

General Participation Requirements

A school that participates in the Federal Student Aid (FSA) programs must meet certain requirements, including providing drug and alcohol abuse prevention programs, and must adhere to certain standards of conduct with respect to lenders and third-party servicers. In some cases, a participating school may be required to report information about funds paid for lobbying activities and gifts or contracts involving foreign sources.

CONTRACTS WITH THIRD-PARTY SERVICERS

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.

The General Provisions regulations contain 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 school'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 loans, 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 cash monitoring 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.

CHAPTER 3 HIGHLIGHTS

- General requirements
 - Voter registration (in certain states)
 - GED preparatory program
- Contracts with 3rd-party servicers
- Incentive compensation
- Prohibited activities in loan programs
- Programs to prevent drug & alcohol abuse
 - Drug & alcohol abuse prevention programs
 - Drug-Free Workplace requirements
- Anti-lobbying certification & disclosure
- Reporting information on foreign sources & gifts

Related information

- Administrative Capability, Volume 2, Chapter 10
- Financial Standards, Volume 2, Chapter 11

Assessing your school's compliance

To assess your school's compliance with the provisions of this chapter see the FSA Assessment modules for:

- Institutional Eligibility
ifap.ed.gov/qahome/qaassessments/institutionalelig.html
- Consumer Information
ifap.ed.gov/qahome/qaassessments/consumerinformation.html

Third-party servicer cite

34 CFR 668.1, 668.2, 668.11, 668.14, 668.15, 668.16, 668.23, 668.25, 668.81, 668.82, 668.83, 668.84, 668.86, 668.87, 668.88, 668.89, and Subpart H.

Institutional liability

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

Excluded functions

Examples of functions excluded from the definition of “third-party servicer” are:

- performing lockbox processing of loan payments;
- performing normal electronic fund transfers (EFTs) after being initiated by the school;
- publishing ability-to-benefit tests;
- acting as a Multiple Data Entry Processor (MDE);
- financial and compliance auditing;
- mailing documents prepared by a school or warehousing school records;
- participating in a written arrangement with other eligible schools to make eligibility determinations and FSA awards for certain students (see Chapter 7); and
- providing computer services or software.

A person or organization performing these functions is not considered to be a third-party servicer and is not subject to third-party servicer requirements.

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

For purposes of administering FSA programs, 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 to the school all unexpended FSA funds and records related to the servicer’s administration of the school’s participation in the FSA programs.

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 applying for certification or recertification, no additional submission is required.

If a school has not notified the Department, the school immediately must do so by completing Section J of the **E-App** (see Chapter 5).

A school is 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 in the law & regulations

The prohibition of incentive compensation appears in Section 487(a)(20) of the HEA and in FSA regulations at 34 CFR 668.14(b)(2). 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 developed the 12 permissible payment arrangements found in 34 CFR 668.14(b)(22)(ii) to provide an illustrative framework a school may use to make its own determination about compliance with the HEA. The list is not exhaustive, and schools that have additional questions should consult with their legal counsel when making this determination. The Department does not review or approve an individual school's payment arrangements.

Audit requirements for school lenders

A school acting as a lender is subject to certain audit requirements that apply to lenders, as described in §682.601(a)(7), and

- §682.305(c)(2)(v) for governmental entities and nonprofit organizations.
- §682.305(c)(2)(i) through (iii) for schools that are not governmental entities and nonprofit organizations.

SCHOOL LENDER IN THE FFEL PROGRAM

A school lender may make only subsidized or unsubsidized Stafford Loans to graduate or professional students enrolled at the school. A home study school cannot be a school lender.

To be a school lender, a school must have made one or more FFEL program loans on or before April 1, 2006, and must have met program requirements as of February 7, 2006 (see box). To make or originate loans under the FFEL program, a school—

- Must employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending the school;
- Must award any contract for financing, servicing, or administration of FFEL loans on a competitive basis;
- Must offer loans that carry an origination fee or an interest rate, or both, that are less than the fee or rate authorized under the provisions of the Act;
- Must not have a cohort default rate greater than 10%.

School lender requirements on or before April 1, 2006

To be a school lender, a school must have met the requirements that were in effect as of February 7, 2006, which is the day prior to the enactment of the Higher Education Reconciliation Act of 2005 (HERA). On February 7, 2006, a school lender --

1. Had to employ at least one person whose full-time responsibilities were limited to the administration of programs of financial aid for students attending that school;
2. Could not be a home study school;
3. Could not make loans to more than 50% of the undergraduate students at the school;
4. Could not make a loan, other than a loan to a graduate or professional student, unless the borrower had previously received a loan from the school or had been denied a loan by another eligible lender;
5. Could not have a cohort default rate greater than 15%; and
6. Had to use the proceeds from any special allowance payments received from the Department and interest payments from borrowers for need-based grant programs, except for reasonable reimbursement for direct administrative expenses.

These requirements were modified by the enactment of HERA—the current provisions are described under “School lenders in the FFEL Program.”

HEA §435(d)(2)
20 U.S.C. 1085
34 CFR 682.601

(Interim Final Regulations Aug. 9, 2006;
Final Regulations: Nov. 1, 2006)

A school lender must use any of the following proceeds for need-based grants:

- special allowance payments
- interest payments from borrowers
- interest subsidy payments,
- proceeds from the sale or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates that are less than the statutory maximums)

An eligible school lender must ensure that the proceeds are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.

An eligible school lender may use a portion of these proceeds for reasonable and direct administrative expenses that are incurred by the school and are directly related to the school's performance of actions required by statute and regulations. Reasonable and direct administrative expenses do not include financing and similar costs such as costs paid by the school to obtain funding to make FFEL loans, the cost of paying Federal default fees on behalf of borrowers, or the cost of charging origination fees or interest rates that are less than the statutory maximums.

Eligible lender trustee

A school or school-affiliated organization may not contract with an eligible lender to serve as its trustee, unless the organization is continuing or renewing a contract made on or before September 30, 2006 with the eligible lender. (The eligible lender must have held at least one loan in trust on behalf of the school or school-affiliated organization on September 30, 2006.)

Eligible Lender Trustee

For any continuing eligible lender trustee arrangements, note the requirements in 34 CFR 682.602.

INCENTIVE COMPENSATION

Schools may not provide 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 FSA program funds.

ED identified 12 types of payment and compensation plans that do not violate this 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 a school 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 a school 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.

Adjustments to employee compensation

This safe harbor strikes a balance between a school'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, a school may make up to two adjustments (upward or downward) to a covered employee's annual salary or fixed hourly wage rate within any 12-

The 12 "safe harbors"

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

1. adjustments to employee compensation—34 CFR 668.14(b)(22)(ii)(A),
2. recruitment into programs that are not eligible for FSA program funds—34 CFR 668.14(b)(22)(ii)(B)
3. payment for securing contracts with employers—34 CFR 668.14(b)(22)(ii)(C)
4. profit-sharing or bonus payments—34 CFR 668.14(b)(22)(ii)(D)
5. compensation based upon students completing their programs of study—34 CFR 668.14(b)(22)(ii)(E)
6. payments to employees for pre-enrollment activities—34 CFR 668.14(b)(22)(ii)(F)
7. compensation paid to managerial and supervisory employees not involved in admissions or financial aid—34 CFR 668.14(b)(22)(ii)(G)
8. token gifts—34 CFR 668.14(b)(22)(ii)(H)
9. profit distributions—34 CFR 668.14(b)(22)(ii)(I)
10. Internet-based recruiting activities—34 CFR 668.14(b)(22)(ii)(J)
11. payments to third parties for services to the school that do not include recruitment activities—34 CFR 668.14(b)(22)(ii)(K)
12. payments to third parties for services that include recruitment activities—34 CFR 668.14(b)(22)(ii)(L)

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 school'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 Fair Labor Standards Act.

Enrollments in programs that are not eligible for FSA funds

A school may provide incentive compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for FSA funds.

Contracts with employers to provide training

In general, the business-to-business marketing of employer-provided education is not covered by the incentive compensation prohibition. This safe harbor addresses payments to recruiters who arrange contracts between a school and an employer, where the employer pays the tuition and fees for its employees (either directly to the school or by reimbursement to the employee).

As long as there is no direct contact by the school'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 a school'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 school'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 levels at the school, except that an organizational level may not consist predominantly of recruiters, the admissions staff, or the financial aid staff.

Compensation based upon program completion

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. This safe harbor recognizes that a major reason for the incentive compensation prohibition is to prevent schools from enrolling unqualified students. Completing a program

Covered employee

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

Compensation based on program completion: credits must be earned in residence

For this purpose, a school 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 school toward the successful completion of an academic year.

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.

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.

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 school . (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

Generally, clerical pre-enrollment activities are not considered recruitment or admission activities. Accordingly, a school may make incentive payments to individuals whose responsibilities are limited to pre-enrollment activities that are clerical in nature.

However, 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 a school to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities.

Managerial and supervisory employees

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

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 school paid for it. The value is the fair market value of the item. 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

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 a school to award incentive compensation for Internet-based recruitment and admission activities that –

- provide information about the school to prospective students,
- refer prospective students to the school, or
- permit prospective students to apply for admission online.

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, a school may make incentive payments to third parties for other types of services, including tuition-sharing arrangements, marketing, and advertising that are not covered by the incentive compensation prohibition.

Payments to third parties for recruitment activities

This safe harbor recognizes that the incentive compensation prohibition applies to individuals who work both for the school and to entities outside the school, and that the rules that apply to schools apply equally to outside entities. Thus, if a school uses an outside entity to perform activities for it, including covered activities, the school may make incentive payments to the third party without violating the incentive payment prohibition as long as the individuals performing the covered activities are not compensated in a way that is prohibited by the incentive payment compensation rule.

For example, if a school established a group of employees who provided the school 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 school 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.

Prohibited activities

Schools 34 CFR 682.212

Detailed lists of prohibited activities for lenders and guarantors were published as part of the General Provisions regulations dated November 1, 2007. See 72 FR 62003

Lenders 34 CFR 682.200

Guarantors 34 CFR 682.401(e)

Preferred Lender Lists

Rules for “preferred lender lists” are described in Volume 4, Chapter 1. 34 CFR 682.212 and 682.401

PROHIBITED ACTIVITIES IN THE LOAN PROGRAMS

A school is prohibited from paying points, premiums, payments, or additional interest of any kind to an eligible lender or other party in order to induce a lender to make loans to students at the school or to the parents of the students.

Lenders may not offer, directly or indirectly, points, premiums, payments, or other inducements, to a school or any other party to secure applicants for FFEL loans. Similar restrictions apply to guaranty agencies. (See detailed list on next page.)

In addition, lenders and guaranty agencies may not:

- conduct unsolicited mailings to a student or a student’s parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student’s parent who previously has received a FFEL loan from the lender,
- offer directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person, or
- engage in fraudulent or misleading advertising with respect to their FFEL loan activities.

However, lenders, guaranty agencies, and other participants in the FFEL Program may assist schools in the same way that the Department assists schools under the Direct Loan Program. For example, a lender’s representatives can participate in counseling sessions at a school, including initial counseling, provided that school staff are present, the sessions are controlled by the school, and the lender’s counseling activities reinforce the student’s right to choose a lender. A lender can also provide loan counseling for a school’s students through the Web or other electronic media, and it can help a school develop, print, and distribute counseling materials.

Lender & guarantor: prohibited activities

These include but are not limited to—

- Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for applying for or accepting a FFEL loan from a lender, or for processing a loan using the agency's loan guarantee;
- Payments or other benefits to a school, any school-affiliated organization or to any individual in exchange for FFEL loan applications, referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;
- Payments or other benefits provided to a student at a school who acts as a lender's representative to secure FFEL loan applications from individual prospective borrowers;
- Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;
- Payment to another lender or any other party of referral fees or processing fees, except those processing fees necessary to comply with Federal or State law;
- Solicitation of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee and/or payment of costs incurred on behalf of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee;
- Payment of conference or training registration, transportation, and lodging costs for an employee of a school or school-affiliated organization;
- Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;
- Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications, referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders; and
- Staffing services to a school, except for services provided to participating foreign schools at the direction of the Secretary, as a third-party servicer or otherwise on more than a short-term, emergency basis, and which is non-recurring, to assist a school with financial aid-related functions.

Lender & guarantor: permissible activities

Lenders and guarantors, in carrying out their roles in the FFEL program and in attempting to provide better service, may provide—

- Assistance to a school that is comparable to the kinds of assistance provided to a school by the Department under the Direct Loan program, as identified in a public announcement, such as a notice in the Federal Register;
- Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, excluding in-person school-required initial or exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender or guarantor does not promote its student loan or other products (except for benefits provided under other Federal or State programs administered by the guarantor);
- Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees. (Guarantors may also provide reasonable meals and refreshments when training program participants and elementary, secondary, and postsecondary school personnel, and with workshops and forums customarily used by the agency to fulfill its statutory responsibilities.)
- [Guarantors only] Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;
- Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;
- A reduced origination fee in accordance with §682.202(c); reduced interest rate as provided under the Act;
- Payment of Federal default fees in accordance with HEA;
- Purchase of a loan made by another lender at a premium;
- Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;
- Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will.

Drug-Free Schools and Communities Act

The FSA requirements are derived from the 1989 Amendments to the Drug-Free Schools and Communities Acts of 1986 and 1988

See: Public Law 101-226

Drug-Free Workplace Act

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 federal grant recipient.

34 CFR Part 84

Developing a drug prevention program

The regulations published in the Federal Register, August 16, 1990 offer a number of suggestions for developing a drug prevention program.

Measuring the effectiveness of 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.

PROGRAMS TO PREVENT DRUG & ALCOHOL ABUSE

There are two requirements that relate to preventing drug and alcohol abuse. Every school that participates in the FSA programs must have a drug and alcohol prevention program for its students, as described below. A school that receives Campus-Based funding must also have a drug prevention program for its employees.

Drug & alcohol abuse prevention program

Every participating school must 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 discussed later in this section, a school usually will only submit this certification to the Department once (on the E-App). A school that changes ownership is an exception; it must recertify that it has a drug and alcohol abuse prevention program.

The 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.

A school must review its program once every two years to determine its effectiveness and to ensure that its sanctions are being enforced.

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.

Drug-Free Workplace requirements for Campus-Based schools

A school that participates in the Campus-Based programs 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 school.

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 may be used to help defray related expenses, such as the cost of printing informational materials given to employees. The administrative cost allowance is discussed in *Volume 6 – Campus-Based Programs*.

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.

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).

Anti-Lobbying Certification & Disclosure

Section 319 of Pub. L. 101-121, enacted October 23, 1989, amended title 31, United States Code, by adding a new section 1352, entitled “Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions,” commonly known as the Byrd Anti-Lobbying Amendment.

As a result of that legislation, the Office of Management and Budget (OMB) issued interim final common regulations on February 26, 1990, for implementing and complying with the law. The Department of Education (ED) codified these regulations at 34 CFR Part 82, which is part of the Education Department General Administrative Regulations (EDGAR).
34 CFR Part 82

ANTI-LOBBYING CERTIFICATION AND DISCLOSURE

If a school receives more than \$100,000 in Campus-Based funds, it must submit Certification Form ED-80-0013 (combined with Debarment and Drug-Free Workplace Certifications), stating that 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.

Primarily, this certification covers the use of the Campus-Based administrative cost allowance. Association membership is not a legitimate administrative cost of the FSA Programs. A school may not use its Administrative Cost Allowance to pay for its membership in professional associations (such as the National Association of Student Financial Aid Administrators, the National Association of College and University Business Officers, 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 administrative cost allowance).

If a school that receives more than \$100,000 in Campus-Based funds has used nonfederal funds to pay a nonschool employee for lobbying activities, the school must also submit a Disclosure Form (Standard Form LLL) 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 Chief Executive Officer (CEO) or other individual who has the authority to sign on behalf of the entire school. A school is advised to retain a copy in its files.

REPORTING INFORMATION ON FOREIGN SOURCES & GIFTS

Federal law requires certain postsecondary schools (whether or not the school is eligible to participate in the FSA programs) to report ownership or control by foreign sources. Federal law also requires these postsecondary schools to report contracts with or gifts from the same foreign source that, alone or combined, have a value of \$250,000 or more for a calendar year.

Who must report

A school (and each campus of a multicampus school) must report this information if the school—

- is legally authorized to provide a program beyond the secondary level within a state,
- provides a program that awards a bachelor's degree or a more advanced degree, or provides at least a two-year program acceptable for full credit toward a bachelor's degree,
- is accredited by a nationally recognized accrediting agency, and
- is extended any federal financial assistance (directly or indirectly through another entity or person) or receives support from the extension of any federal financial assistance to the school's subunits.

Timing of submission

A school must report this information by the January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control. The January 31 report should cover the period July 1–December 31 of the previous year, and the July 31 report should cover January 1–June 30 of the same year.

Information to be reported

Using the E-App, you must report the following information in Section K, question 71:

- for gifts received from or contracts entered into with a foreign government—the name of the country and the aggregate amount of all gifts and contracts received from each foreign government,
- for gifts received from or contracts entered into with a foreign source other than a foreign government—the name of the foreign state to which the contracts or gifts are attributable, and the aggregate dollar amount of the gifts and contracts attributable to a particular country (The country to which a gift or a contract is attributable is the country of citizenship; or, if unknown, the principal residence for a foreign source who is a natural person and the country of incorporation, or if unknown, the principal place of business for a foreign source that is a legal entity.),

Where to report foreign gift information

Foreign gift, contract, and ownership or control reports must be submitted to the FSA School Participation Teams using FSA's electronic application (E-App) found at www.eligcert.ed.gov

Go to Section K, Question 71, and enter the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L, to complete the signature page. You may then submit your report.

Foreign gifts references

Higher Education Act: Sec. 117
Recent reminder to schools of requirements for reporting foreign gifts
DCL: GEN-04-11, Oct. 4, 2004.

Definitions

A foreign source is

- a foreign government, including an agency of a foreign government;
- a legal entity created solely under the laws of a foreign state or states;
- an individual who is not a citizen or national of the United States; and
- an agent acting on behalf of a foreign source.

A gift is any gift of money or property.

A contract is any agreement for the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of either of the parties.

Restricted or conditional gift or contract

A *restricted or conditional gift or contract* is any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding

- the employment, assignment, or termination of faculty;
- the establishment of departments, centers, research or lecture programs, or new faculty positions;
- the selection or admission of students; or
- the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

Penalties

If a school fails to comply with the requirements of this law in a timely manner, the Department is authorized to undertake a civil action in federal district court to ensure compliance. Following a knowing or willful failure to comply, a school must reimburse the Treasury of the United States for the full costs of obtaining compliance with the law.

For additional information & alternative reporting

Contact the School Participation Team for your state. Contact information for these Teams is posted on the Schools Portal:

fsa4schools.ed.gov

- in the case of a school that is owned or controlled by a foreign entity—the identity of the foreign entity, the date on which the foreign entity assumed ownership or control, and a description of any substantive changes to previously reported ownership or control, or institutional program or structure resulting from the change in ownership or control,
- for restricted or conditional gifts received from, or restricted or conditional contracts entered into with a foreign government—the name of the foreign country, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions or restrictions,
- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign person—the citizenship (or if unknown, the principal residence) of that person, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions and restrictions, and
- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign source (legal entity other than a foreign state or individual—the country of incorporation or, if unknown, the principal place of business for that foreign entity), the amount of the gift or contract, date of the gift or contract, and a description of the conditions and restrictions.

Once you've entered the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L to complete the signature page. You may then submit your report.

Alternative reporting

In lieu of the reporting requirements listed above:

- If a school is in a state that has substantially similar laws for public disclosure of gifts from, or contracts with, a foreign source, a copy of the report to the state may be filed with the Department. The school must provide the Department with a statement from the appropriate state official indicating that the school has met the state requirements.
- If another department, agency, or bureau of the Executive Branch of the federal government has substantially similar requirements for public disclosure of gifts from, or contracts with, a foreign source, the school may submit a copy of this report to the Department.

GENERAL REQUIREMENTS

Voter registration

If a participating school is located in a state that has not enacted the motor vehicle/voter registration provisions of the National Voter Registration Act, the school must make a good faith effort to distribute voter registration forms to its students. (Schools in Puerto Rico are not subject to this provision because Puerto Rico is not a state under the National Voter Registration Act.)

In states where this condition applies, schools must request voter registration forms from the state 120 days prior to the state's deadline for registering to vote. This provision applies to general and special elections for federal office, and to the elections of governors and other chief executives within a state. If a school does not receive the forms within 60 days prior to the deadline for registering to vote in the state, it is not liable for failing to meet the requirement during that election year.

The school must make the voter registration forms widely available to its students. It must individually distribute the forms to its degree or certificate seeking (FSA eligible) students.

Preparatory programs for students without high school diploma or equivalent

A school that admits students without a high school diploma or its recognized equivalent (except home-schooled students) must make available to its students a program that has proven successful in assisting students in obtaining the recognized equivalent of a high school diploma. For example such a program might assist a student in obtaining a General Educational Development (GED) test or a State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma. Such programs include preparatory 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 school must provide information about the availability of the preparatory program to affected students.

The program does not have to be provided by the school itself, and the school is not required to pay the costs of the program. The 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 preparatory program.

The law does not require a school to verify that a student is enrolled in a preparatory 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 program, but the school may choose to make this an admission requirement.

Students without high school diploma or equivalent: related topics

→ Volume 1, Chapter 1: remedial coursework, ability to benefit tests as alternative

→ Volume 2, Chapter 1: Eligibility of schools enrolling students without high school diploma or equivalent

A student may not receive FSA funds for the program although he or she may be paid for postsecondary courses taken at the same time as the preparatory coursework, including remedial coursework at the secondary level or higher