion, institutions may accept such self-certifications in institutional application documents, in letters from the students, or in some other appropriate record.

“TWO-YEAR” RULE

To be eligible as a proprietary institution or a postsecondary vocational institution, a school must be legally authorized to give (and continuously been giving) the same postsecondary instruction for at least two consecutive years. The educational program(s) offered must remain substantially the same in length and subject matter, except for changes made because of new technology or requirements of other federal agencies.

A branch campus of an eligible proprietary institution or postsecondary vocational institution seeking status as a main campus or freestanding institution is subject to the two-year rule. A branch campus must be in existence for two years after certification as a branch campus before the branch can seek certification as a main or freestanding school. A branch campus's time as a branch campus counts toward the two years.

Branch campus

A branch campus is a location of a school that is geographically apart and independent of the main campus of the school. A location is independent of the main campus if the location:

- is permanent in nature;
- offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- has its own faculty and administrative or supervisory organization; and
- has its own budgetary and hiring authority.

Branch campus cite

34 CFR 600.2 and 600.8

An additional location must obtain approval from the Department to become a branch campus. A branch campus then must operate as a branch campus for two years (satisfy the two-year rule) before it may be considered for status as a freestanding institution. Time as an additional location of an eligible proprietary institution or postsecondary vocational institution does not count toward the two-year rule.

ADDITIONAL INSTITUTIONAL ELIGIBILITY FACTORS

A school becomes an ineligible institution if the school violates, among other requirements, the 90/10 Rule (applicable to proprietary schools only), the correspondence course limitation, the correspondence student limitation, the incarcerated student limitation, or the ability-to-benefit student limitation. In addition, a school is not eligible if it (or its owner) files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving FSA program funds. A school that becomes ineligible because of one of these factors must immediately stop awarding FSA program funds and must comply with the requirements in 34 CFR 668.26 for a school that has lost its FSA participation. For more information on requirements when a school's FSA participation ends, see chapter 12.

Demonstrations of compliance

All of the *limitation* requirements and the 90/10 Rule involve certain percentage calculations, that are performed by the school either to demonstrate compliance with a requirement or to demonstrate eligibility for a limitation waiver. For each of the tests enumerated above a calculation performed by the school must be attested to by the independent auditor who prepares the school's audited financial statement or its FSA compliance audit (for more information on audits, see chapter 12). If a school's initial or previous calculation was in error, the auditor's report must be part of the audit workpapers and must include a recalculation. The auditor's attestation report must indicate whether the school's determinations (including any relevant waiver or exception) are accurate. Requirements for demonstrating compliance with the 90/10 Rule are discussed below.

For each of the limitation requirements, the school must notify the Department (via Section G of the Application) of the school's failure to meet a requirement, its falling within a prohibited limitation, or its ineligibility for a continued waiver, as applicable. The school's notification must occur by July 31 following the end of an award year. A school that fails to meet any of these requirements loses its eligibility to participate in any FSA program as of the last day of the most recent award year.

Additional location cite

34 CFR 600.32

Conditions of institutional ineligibility

34 CFR 600.7

Disqualified individuals and the PPA

In its PPA, a school agrees to not knowingly employ in a capacity involving the administration of Title IV funds, anyone who has pled nolo contendere or guilty or has been administratively or judicially determined to have committed fraud or any other material violation of the law involving federal, state, or local government funds (34 CFR 668.14(b) (18)(i)).

Notification cite

34 CFR 600.8(h)

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted Application (which deal with enrollment thresholds in these areas), the school must notify the Department via the application. The Department will advise the school of its options, including whether the school might be eligible for a waiver. (Waivers are available for the correspondence student limitation, the incarcerated student limitation, and the ATB limitation.)

To regain institutional eligibility lost due to the limitation requirements, the school must demonstrate its compliance with all eligibility requirements and its ability to stay outside prohibited limits for at least one award year. Further, it must also show how its administrative practices and policies have been changed to ensure that it will not fall within prohibited limits in the future.

Proprietary institutions have 90 days after their most recent fiscal year has ended to report to the Secretary if they did not satisfy the 90/10 Rule for that period. Schools that fail to satisfy the 90/10 Rule lose their eligibility as of the last day of that fiscal year. A school changing from for profit to nonprofit must continue to file this report for the first year of its nonprofit status.

If a school becomes ineligible because it files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving FSA program funds, the school must notify the Department of the change within 10 days. The loss of eligibility is effective as of the date of the bankruptcy, or the date the school or individual pleads to or is found responsible for the crime, as applicable. A loss of eligibility for these two reasons is permanent. The institution's eligibility cannot be reinstated.

The 90/10 Rule

To be eligible for FSA participation, a proprietary institution may derive no more than 90% of its revenues from the FSA programs. As specified in 34 CFR 600.5(d), a school must determine its revenue percentages using the following formula for its latest complete fiscal year.

90/10 cite

Sec. 102

34 CFR 600.5

FSA Program Funds (except LEAP or FWS) used for tuition, fees, and other institutional charges to students

The sum of revenues generated by the school from: (1) tuition, fees, and other institutional charges for students enrolled in eligible training programs; plus (2) school activities necessary for the education or training of students enrolled in those eligible programs.*

*to the extent not included in tuition, fees, and other institutional charges

The cash basis of accounting

A proprietary institution of higher education must use the cash basis of accounting in determining whether it satisfies the 90/10 Rule. Under the cash basis of accounting, revenue is recognized when received.

For the purpose of calculating the qualifying percentages under the 90/10 Rule, revenue is an inflow or other enhancement of assets to an entity, or a reduction of its liabilities resulting from the delivery or production of goods or services. An institution may recognize revenue only when the institution receives cash, i.e., when

there is an inflow of cash. As a result, **in order for an institution to recognize revenue under the cash basis of accounting, that revenue must represent cash received from a source outside the institution.**

Exclusions from fraction

In determining whether a school satisfies the 90/10 Rule, the totals used in the fraction do not include refunds paid to or on behalf of students who have withdrawn, dropped out, been expelled, or otherwise failed to complete the period of enrollment. The cost of books, supplies, and equipment is not included in the fraction unless those costs are institutional charges as described in Volume 5 – Overawards, Overpayments, and Withdrawal Calculations.

FSA program funds for institutional charges

In figuring what FSA program funds were used to pay tuition, fees, and other institutional charges, a school **must** assume that any FSA program funds disbursed (or delivered) to or on behalf of a student were used for such costs, regardless of whether the institution credits those funds to the student's account or pays them directly to the student, **unless** those costs were otherwise paid by

- grant funds provided by nonfederal public agencies,
- grant funds provided by independent private sources,
- funds from qualified government agency job training contracts, or
- funds received from a prepaid state tuition plan.

Revenues

In figuring revenues generated by school activities, a school may include only revenue generated by the institution from activities it conducts, that are **necessary for its students' education or training**. The activities must be

- conducted on campus or at a facility under the control of the institution;
- performed under the supervision of a member of the institution's faculty; and
- required to be performed by all students in a specific educational program at the institution.

When an institution makes a loan to a student, it does not receive cash from an outside source. Accordingly, cash revenue from institutional loans is recognized only when those loans are repaid, because that is when there is an inflow of cash from an outside source. Loan proceeds from institutional loans that were disbursed to students may not be counted in the denominator of the fraction, because these *proceeds* neither generate nor represent actual inflows of cash. The school may include only loan repayments it received during the appropriate fiscal year for previously disbursed institutional loans.

Revenues

Revenues from auxiliary enterprise and activities that are not a necessary part of the students' education, such as revenues from the sale of equipment and supplies to students and revenues from vending machines, may **not** be included in the denominator of the 90/10 calculation.

If a clinic or service is

- operated by the school;
- offered at the school;
- performed by students under direct faculty supervision; and
- required of all students as part of their educational program

then revenues from the clinic or service may be included in the denominator of the 90/10 calculation.

Additional guidance

on 90/10 and institutional loans and scholarships can be found in Dear Partner Letter GEN-99-33 and Dear CPA Letters CPA-99-01 and CPA-99-02.

Institutional grants in the form of tuition waivers do not count as revenue because no new revenue is generated. Similarly, internal transfers of cash among accounts are not considered revenue because they do not represent an inflow of cash to the institution. Institutional scholarships are not revenues generated by the school (unless they are donated by an unrelated or outside third party). An exception is permitted for schools to use donations from a related party to create restricted accounts for institutional scholarships, but only the amount earned on the restricted account and used for scholarships would count as revenue in the denominator of the calculation.

Funds held as credit balances in institutional accounts cannot be counted in the 90/10 formula. However, once funds held as credit balances are used to satisfy institutional charges, they would be counted in both the numerator and the denominator of the formula.

Revenue generated from the sale of *nonrecourse* institutional loans to an unrelated third party may be counted as revenue in the denominator of the 90/10 calculation to the extent that the revenues represent actual proceeds from the sale.

Loans made by a private lender that are **in any manner** guaranteed by the school are known as *recourse loans*. The proceeds from recourse loans may be included in the denominator of an institution's 90/10 calculation for the fiscal year in which the revenues were received, provided that the institution's reported revenues are also reduced by the amount of recourse loan payments made during that fiscal year.

Note that recourse loan payments may be for recourse loans that were made in a prior fiscal year. Under the cash basis of accounting the reductions to total revenues in the denominator of the 90/10 calculation are reported in the fiscal year when the payments are made.

The nonrecourse portion of a partial recourse loan may be included in a 90/10 calculation. In order to include a partial recourse loan in a 90/10 calculation, the contract must identify the percentage of the sale that is nonrecourse; only that percentage may be included. Furthermore, no after-the-fact adjustments may be provided for.

The sale of institutional loan receivables is distinguishable from the sale of an institution's other assets because receivables from institutional loans are produced by transactions that generate tuition revenue. Tuition revenue represents income from the major service provided by an institution. That would not be true in the case of the sale of other institutional assets.

Time period covered

As mentioned above, a proprietary institution must determine whether it satisfied the 90/10 Rule during its most recently completed fiscal year.

Failure to satisfy the 90/10 Rule

Schools that fail to satisfy the 90/10 Rule lose their eligibility on the last day of that fiscal year. As mentioned earlier, the school must immediately stop awarding FSA program funds and comply with the provisions of 34 CFR 668.26. Schools have 90 days after their most recently completed fiscal year has ended to report to the Department if they did not satisfy the 90/10 Rule for the fiscal period.

Financial statement disclosure

A proprietary school is required to disclose the percentage of its revenues derived from the FSA programs (that the school received during the fiscal year covered by the audit) as a footnote to its audited financial statement. For information on audited financial statements, see chapter 12.

Financial statement notification

A school must send notice of its failure to satisfy the 90/10 Rule to the Department at the following address:

By U.S. Mail to:

**U.S. Department of Education
School Eligibility Channel
Data Management and Analysis Division
Document Receipt and Control Center
830 First Street, NE
Room 71-I-1
Washington, DC 20002-5402**

Phone: (202) 377-3630 (for this purpose)

Correspondence course and correspondence student limitation

In general, a school does not qualify as eligible to participate in the FSA programs if, for the latest complete award year,

- more than 50% of the school's courses were correspondence courses (correspondence course limitation), or
- 50% or more of the school's regular enrolled students were enrolled in correspondence courses (correspondence student limitation).

For additional information on the effects of correspondence courses and students on institutional eligibility, see chapter 8.

For schools using a calendar year as their fiscal year, their most recently completed fiscal year is the one that ended on December 31, 2002. For those schools using the award year as their fiscal year, their most recently completed fiscal year will be the one that ends on June 30, 2003.

Conditions of institutional ineligibility cite

34 CFR 600.7

Correspondence limitations cite

Sec. 481(a)(3)(A) and (B)
34 CFR 600.7(a)(1)(i) and (ii)

Student eligibility

For information about a student's eligibility for FSA program funds while enrolled in a correspondence course and cost of attendance information for correspondence courses, see Volume 1 – Student Eligibility.

Incarcerated student limitation

Incarcerated student defined

An “incarcerated student” is a student who is serving a criminal sentence in a federal, state, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution (does not include detention in a halfway house, home detention, or weekend-only sentences).

Incarcerated student limitation cite
34 CFR 600.7(a)(1)(iii) and 600.7(c)

A school is not eligible for FSA program participation if, in its latest complete award year, more than 25% of its regular students are incarcerated. A school can ask the Department to waive this limitation. For a school offering only two-year or four-year programs that lead to associate or bachelor’s degrees, the waiver applies to all programs offered at the school. However, if the school offers other types of programs, the waiver would apply to any of the school’s two-year associate degree programs or four-year bachelor’s degree programs, and also to any other programs in which the incarcerated regular students enrolled have a 50% or greater completion rate. (The calculation of this completion rate is specified in Section 600.7(e) (2) of the Institutional Eligibility regulations and must be attested to by an independent auditor.) If granted, the waiver is effective as long as the school continues to meet the waiver requirements each award year. For information on the eligibility of incarcerated students for FSA assistance, see *Volume 1 – Student Eligibility*.

Note: A school may request the waiver using the *Application to Participate*, by answering the questions in *section G* and explaining in question 69.

Ability-to-benefit limitation

Ability-to-benefit cite

34 CFR 668, Subpart J

Ability to benefit limitation cite
34 CFR 600.7(a)(1)(iv)

A student who has neither a high school diploma nor its equivalent is referred to as an *ability-to-benefit* student (see *Volume 1 – Student Eligibility* for additional information about ability-to-benefit students). Unless a school provides a four-year bachelor’s degree program, or a two-year associate degree program, the school will not qualify as an eligible institution if, for its latest complete award year, more than 50% of its regular enrolled students had neither a high school diploma nor its equivalent.

If a nonprofit institution exceeds the ability-to-benefit limitation because it serves significant numbers of ability-to-benefit students through contracts with federal, state, or local government agencies, the Department may waive the limitation.

The waiver will only be granted if no more than 40% of the institution’s regular students not served through contracts with federal, state, or local government agencies to provide job training do not have a high school diploma or its equivalent. If granted, the waiver may be extended in each year the school continues to meet the requirements. The school’s *ability-to-benefit* calculation must be attested to by an independent auditor.

Bankruptcy

A school is not an eligible institution if the school, or an affiliate of the school that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the school, files for relief in bankruptcy or has entered against it an order for relief in bankruptcy.

Crimes involving FSA program funds

In order to safeguard FSA funds, schools are prohibited from having as principals or employing, or contracting with other organizations that employ individuals who have engaged in the misuse of government funds. Specifically, a school must not knowingly –

1. employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled nolo contendere or guilty to, a crime 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 of law involving Federal, State, or local government funds;
2. contract with an institution or third-party servicer that has been terminated under the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or
3. contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been:
 - a. convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or
 - b. administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds.

A school acting as a lender in the FFEL program

Under certain conditions, a school that is not a correspondence school (see chapter 8) may make (originate) loans under the FFEL program. To originate FFEL loans a school must meet **all** of the following conditions —

1. Unless it is granted a waiver by the Department, a school may not have loans outstanding to or on behalf of more than 50% of the undergraduates in attendance on at least a half-time basis.
2. The school must inform any undergraduate student who has not previously obtained a loan from the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender.

Prohibited associations cite

34 CFR 668.14(b) (18)(i), (ii), & (iii)

School as FFEL lender cite

34 CFR 682.601

3. The school may not make or originate a loan for an academic period to a student until the student provides the school with evidence of denial of a loan by a commercial lender for the same academic period.
4. The school's cohort default rate must not exceed 15%.
5. Except for reasonable administrative expenses directly related to the FFEL Program, the school must use federal payments of interest and special allowances for need-based grant programs for its students.