Volume 2
School Eligibility and Operations
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Introduction to Volume 2

This volume of the Federal Student Aid Handbook comprises topics pertaining to colleges' general obligations in administering the Title IV student aid programs: institutional and program eligibility, administrative requirements, audits, record keeping, program reviews, and providing information to the public are all explained.

Throughout the Handbook we use "college," "school," and "institution" interchangeably unless some more specific use is given. Similarly, "student," "applicant," and "aid recipient" are synonyms. "Parents" in this volume refers to the parents of dependent students, and "you" refers to the primary audience of the Handbook: financial aid administrators at colleges. "We" indicates the United States Department of Education (Department, ED), and "federal student aid" and "Title IV aid" are synonymous terms for the financial aid offered by the Department.

We appreciate any comments that you have regarding the Federal Student Aid Handbook. We revise and clarify the text in response to questions and feedback from the financial aid community, so please contact us at **fsaschoolspubs@ed.gov** to let us know how to improve the Handbook so that it is always clear and informative.

This introduction only summarizes the changes and clarifications presented in more detail in the chapters. For more complete guidance, refer to the text in the chapters cited and the pertinent regulations and statutes.

Notes on Active Links: At the top of each page you will find links to the Federal Student Aid Glossary and Appendices, the Code of Federal Regulation (CFR), and Dear Colleague Letters (DCL).

Glossary CFR DCL

NOTEWORTHY CHANGES

Important Note: This volume does not contain guidance on the special provisions pertaining to the Coronavirus pandemic. For that information, schools should refer to the Department's COVID-19 Resources for Schools, Students, and Families website.

Throughout Volume 2 we moved the text of the margin notes to the body of the page in preparation for converting the FSA Handbook to an HTML version.

The Gainful Employment (GE) regulations under 34 CFR 668 subparts Q and R were rescinded effective July 1, 2020. As a result of this rescission, GE guidance in chapters 2, 4, and 6 has been deleted and is noted below. Requirements located outside of those subparts, such as the requirement for institutions to add new GE programs to their ECAR, remain in effect.

On page 10 we removed the definition of religious institution because the regulations no longer limit the definition of that term as it applies to state authorization requirements.

Pursuant to recent regulatory changes, we updated the paragraph on page 11 about state authorization requirements for distance education.

Similarly, on page 12 we revised the second paragraph under "State complaint process" to reflect changes regarding distance education and the complaint process. Also on page 12, we added the paragraph about schools determining the state where their students are located so as to be able to comply with state authorization requirements, and we added the definition of a state authorization reciprocity agreement.

We amended the last bullet under "General terms and conditions" on page 23 to reflect recent regulatory changes. The general phrase "adverse action" now appears with "final denial, withdrawal, or termination of accreditation" as examples. Previously only those examples appeared. We also changed the text under "Loss of accreditation" on page 139 to reflect this. And we made a similar change—as it applied to accrediting agencies—to the third bullet on the right side of page 218.

On page 30 we updated the definition of programs leading to a baccalaureate degree in the liberal arts. The regulation change removed from the first part of the definition the text about such programs being determined by a school's recognized regional accrediting agency to be in the liberal arts, the humanities, or the general curriculum.

In Chapter 2 we removed the section on certification requirements for GE programs because the governing regulations were rescinded.

On page 57 we added a section on fraud rings that have been operating in distance education programs, and we linked to a recent electronic announcement that updates guidance pertaining to that.

We added two paragraphs on page 72. The first explains that the Department will make available COD testing in 2021 to allow schools, third-party servicers, and software developers the chance to test their business processes and software before submitting actual data to the production environment. The next paragraph explains that the Department will be upgrading the SAIG and that schools will need to install new software by June 5, 2021, to comply with the upgrade.

On pages 72 and 73 we added and updated links to the IFAP website to reflect changes to it in the previous year. The FSA Download site and the Financial Partners Portal were incorporated into the IFAP site. See the announcement of February 10, 2020, for more information, including an extensive crosswalk between old and new URLs for IFAP content.

At the beginning of Chapter 4, we rewrote the text to improve clarity and to reflect that OMB Circular A-133 was superseded by the Compliance Supplement for the purpose of audits of public and private nonprofit schools.

On page 97 we added a paragraph announcing that the eZ-Audit web-based process will now be used for entities other than domestic schools—foreign schools, third-party servicers, Federal Family Education Loan (FFEL) Program lenders, FFEL lender servicers, guaranty agencies (GAs), and GA servicers—when they submit audited financial statements and compliance audits. Hard copies will no longer be submitted.

On page 98 we added a reference to the electronic announcement of April 9, 2020, (updated in August), which has a 20-page attachment of FAQs about financial responsibility and eZ-Audit requirements.

On pages 98–99 we revised the text for clarity and because of regulatory changes, and we gave it the subheading "General standards of financial responsibility."

On pages 100–102, because of new regulations, we added the sections "Mandatory and discretionary triggers," "Recalculating the composite score," and "Alleviating a triggering event."

On pages 103 and 104 we amended the paragraph and added the section, respectively, about the treatment of long-term debt and operating leases in the composite score methodology. This treatment was changed by the 2019 regulations.

We deleted the section "Current in debt payments" on page 108 because it represented outdated regulatory guidance.

On pages 109–110 we added the section "Financial protection," which is new to the regulations.

On pages 110–111 we revised the sections "Zone alternative" and "Provisional certfication alternative" for better clarity.

At the end of Chapter 4, we removed the guidance on debt-to-earnings rates for gainful employment (GE) programs because the governing regulations were repealed. For the same reason we also removed the text in Chapter 6 about GE program disclosures and the Disclosure Template.

Under "Change in Ownership" in Chapter 5, we modified the text for clarity and to account for minor regulatory changes to the definition of *closely held corporation* and other terms.

On pages 124 and 125 we added the paragraph and two bullets pertaining to other entities, and we added the sentence about when a nonprofit institution changes ownership.

On page 134 we modified the text about the circumstance in which an additional location does not need to satisfy the two-year requirement when there is no commonality of ownership or management between the acquiring school and the additional location. This too was due to a regulatory change.

Also on that page, we changed the first paragraph under "Teach-outs at closed or closing school locations" to reflect recent regulatory updates.

We added on page 135 the last paragraph under the section "Reporting a new location." We explain that 1) additional locations can be counted as such only if students receive instruction there and 2) only one location, main or additional, of a school can exist at a single address.

On pages 137 and 138 we added the two bullets and subsequent paragraph immediately under the heading "Changes in Accreditation" to account for updated regulations about schools changing accrediting agencies.

On page 145 we updated the *Federal Register* reference and the civil fine pertaining to Title IV violations by schools.

We added the last bullet, consisting of two paragraphs, under "Academic programs" on page 149 about schools disclosing information when programs are intended to meet the educational requirements for licensure or certification for an occupation. This was a recent addition to the regulations.

On pages 150 and 151 we added the section about the disclosure schools must make when they condition enrollment on arbitration agreements or class action waivers.

Also on page 151, we added the definitions of class action, class action waiver, and pre-dispute arbitration agreement.

On page 152 we added the third bullet under "Transfer of credit policies" about criteria for evaluating prior learning experience. Also on that page, we included the bulleted items about teach-out plans and enforcement actions because they were added to the institutional information regulations under 34 CFR 668.43(a)(19) and (20).

On page 154 we noted that the College Financing Plan will include, new for 2021–2022, separate forms for undergraduate and graduate/professional students.

On page 156 we added the last sentence in the bullet about retention rates, and we amended the guidance about the disclosure of placement rates to account for regulatory changes in 34 CFR 668.41 and 43.

In Chapter 6 we made several changes to the section "Campus Crime and Safety Information" that begins on page 157:

- We revised the first paragraph for better clarity.
- We removed references to DCL GEN-15-15 (which is now maintained for historical purposes only) and other resources in the second and third paragraphs.
- We added the definition of sexual assault to the list of definitions on page 160.
- We removed the references to and information about the Handbook for Campus Safety and Security Reporting because that publication was rescinded in an October 9, 2020, announcement.
- We removed the sample statement of availability of the annual security and fire safety reports.
- We replaced the text in the sections on the crime and fire logs with guidance from the October 9, 2020, announcement.
- We rearranged the material in the section on distributing the security and fire safety reports.

On page 172 we added the first three full paragraphs to account for new and revised instructions in the regulations.

We added a section on page 173 explaining the new annual student loan acknowledgement process that will begin in 2021 with loans associated with the 2021–2022 award year.

On page 174 we added paragraphs xiii, xiv, and xv, which are new to the regulations. The previous paragraph xiii is now paragraph xvi. These explain new information, similar to that referred to above for pages 150 and 151, about arbitration agreements and class action waivers that schools must disclose to student borrowers as part of entrance counseling.

On page 176 we added a sentence in the first paragraph under "Exit counseling" explaining that instead of mailing or emailing exit counseling materials to students who leave school without completing exit counseling, a school can send them a **direct link** to the counseling materials online. Note that the link must take students directly to those materials and not to another page or related document. We added a similar statement on page 191 under "TEACH grant counseling."

On page 182 we added the definitions of covered institution and preferred lender arrangement.

We added text to the last bullet under "Sanctions" on page 185 explaining that a proceeding initiated by the Department against a school found to have engaged in misrepresentation could require the school to repay the amount of a loan that was cancelled due to a successful borrower defense to repayment claim based on the misrepresentation. This was a result of regulations that became effective July 1, 2020. We also explained what a borrower defense claim is.

We rewrote the section on foreign gift reporting on pages 185–186 to comport with the June 22, 2020, announcement of the new reporting system and the revised data that are to be reported.

On pages 188–189 we added the section on First Amendment violations pursuant to recent regulatory changes.

At the bottom of page 208, we updated the email address for questions related to cybersecurity issues.

We rewrote the section on page 209 about the National Institute of Standards and Technology document, *Controlled Unclassified Information in Nonfederal Systems*, because it has been revised and to explain that the Department intends to collaborate with schools in 2021 to help them comply with that document and other cybersecurity requirements.

On page 223 we added a section about the 120-day transition allowable under recent regulations for schools that lose their Title IV eligibility due to a ruling by their accrediting agency or state authorizing entity or by the Department.

Institutional Eligibility

This chapter discusses the three types of institutions that are eligible to participate in the Federal Student Aid (FSA) programs. If circumstances change and a participating school no longer qualifies as an eligible institution, it must notify the Department of Education (the Department; see Chapter 5*) and carry out the closeout procedures described in* Chapter 8.

Schools must apply to and receive approval from the Department to be eligible to participate in the FSA programs before they can be certified for participation. Some schools apply only for designation as an eligible institution—they do not seek to participate—so their students may receive deferments on FSA program loans or be eligible for the American Opportunity and Lifetime Learning tax credits or other non-FSA programs that require schools to be FSA-eligible. The same application is used to apply for both eligibility and certification for participation (see *Chapter 2*).

To assess your school's compliance with this chapter's provisions, see the institutional eligibility module on the FSA Assessments website.

TYPE AND CONTROL

The three types of eligible institutions

Definitions of eligible institutions
34 CFR 600.4, 600.5, and 600.6

The law defines three kinds of eligible institutions—*institutions of higher education*, *proprietary institutions of higher education*, and *postsecondary vocational institutions*. Each type of school is eligible to participate in all the FSA programs, provided it offers the appropriate type of program. 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, it is possible that an institution of higher education can also qualify as a postsecondary vocational institution by offering programs that are less than an academic year in length and lead to a certificate or other non-degree recognized credential.

Type and Control of Eligible Institutions

Institution of Higher Education A public or private nonprofit educational institution located in a state	*Proprietary Institution of Higher Education* A private, for-profit educational institution located in a state	*Postsecondary Vocational Institution* A public or private nonprofit educational institution located in a state
The institution offers (1) associate, bachelor's, graduate, or professional degree programs; (2) a program of at least two years that is acceptable for full credit toward a bachelor's degree; or (3) a training program of at least one academic year that leads to a certificate or other nondegree recognized credential and prepares students for gainful employment in a recognized occupation.	The institution must (1) provide training for gainful employment in a recognized occupation or (2) have provided a program leading to a baccalaureate degree in liberal arts continuously since 1/1/09 (with continuous regional accreditation since 10/1/07 or earlier). Programs offered must meet the criteria of at least one category below: (1) They are at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. They may admit students without an associate degree or equivalent. (2) They are at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. They must be a graduate/professional program or must admit only students with an associate degree or equivalent. (3) They are at least a 10-week (instructional time) undergraduate program of 300–599 clock hours. They 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 Direct Loan participation.	The institution must provide training for gainful employment in a recognized occupation. Programs offered must meet the criteria of at least one category below: (1) They are at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. They may admit students without an associate degree or equivalent. (2) They are 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. (3) They are 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 Direct Loan participation.

Any school may act as a postsecondary vocational institution to offer GE programs less than one academic year in length. Also, all three institutional types may provide a comprehensive transition and postsecondary program for individuals with intellectual disabilities.

"Two-Year Rule" (applicable to proprietary and postsecondary vocational institutions): Legally authorized to give (and continuously have been giving) the same postsecondary instruction for at least two consecutive years.

Institutional control

The control of an institution distinguishes whether it is public or private and nonprofit or for-profit. By definition, 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.

BASIC CRITERIA FOR ELIGIBLE INSTITUTIONS

To be eligible an institution must

- be legally authorized by a state to provide a postsecondary education program in that state,
- be accredited by a nationally recognized accrediting agency or have met the alternative requirements, if applicable, and
- admit as regular students only individuals with a high school diploma or its recognized equivalent or individuals beyond the age of compulsory school attendance in the state where the institution is located.

These requirements are discussed in the following sections.

Legal authorization by a state

State authorization
34 CFR 600.9

Generally, an eligible institution must be located in a state. A school is physically located in a state if it has a campus or instructional site in that state. There are certain limitations and exceptions:

- Institutions of higher education in the Federated States of Micronesia and the Republic of the Marshall Islands are eligible for purposes of the Federal Pell Grant Program.
- Institutions of higher education in the Republic of Palau are eligible for purposes of the Federal Pell Grant, FSEOG, and FWS programs.
- Foreign schools may participate in the Direct Loan Program, subject to the rules of Subpart E of 34 CFR Part 600.

There are two basic requirements for an institution to be considered legally authorized by a state for the purpose of Title IV program eligibility: (1) the state must authorize the institution by name to operate postsecondary educational programs; and (2) the state must have a process to review and act on complaints concerning the institution, including enforcing applicable state laws. The following are exempt from both of these requirements:

- schools authorized by name by the federal government to offer educational programs beyond secondary education, and

- schools authorized by name by an Indian tribe [as defined in 25 USC 1801(a)(2)] to offer educational programs beyond secondary education, provided they are located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning the schools and enforces applicable tribal requirements or laws. [Note that 34 CFR 600.9(a)(2)(ii) incorrectly cites 25 USC 1802(2); the correct citation is, as given above, 25 USC 1801(a)(2).]

Religious institution exemption
34 CFR 600.9(b)

Religious institutions must comply with (2) but are exempt from (1) above—i.e., they are already considered to be legally authorized to operate postsecondary educational programs—if they are exempt from state authorization as religious institutions under the state constitution or by state law.

Authorization to operate postsecondary educational programs

A school can be established by name as an educational institution through a state charter, statute, constitutional provision, or other action by an appropriate state entity. See DCL GEN-13-20 for an explication of "other action." The school must be authorized to operate educational programs beyond the secondary level, including programs leading to a degree or certificate. In addition, the institution must comply with any applicable state approval or licensure requirement, although the state may exempt the school from that approval or requirement based on the school being in operation for at least 20 years or on its accreditation by one or more accrediting agencies recognized by the Department.

If a school was not established by name as an educational institution but was established by a state on the basis of an authorization to conduct business or to operate as a nonprofit charitable organization, it must show that the state took an active role in approving or licensing it to offer programs beyond secondary education, including programs leading to a degree or certificate. Again, see DCL GEN-13-20 for more. Such a school can't be exempted from state approval or licensure requirements based on accreditation, years in operation, or a comparable exemption.

Definitions

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 U.S.C. 501(c)(3)].

State—One of the 50 states, American Samoa, Puerto Rico, the District of Columbia, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
34 CFR 600.2.

How different types of schools meet state authorization requirements		
Legal Entity	**Entity Description**	**Approval or Licensure Process**
Educational Institution	A public, private nonprofit, or for-profit institution established by name through a charter, statute, articles of incorporation, or other action issued by an appropriate state entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable state approval or licensure process and be approved or licensed by name. It may be exempted from such requirement based on its accreditation or being in operation at least 20 years.
Business	A for-profit entity established by the state on the basis of an authorization or license to conduct commerce or provide services.	The state must have a state approval or licensure process, and the institution must comply with that process and be approved or licensed by name to offer postsecondary education. An institution in this category may not be exempted from state approval or licensure based on accreditation, years in operation, or a comparable exemption.
Charitable Organizations	A nonprofit entity established by the state on the basis of an authorization or license for the public interest or common good.	
Notes: The chart does not apply to federal, tribal, and religious institutions, which are exempt from these requirements, or to distance education programs offered out of state. A state must have a process to review and address complaints directly or through referrals; this applies to all institutions except tribal and federal institutions. For tribal institutions, the tribal government must have a process to review and appropriately act on complaints concerning them and to enforce applicable tribal requirements or laws.		

A school must have documentation that it has the authority to operate in a state at the time of its certification to participate in the FSA programs. For more information on applying for participation in the FSA programs, see the *New School Guide*. Existing Title IV schools should ensure that they are currently in compliance with the regulations, but they are not required to immediately update their Eligibility and Certification Approval Report (ECAR). Instead, they can include the information showing their state authorization when they next submit their application for approval to participate in the FSA programs. For questions about documenting state legal authorization, schools should contact their participation division, information for which is at https://eligcert.ed.gov/.

State authorization and distance education
34 CFR 600.9(c)(1)(i) and (ii)

If a school offers coursework through distance education or correspondence courses to students in a state in which the school is not physically located or is otherwise subject to that state's jurisdiction, the school must meet any of the state's requirements for it to offer postsecondary distance education or correspondence courses there. A school is considered to meet state authorization requirements for distance education or correspondence courses if the state participates in an authorization reciprocity agreement and the school is covered by the agreement (subject to any limitations in the agreement and to any additional requirements the state has that do not relate to authorization of distance education).

A school must, upon request, provide documentation to the Department that it has met a state's authorization requirements, including by coverage under a reciprocity agreement.

State complaint process

The state must have a process to review and act on complaints (for example, about fraud or false advertising) concerning a school, which must provide the contact information for filing those complaints to enrolled and prospective students. Complaints can be handled by the state attorney general's office or a state agency as long as that entity can review, investigate, and resolve complaints against the school. There may be different complaint processes for different types of schools. Whatever entity handles complaints, the state must have the final authority for the process. See DCL GEN-14-04 for more information.

Previously states had to have a process for reviewing and acting on complaints by its students against out-of-state schools that were providing them distance education. With the new state authorization regulations that became effective July 1, 2020, that is no longer a requirement. A school is required to document that a state-based complaint process exists in every state that it has a physical location, but it is not required to document that a state has a complaint process where the school does not have a physical location but where it does have students enrolled in distance education and correspondence courses. The complaint process in the school's home state is expected to receive and act upon complaints from those students. Note that 34 CFR 668.43(b) requires an institution to provide its students or prospective students with contact information for filing complaints with its state approval or licensing agency and any other state official or agency that would appropriately handle a student's complaint.

Determining student location
34 CFR 600.9(c)(2)

Determining student location

A school must determine what state its students are located in so that it can ensure that it complies with each state's authorization requirements. This determination must accord with the school's policies and procedures and must be applied consistently to all students. The school must determine each student's state when she initially enrolls in an educational program and, if applicable, upon formal receipt of information from the student, according to school procedures, that her location has changed to another state. The school must document the basis for its determination of a student's location and must, upon request, provide that documentation to the Department.

State authorization reciprocity agreement definition—An agreement between two or more states that authorizes an institution located and legally authorized in a state covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other states covered by the agreement and cannot prohibit any member state of the agreement from enforcing its own general-purpose state laws and regulations outside of the state authorization of distance education.

ACCREDITATION

Alternatives to accreditation
Institutions of Higher Education
34 CFR 600.4(a)(5)(ii)
Postsecondary Vocational Institutions
34 CFR 600.6(a)(5)(ii)

Generally, a school must be accredited or preaccredited by a nationally recognized accrediting agency or association (both referred to here as agencies) to be eligible.

Except as provided here, a school must be accredited by an agency that has the authority to cover all of the institution's programs. An agency such as this is referred to as the school's *primary accrediting agency*. A school can have only one primary accreditor.

A school may also be accredited by one or more programmatic accrediting agencies. A *programmatic accrediting agency* is one that accredits only individual educational programs that prepare students for entry into a profession, occupation, or vocation.

If a school is seeking to change primary accreditors, it must first provide the Department and the agencies all materials documenting the reasons for the change. You can find information on accreditation changes is in *Chapter 5*.

Alternatives to regular accreditation

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

Primary accreditor

The primary accreditor typically is an accrediting agency whose scope is institution-wide rather than only programmatic. A participating institution must tell the Department which accrediting agency it wants to serve as its primary accrediting agency for FSA eligibility. If a school offers only programs of a singular nature, the school's primary accreditor may be an agency that accredits only those specific educational programs.

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 for dual accreditation before the school adds the additional accreditation. See *Chapter 5* for more on changes in accreditation and loss of eligibility.

List of accrediting agencies

The Department periodically publishes in the *Federal Register* a list of nationally recognized accrediting bodies based on criteria in 34 CFR Part 602. The list of accrediting agencies recognized for FSA purposes is on the Department's website. Agencies recognized for their preaccreditation categories are in Section 7. Information about national recognition of state approval agencies is in Section 11.

Admissions standards
34 CFR 600.4(a)(2), 600.5(a)(3), 600.6(a)(2)

ADMISSIONS STANDARDS

An *eligible institution* may admit as regular students only persons who have a high school diploma or its recognized equivalent, are beyond the age of compulsory school attendance in the state in which the school is located, or are dually enrolled in the college and a secondary school. See "Limitation on students admitted without a high school diploma or equivalent" in *Chapter 4*.

Dual enrollment in high school and college
20 USC 1001(b)(2)(B), 1002(b)(2)(B) and (c)(2)(B)

An *eligible student* must have a high school diploma or its recognized equivalent or be beyond the age of compulsory attendance and meet the criteria for homeschooled students. A student dually enrolled in high school and college is **not eligible** for FSA funds. See *Volume 1*, *Chapter 1*.

Definitions

Nationally recognized accrediting agency—An agency or association the Department has recognized to accredit or preaccredit a category of institution, school, or educational program according to 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 toward accreditation within a reasonable period of time.
Institutions of higher education: 34 CFR 600.4(a)(5)(ii)
Postsecondary vocational institutions: 34 CFR 600.6(a)(5)(i)

Regular student—A person who is enrolled or accepted for enrollment in an eligible program to obtain a degree, certificate, or other recognized educational credential. If a person is not yet beyond the age of compulsory school attendance in the state where the college is physically located, it may only enroll her as a regular student if she has a high school diploma or its equivalent or is dually enrolled in high school and college. 34 CFR 600.2

Branch campus—A campus that is geographically apart from and independent of the school's main campus. It is considered to be independent of the main campus if it

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

Branch campus: 34 CFR 600.2 and 600.8
Additional location: 34 CFR 600.32

High school diploma

A high school diploma is a document recognized by the state in which the high school is located. Unless required by its accrediting or state licensing agency, the college is not required to keep a copy of a student's high school diploma or recognized equivalent of a high school diploma (see below). Rather, the college 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 college's admissions application. The college may also require the student to provide supporting documentation.

Recognized equivalent of a high school diploma

The following are the equivalent of a high school diploma:

- A GED certificate
- A state certificate awarded after passing an authorized test and that the state recognizes as equivalent to a high school diploma. This includes evidence of a passing score on tests recognized by the state and similar to the GED, such as the High School Equivalency Test or HiSET and the Test Assessing Secondary Completion or TASC
- An academic transcript showing that the student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree (including a previously earned bachelor's degree)
- For a student seeking enrollment in a program of at least the associate degree level, documentation showing that he excelled academically in high school and has met the formalized written admissions policies of the college

Checking the validity of high school completion

As stated in 34 CFR 668.16(p), a college must have a procedure to evaluate the validity of a student's high school completion if the college or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. This is discussed in detail in *Volume 1*, *Chapter 1*.

A school is in compliance with the regulation if its procedure includes (1) receiving documentation from the secondary school that confirms the validity of the student's diploma and (2) confirming with or receiving documentation from the relevant department or agency in the state in which the high school is located that it is recognized as a provider of a secondary school education. Colleges can also comply with the regulation via other methods. See the July 23, 2019, announcement.

Homeschooled students and compulsory school attendance

The Department considers a homeschooled student to be beyond the age of compulsory school attendance if the state in which the college is located does not consider him truant once he has completed homeschooling.

For instance, if your state requires children to attend school until age 17, you may admit as a regular student a child who completes her secondary homeschooling curriculum at age 16 if your state would not consider her truant and would not require her to go to high school or continue homeschooling until age 17.

You may rely on a homeschooled student's self-certification that he completed secondary school in a homeschool setting, as discussed in *Volume 1, Chapter 1*, under "Academic Qualifications."

Career pathway programs

Students enrolled in an eligible career pathway program who are not high school graduates and don't have a diploma equivalent may be eligible to receive Title IV aid if they pass an independently administered, ED-approved ability-to-benefit test or complete at least 6 credit hours or 225 clock hours that apply to a degree or certificate offered by the school. See DCL GEN-16-09 for more information, including a list of Q's and A's about career pathway programs.

Preparatory programs for students without a high school diploma or equivalent

A school that admits students without a high school diploma or its recognized equivalent (except homeschooled students) must make available to them a program that has proven successful in helping students obtain the equivalent of a high school diploma.

For example, such a program might assist a student in obtaining a GED certificate or the state certificate mentioned earlier. It could be a preparatory program conducted by state and local secondary school authorities, or any other program for which the school has documentation that statistically demonstrates success. The school must provide information about the availability of the program to interested students.

The school does not have to provide the program or pay for its cost. The program must be offered at a place that is convenient for students, and the school must take reasonable steps to ensure that they have access to it, such as coordinating the timing of school programs and the preparatory program.

The law does not require a school to verify that a student is enrolled in a preparatory program or to monitor his progress in it. A student who does not have a high school diploma or its recognized equivalent is not

required by law to enroll in such a program, but the school may make this an admission requirement.

A student may not receive FSA funds for the program, and a school cannot include the cost of the program in a student's cost of attendance.

"TWO-YEAR" RULE FOR NEW PROPRIETARY OR VOCATIONAL SCHOOLS

Two-year rule
34 CFR 600.5(a)(7) and (b), 600.6(a)(6) and (b)

To be eligible as a proprietary institution or a postsecondary vocational institution, a school must be legally authorized to give (and have continuously been giving) the same postsecondary instruction for at least two consecutive years prior to its application. 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 school subject to the two-year rule may not award FSA funds to a student in a program that is not included in the school's approval documents.

If a school is subject to the two-year rule, during the school's initial period of participation in the FSA programs, the Department will not approve additional programs that would expand the institution's eligibility. An exception would be considered if the school demonstrates that the program has been legally authorized and continuously provided for at least two years prior to the date of the request.

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. It must be designated as a branch campus for two years after certification as such by the Department before it can seek certification as a main or freestanding school.

An additional location must obtain approval from the Department to become a branch campus. A branch campus then must 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 years.

LOSING ELIGIBILITY

Conditions of institutional ineligibility
34 CFR 600.7

Limitations

An otherwise eligible institution becomes ineligible if it violates, among other requirements,

- the 50% limit on students without a high school diploma or equivalent (for schools that don't offer a 4-year bachelor's degree program or a 2-year associate degree program),

- the incarcerated student limitation (25%), or
- the correspondence course limitation (50%) or correspondence student limitation (50%).

The school must demonstrate compliance with these limitations, and its calculations must be attested to by the independent auditor. Under certain circumstances, waivers are available for each limitation. *Chapter 4* explains the calculations and waivers and how the school must notify the Department of a failure to meet any of these requirements. See also 34 CFR 600.7(h).

Bankruptcy or crimes involving FSA programs

A school is not eligible if it files for relief in bankruptcy or has entered against it an order for bankruptcy. The school is also ineligible if either of these circumstances apply to 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.

A school also loses eligibility if it, its owner, or its executive officer has

- pled guilty or *nolo contendere* to, or is found guilty of, a crime involving the acquisition, use, or expenditure of FSA program funds; or
- been judicially determined to have committed fraud involving FSA program funds.

If a school becomes ineligible for any of these reasons, it must notify the Department of the change within 10 days. A school that becomes ineligible because of one of these factors must immediately stop awarding FSA funds and must follow the requirements for a school that has lost its FSA participation (see *Chapter 8)*. The loss of eligibility is effective as of the date of the bankruptcy or the date the school or individual pleads guilty to, or is found responsible for, the crime, as applicable. A loss of eligibility for these two reasons is permanent—the school's eligibility cannot be reinstated.

See *Chapter 3* for information about the prohibition on schools having as principals—or contracting with other organizations that employ—individuals who have been involved in crimes pertaining to the use of government funds generally.

TEACH Grant Program
34 CFR Part 686
Definition of TEACH Grant-eligible institution
34 CFR 686.2(d)

PARTICIPATING IN THE TEACH GRANT PROGRAM

Eligibility for the Teacher Education Assistance for College and Higher Education (TEACH) Grant program is not automatically extended to an FSA-eligible postsecondary school. A school qualifies as a "TEACH Grant-eligible institution" if it offers a high-quality teacher preparation program at either the baccalaureate or master's level that provides supervision and support services to teachers (or assists in the

provision of such services). The teacher preparation program must also be accredited by a specialized accrediting agency recognized by the Department for the accreditation of professional teacher education programs (see the margin note) or be approved by a state and meet certain other requirements.

If a school does not have a teacher preparation program, it can qualify as a TEACH Grants-eligible institution if it

- provides one or more 2-year programs of study that are acceptable for full credit to either a baccalaureate teacher preparation degree program or a baccalaureate degree program in a high-need field at another TEACH-eligible school with which it has an agreement;
- offers a baccalaureate degree that, in combination with other training or experience, will prepare a student to teach in a high-need field and has an agreement with another institution that offers a teacher preparation program or a post-baccalaureate program that prepares students to teach; or
- offers a postbaccalaureate program.

Accreditation of teacher preparation programs

At present there are no agencies for the accreditation of high-quality teacher preparation programs that are recognized by the Department. Thus, a school that offers a high-quality teacher preparation program at the baccalaureate or master's degree level can only qualify as a TEACH Grant-eligible institution if the teacher preparation program is approved by a state, includes a minimum of 10 weeks of full-time pre-clinical experience, or its equivalent, and provides either pedagogical coursework or assistance in the provision of such coursework. See DCL GEN-08-07.

APPLYING AS AN ELIGIBLE NONPARTICIPATING SCHOOL

Some schools choose to establish their eligibility for FSA programs but elect not to participate in them because designation as an eligible institution qualifies a school or its students to take advantage of non-FSA programs or benefits, such as the American Opportunity and Lifetime Learning tax credits. In addition, only students attending eligible institutions qualify for in-school deferments of payments on their federal education loans.

A school wishing to be designated an eligible nonparticipating institution may submit an E-App to the Department at any time. The application must be materially complete.

The Department will contact the school, generally within 90 days of receiving the application, if it has additional questions. If it approves the school's application, it will send an electronic notice to the president and financial aid officer stating that the school is eligible and that its approval letter and ECAR must be printed and maintained. If the Department does not approve the school's application, it will tell the school why.

WITHDRAWAL RATES

Students are considered to have withdrawn if they officially withdraw, unofficially drop out, are expelled from the school, or receive a 100% refund of their tuition and fees. Those who withdraw from one or more courses or programs but do not withdraw entirely from the school (e.g., the students reduced their credit hours from 12 to 6) do not meet the definition of withdrawn. Instead, this action is considered a change in enrollment status.

New schools (those seeking to participate in an FSA program for the first time) must have an undergraduate withdrawal rate for regular students of no more than 33% during the last completed award year.

When calculating the withdrawal rate, the school must include all regular, enrolled students. For the purpose of withdrawal rates, students are considered enrolled when they complete the school's registration requirements. Correspondence students are enrolled if they have been admitted to the program and have submitted one lesson (that was completed without the assistance of a school representative). The definition of enrolled does not require either payment of tuition or class attendance; therefore, the withdrawal rate calculation must include enrolled students who have not yet paid tuition or begun attending classes.

Program Participation Agreement
HEA Sec. 487
34 CFR 668.14
20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141

THE PROGRAM PARTICIPATION AGREEMENT

To be Title IV-eligible, schools must have a current program participation agreement (PPA), signed by their president, chief executive officer, or chancellor and an authorized representative of the Secretary of Education. Note that the PPA and the E-App (see *Chapter 5*) are not the same thing. The E-App is used to apply to participate in the Title IV programs initially (which results in a PPA) and to update a current approval; it's also used for recertification, reinstatement, change in ownership, and designation as an eligible nonparticipating institution.

Purpose and scope of the PPA

With the PPA the school agrees to comply with the laws, regulations, and policies governing the FSA programs. After being certified for FSA program participation, the school must administer FSA program funds in a prudent and responsible manner. A PPA contains critical information such as the effective date of a school's approval, the date when the approval expires, and the date by which the school must reapply

for participation; the PPA also includes the FSA programs in which the school is eligible to participate. The FSA programs are:

- Federal Pell Grant
- Iraq and Afghanistan Service Grant (A school that is certified for Pell Grant purposes is considered to be certified for the Iraq and Afghanistan Service Grant program.)
- TEACH Grant
- Federal Supplemental Educational Opportunity Grant
- Federal Work-Study
- Federal Direct Loan Program

Beginning to disburse funds when first signing the PPA

A school may make Pell and TEACH Grant disbursements to students for the payment period in which the PPA is signed by the Secretary. Schools receiving initial certification can participate in the Campus-Based programs in the next award year that funds become available (provided the Fiscal Operations Report and Application to Participate is completed by the deadline for that year). Direct Loan disbursements may begin in the loan period that the PPA is signed.

Expiration or termination of the agreement

Either the school or the Department may terminate the PPA. The agreement automatically terminates if the school loses eligibility. The PPA also expires on the date that

- the school changes ownership that results in a change in control (see *Chapter 5*),
- the school closes or stops offering educational programs for a reason other than a normal vacation period or natural disaster that directly affects it or its students (see closure procedures in *Chapter 8*),
- the school ceases to meet the eligibility requirements (see *Chapter 4* and "Losing Eligibility" earlier in this chapter),
- the school's period of participation expires, or
- its provisional certification is revoked (*Chapters 4, 5,* and *8*).

A school's PPA no longer covers an additional location as of the date on which that location ceases to be a part of the school.

Selected Provisions of the PPA

Most of the provisions of the Program Participation Agreement (PPA) are discussed in detail in *Volume 2* and other volumes of the *Federal Student Aid Handbook*. In this section, we highlight some of the general school requirements in the PPA that may not be as familiar to financial aid professionals.

Note that the PPA may list additional requirements that are school-specific; schools must carefully review all of the requirements listed on their PPA.

General terms and conditions

- The school certifies that it will comply with
  1. Title VI of the Civil Rights Act of 1964, as amended, barring discrimination on the basis of race, color, or national origin;
  2. Title IX of the Education Amendments of 1972, barring discrimination on the basis of sex;
  3. The Family Educational Rights and Privacy Act of 1974 (see *Chapter 7*);
  4. Sections 501 and 505(b)(2) of the Gramm-Leach-Bliley Act, on safeguarding information (see *Chapter 7*);
  5. Section 504 of the Rehabilitation Act of 1973, barring discrimination on the basis of physical handicap (34 CFR Part 104); and
  6. The Age Discrimination Act of 1975 (34 CFR Part 110).
- The school acknowledges that the Department, states, and accrediting agencies may share information about the school without limitation.
- The school must agree to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

General provisions

- The school will use funds received under any FSA program, as well as any interest and other earnings thereon, solely for the purposes specified for that program.
- If the school is permitted to request FSA program funds under an advance payment method, the school will time its requests for funds to meet only the school's immediate FSA program needs (see *Volume 4, Chapter 2*).
- The school will not charge for processing or handling any application, form, or data used to determine a student's FSA eligibility (see *Chapter 3*).
- The school will establish administrative/fiscal procedures and reports that are necessary for the proper and efficient management of FSA funds, and it will provide timely information on its administrative capability and financial responsibility to the Department and to the appropriate state, guaranty, and accrediting agencies (see *Chapter 6*).
- The school must acknowledge the authority of the Department and other entities to share information regarding fraud, abuse, or the school's eligibility for participation in the FSA programs (see *Chapter 8*).
- The school must, in a timely manner, complete reports, surveys, and any other data collection effort of the Department including surveys under the Integrated Postsecondary Education Data System (see *Chapter 6*).
- The school cannot penalize in any way a student who is unable to pay school costs due to compliance with the FSA program requirements or due to a delay in an FSA loan disbursement caused by the school.
- The school must comply with the program integrity requirements established by the Department, state authorizing bodies, and accrediting agencies (see *Chapter 8*).
- The school is liable for all improperly administered funds received or returned under the FSA programs, including any funds administered by a third-party servicer (see *Chapter 3*).

Selected Provisions of the PPA, continued

- If the program offered by the school is preparing students for gainful employment in a recognized occupation, the school will
  1. demonstrate a reasonable relationship [as defined in 34 CFR 668.14(b)(26)(i)] between the length of the program and entry level requirements for the recognized occupation, and
  2. establish the need for the training for students to obtain employment in the recognized occupation.

Certifications

Three certifications are included in the PPA:

- Lobbying; Debarment, Suspension, and other responsibility matters; and Drug-Free Workplace Requirements (see *Chapter 6*).
- Drug Prevention Certification (see *Chapter 6*).
- Certification regarding Debarment, Suspension, Eligibility, and Voluntary Exclusion—lower-tier covered transactions.

Direct Loans

- The school will not charge any fees of any kind to student or parent borrowers for loan application, origination activities, or the provision and processing of any information needed to receive a Direct Loan.
- The note or evidence of obligation of the loan shall be the property of the Secretary.
- The school accepts responsibility and financial liability stemming from its failure to perform its functions under the Program Participation Agreement.

Additional requirements

In addition to the requirements listed on the PPA, a school must meet any requirements for participation in the General Provisions (34 CFR Part 668), as well as those specific to an individual FSA program:

- Federal Pell Grant Program—20 USC 1070a et seq., 34 CFR Part 690
- Federal Direct Student Loan Program—20 USC 1087a et seq., 34 CFR Part 685
- Federal Supplemental Educational Opportunity Grant Program—20 USC 1070b et seq., 34 CFR Part 676
- Federal Work-Study Program—42 USC 2751 et seq., 34 CFR Part 675

These requirements are discussed in the *Application and Verification Guide* and volumes 1–6 of this *Federal Student Aid Handbook*.

Experimental sites
HEA Sec. 487A(b)

EXPERIMENTAL SITES

The Experimental Sites Initiative permits statutory and regulatory flexibility for schools participating in the experiments. This gives the Department data for judging the effectiveness of certain laws and regulations and whether they should change. For example, the Dual Enrollment Experiment allows participating colleges to award Pell grants to students for their Title IV-eligible college program while still being enrolled in high school. Go to the website for more information and other experiments.

Program Eligibility, Written Arrangements, & Distance Education

CHAPTER 2

Many of the program eligibility requirements are derived from the institutional definitions that we discussed in Chapter 1. *However, bear in mind that institutional eligibility does not mean that all programs at the school are eligible. A financial aid office should have a process to confirm the eligibility of an educational program before paying any FSA funds to students enrolled in that program and should promptly report changes to the Department following the procedures in* Chapter 5.

DETERMINING PROGRAM ELIGIBILITY

Program eligibility
34 CFR 668.8
See also 232(a), 600.10, 668.232, and 691.2(b).

To qualify as eligible institutions, schools must offer at least one eligible program. Not all programs at a school must be eligible, but at least one must meet the eligible program requirements. And students must be enrolled in an eligible program to receive FSA funds (except for students enrolled in certain preparatory or teacher certification courses; see *Volume 1*, *Chapter 1*). Schools are responsible for ensuring a program is eligible before awarding FSA funds to students in that program.

In addition to determining that the program meets the eligible program criteria given in this chapter, the school should make certain that the program is included under the notice of accreditation from a nationally recognized accrediting agency (unless the agency does not require that particular program be accredited).

The school should also make certain that it is authorized by the appropriate state to offer the program (if the state licenses individual programs at postsecondary institutions). In some instances a school or program may need a general authorization as well as licensure for a specific program approval. (See the chart on eligible institutions and the discussion under *Legal Authorization By a State* in *Chapter 1*.)

A school's eligibility extends to all eligible programs and locations on its E-App, unless the school participation division (SPD) determines that certain programs or locations did not meet the eligibility requirements or it has not approved the expansion's FSA eligibility. Generally, the school's eligible nondegree programs and locations are specifically named on the *Eligibility and Certification Approval Report* (ECAR). Additional locations and programs may be added later. Once the SPD has approved the program/location, it will notify the school and an updated ECAR can be printed. See the discussion under *Changes to Educational Programs* in *Chapter 5* for a discussion of when and how a school must notify the Department when adding programs and when the school must wait

for approval from the Department. Note that all GE programs must be reported to ED and all direct assessment programs, comprehensive transition and postsecondary programs, and short-term programs must be reported to and approved by ED.

If a program offered through distance or continuing education meets the definition of an eligible program, students enrolled in that program must be considered for FSA program assistance on the same basis as students enrolled in eligible programs offered through traditional modes. With some limitations, if a correspondence program meets the definition of an eligible program, students enrolled in that program are considered eligible (see *Distance Education & Correspondence Study* in this chapter).

Schools must accurately report their programs' published length

The Department's regulations require each school to have established a normal time for completion for each of its academic programs. 34 CFR 668.41(a) defines normal time as "the amount of time necessary for a student to complete all requirements for a degree or certificate according to the school's catalog." The definition goes on to say, "This is typically four years for a bachelor's degree…two years for an associate degree… and the various scheduled times for certificate programs." **Therefore, a school must have established a program's published length in time (years, months, or weeks), not just in credit or clock hours,** to comply with 34 CFR 668.41(d)(4) and 668.45 and must report that published length in time to COD and NSLDS.

- If the school has published, in its catalog, on its website, or in any promotional materials, the length of the program in weeks, months, or years, the program length to be reported to COD and NSLDS must be the same as the program length that the school has published. Note: For gainful employment programs, the school must have published the program's length in weeks, months, or years on the school's website.
- If the school has not published a program length and the program is an associate or bachelor's degree program, the program length to be reported should be 2 years or 4 years, respectively, unless the academic design of the program makes it longer or shorter than the typical, 2-year associate degree program or 4-year bachelor's degree program.
- For all other programs for which the school has not published a program length, the program length is based on the school's determination of how long, in weeks, months, or years, the program is designed for a full-time student to complete.

See the April 20, 2015, electronic announcement.

BASIC TYPES OF ELIGIBLE PROGRAMS

There is a wide variety of programs that are eligible for Title IV aid. This section explains some of the most common for each type of institution. Later in the chapter we explain others, such as direct assessment programs and comprehensive transition and postsecondary programs.

Eligible programs at an institution of higher education

At a public or private nonprofit institution of higher education, the following types of programs are Title IV-eligible:

- a program that leads to an associate, bachelor's, professional, or graduate degree,
- a transfer program of at least two academic years in duration that does not award a credential and is acceptable for full credit toward a bachelor's degree,
- a program of at least one academic year in duration that leads to a certificate or other nondegree recognized credential and prepares students for gainful employment in a recognized occupation,
- a program consisting of courses required for elementary or secondary teacher certification or recertification in the state where the student plans to teach that is offered in credit or clock hours, or
- a certificate or diploma training program that is less than one year and prepares students for gainful employment in a recognized occupation (if the school also meets the definition of a postsecondary vocational institution).

Note that with a few exceptions detailed later in this chapter, a nondegree program at a public or private nonprofit institution is subject to the rules for a gainful employment program.

Eligible programs at a proprietary or postsecondary vocational institution

There are several types of eligible programs at a proprietary institution or a postsecondary vocational institution. Generally these programs must have a specified number of weeks of instruction and must provide training that prepares a student for gainful employment in a recognized occupation.

- The program provides at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of undergraduate instruction offered during a minimum of 15 weeks of instruction. The program may admit as regular students persons who have not completed the equivalent of an associate degree.

Completion and Placement Rates for Short-Term Programs

For the purpose of demonstrating compliance with the standards for short-term (at least 300 but less than 600 clock hours), a school must calculate the completion and placement rates for the award year. The independent auditor who prepares the school's compliance audit report must attest to the accuracy of the school's calculation of completion and placement rates. See 34 CFR 668.8(e), (f), and (g).

$$\frac{\text{Number of regular students who earned credentials for successfully completing the program within 150\% of its length}}{\text{Number of regular students enrolled in the program for the award year, including the number of regular students who withdrew with a 100\% refund of tuition and fees and the number of regular students enrolled at the end of the award year}} = \textbf{Completion Rate}$$

$$\frac{\text{Number of students who obtained employment* within 180 days of receiving credential and who are employed (or have been employed) for at least 13 weeks following receipt of credential}}{\text{Number of regular students who received credential for successfully completing the program during the award year}} = \textbf{Placement Rate}$$

*in the recognized occupation for which they were trained or in a related comparable occupation

The school must document the employment of any student it includes as employed in the placement rate calculation. Examples of such documentation include but are not limited to a written statement from the employer, signed copies of state or federal income tax forms, or written evidence of payment of Social Security taxes.

The school must reasonably determine whether a related occupation is comparable. For instance, for a student who was trained as an auto mechanic, it is reasonable to determine that a job as a boat mechanic is comparable. However, for a person trained in retail sales management, a counter-service job at a fast-food restaurant is not comparable.

An auditor may use his or her discretion to choose the award year used to calculate a program's completion and placement rates under 34 CFR 668.8(e), (f), and (g) based on the circumstances and appropriate audit standards, with these caveats:

- The auditor must use the same procedure from year to year; and
- The auditor may not use the rates from award years that ended more than two years prior to the institution's fiscal year end date.

For example, for a fiscal year that ends on 8/31/16, the auditor could calculate rates from the 2015-2016 award year or the 2014-2015 award year, but not from the 2013-2014 award year or any award year prior to that.

- The program provides at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction during a minimum of 10 weeks of instruction. The program must be a graduate or professional program or must admit as regular students only persons who have completed the equivalent of an associate degree.
- The program is known as a short-term program, which qualifies for the Direct Loan program only. This type of program must provide at least 300 but less than 600 clock hours of instruction offered during a minimum of 10 weeks of instruction. The program must admit as regular students some persons who have not completed the equivalent of an associate degree. It must also have been in existence for at least one year, have verified completion and placement rates of at least 70% (see below), and not be more than 50% longer than the minimum training period required by the state or federal agency, if any, for the occupation for which the program of instruction is intended.

Lastly, a program that leads to a baccalaureate degree in liberal arts at an accredited proprietary institution is an eligible (non-GE) program. The school must have been continuously accredited by a recognized regional accrediting agency or association since at least October 1, 2007, and have provided the program continuously since January 1, 2009.

PROGRAMS LEADING TO GAINFUL EMPLOYMENT

To be eligible for Title IV funding, an educational program at a postsecondary school must lead to a degree—associate, bachelor's, graduate, or professional degree from a public or non-profit institution—or prepare students for "gainful employment in a recognized occupation." We refer to the latter as "gainful employment programs" or "GE programs" for short. They include nondegree programs offered by public and private nonprofit institutions and almost all academic programs offered by proprietary institutions; see below for details. See the May 20, 2015, announcement, which identifies GE programs.

Programs offered by for-profit institutions

All educational programs offered by for-profit (proprietary) institutions are GE programs with the following three exceptions:

1. Preparatory coursework necessary for enrollment in a Title IV-eligible program [34 CFR 668.32(a)(1)(ii)];
2. Approved Comprehensive Transition and Postsecondary (CTP) programs for students with intellectual disabilities [34 CFR 668.231]; and
3. A limited number of liberal arts bachelor degree programs if offered since January 2009 and the school has been regionally accredited since October 2007 [34 CFR 600.5(a)(5)(i)(B)].

Programs offered by public and private nonprofit institutions

All **non-degree** educational programs offered by public or private non-profit institutions are GE programs with the following four exceptions:

1. Preparatory coursework as noted under (1) above;
2. Approved CTP programs as noted under (2) above;
3. Programs that are at least two years long and designed to be fully transferable to a bachelor's degree program and for which the school does not confer a credential [34 CFR 668.8(b)(1)(ii)]; and
4. Teacher certification programs the institution does not award a credential for [34 CFR 668.32(a)(1)(iii)].

Definitions

Program leading to a baccalaureate degree in liberal arts—a general instructional program falling within one or more of the following generally accepted instructional categories:

1. A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.
2. An undifferentiated program that includes instruction in the general arts or general science.
3. A program that focuses on combined studies and research in humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literature, art, music, philosophy, and religion.
4. Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in 1 through 3 above.

Instruction must be in a regular program, not an independently designed or individualized program or unstructured studies.
34 CFR 600.5(e)

Recognized occupation—one that is

- identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget or an Occupational Information Network O*NET–SOC code established by the Department of Labor and available at O*NET OnLine or its successor site, or
- considered by ED, in consultation with the Department of Labor, to be a recognized occupation.

If the title of the program does not clearly indicate the specific occupation that the program prepares the student for, that information must appear on the E-App.

Student with an intellectual disability—one who

(1) has a cognitive impairment characterized by significant limitations in
(i) intellectual and cognitive functioning and
(ii) adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and
(2) is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

Some public and private nonprofit institutions offer degree programs in which students may also be awarded a non-degree credential (e.g., certificate, diploma) after completing a portion of the degree program. These are **not** GE programs as long as a significant number of the students enrolled in the program earn the degree rather than withdraw after obtaining the certificate. If a significant number of students enrolled in the program do not earn the degree, all of the students are considered to be enrolled in a non-degree program, that is, a GE program.

GE programs at foreign schools

The only programs at foreign proprietary institutions that are eligible for FSA loan funds are degree programs in medicine, nursing, and veterinary science. All Title IV-eligible programs at these schools are GE programs. The determination of a GE program at a foreign public or nonprofit institution is the same as for domestic public and nonprofit institutions.

State requirements and program length

GE program length
34 CFR 668.14(b)(26)

The school must demonstrate a reasonable relationship between the length of the GE program and entry level requirements for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50% the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the state in which the program is offered, or as established by any federal agency (if applicable). This limitation applies to both clock-hour and credit-hour GE programs.

ADDITIONAL ELIGIBILITY REQUIREMENTS

There are additional FSA program eligibility requirements for specific educational programs. For example, only undergraduate educational programs are eligible under the Pell Grant and FSEOG programs. Correspondence programs are not eligible unless they meet the general requirements for an eligible program and are required for the student's regular program of study leading to a degree.

TEACH Grant eligible programs

One of the eligibility requirements for a student to receive a TEACH Grant is that the student must be enrolled in a TEACH Grant-eligible program. A TEACH Grant-eligible program is an eligible program that is

- designed to prepare an individual to teach as a highly qualified teacher in a high-need field and lead to a baccalaureate or master's degree (including 2-year programs of study that are acceptable for full credit toward a baccalaureate degree), or
- post-baccalaureate program of study for students who have completed a baccalaureate degree.

A postbaccalaureate program consists of courses required by a state for a student to receive a professional certification or licensing credential that is needed for employment as a teacher in an elementary or secondary school in that state. It must be a program that is treated as an undergraduate program for FSA purposes and may not lead to a graduate degree. Note that the program cannot be considered a postbaccalaureate program if the school offers a baccalaureate degree in education.

For additional TEACH grant student eligibility requirements, see *Volume 1*, *Chapter 6*.

Programs for students with intellectual disabilities

A student with an intellectual disability who enrolls in a comprehensive transition and postsecondary (CTP) program at a school that participates in the FSA programs is eligible for non-loan assistance (Pell Grants, FSEOG, and Federal Work-Study). As discussed in *Volume 1*, the student is exempt from some student eligibility requirements.

A CTP program is a degree, certificate, non-degree, or non-certificate program that is designed to support students with intellectual disabilities who want to continue their instruction (academic, career and technical, and independent living) at a postsecondary school to prepare for gainful employment. Schools must apply to the Department to have such a program judged eligible. To do so, they must follow the procedures in 34 CFR 600.20 and provide the information described in 34 CFR 668.232. See the June 6, 2011, announcement.

The program must be delivered to students physically attending the institution, include an advising and curriculum structure, and provide students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

Such programs must require that at least half of the students' participation in the program, as determined by the school, focuses on academic components through one or more of the following activities:

- taking credit-bearing courses with students without disabilities,
- auditing, or otherwise participating in, courses the student does not receive regular academic credit for with students without disabilities,
- taking non-credit-bearing, nondegree courses with students without disabilities, and
- participating in internships or work-based training in settings with individuals without disabilities.

ESL programs

Students enrolled in a program that consists solely of English as a second language (ESL) instruction are only eligible for Pell Grants. An ESL program must meet the general requirements for eligible programs

(e.g., it must lead to a degree or other credential), and a school must request an eligibility determination for it from the Department. The program may admit only students who need instruction in English to be able to use the knowledge, training, or skills they already have. The school must document its determination that the ESL instruction is necessary for each student enrolled.

Schools should pay attention to the effect that awarding Pell Grants for more than one academic year of attendance in an ESL program has on a student's Pell LEU (See *Volume 3*).

See *Chapter 3* for a discussion of the requirement that schools define the effect of non-credit remedial courses (including ESL on a student's academic progress.

Competency-based education programs

Competency-based education (CBE) is an innovative approach in higher education that organizes academic content according to competencies—what a student knows and can do—rather than following a more traditional scheme, such as by course.

As with all Title IV-eligible programs (except correspondence programs), CBE programs must be designed to ensure that there is regular and substantive interaction between students and instructors. Interaction that is wholly optional, initiated primarily by the student, or occurring only upon the request of the student is not sufficient.

Some schools use a CBE model where instructors perform different roles and no single faculty member is responsible for all aspects of a course or competency. Such a model may be used, but schools must ensure that regular and substantive interaction between students and instructors occurs, that instructors meet accrediting agency standards for instruction in their subject, and that the faculty resources dedicated to the program are sufficient for the accrediting agency. Interactions between students and personnel who don't meet accrediting agency standards for providing instruction in the subject area would not be considered substantive interaction with an instructor.

FSA funds may be awarded only for learning that results from instruction provided or overseen by the school. FSA funds cannot be awarded for any portion of the program based on study or life experience prior to enrollment in the program or based on tests of learning that are not associated with educational activities overseen by the school.

A school must ensure that the instructional materials and faculty support necessary for academic engagement are available to students every week that the school counts toward its defined payment period or academic year. Educational activity in a CBE program includes but is not limited to

- participating in regularly scheduled learning sessions (where there is an opportunity for direct interaction between the student and the faculty member);
- submitting an academic assignment;
- taking an exam, an interactive tutorial, or computer-assisted instruction;
- attending a study group that is assigned by the institution;
- participating in an online discussion about academic matters;
- consultations with a faculty mentor to discuss academic course content; and
- participation in faculty-guided independent study (as defined in 34 CFR 668.10(a)(3)(iii)).

For direct assessment programs only, educational activity also includes development, in consultation with a qualified faculty member, of an academic action plan that addresses competencies identified by the school.

As with other types of eligible programs, CBE programs may be offered as nonterm or as standard or nonstandard term programs. Such programs may also last less than a year if all applicable requirements are met. See DCL GEN-14-23 for more information, including guidance about CBE programs and cost of attendance, satisfactory academic progress, return of Title IV funds, and direct assessment programs.

Types of CBE programs

There are two types of CBE programs: those that measure progress using clock or credit hours and direct assessment programs.

Credit- or clock-hour CBE programs

These are organized by competency but measure student progress using clock or credit hours. In such programs, Title IV aid must be administered under normal statutory and regulatory provisions for credit- or clock-hour programs.

An institution offering a CBE program using credit hours must ensure that for Title IV purposes each credit hour in the program requires sufficient educational activity to fulfill the federal definition of a credit hour (See the discussion under *Determining program eligibility and Clock-Hour to Credit-Hour Conversions* later in this chapter.) and must reasonably approximate not less than one hour of classroom instruction and two hours of out-of-class work each week. A credit hour in a CBE program might not require structured class sessions but must still require sufficient academic activity—for instance, reading and writing assignments with feedback from an instructor—to reasonably approximate three hours of expected academic engagement per week for each credit hour. The CBE program could allow this work to be

completed more flexibly and at the student's pace as long as he is making satisfactory academic progress.

Direct assessment programs

Direct assessment programs
34 CFR 668.10

These are a type of CBE program that does not use credit or clock hours. Progress in a direct assessment program is measured solely by assessing whether students can demonstrate that they have a command of a specific subject, content area, or skill or can demonstrate a specific quality associated with the subject matter of the program. Therefore, unlike a CBE program measured in credit hours, a direct assessment program does not specify the level of educational activity a student is expected to engage in to complete the program.

Because direct assessment programs do not use credit or clock hours, schools must establish credit- or clock-hour equivalencies for the programs and provide a factual basis for that to the Department as part of the application process for direct assessment programs. The equivalencies must be approved by a school's accrediting agency, and the school must document that approval. See GEN-14-23 for more about equivalencies.

The entire program must be provided by direct assessment—one offered partly with credit or clock hours is not Title IV-eligible—and the assessment must be consistent with the accreditation of the institution or program.

A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the school providing the direct assessment program without regard to the limitations on contracting for part of an educational program (see *Written Arrangements Between Schools* later in this chapter).

Several types of programs and coursework that might otherwise be eligible for FSA purposes are not eligible if they involve direct assessment:

- Programs at foreign schools.
- Preparatory coursework required for entry into an eligible program (*see Volume 1, Chapter 6*).
- Courses necessary for an elementary or secondary school teaching credential or certificate (*see Volume 1, Chapter 6*).
- Remedial coursework measured through direct assessment.

However, remedial instruction offered in credit or clock hours in conjunction with a direct assessment program is eligible for FSA funds.

A school that wishes to award FSA funds for a program using direct assessment must submit an updated E-App to the Department to apply for approval of the program. In addition to updating the E-App, the school will email to the case teams supporting documentation: a detailed program description (recommended length not to exceed 20 pages), a detailed description of financial aid administration (not to

exceed 5 pages), and documentation that the school's accrediting agency has evaluated and approved the program and agrees with the school's credit- or clock-hour equivalency. See DCL GEN-13-10 for complete instructions.

The detailed program description will be a succinct narrative clearly indicating the name of the program and how it meets the regulatory requirements of 34 CFR 668.10(b). Each requirement must be specifically identified in the narrative; for example, there must be a description of how the assessment of learning is done [668.10(b)(2)].

The detailed description of financial aid administration for the program explains how the program meets the Title IV requirements. For example, the school must provide a basis for its credit- or clock-hour equivalent for the program or portion thereof (the clock or credit hours will be used as the basis for the FSA award calculations described in *Volume 3*, *Chapter 1*).

If a school plans to change any aspect of the program, it must obtain prior approval from the Department by reapplying.

Apprenticeships

An apprenticeship combines job-related instruction with on-the-job experience. Postsecondary schools may provide related classroom instruction, technical training, or other certified training. If all or part of an apprenticeship meets an academic requirement of a Title IV-eligible educational program, students enrolled in that program may receive Title IV aid for the entire program, including for the apprenticeship portion. For more information see Dear Colleague Letter GEN-14-22 and *Volume 6*, *Chapter 2*, of the Handbook.

Since student aid is partly determined by the number of credit or clock hours in the program, the structured on-the-job portion must be associated with a defined number of credit or clock hours. For clock-hour programs, students' completion of the clock hours associated with the on-the-job training must be under the supervision of school faculty.

Except as may be required by the accrediting agency or state, there is no limit on the percentage of the program that consists of on-the-job training as long as the school provides the training. Note that schools must report to the Department any location at which 50% or more of an educational program is provided, including any on-the-job component. If an entity other than the school provides the on-the-job training, that component must be 25% of the program or less or, with specific permission of the institution's accrediting agency, over 25% but less than 50% of the program.

In such contracted situations, the school must enter into a written arrangement with the entity providing the on-the-job training. If the program is offered in credit hours, the written arrangement should establish the equivalent credit hours for the non-coursework portion

of the program. A school's policies for establishing credit hours must meet all requirements and standards set by its accrediting agency. See the discussion under *Written Arrangements Between Schools* later in this chapter for additional information.

Study-abroad programs

A participating institution may establish study-abroad programs for which students are eligible to receive FSA funds. The study-abroad program does not have to be a *required* part of the eligible program at the home school for the student to be eligible to receive FSA funds, but the credits earned through the study-abroad or exchange program must apply toward graduation in the student's program at the home school. In addition, students in the study-abroad program must remain concurrently enrolled at their home school. Moreover, the school must mention the availability of FSA funds in the information it provides to students about the study-abroad program.

Study-abroad references
Arrangements with a study-abroad organization
34 CFR 668.5(b)
Student eligibility in study-abroad programs
34 CFR 668.39
FSEOG maximum awards
34 CFR 676.20

Types of study-abroad programs

Study-abroad program configurations include the following:

- A home school sends students to a study-abroad program at an eligible or ineligible foreign host school. The home school must have a contractual agreement with the foreign school. A written arrangement between a domestic institution and one in another country is always considered a contractual agreement in which the domestic institution is the home school.
- A home school has, instead of a separate agreement with each foreign school, a written arrangement with a study-abroad organization that represents one or more foreign schools. The arrangement must adequately describe the duties and responsibilities of each entity and meet the requirements of the regulations.

Direct assessment definitions

Academic year—In a direct assessment program, this consists of a minimum of 30 weeks of instructional time, during which a full-time student is expected to complete the equivalent of at least 24 semester or trimester credit hours or 36 quarter credit hours for an undergraduate program.
Week of instructional time—any seven-day period in which at least one day of educational activity occurs.
Educational activity—This includes assessments, regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, and development of an academic action plan addressed to the competencies identified by the school.
Independent study—This occurs when a student follows a course of study and works with a faculty member to decide how the student will meet defined course objectives. Both agree on what the student will do (e.g., readings, research, and work products), how the student's work will be evaluated, and the time frame for completion. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.
Full-time student—one who is carrying a full-time academic workload, as determined by the school, that is the standard for all students in the program. For undergraduate students, the school's standard must equal or exceed the minimum requirements in the definition of full-time student in 34 CFR 668.2, based on the credit- or clock-hour equivalency for the program.

- A variant of the study-abroad program occurs when a home school sends faculty and students to a foreign site. This is not a consortium or contractual study-abroad program; rather, the foreign site is considered an additional location under 34 CFR 600.32.

A study-abroad program must be part of a written contractual agreement between two or more schools. If a study-abroad program has higher costs than the home school, those should be reflected in the student's cost of attendance. This may result in the student being eligible for additional FSA funds.

The maximum FSEOG for a full academic year is usually $4,000. However, a school may award as much as $4,400 to a student participating in a study-abroad program that is approved for credit by the home school.

Some eligible students have had problems receiving FSA funds for study-abroad programs because neither their home school nor the school they were temporarily attending documented that they were enrolled in an eligible program of study. The Program Participation Agreement requires participating schools to establish procedures that ensure that students participating in study-abroad programs receive the FSA funds to which they are entitled.

Flight school programs
34 CFR 668.8(i)

Flight school programs

A flight school program must maintain current valid certification by the Federal Aviation Administration to be eligible.

Written arrangements
34 CFR 668.5

WRITTEN ARRANGEMENTS BETWEEN SCHOOLS

Under a consortium or contractual agreement (including those for study-abroad programs), the home school must give credit for courses taken at the other schools on the same basis as if it provided the training. The assumption of such an agreement is that the home school has found the other school's or organization's academic standards equivalent to its own and the instruction an acceptable substitute for its own.

A home school may decline to give credit for courses in which a student earns a grade that is not acceptable at the home school even though the host school has a policy of accepting that grade for its resident students. Also, although grades received through consortium or contractual agreements do not have to be included in a student's grade point average, they must be included when calculating the quantitative component (the percentage of credits earned vs. attempted) of her satisfactory academic progress.

If not written for an individual student or group of students, agreements between schools can go on indefinitely. These agreements do not have to be renewed unless the terms of the agreement change.

Requirement to inform students of an arrangement
34 CFR 668.43(a)(12)

A school must provide enrolled and prospective students with a description of the written arrangements it has entered into, including

- the portion of the educational program that the school that grants the degree or certificate is not providing,
- the name and location of the other schools or organizations that are providing that portion of the educational program,
- the method of delivery of that part of the educational program, and
- estimated additional costs students may incur by enrolling in an educational program provided under the written arrangement.

Consortium agreement

A consortium agreement can apply to all FSA programs. Under a consortium agreement, a student may take courses at another school and have them count toward the degree or certificate at the home school. A student can receive FSA funds only for courses that apply to his certificate or degree program.

A consortium agreement can be a blanket agreement between two or more eligible schools, or it can be written for a specific student. Such an agreement is often used when a student takes related courses at neighboring schools or when a student is enrolled in an exchange program with another eligible school for a term or more. A school could have one agreement for each student, a separate agreement with each host school, or a blanket agreement with a group of schools.

In a consortium agreement there is no limit on the portion of the eligible program that may be provided by eligible schools other than the home school. Agreement contents can vary widely and will depend upon the interests of the schools involved and the accrediting or state agency standards. The Department does not dictate the format of the agreement (which can be executed by several different offices) or where the agreement is kept. However, the following information should be included in all agreements:

- The school that will grant the degree or certificate
- The student's tuition, fees, and room and board at each school
- The student's enrollment status at each school
- The school that will be responsible for disbursing aid and monitoring student eligibility
- The procedures for calculating awards, disbursing aid, monitoring satisfactory progress and other student eligibility requirements, keeping records, and returning funds when the student withdraws

The school that disburses an FSA award is responsible for maintaining information on the student's eligibility, how the award was calculated, what money has been disbursed, and any other documentation associated with the award, even if some of that documentation comes

from other schools. Moreover, the school paying the student must return FSA funds if required, for example, in refund/return or overpayment situations. For determining enrollment status under a consortium agreement, see *Volume 3*, *Chapter 3*.

Usually the home school is responsible for disbursing funds, but if the student is enrolled for a full term or academic year at the host school, it may be easier for the host school to monitor his eligibility and make payments.

If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Department considers the educational program to be eligible if the school that grants the degree or certificate provides more than 50% of the program and it otherwise satisfies the requirements of an eligible program described in this chapter.

When there is a written arrangement between eligible schools, any of the schools participating in the written arrangement may make FSA calculations and disbursements without that school being considered a third-party servicer. This is true even if the student is not currently taking courses at the school that is calculating and disbursing the aid.

Contractual agreement

If the limitations in the following paragraphs are adhered to, an eligible school may enter into a contractual agreement with an ineligible school or organization that provides part of the educational program of students enrolled at the eligible school.

Such a contract is prohibited with an ineligible school or organization whose

- eligibility or certification to participate in the FSA programs has been terminated or revoked by the Department or
- application for certification or recertification to participate in the FSA programs was denied by the Department.

Similarly, an eligible school is prohibited from entering into a contract with an ineligible school or organization that has voluntarily withdrawn from participation in the FSA programs under a termination, show-cause, suspension, or similar proceeding initiated by the Department or the school's state licensing agency, accrediting agency, or guarantor.

Under a contractual agreement, the eligible school is always the home school. It performs all the aid processing and disbursement for students attending the ineligible school and is responsible for maintaining all records necessary to document student eligibility and receipt of aid (see *Chapter 7*).

With a contractual agreement, the ineligible school can in general provide no more than 25% of the educational program. However, it may

provide more than 25% but less than 50% of the program as long as (1) the home and ineligible schools are **not** owned or controlled by the same individual, partnership, or corporation; and (2) the home school's accrediting agency or state agency (in the case of a public postsecondary vocational institution) determines and confirms in writing that the agreement meets its standards for contracting out education services.

Schools sometimes contract with providers of software platforms designed to support distance education programs. When such a contractor provides only the software or platform for coursework and instruction in the program is still performed by the school's own faculty under the school's supervision, such an arrangement is not considered a written arrangement under 34 CFR 668.5. However, if the contractor's staff provides instruction as part of its provision of software or other services, the school must have a contractual agreement in place that establishes the proportion of the program provided by the contractor and ensures it does not exceed the legal limits.

Written arrangements between domestic and foreign schools

An eligible U.S. school may have a written arrangement with a foreign school or organization that is acting on behalf of a foreign school, but such an arrangement is always considered to be one between an eligible domestic school where the student enrolls and an ineligible foreign school, even if the latter is otherwise Title IV-eligible. Therefore, these arrangements are considered contractual agreements that must follow the rules that apply to such. See DCL GEN-11-18 for more information about Title IV eligibility of programs offered through written arrangements between U.S. and foreign schools.

Internships and externships

Internships and externships that are part of a program and are provided by organizations other than the institution are subject to the written arrangement requirements. However, an internship or externship portion of a program does not have to meet the written arrangement requirements if it is governed by explicit accrediting agency standards that require the oversight and supervision of the school, which is responsible for the internship or externship, and where students are monitored by qualified school personnel.

Definitions

Consortium agreement—a written agreement between two or more eligible schools.
Contractual agreement—a written agreement between an eligible school and an ineligible school.
Home school—the school where the student is enrolled in a degree or certificate program.
Host school—the school where the student is taking part of his or her program requirements through either a consortium or contractual agreement.
Two plus two program—a partnership between a two-year and a four-year school that facilitates a student's completing the last two years of the student's four-year degree.

DISTANCE EDUCATION AND CORRESPONDENCE STUDY

Schools use distance education and correspondence courses to respond to students' needs for alternatives to the schedules and locations at which courses traditionally have been offered. A school may not refuse to provide FSA funds to a student because she is enrolled in correspondence or distance education courses unless the courses are not part of an eligible program.

Some participating institutions contract with distance education providers that are not eligible to participate in the FSA programs. These participating institutions must ensure that they do not exceed the limitations on contractual arrangements (see the previous section).

Distance education

A distance education program at a domestic school is considered an eligible FSA program if it has been accredited by an accrediting agency recognized by the Department for accreditation of distance education. It is not subject to the rules that apply to correspondence coursework, which are discussed in the next section. Distance education programs must be evaluated by an accrediting agency that is recognized by ED for the purpose of evaluating distance education, just as an agency must be specifically reviewed and recognized for the evaluation of correspondence education. Dear Colleague Letter GEN-06-17 includes specific instructions on notifying ED if the school intends to seek new accreditation and updating the E-App to reflect changes to the school's accreditation.

Distance education means education that uses certain technologies to deliver instruction to students who are separated from the instructor and **to support regular and substantive interaction between the students and the instructor**. The interaction may be synchronous (student and instructor are in communication at the same time) or asynchronous. The technologies may include

1. the Internet;
2. audio conferencing; or
3. one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices.

A course taught through video cassettes or discs is also considered a distance education course but only if one of the three technologies listed is used to support interaction between the students and the instructor.

Correspondence courses

Correspondence courses and institutional eligibility
34 CFR 600.2, "Correspondence course"
34 CFR 600.7(a)(1)(i) and (ii)
34 CFR 602.3, "Correspondence education"
HEA Sec. 102(a)(3)(A) and (B)

Unlike distance education courses, which are treated the same as all other eligible programs, some restrictions apply to correspondence courses. A correspondence program at a domestic school is considered an eligible FSA program if it has been accredited by an accrediting agency recognized by the Department for accreditation of correspondence education.

A correspondence course is a home-study course for which the school provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the school. Interaction between the instructor and student is limited, not regular and substantive, and primarily initiated by the student.

Correspondence courses are typically self-paced. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials and returns the examinations to the school for grading.

If a course is part correspondence and part residential training, the course is considered to be a correspondence course. For example, a school offers a truck driving program, the first part of which is offered via correspondence. After completing that part of the program, the student has to attend a residential site where he learns how to drive trucks. This is a correspondence program.

If a school adds distance education technology, such as electronic delivery of course materials or an online discussion board, to a correspondence course, the school must ascertain the predominant method of instruction (correspondence or distance education), keeping in mind that a distance education course must use technology to support regular and substantive interaction between the students and instructor. The school must use the rules for the predominant method in administering the FSA programs.

If a school offers more than 50% of its courses by correspondence or if 50% or more of its students are enrolled in its correspondence courses, the school loses its eligibility to participate in the FSA programs (see *Chapter 1*).

Note that correspondence students enrolled in certificate programs are not eligible for FSA funds. For a full discussion of when a school may pay a student for correspondence study, see *Volume 1, Chapter 1.* Also see *Volume 3, Chapter 2* for limitations on the cost of attendance for correspondence students and *Volume 3, Chapter 1* for the timing of disbursements to correspondence students.

DETERMINING PROGRAM ELIGIBILITY AND CLOCK-HOUR TO CREDIT-HOUR CONVERSIONS

The credit hour definition and the clock-hour to credit-hour conversion rules serve two purposes: to determine program eligibility and to determine the award amount for certain FSA programs. See the program integrity Q's & A's for more information.

In this section, we discuss the first of these topics—the use of the **clock-hour to credit-hour** conversion rules in determining if a program meets the minimum program length requirements discussed earlier in the chapter.

Definition of a clock hour

A clock hour is defined as a period of time consisting of

1. a 50- to 60-minute class, lecture, or recitation in a 60-minute period;
2. a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or
3. sixty minutes of preparation in a correspondence course.

Definition of a credit hour

A credit hour is an amount of work that reasonably approximates not less than

1. one hour of classroom or direct faculty instruction and a minimum of two hours of out-of-class work each week for approximately 15 weeks for one semester or trimester hour of credit, or 10 to 12 weeks for one quarter hour of credit, or at least the equivalent amount of work over a different amount of time; or
2. at least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

Note that the classroom/direct faculty instruction time and out-of-class student work requirement in #1 does not mean you must have a certain number of hours of those specific types of instruction every week; it is an average required over the length of the course and may be institutionally established equivalencies that reasonably approximate the minimum standard using different measures of student work.

You may set a higher standard that requires more student work per credit-hour, and you may use a measure or metric different from this definition for academic and non-federal aid purposes. The regulations

make an exception to this definition in the case of programs that the clock-hour to credit-hour conversion formula, as described in the following text.

Measuring attendance in clock hours

A student's period of attendance is measured according to one of several commonly accepted academic standards. A clock hour is based on an actual hour of attendance (though each hour may include a 10-minute break). Credit hours are typically based on two hours of homework for each hour of class attendance.

A school is not permitted to count more than one clock hour per 60-minute period; in other words, a school may not schedule several hours of instruction without breaks and then count clock hours in 50-minute increments. For instance, a school could not consider seven consecutive hours of instruction to be 8.4 hours by dividing 50 minutes into 420 minutes. Seven 60-minute periods of instruction may not count for more than seven clock hours.

Clock-hour to credit-hour conversions in determining program eligibility

Clock-hour to credit-hour conversions
34 CFR 668.8(k) & (l)
Definitions of clock hour and credit hour
34 CFR 600.2

If your school offers an undergraduate educational program in credit hours that is considered a GE program, it must use one of the following conversion formulas unless

- the program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Department (Note that this does not permit a school to ask for a determination that a non-degree program is equivalent to a degree program.); or
- each course within the program is acceptable for full credit toward a single associate degree, bachelor's degree, professional degree provided by that institution, or equivalent degree as determined by the Department, provided that 1) the school's degree requires at least two academic years of study; and 2) the school demonstrates that students enroll in, and graduate from, the degree program.

The formula will determine if, after the conversion, the program includes the minimum number of credit hours to qualify as an eligible program for FSA purposes. The formula also determines the number of Title IV credit hours associated with each class that an institution can use to determine a student's enrollment status during the program.

For determining the number of credit hours in that educational program

- a semester hour must include at least 37.5 clock hours of instruction,

- a trimester hour must include at least 37.5 clock hours of instruction, and
- a quarter hour must include at least 25 clock hours of instruction.

For more information on how to perform the clock-hour/credit-hour conversion, see the *Clock-Hour to Credit-Hour Conversion Example* at the end of this chapter.

State/accrediting agency criteria
34 CFR 602.24 and 603.24

Credits approved by state and accrediting agencies

When states and accrediting agencies approve programs, they sometimes also approve the number of credits in those programs. The credits approved by states and accrediting agencies are not necessarily the credits that will be approved if the program becomes eligible for Title IV aid. For Title IV purposes, the number of credits in the program will be those determined by the clock-hour to credit-hour conversion formula, but they will never be more than those approved by a state or accrediting agency. The regulations for state and accreditation agencies explain how an agency reviews a school's assignment of credit hours.

State requirements and clock-hour to credit-hour conversions

If a state requires that a program that prepares students for a recognized occupation be composed of a minimum number of hours of training and a school offers a GE program that prepares a student for that occupation, the number of hours in the program cannot exceed the state minimum by more than 50%. For example, if Alaska requires that students preparing for a career in air conditioning and refrigeration repair complete 1,000 hours of training, the Department will not approve Title IV participation for any GE program (clock hour or credit hour) in air conditioning and refrigeration repair that is composed of more than 1,500 hours (150% X 1,000).

If a school provides a credit-hour GE program that is subject to the clock-hour to credit-hour conversion, and the school includes out-of-class hours in the conversion calculation (using the "full formula" described at the end of this chapter), the school must include those out-of-class hours when determining whether the hours in the program exceed the minimum hours required by the state by more than 50%.

If a school's credit-hour GE program is not subject to the conversion but is still subject to the limitation because its state has established a minimum number of clock hours required for training, the school has options for demonstrating compliance. If the state has established its own clock-to-credit hour equivalency, the school may use that equivalency to demonstrate that the program's hours do not exceed the limitation. A school can also show that the clock hours (in-class hours) associated with the program's coursework do not exceed the maximum allowed. If no other method can be used to demonstrate compliance, the school must multiply the number of credit hours in the program by 37.5 (if a

semester-hour program) or 25 (if a quarter-hour program) and ensure that the result does exceed the state-required hours by more than 50%.

If a school applies the appropriate formula and finds that a program is eligible, the converted credit hours are used to determine the amount of FSA funds that a student who is enrolled in the program is eligible to receive as explained in *Volume 3, Chapter 1*.

Out-of-class student work

The school's minimum number of clock hours of instruction per credit may be less if its designated accrediting agency or recognized state agency for the approval of public postsecondary vocational institutions for participation in the FSA programs has not identified any deficiencies with the school's policies and procedures for determining the credit hours that the school awards for programs and courses. In such cases student work outside of class combined with the clock hours of instruction must meet or exceed the numeric requirements (37.5 or 25), and

- a semester hour must include at least 30 clock hours of instruction,
- a trimester hour must include at least 30 clock hours of instruction, and
- a quarter hour must include at least 20 hours of instruction.

Merely having coursework that is outside of class does not mean a school can automatically divide by 30 or 20. The minimum may be higher than 20 or 30 depending on the amount of out-of-class work that is expected in the different educational activities of a program and may vary depending on the particular activity. The case study that follows illustrates a method for accurately accounting for any out-of-class work a student may have in a course.

Also, the amount of out-of-class work in a particular course or activity in a program does not carry over to other courses or activities.

Rounding

A school must have a policy that specifies the number of decimal places it will use in the steps of its calculation, and round at each of the steps in the calculation to that number.

Because the results of these formulas determine the eligibility of a program, the resulting number of credit hours both in each step and final result may not be rounded up.

Since the E-app accepts whole numbers only, when reporting on the E-app, a school must round down to the whole number.

In determining a student's enrollment level, a school must use the exact number of decimal places specified in its policy on rounding.

Clock-Hour to Credit-Hour Conversion Example

Prejean Community College (PCC), a public institution located in Louisiana that offers its courses in a semester format, has been told by the state that it must begin offering a 27 semester-hour career-training program previously offered in a clock-hour format by a post-secondary vocational-technical school. The program does not lead to a degree, and all of its courses do not transfer into a single degree program at the institution. Therefore, the program is subject to the clock-hour to credit-hour conversion.

Alice Defontes, PCC's financial aid officer discovers that a school has two options when performing a clock-hour/credit-hour conversion—a Default Formula and a Full Formula. Alice decides to perform the calculation both ways in order to determine which option would most benefit students, and that she will ultimately select.

Neither the state or PCC's accrediting agency specifies rounding rules, but PCC's policies and procedures state that PCC performs calculations to 2 decimal points and awards credits using whole credit hours.

The program's information is as follows:

Course	Hours of Classroom Instruction	Out-of-Class Hours in Course	Credits assigned by school
1	105	30	4
2	83	18	4
3	78	25	4
4	111	35	2
5	195	45	6
Externship	375	0	7
Total	947	153	27

The first four courses are offered in the first semester, and the fifth course and the externship are offered in the second semester.

To apply the Default Formula, Alice ignores the out-of-class hours and simply divides the number of hours of in-class instruction by 37.5 and rounds down to the nearest whole number. As she performs the calculation using the Default Formula, Alice must keep in mind the following rules:

Using the Default Formula for the conversion

- A school must perform the calculations on each individual component (course) in the program.
- Regardless of the results of the conversion calculation, a school cannot award more credit for Title IV purposes than the academic credit assigned to a course by the school and/or approved by its state or accrediting agency.
- A school must have a policy that specifies the number of decimal places (fractions of credit hours) it will use in its calculation.
- A school that elects to round its calculations, when determining student eligibility, must round down at the level of each individual course or educational activity. The school must not wait until the last step and round the total.

Clock-Hour to Credit-Hour Conversion Example (Continued)

Default Formula

Course	Hours of Classroom Instruction	Credits assigned by school	Conversion Calculation
Semester 1			
1	105	4	105/37.5 = 2.80 rounded to 2
2	83	4	83/37.5 = 2.21 rounded to 2
3	78	4	78/37.5 = 2.08 rounded to 2
4	111	2	111/37.5 = 2.96 rounded to 2
Totals	**377**	**14**	**8**
Semester 2			
5	195	6	195/37.5 = 5.20 rounded to 5
Externship	375	7	375/37.5 = 10.0 limited to 7[1]
Totals	**570**	**13**	**12**
Program Totals	**947**	**27**	**20**

[1] *Regardless of the results of the conversion calculation, a school cannot award more credit for Title IV purposes than the academic credit assigned to a course by the institution, and/or approved by a state or accrediting agency.*

After applying the Default Formula, Alice finds that during the first semester of the program, students are eligible to be paid for only 8 credit hours of instruction. Because this is less than the full-time student minimum of 12 credit hours, students who attend the first semester are eligible to be paid for only half-time attendance. In the second semester of the program, students are eligible to be paid for 12 credit hours of instruction. Students attending the second semester can be paid as full-time students.

Alice must follow some additional rules when applying the Full Formula. Since Alice cross trains her staff, she gathers Barry, Jack, Lucille, Agnes and Miles, and together they make the following list of the rules:

Using the Full Formula for the conversion

- A school must perform the calculations on each individual component (course) in the program.
- Regardless of the results of the conversion calculation, a school cannot award more credit for Title IV purposes than the academic credit assigned to a course by the school and/or approved by its state or accrediting agency.
- A school must satisfy the requirement that a credit hour must include at least 30 in-class hours of instruction for a program offered in semesters or trimesters or 20 clock-hours of instruction for a program offered in quarters.
- A school may include in the conversion calculation only 7.5 out-of-class hours for every 30 in-class hours for a semester program, and 5 out-of-class hours for every 20 in-class hours in a quarter hour program.
- A school must have a policy that specifies the number of decimal places (fractions of credit hours) it will use in its calculation.
- A school that elects to round its calculations, when determining student eligibility, must round down at the level of each individual course or educational activity. The school must not wait until the last step and round the total.

Clock-Hour to Credit-Hour Conversion Example (Continued)

As Alice calculates the program's eligibility using the Full Formula, she will proceed through the following steps:

Step 1 For each course, calculate the ***maximum number of credits*** your course could be eligible for by dividing the hours of classroom instruction by 30 if the course is offered in semester or trimesters and 20 if the course is offered in quarters.

Step 2 Multiply the ***maximum number of credits*** by 7.5 to find the ***number of out-of-class hours required*** for the course to be worth that maximum number of credit hours.

Step 3 If, after rounding, the number of out-of-class hours is equal to or greater than the ***number of out-of-class hours required,*** then the course is worth the number of credits established in Step 1. If not, go to Step 4.

Step 4 Sum the in-class hours and out-of-class hours and divide by 37.5 hours (for a program offered in semesters or trimesters) or 25 hours (for a course offered in quarters) and go to step 5.

Step 5 Apply school's rounding policy—either one mandated by the state or the accrediting agency or otherwise chosen by the school and included in its policies and procedures. You must round down to the whole number or decimal specified in your school's policies.

Full Formula

Course	Hours of Classroom Instruction	Out-of-Class Hours in Course	Out-of class hours after limit applied	Credits assigned by school	Conversion Calculation
			Semester 1		
1	105	30	26.25[1]	4	(105 + 26.25) / 37.5 = 3.50 rounded to 3
2	83	18	18.00	4	(83 + 18) / 37.5 = 2.69 rounded to 2
3	78	25	19.50[1]	4	(78 + 19.5) / 37.5 = 2.60 rounded to 2
4	111	35	27.75[1]	2	(111 + 27.75) / 37.5 = 3.7 limited to 2[2]
Totals	**377**	**108**	**91.50[1]**	**14**	**9 credit hours**
			Semester 2		
5	195	45	45.00	6	(195 + 45) / 37.5 = 6.4 rounded to 6
Externship	375	0	n/a	7	(375 + 0) / 37.5 = 10 limited to 7[2]
Totals	**570**	**45**	**45.00**	**13**	**13**
Program Totals	**947**	**153**	**136.5**	**27**	**22**

[1] The rules permit an institution to include in the conversion calculation only 7.5 out-of-class hours for every 30 in-class hours. For example, 105 in-class hours divided by 30 equals 3.5, which multiplied by 7.5 equals 26.25. For this class, the maximum number of out-of-class hours that may be considered is 26.25.

[2] Regardless of the results of the conversion calculation, a school cannot award more credit for Title IV purposes than the academic credit assigned to a course by the institution, and/or approved by a state or accrediting agency.

Clock-Hour to Credit-Hour Conversion Example (Continued)

For the first semester of the program, students are eligible for payment for only 9 credit hours of instruction. Because this is less than the full-time student minimum of 12 credit hours, students who attend the first semester are eligible to be paid for only 3/4-time attendance.

In the second semester of the program, students are eligible to be paid for 13 credit hours of instruction. Students attending the second semester can be paid as full-time students.

The state of Louisiana requires 700 clock hours for employment in the occupation for which the program prepares students. Therefore, **the maximum number of hours included in the conversion calculation cannot be more than 150% of 700 or 1,050 hours.**

Since the sum of the number of classroom hours and out-of-class hours (after the limits are applied) in the Full Formula is 1,065.5 (377 + 91.5 + 570 + 45) and that total exceeds 1,050, Alice cannot use the Full Formula results unless the school reduces the number of in-class or out-of-class hours in the program to the point at which the sum of the number of classroom hours and out-of-class hours (after the limits are applied) is less than or equal to 1,050.

References
34 CFR 668.8(k)
34 CFR 668.8(l)(1)(i), (ii), and (iii)
34 CFR 668.14(b)(26)

FSA Administrative & Related Requirements

This chapter describes aid-related requirements, many of which involve coordination with other school offices. For instance, the requirements for adequate staffing, the incentive compensation prohibition, and hiring restrictions related to the misuse of government funds might apply to the human resources office. Similarly, your school's academic divisions and business office will need to be aware of the satisfactory progress standards, readmission of service members, and in-state tuition rates for service members and their families.

ADMINISTRATIVE REQUIREMENTS FOR THE FINANCIAL AID OFFICE

Administrative capability and resolving conflicting information
34 CFR 668.16(f)

Consistency of information and conflicting information

To participate in the FSA programs, a school must demonstrate that it is administratively capable of providing the education it promises and of properly managing the FSA programs. It must have a system of identifying and resolving discrepancies in all FSA-related information received by any school office. It must resolve discrepancies for all students, not just those selected for verification. Resolution includes determining what information is correct and documenting the findings in the student's file.

Such a system must include a review of:

- All student aid applications, need analysis documents, multiple reporting records, potential overawards from COD, statements of educational purpose, statements of registration status, and eligibility notification documents presented by or on behalf of each applicant.
- The Student Aid Report/ISIR for a student. Even if a school has already verified the information on a student's SAR/ISIR, it must review all information on subsequent SARs/ISIRs.
- Any documents, including copies of federal tax return and tax account transcripts, that are normally collected by the school to verify information received from the student or other sources.
- Any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, or Social Security number, as well as other factors relating to the student's eligibility for FSA funds.

For instance, if a student receives an academic scholarship through one school office, that office must notify the aid administrator of these benefits to ensure that the amounts are correctly reported on the student's

aid application and are counted as estimated financial assistance for the Campus-based and Direct Loan programs.

Another example is that a school's admissions or registrar's office must provide the aid office with any information it has that might affect a student's eligibility, such as his enrollment in an ineligible program or in summer classes immediately preceding a fall term of enrollment.

There is a distinction between how long you need to be alert for conflicting information and how long you have to actually resolve a conflict. Even if the processing year has ended, you must continue to resolve conflicting information unless

- all aid for the period of enrollment has been disbursed,
- at the time of disbursement there was no conflicting information, and
- the student is no longer enrolled at the school (and is not intending to reenroll).

You also are not required to resolve conflicting information if the student dies during the award year.

You may not ignore a document in your files unless a student is no longer enrolled. If you have conflicting information in your files, you must resolve it as expeditiously as possible. If you become aware of conflicting information for a student who is no longer enrolled and there is aid to be disbursed, you must resolve the conflict before making the late or post-withdrawal disbursement.

If aid that the school was unaware of is received after the end of a period of enrollment for a student who is intending to re-enroll, that aid must be treated as estimated financial assistance for either the period of enrollment just completed or for the subsequent period of enrollment. See the discussion of estimated financial assistance and packaging in *Volume 3*.

Remember, if any office at your school has information that might affect a student's eligibility for FSA funds, it must provide that information to the school's designated coordinating official (described later). That person must forward it to the financial aid office, where procedures must be in place to ensure that any conflicting information is resolved and documented before the student receives any (or any additional) FSA funds.

To assess your school's compliance with these requirements, go to the FSA Assessments website > award year > Verification > "Activity 1: Resolving Conflicting Data." See also the guidance on conflicting information in *Chapter 5* of the *Application and Verification Guide*.

Sources and Examples of Conflicting Information

Sources of conflicting information include:

- tax returns or schedules;
- federal tax transcripts;
- other information provided by the student to the financial aid office;
- supplemental financial aid applications;
- other offices within the school;
- offices at other educational institutions (not just aid offices);
- the Department;
- scholarships and information from outside sources;
- state agencies such as scholarship and vocational rehabilitation agencies, Workforce Investment Act offices, etc.;
- tips from outside sources;
- transcripts from other colleges;
- SARs or ISIRs;
- verification;
- C flags;
- reject codes; and
- comment codes.

Examples of conflicting information include:

- citizenship status,
- accuracy of SSN,
- default or overpayment status,
- changes in student's academic status (including grade level progression),
- elements considered in determining cost of attendance,
- other student financial assistance or resources, and
- inconsistent information used in calculating the student's EFC.

Conflicting information does not include such things as:

- a household size that differs from the number of exemptions on a tax return;
- dependency under IRS rules vs. ED definition of dependency;
- a roster of candidates for an outside scholarship, as opposed to a list of recipients;
- privacy-protected information, such as information from professional counselors, chaplains, doctors, etc.;
- assumptions made by the Central Processing System; and
- a student who has an expired immigration document but whose secondary confirmation match is successful.

Students who turn out to be ineligible

Sometimes resolving conflicting information will reveal that a previously eligible student who received Title IV aid was actually ineligible, for example, a student who indicated on his FAFSA that he had a high school diploma when he really did not. In such cases the student must return* all the Title IV aid he received (except earned FWS wages) while ineligible, even if it was in a previous award year. While the student is generally responsible for repaying aid in such cases, there might be situations where the school is responsible; see DHC-Q4 under the high school diploma Q's and A's. Also, you are required to update COD data to reflect the adjustments. If you suspect that the student intended to deceive rather than made a mistake, see "OIG referrals" below.

OIG referrals
34 CFR 668.16(g)

OIG referrals

A school must refer to the Department's Office of Inspector General (OIG) any credible information indicating that an applicant for federal student aid may have engaged in fraud or other criminal misconduct in connection with his or her application. Common misconduct includes false claims of independent student status, false claims of citizenship, use of false identities, forgery of signatures or certifications, and false statements of income. Remember that fraud is the intent to deceive as opposed to a mistake. If you suspect such intent on the part of a student, report it to the OIG by phoning 1-800-MISUSED.

Schools must also refer to the OIG any third-party servicer who may have engaged in fraud, breach of fiduciary responsibility, or other illegal conduct involving the FSA Programs.

It is always appropriate for a financial aid administrator to consult with a school's legal counsel prior to referring suspected cases of fraud or misconduct to an agency outside of the school. Referrals to the OIG are also mentioned in the *Application and Verification Guide.*

The regulations provide the following examples of criminal misconduct:

- False claims by the school for FSA program assistance
- False claims of independent student status
- False claims of citizenship;
- Use of false identities
- Forgery of signatures or certifications;
- False statements of income and
- Payment of any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of FSA program funds. See the next section on incentive compensation.

Fraud rings in distance education

One area in which the Department has discovered significant fraud has been distance education. Typically in such cases, a ringleader gets the personal information from a group of people who agree to be straw students, enrolls in a distance education program on their behalf, and then participates in just enough online interaction under the school's procedures to obtain Title IV disbursements. Rather than use the funds to complete the program, the people in the fraud ring keep it and give a portion of the money to the ringleader.

The Department announced on August 21, 2020, changes to how such fraud rings would be reported: the email address for fraud rings has been retired, and the fraud ring reporting spreadsheet has been changed. The announcement also links to DCL GEN-11-17, which gives more information and in turn links to the OIG report that gives further background into the issue. Guidance is given to schools about how to detect this kind of fraud and report it to help maintain the integrity of the Title IV programs.

Coordinating official

Coordinating official
34 CFR 668.16(b)(1)

A school must designate a capable individual to be the coordinating official. An individual is "capable" if he or she is certified by the state in which the school is located, if state certification is required. Other factors affecting capability include the individual's successful completion of FSA program training provided or approved by the Department and previous experience and documented success in FSA program administration.

This person performs a key role in demonstrating the school's administrative capability. She administers the FSA programs and coordinates the aid from those programs with that from all other sources (federal, state, school, and private). As noted earlier, all the information the school receives and any changes processed by an office of the school that might affect a student's FSA eligibility are communicated to the coordinating official and by her to the financial aid office.

For example, when aid administrators create a student's financial aid package, they must consider financial assistance (scholarships, grants, awards, etc.) the student is receiving from external and internal sources to ensure that he is not overawarded. Therefore, any information the school's admissions office or an academic department gets about financial assistance a student is receiving must be made available to the coordinating official. Another example is that the financial aid office must be informed of any changes in a student's enrollment status. Therefore, whenever he adds or drops a class, changes from credit to audit, or withdraws from school, the change must be communicated to the coordinating official.

Counseling

Schools must provide adequate financial aid counseling to all enrolled and prospective students and their families. In addition, schools must also provide entrance and exit counseling for student borrowers in the Direct Loan programs and exit counseling for borrowers in the Perkins Loan Programs. For a complete discussion of Direct Loan counseling requirements, see *Chapter 6*. For a discussion of Perkins counseling and disclosure requirements, see *Volume 6*.

Adequate staffing

To manage a school's aid programs effectively, the aid administrator must be supported by an adequate number of professional and clerical personnel. The number of staff that is adequate depends on the number of students aided, the number and types of programs in which the school participates, the number of applicants evaluated and processed, the amount of funds administered, and the type of financial aid delivery system the school uses. What may be adequate at one school may be insufficient at another. The Department will determine on a case-by-case basis whether a school has an adequate number of qualified persons, based on program reviews, audits, and information provided on the school's application for approval to participate in the FSA programs.

System of checks and balances

In addition to having a well-organized financial aid office staffed by qualified personnel, a school must ensure that its administrative procedures for the FSA programs include an adequate system of internal checks and balances. This system, at a minimum, must separate the functions of authorizing payment and disbursing or delivering funds so that no single person or office exercises both functions for any student receiving FSA funds.

Small schools are not exempt from this requirement even though they may have limited staff. Individuals working in either authorization or disbursement may perform other functions as well but not both authorization and disbursement. These two functions must be performed by individuals who are not members of the same family and who do not together exercise substantial control over the school. If a school performs any aspect of these functions via computer, no one person may have the ability to change data that affect both authorization and disbursement.

While electronic processes enhance accuracy and efficiency, they also can blur separation of functions so the awarding and disbursement oc-

Family definition and example—A member of a person's family is a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse. Example: Charlie works in the financial aid office at Krieger University, and he notices that there is an opening in the business office. He thinks of telling his daughter Sarah about the job but then realizes that because the business office disburses student aid, she would not be able to work there while he is responsible for awarding aid in the financial aid office.
34 CFR 668.15(f)(3)

cur virtually simultaneously. Schools must set up controls that prevent an individual or an office from having the authority or the ability to perform both functions.

In addition, your system also should have controls that prevent cross-functional tampering. For example, financial aid office employees should not be able to change data elements that are entered by the registrar's office. Finally, your system should only allow individuals with special security classifications to make changes to the programs that determine student need and awards, and it should be able to identify the individuals who make such changes. For further guidance on the separation of functions, contact your school participation division.

OWNERSHIP, EMPLOYEES, AND CONTRACTORS

Debarment and suspension

Debarment and suspension
Executive Order 12549
Federal Acquisition Regulations
48 CFR Part 9, Subpart 9.4

To protect the public interest, it is the policy of the federal government to conduct business only with responsible individuals. To implement this policy, the government takes debarment and suspension actions against individuals who it determines constitute a current risk to federal agencies. If one of the principals of a school is debarred or suspended by a federal agency, that person is prohibited from participating in any FSA program as long as the agency's procedures include due process protections that are equivalent to those provided by ED.

The principals of a school include its owners, directors, officers, partners, employees, and anyone else with management or supervisory responsibilities. A principal may also be someone who is not employed by the school but who has critical influence on or substantive influence over a covered transaction (such as the receipt of Pell Grant or Campus-Based funds). For example, a principal may be someone, employed by the school or not, who

- is in a position to handle federal funds,
- is in a position to influence or control the use of those funds, or
- occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

For purposes of the debarment/suspension rules, covered transactions include:

- disbursement of FSA funds to a student or borrower,
- certification by an educational institution of eligibility for an FSA loan, and
- acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under an FSA program.

Schools participating in the FSA programs have a fiduciary responsibility to safeguard FSA funds and ensure those funds are used for the benefit of the students for whom they are intended. We expect participating institutions to thoroughly examine the background of individuals they employ (or are considering employing) in management or supervisory positions. If a school discovers that a person employed in a management or supervisory capacity has been suspended or debarred by a federal agency, the school must remove that person from such a position or risk losing its FSA eligibility.

Moreover, similar debarment and suspension limitations apply to lenders, third-party servicers, loan servicers, and any individuals who provide services described in 34 CFR 668.2 or 682.200 to an FSA recipient whether or not they are employed by the school. A school may not enter into a relationship—or must terminate an ongoing relationship—with such a person or entity who the school determines has been debarred or suspended.

You can check debarment/suspension status online by searching the entity registration and exclusion records on the System for Award Management (SAM) website.

Disqualified individuals & PPA
34 CFR 668.14(b)(18)(i)

Certifying current or prospective employees or contractors

Before a school may receive FSA funding, it must certify that neither the school nor its employees have been debarred or suspended by a federal agency. You can find this certification in the Program Participation Agreement.

The certification provided by the school is a material representation of fact relied upon by the Department when it enters into a participation agreement with the school. Moreover, a school is expected to have knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. Although the Department doesn't dictate how a school must ensure that its principals/employees have not been debarred or suspended by a federal agency, we do hold the school responsible for any information it could reasonably have been expected to know in the course of ordinary operations. In addition, we expect the school to expend a reasonable amount of effort ensuring that it and its employees are in compliance. If the Department learns that a prospective participant knowingly rendered an erroneous certification, in addition to other remedies available, the Department may terminate the participation of the institution.

A school chooses the method and frequency for making a determination about the eligibility of its principals. This might include asking current and prospective employees and contractors, in person or in writing, about their debarment or suspension histories. In addition, a school might also examine the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* to find out if an individual or organiza-

tion is debarred or suspended. A school should discuss with its attorney the procedures appropriate to its circumstances.

The employees who award FSA funds and those who disburse them should always be included in those whose backgrounds are examined. In addition, employees who participate in other transactions from which the regulations exclude individuals who have been debarred or suspended should be included. A school should consult with its attorney on the individuals it must certify.

The debarment or suspension of a person who is not a principal of the school and who does not work in the financial aid office will not affect the school's FSA eligibility so long as that person is not involved in any covered transactions.

Lower-tier covered transactions

A school must not enter into lower-tier covered transactions with a debarred or suspended individual or organization. A lower-tier covered transaction is any transaction between a participant in a covered transaction (such as the school) and another individual or organization, if that transaction stems from a covered transaction. Examples of common lower-tier covered transactions are a school's contracts with a financial aid consultant service or with a loan collection or billing agency. A school must obtain a certification from any lower-tier organization if the amount of the lower-tier transaction is $25,000 or more. The lower-tier organization must inform the school in writing if the organization or its principals are debarred or suspended. Therefore, the certification does not need to be renewed from year to year.

The Department disseminated the following language in April 1989 as a model that schools may use to obtain the required certification statement from a lower-tier organization:

> "The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.
>
> Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal."

Federal Register, May 26, 1988, page 19211, disseminated in Dear Colleague Letter GEN-89-21.

Crimes involving FSA program funds

Schools are prohibited from having as principals those who have engaged in the misuse of government funds or from employing or contracting with other organizations that employ such persons. Specifically, a school must not knowingly

- employ, in a capacity that involves the administration of the FSA 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;
- contract with a school or third-party servicer that has been limited, suspended, or terminated by the Department within the preceding five years; or terminated from the FSA programs 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;
- contract with a school or third-party servicer that has had, during the servicer's two most recent audits, a finding that resulted in the servicer being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV programs for any year; or has been cited during the preceding five years for failure to submit audit reports required under Title IV in a timely fashion; or
- contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been: (1) 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 (2) administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

Code of conduct

If a school participates in an FSA loan program, it must publish and enforce a code of conduct that includes bans on the following:

- revenue-sharing arrangements with any lender,
- steering borrowers to particular lenders or delaying loan certifications, and
- offers of funds for private loans to students in exchange for providing concessions or promises to the lender for a specific number of FSA loans, a specified loan volume, or a preferred lender arrangement.

The code of conduct applies to the officers, employees, and agents of the school and must also prohibit employees of the financial aid office from receiving gifts from a lender, guaranty agency, or loan servicer.

The code must also prohibit financial aid office staff (or other employees or agents with responsibilities with respect to education loans) from accepting compensation for

- any type of consulting arrangement or contract to provide services to or on behalf of a lender relating to education loans; and
- service on an advisory board, commission, or group established by lenders or guarantors, except for reimbursement for reasonable expenses.

Compensation for serving on an advisory board

Advisory board compensation
HEOA section 1011
HEA section 485(m)
15 USC 1650(d)

A person employed in a financial aid office who serves on an advisory board established by a lender or group of lenders cannot receive anything of value from the lender but can receive reimbursement for reasonable expenses associated with participation. A school must report annually to ED any such reasonable expenses paid or provided to any employee who is employed in the financial aid office or who otherwise has responsibilities with respect to education loans or other financial aid of the institution.

The report must include the following:

- the amount of each specific instance of reasonable expenses paid or provided;
- the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;
- the dates of the activity for which the expenses were paid or provided; and
- a brief description of that activity.

CONTRACTS WITH THIRD-PARTY SERVICERS

Third-party servicer
34 CFR 668.2(b) (definition) and 668.25
DCL GEN-12-08 and GEN-15-01

Schools may contract with consultants to help with administering the FSA programs. Such a consultant—aka a third-party servicer—is any individual or a state or a private, for-profit or nonprofit organization that enters into a contract with an eligible school to administer, through manual or automated processing, any aspect of the school's participation in any Title IV program. Examples of functions that third-party servicers perform include the following:

- 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 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);
- performing default prevention/aversion activities, such as contacting student loan borrowers to discuss repayment options or borrower account history, assisting with completion and/or collection of borrower deferment or forbearance forms, doing entrance/exit loan counseling, implementation and oversight of a written default management plan, and /or accessing borrower information contained in Department systems;
- accessing Department systems (NSLDS, COD, CPS, etc.) that contain personally identifiable student information, and/or accessing personally identifiable student information downloaded from a Department system to perform any Title IV function or service on behalf of an eligible institution;
- determining student eligibility and related activities, such as completing verification, performing satisfactory academic progress evaluations, determining award amounts, performing Return of Title IV aid calculations, and/or reconciling Title IV program accounts; and
- processing enrollment verification for deferment forms or NSLDS enrollment reporting.

For more examples see DCLs GEN 15-01 and GEN-16-15.

Both the school and third-party servicer are liable for all FSA-related actions by the servicer on the school's behalf. However, the school is ultimately responsible for the use of FSA funds and will be held accountable if the consultant mismanages the programs.

Schools must notify the Department of new third-party servicer contracts as well as changes to and termination of existing contracts, as described in *Chapter 5*. No additional submission is required if a school has already submitted the same information as part of a recent application for certification or recertification.

Requirements of a third-party servicer contract

Under a contract with a school, a third-party servicer agrees to comply with all Title IV provisions, which includes those that refer solely to schools as well as to servicers, and to be jointly and severally liable with the school for a violation by the servicer of any of those provisions.

A school must ensure that its contracts accurately and specifically detail the functions that the servicer (or its subcontractor(s), if applicable) performs on behalf of the institution, and those functions that are required to be completed by the institution. The contract must identify

the third-party servicer by its legal name and include any other name the servicer does business as (d/b/a). The contract must provide the physical address and primary phone number of the servicer's primary location, as well as the name, title, phone number, and e-mail address of the president or chief executive officer of the entity. If a third-party servicer subcontracts any of its contractual responsibilities, the contract must identify the subcontractor and clearly describe the functions performed on behalf of the servicer and institution by the subcontractor.

The servicer agrees to use any Title IV funds (and interest or earnings on them) in accordance with the regulations and, if it disburses those funds, to confirm student eligibility and make the required returns to Title IV funds (see *Volume 5*) when a student withdraws.

A third-party servicer must refer to the Department's inspector general any suspicion of crime relating to FSA program administration, including any information that there is reasonable cause to believe the school might have engaged in fraud or other criminal misconduct pertaining to the FSA programs (see the examples under "OIG referrals" earlier in this chapter).

If the contract is terminated or the servicer files for bankruptcy or 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.

For more information about elements to include in third-party servicer contracts, see GEN-15-01 and GEN-16-15.

All contracts between schools and their third-party servicers must contain specific language under which the servicer agrees to

- comply with all applicable statutory, regulatory, and other Title IV requirements;
- refer any suspicion of fraudulent or criminal conduct in relation to the school's Title IV program administration to the Department's Office of the Inspector General;
- return all records related to the servicer's administration of the school's participation in the Title IV programs to the school;
- confirm student eligibility and, if the servicer disburses funds, return Title IV funds (if required) when a student withdraws;
- if the servicer disburses or releases Title IV funds, return all unexpended Title IV funds to the institution if the contract with the school is terminated or the servicer ceases to perform any functions prescribed under the contract;
- be jointly and severally liable with the institution for any violation of Title IV requirements resulting from the functions performed by the servicer.

Excluded functions

Examples of functions that are not considered administering the participation in a Title IV program include:

- performing lockbox processing of loan payments,
- performing normal electronic fund transfers (EFTs) after being initiated by the school,
- 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 2*), 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.

Excluded entities

An employee of a school is not a third-party servicer. For this purpose, an employee is one who: is paid directly by the school; works full or part time or on a temporary basis; performs all duties under school supervision, whether on site or remotely; is not employed by or associated with a third-party servicer; and is not a third-party servicer for any other school.

A school may not have as a third-party servicer one that

- has been limited, suspended, or terminated by the Department within the preceding five years;
- has had, during the servicer's two most recent audits, a finding that resulted in the servicer being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV programs for any year; or
- has been cited during the preceding five years for failure to submit audit reports required under Title IV in a timely fashion.

Servicer reporting and audits

A servicer must update its Third-Party Servicer Data Form within 10 days of the date that the servicer

- changes its name,
- changes the address or contact information for its primary or additional location,

- adds or terminates a contract with an eligible Title IV school, or
- buys, sells, or merges with another third-party servicer.

See 34 CFR 668.25(e)(1)(i) and the March 9, 2018, announcement. For questions call or email the Third-Party Servicer Oversight Group at (816) 268-0543 or fsapc3rdpartyserviceroversight@ed.gov.

A third-party servicer must submit a compliance audit each year. If it contracts with several schools, a single audit can be submitted that covers its administrative services for all those schools. See 34 CFR 668.23 and the audit page for proprietary and foreign schools and third-party servicers.

Servicer security and privacy

Schools are subject to the information security requirements established by the Federal Trade Commission (FTC) for financial institutions. Third-party servicers must provide the same security. They must also comply with all aspects of the Family Educational Rights and Privacy Act (FERPA) with regard to their receipt and use of any education records provided by the school.

INCENTIVE COMPENSATION PROHIBITION

Incentive compensation
HEA section 487(a)(20)
34 CFR 668.14(b)(22)

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 about awarding FSA program funds. Only these two types of activities are subject to the incentive compensation ban: securing enrollment (recruitment) and securing financial aid. No other activities are subject to the ban.

This two-part test determines if a payment is incentive compensation:

1. Is the payment a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered?
2. Is the commission, bonus, or other incentive payment provided to any person based, in any part directly or indirectly, upon success in securing enrollments or the award of financial aid?

If the answer to each question is "yes," the payment would be prohibited.

The incentive compensation prohibition applies to all individuals with responsibility for recruitment or admission of students or making decisions about awarding FSA funds. As shown in Table 1, the Department draws a distinction between recruitment activities that involve working with individual students and policy-level determinations that affect recruitment, admission, or the awarding of FSA funds. The Department expects that employees who have titles such as enrollment counselors, recruitment specialists, recruiters, and enrollment managers have sufficiently direct involvement in recruitment that the incentive compensation

ban applies to them. Senior managers and executive level employees who are only involved in the development of policy and do not engage in individual student contact or the other covered activities listed in Table 1 will not generally be subject to the incentive compensation ban.

When other activities are coupled with recruitment or securing financial aid, a school must consider how they compensate persons or entities to avoid payments that are prohibited. Table 1 illustrates how these principles would be applied to activities that schools carry out in support of recruitment and financial aid. Payments to persons or entities that undertake or have responsibility for recruitment and decisions related to securing financial aid are subject to the incentive compensation ban even if their work also includes other activities.

Schools may use factors such as seniority or length of employment as a basis for compensating employees covered by the incentive compensation prohibition. Many other qualitative factors may also be used so long as they are not related to the employee's success in securing student enrollments or the award of financial aid. These factors may include such things as job knowledge and professionalism; skills such as analytic ability, initiative in work improvement, clarity in communications, and use and understanding of technology; traits such as accuracy, thoroughness, dependability, punctuality, and adaptability; peer rankings; student evaluations; and interpersonal relations.

In GEN-11-05 the Department issued additional guidance on incentive compensation. In addition to the tables included in this text, that DCL provided examples of how the incentive compensation rules are applied, as well as guidance on tuition sharing and profit sharing and other forms of compensation. Since that time, the Department posted additional related questions and answers to address study-abroad situations for Title IV-eligible students and to clarify when bundled services provided by a third party are subject to the incentive compensation ban.

On March 22, 2013, the Department published a revision to the preamble of the October 29, 2010, final regulations in accordance with the remand in "Association of Private Sector Colleges and Universities v. Duncan" 683F.3d 427 (D.C. Cir. 2012).

Table 1: Activities covered by prohibition on incentive compensation	
Covered Activities *Activities that are ALWAYS subject to the ban on incentive compensation*	Exempt Activities *Activities NOT subject to the ban on incentive compensation include the following, unless the activities of the employee or entity also involve a covered activity*
Recruitment activities, including: • Targeted information dissemination to individuals; • Solicitations to individuals; • Contacting potential enrollment applicants; • Aiding students in filling out enrollment application information	Marketing activities, including: • Broad information dissemination; • Advertising programs that disseminate information to groups of potential students; • Collecting contact information; • Screening pre-enrollment information to determine whether a prospective student meets the requirements that an institution has established for enrollment in an academic program; • Determining whether an enrollment application is materially complete, as long as the enrollment decision remains with the institution
Services related to securing financial aid, including completing financial aid applications on behalf of prospective applicants (including activities that are authorized by the Department, such as the FAA Access tool, which can be used to enter, correct, verify, or analyze financial aid application data)	Student support services offered after the point at which financial aid is allowed to be disbursed for a payment period, including: • General student counseling; • Career counseling; • Financial aid counseling, including loan management; • Online course support—both professional services and computer hardware and software; • Academic support services, including tutoring, aimed at student retention, whether that support is provided prior to attendance in classes or after attendance has begun.
	Policy decisions made by senior executives and managers related to the manner in which recruitment, enrollment, or financial aid will be pursued or provided, such as decisions to admit only high school graduates

Table 2: Types of payments covered by prohibition on incentive compensation	
Types of payments that are direct or indirect payment of incentive compensation	Types of payments that are not direct or indirect payment of incentive compensation
"Tuition sharing" as a measure of compensation when based on a formula that relates the amount payable to the entity to the number of students enrolled as a result of the activity of the entity	Tuition as a source of revenue from which compensation is paid to an unrelated third party for a variety of bundled services (Example 2-B in GEN-11-05)
Profit sharing plans from which distributions are made to individuals based on the number of students enrolled by virtue of covered activities by the recipient [668.14(b)(22)(ii)(B)]	Profit sharing plans, including 401(k) type plans, from which distributions are made to individuals on a basis that is neutral with respect to the role the recipient plays in student recruitment or the securing of financial aid
Salary adjustments that take the form of incentive payments based directly or indirectly on success in securing enrollments or financial aid	Employee benefits plans offered to all employees on a basis that is neutral with respect to the role the recipient plays in student recruitment or the securing of financial aid
Payments based on the application of an admissions policy	Cost of living adjustments (COLAs)
Bonus or other payments based on success in securing enrollments or financial aid	Compensation adjustments based upon seniority
	Payments to faculty based upon student class size or academic achievement
	Payments to senior executives with responsibility for the development of policies that affect recruitment, enrollment, or financial aid
	Payments based upon securing student housing or other student services, including career counseling
	Volume-driven arrangements based on services that are not recruitment or securing of financial aid

Table 3: Definitions

Commission, bonus, or other incentive payment
A sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.

Securing enrollments or the award of financial aid
Activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.

(1) These activities include contact in any form with a prospective student, such as, but not limited to, contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application.

(2) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on

(i) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student's enrollment agreement or financial aid application; or

(ii) The number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are enrolled for any period of time, including through completion of an educational program.

Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid
(1) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards FSA funds; and

(2) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards FSA funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding FSA funds.

Enrollment
The admission or matriculation of a student into an eligible institution.

Electronic processes
34 CFR 668.16(o)
DCL GEN-04-08, September 2004
Federal Register, 9/14/04, 55418–55420

REQUIRED ELECTRONIC PROCESSES

Schools must be able to use FSA electronic processes to be considered administratively capable of participating in the FSA programs. To exchange data with the FSA systems, schools must have Internet access through their network or an Internet service provider. Schools need to enroll in the Student Aid Internet Gateway (SAIG) and establish a data mailbox. (Doing this and other tasks related to electronic processing is the most frequent duty for third-party servicers.) Most schools prepare student data records in a software package such as EDExpress and transmit the records as batch files to the SAIG mailbox. The Department's systems send edited records back to that mailbox, and the school downloads the records and uses its software to update the records in its own database.

Schools must use COD's common record format, complying with the published schema for the corresponding award year, to send and receive origination and disbursement data for Pell Grants, TEACH Grants, and Direct Loans. This format uses Extensible Markup Language (XML).

To create and edit student records, your school may use the Department's EDExpress software, develop its own software, or rely on a third-party software vendor. If you are not using EDExpress software to prepare your records, it is your responsibility to ensure that the software you use is capable of generating COD records in XML format. As an alternative, you can now create and edit student records directly on many of our websites, such as COD, CPS, and NSLDS. When creating and editing records on the Web, you do not use PC software and you do not have to transmit the changes through your SAIG mailbox.

The COD School Relations Center will make available COD testing to give schools, third-party servicers, and software providers an opportunity to test Pell and TEACH Grant and Direct Loan business processes and system software with the COD System. This will allow for corrections or enhancements to those processes and software before the transmission of actual production data using the common record XML schema. See the December 15, 2020, announcement about COD testing for 2021–2022.

Also, the Department has announced that the SAIG will be upgraded to comply with a federal mandate to improve web security that requires all publicly accessible federal websites and web services to support Transport Layer Security (TLS) version 1.2 or higher; TLS is an Internet protocol that ensures privacy between applications and users. As a result of this, schools will need to install a new version of SAIG software—TDClient or EDconnect—that supports TLS 1.2. The deadline to complete this required software upgrade is June 5, 2021. For more information see the February 12, 2021, announcement.

See the Software and Other Tools webpage on the IFAP website for links to software, desk references, technical references for programmers, and other materials that pertain to SAIG, EDExpress, CPS, and other Department systems. For questions about specific systems, such as ap-

plication processing and software (CPS/SAIG), COD, and NSLDS, see the Help page on the IFAP site. A single toll-free number—1-855-FSA-4-FAA (1-855-372-4322)—allows access to FSA's contact centers such as CPS/SAIG technical support, the COD School Relations Center, and the NSLDS Customer Support Center. At this single number you can get more information about the various call centers or connect to the center you need. The individual phone numbers for all the centers remain available, and you can use those to call the centers directly.

Information for Financial Aid Professionals (IFAP)

Important information is communicated through our IFAP website as electronic announcements, Dear Colleague letters, and Federal Registers. A useful feature of the site is its notification service, which sends you daily or weekly emails that summarize recent postings to IFAP. (Go to "My IFAP" on the website and select "New User Registration.")

Even if you use a third-party servicer to manage your student aid activities, you are responsible for knowing about all new statutory, regulatory, and procedural requirements. The IFAP website is a comprehensive place to get that information. It also has links to all major FSA websites and services as well as contact information for service centers for schools and FSA offices.

Two-factor authentication (TFA)

For greater security FSA systems use TFA, which employs a token to generate single-use passwords. We encourage users to download the new "soft" token, which is an application for their mobile device, but the "hard" token or key fob is also still available. See the December 29, 2014, electronic announcement. For questions about TFA and tokens, you can contact the CPS/SAIG Technical Support and the TFA Support Center at (800) 330-5947 or by email at TFASupport@ed.gov.

Validation of TG Numbers Required by December 11, 2020

Every organization enrolled for a Student Aid Internet Gateway (SAIG) account is required to review and validate its assigned TG numbers and Electronic Services user accounts by December 11, 2020. This includes TG numbers (SAIG mailboxes) with access to the NSLDS Professional Access website, the COD Web Site, and all FAA Access to CPS Online and EDconnect user accounts. It also includes TG numbers enrolled for SAIG batch services for the National Student Loan Data System (NSLDS®), the Central Processing System (CPS), the Common Origination and Disbursement (COD) System, and the Financial Management System (FMS). Failure to accurately complete this process by December 11, 2020, will result in loss of access to Federal Student Aid data systems, including services such as Institutional Student Information Record (ISIR) deliveries, ISIR requests, Free Application for Federal Student Aid (FAFSA®) corrections, and NSLDS enrollment reporting and updates.

For detailed instructions, see the November 17, 2020, announcement on active confirmation of TG numbers and electronic services user accounts.

Summary of Required Electronic Processes

To comply with the administrative capability requirements of 34 CFR 668.16(o), a school must

- use the E-App to submit and update the school's eligibility information: (**https://eligcert.ed.gov/**).
- enroll in the Student Aid Internet Gateway (SAIG): (**https://fsawebenroll.ed.gov/**).
- use *FAA Access* or its SAIG mailbox to exchange FAFSA or ISIR data with the Department's Central Processing System: (**https://faaaccess.ed.gov/FOTWWebApp/faa/faa.jsp**) or (**https://saigportal.ed.gov/tdcm**).
- use the COD website or its SAIG mailbox to exchange award and disbursement data for Pell Grants, TEACH grants, and Direct Loans: (**https://cod.ed.gov/cod/**) or **(https://saigportal.ed.gov/tdcm).**
- use the Common Origination and Disbursement (COD) website at: (**https://cod.ed.gov/cod/**) to file the FISAP application and report, the Work Colleges application and report, and the report of disbursements made to students with intellectual disabilities in approved Comprehensive Transition and Postsecondary (CTP) programs (see *Volume 6*).
- use the National Student Loan Data System (NSLDS) at **https://nsldsfap.ed.gov** to submit student enrollment records, FSA program overpayments, and NSLDS transfer student monitoring records.
- electronically submit the school's annual compliance and financial statement audits and any other required audits: (**https://ezaudit.ed.gov**).
- use the Default Management website to receive its draft and official cohort default rate data electronically: (**ifap.ed.gov/DefaultManagement**).
- use the Information for Financial Aid Professionals (IFAP) website to review Dear Colleague Letters, announcements, or Federal Registers: (**ifap.ed.gov**).

The Access and Identity Management System (AIMS) provides the authentication process for several of Federal Student Aid's systems—COD, eCDR Appeals, FAA Access to CPS Online, NSLDS Professional Access, SAIG Enrollment, and EDconnect software. Users (destination point administrators or DPAs) can log in once with an FSA User ID, password, and TFA token security code and access all of the above systems during a single session.

However, when access is disabled due to inactivity, that only occurs on a per-system basis. After 90 days of inactivity (simply not logging in) on any of the above systems, the user loses access just to that system. To restore access the user must call the customer service center for that system. However, after 365 days of inactivity, the user's access will be permanently deactivated. The school's primary DPA will have to re-enroll the person via the SAIG Enrollment website to restore access.

Beginning in summer 2019, primary DPAs began receiving monthly reports that list the activity status, "Active" or "Disabled," for each of the school's DPAs and all of the systems they are authorized to use. The report will allow primary DPAs to monitor the activity of the school's other DPAs and help them avoid permanent deactivation. For more information about access to systems behind AIMS, see the May 17, 2019, announcement.

Minimum system requirements

In the past ED has issued the minimum system requirements schools must meet to participate in the Department's electronic processes. (The most recent issuance was for 2005–2006 and gave an optimal configuration of a 2.8 GHz/333 MHz processor and 80 GB hard drive with a high-speed Internet connection.) When reviewing your office's computer needs, you should be aware that its system requirements (processor speed, RAM, hard-drive storage, etc.) will depend on which FSA functions the school uses, the number of records processed, and school database interfaces.

SHARING INFORMATION WITH NSLDS, FEDERAL LOAN SERVICERS, AND GUARANTORS

Enrollment reporting
34 CFR 682.610(c) FFEL
34 CFR 685.309(b) Direct Loans
DCLs GEN-12-06 and GEN-14-07
34 CFR 674.16(j) Perkins

Reporting student enrollment data to NSLDS

Student enrollment information is important, and all schools participating or approved to participate in the FSA programs must have online enrollment access and have some arrangement to report student enrollment data to the National Student Loan Data System (NSLDS) through an enrollment roster file. Enrollment information is used to determine if the student is still considered in school, must be moved into repayment, or is eligible for an in-school deferment. Program-level enrollment data is also used to determine a student's eligibility for Direct Subsidized Loans. For students moving into repayment, the out-of-school status effective date determines when the grace period begins and how soon a student must begin repaying loan funds. You're required to report changes in the student's enrollment status, the effective date of the status, and an anticipated completion date.

You must report enrollment status at both the school and program level. For this purpose an academic program is defined as the combination of your school's Office of Postsecondary Education Identification (OPEID) number and the program's Classification of Instructional Program (CIP) code, credential level, and published program length. When a student is enrolled in more than one major (or comparable designation under your school's academic policies), each is considered an academic program and is reported separately whether the student receives separate degrees or certificates for each major or only receives one for completing the requirements for all majors. Enrollment in a minor is not a separate program and therefore would not be reported as such. Report a student's "active enrollment status" (full-time, three-quarter time, half-time, and less than half-time) based on the total number of credit or clock hours in which he or she is enrolled at the institution, regardless of whether specific credits apply to the academic program being reported. See DCL GEN-14-17 for examples and more information.

A school or its servicer must sign up to receive roster files through the SAIG Enrollment site. NSLDS will send a roster file electronically to the school or its designated servicer every 60 days (or more frequently

depending on your schedule) through its SAIG mailbox. The file includes all of the school's students who are identified in NSLDS as Pell recipients, Stafford (Direct and FFEL) Loan borrowers or the beneficiaries of a PLUS loan. The file is not necessarily connected to loans made at your school—it may also report information for students who received some or all of their FSA loans at other schools but are currently attending your school.

Your school or servicer must certify the information and return the roster file within 15 days of receiving it. You may also go to https://nsldsfap.ed.gov and update information for students online. You must report enrollment changes within 30 days; however, if a roster file is expected within 60 days, you may provide the updated data on that file.

If the roster file that you are returning contains records that don't pass the NSLDS enrollment reporting edits, you will receive a response file with the records that didn't pass. Within 10 days you'll need to make the necessary corrections to these records and resubmit them. If you are using a servicer, you may need to assist the servicer in correcting these errors. Please remember that your school is ultimately responsible for notifying NSLDS of student enrollment changes.

When your school reports enrollment data to NSLDS, it does not have to complete enrollment reporting rosters received directly from guaranty agencies. Additionally, your school may request that a lender confirm a borrower's enrollment status using NSLDS rather than completing an in-school deferment form.

For NSLDS newsletters, updates, and other information, go to iLibrary > NSLDS Reference Materials on the IFAP website. Click on NSLDS User Documentation to get the *Enrollment Reporting Guide*, which has more on reporting enrollment information to NSLDS, including record layouts, error codes, etc.

Updating enrollment information on the Web

As already noted, you can create or update student enrollment status on the NSLDS Professional Access site; use the Enroll tab. Phone support is available at 1-800-999-8219.

It is critical to completely and accurately report students' program-level enrollment information to NSLDS. This information is used to determine the subsidy status of loans under the 150% Direct Subsidized Loan Limit and for other purposes. Pay particular attention to correctly reporting published program length, the field for which is a six-digit number with an implied decimal after the third digit. See the electronic announcements from December 23, 2014, and May 13, 2016.

These codes are used for enrollment reporting and are listed in the *Enrollment Reporting Guide:*

F = Full time

Q = At least three-quarter time but less than full time

H = At least half time but less than three-quarter time

L = Less than half time

G = Graduated

W = Withdrawn (voluntary or involuntary)

A = Approved leave of absence

D = Deceased

X = Never attended

Z = Record not found

Updating borrower information at separation

Schools that conduct their own exit counseling rather than have students complete it on **studentloans.gov** must, within 60 days after the exit counseling session, provide the appropriate federal loan servicer or the guaranty agency for FFEL that is listed in the borrower's student aid records any updated information about: her name, address, references, future permanent address, Social Security number, the identity and address of her expected employer, the address of her next of kin, and her driver's license number and state of issuance. This information may be uploaded with the NSLDS Exit Counseling Submittal template. NSLDS will then provide the data to the appropriate loan holders.

Enrollment status during the summer

A student is considered to be continuously enrolled at least half time during the summer, or in another period in which students are not generally expected to attend classes, as long as

- there is no reason for the school to believe that the student will not enroll on an at least half time basis for the next regularly scheduled term; and
- the student was enrolled at least half time at the end of the previous regularly scheduled term.

Therefore, a student should not be reported to NSLDS as withdrawn as of the end of the spring term if the student was enrolled at least half time during the spring term and is expected to enroll at least half time for the upcoming fall term.

Loan information from the guarantor

Information about students in FFEL default
34 CFR 682.401(b)(24)

Lender requests of preclaims assistance
34 CFR 682.404(a)(4)
Sec. 428(c)(2)(H) of the HEA

Notification of loans that are transferred
Sec. 428(b)(2)(F) of the HEA
34 CFR 682.401(b)(25)

Sharing information about delinquent and defaulted borrowers

To promote loan repayment, schools are encouraged to notify the appropriate Direct Loan servicer with new information about a delinquent borrower's location or employment and to work with defaulted borrowers to bring their loans out of default.

The Direct Loan servicers send electronic reports to participating schools listing all delinquent and defaulted Direct Loan borrowers who

took out loans while attending the school. The report, which contains the borrowers' names, addresses, and phone numbers, is organized by the number of days past due so that schools can contact and counsel borrowers to avoid default. Schools can also request delinquency reports through NSLDS (viewable online or for delivery to their TG mailbox) for all their borrowers with any of the DL servicers.

A former FFEL school may agree to provide the holders of delinquent loans information about delinquent borrowers' location or employment. The school may also try to contact borrowers and counsel them to avoid default.

Former FFEL schools may ask a guaranty agency to provide information about their previously enrolled students who have defaulted on their Stafford loans. The guarantor may not charge for this information. A school may also ask the guarantor to notify it whenever a lender requests default aversion assistance on a loan made at the school, and provide the borrower's name, address, and Social Security number. The guaranty agency may charge a reasonable fee for this service. Schools may only use the information to remind the borrower to repay her loan(s).

If you've requested it, the guaranty agency must also notify your school when loans to its students are sold, transferred, or assigned to another holder. The notification must include the address and telephone number of the new loan holder. This notification requirement only applies to loans that are in the grace period or repayment and only if your school was the last the borrower attended before the loan entered repayment. For instance, if a student received Stafford Loans earning a bachelor's degree at your school but pursued a master's degree at another school before those loans entered repayment, the guarantor is not required to notify you if the loans are sold.

Financial aid history
34 CFR 668.19
Transfer Student Monitoring
DCL GEN-01-09

FINANCIAL AID HISTORY AND TRANSFER MONITORING

A school must consider a student's financial aid history in making FSA program awards. The regulations require that schools use NSLDS data to obtain information about a student's financial aid history.

To receive a student's financial aid history, your school must register for the Transfer Student Monitoring Process. Through this process, NSLDS will monitor a transfer student's financial aid history and alert you to any relevant changes—other than the default and overpayment information reported in the postscreening process—that may affect the student's current award(s). You may send information for students who have just expressed an interest in attending your school even if they have not yet formally applied for admission.

To verify the eligibility of transfer students for FSA funds, you may either check the student's financial aid history on the NSLDS Professional

Access site or wait seven days after you've submitted the student's information for monitoring to receive a response from NSLDS. To begin using the "inform" feature, you must designate a contact on the "School Transfer Profile" page on the NSLDS site.

You can find a complete discussion of this requirement and the transfer student monitoring process in *Volume 1, Chapter 3*.

SATISFACTORY ACADEMIC PROGRESS (SAP)

Satisfactory academic progress
School policy:
34 CFR 668.16(e)
Student eligibility:
34 CFR 668.32(f)
34 CFR 668.34

To be considered administratively capable, a school must have a satisfactory academic progress policy that is the same as or more strict for an FSA recipient as the school's standards for a student enrolled in the same educational program who is not receiving FSA funds.

Because satisfactory academic progress issues are most often raised in specific student eligibility cases, we discuss the details of SAP standards in *Volume 1*, *Chapter 1*, of the FSA Handbook. You should carefully review that discussion if your school is developing or amending its SAP policy.

Basic elements of an SAP policy

As discussed in *Volume 1*, a school's policy must include evaluations at least annually for programs longer than one year and every payment period for programs of one year or less. There must be a qualitative component consisting of a minimum grade point average or comparable factor that is measurable against a norm. For programs longer than two academic years, the policy must stipulate that a student must have at the end of the second year a GPA of at least a "C" or its equivalent or have an academic standing consistent with the school's requirements for graduation. There must also be a quantitative component that consists of a maximum time frame in which a student must complete her educational program and a pace of completion that ensures she will complete the program within the time frame.

In addition, your school's policy must explain

- the effect of ESL and remedial courses on progress,
- how progress is measured if a student changes majors or seeks to earn additional degrees,
- how course repetitions are handled,
- whether you have appeals for an adverse SAP determination and the procedures for any such appeals, and
- the procedures for otherwise re-establishing SAP.

The policy must include provisions for consistent application of the standards to all students within categories (e.g., full-time, part-time, undergraduate, and graduate students) and educational programs established by the school. Generally, the quantitative and qualitative

standards used to judge academic progress include all periods of the student's enrollment. Even periods in which the student did not receive FSA funds must be counted.

PROVISIONS FOR U.S. ARMED FORCES MEMBERS AND FAMILY

In-state tuition rates for active duty service members and family attending public institutions

A public postsecondary school may not charge a member of the armed forces who is on active duty for a period of more than 30 days more than the school's tuition rate for residents of the state. Similarly, the service member's spouse and dependent children are entitled to the in-state tuition rate.

In addition, if the service member, spouse, or dependent child pays the in-state tuition rate, the public institution must allow the person to continue to pay such a rate as long as the individual is continuously enrolled, even if there is a subsequent change in the permanent duty station of the service member to a location outside of the state.

Readmission of service members

A school must promptly readmit a service member with the same academic status as he had when last attending the school or accepted for admission to the school. This requirement applies to any student who cannot attend school due to military service.

Definitions

Military service (or service in the uniformed services)—Voluntary or involuntary service in the armed forces, including service by a member of the National Guard or Reserve on active duty, active duty for training, or full-time National Guard duty under federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days. This does not include National Guard service under state authority.

Service member—someone who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services.

Appropriate officer—A warrant, commissioned, or noncommissioned officer authorized to give such notice by the military service concerned.

Armed Forces—the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.

Active duty—full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Active duty does not include full-time National Guard duty.

The student must notify the school of his military service and intention to return to school as follows:

- *Notification of military service.* The student (or an appropriate officer of the armed forces or official of the Department of Defense) must give oral or written notice of such service to the school as far in advance as is reasonable under the circumstances. This notice does not have to indicate whether the student intends to return to the school and may not be subject to any rule of timeliness. (Timeliness must be determined by the facts in each case.) Alternatively, at the time of readmission, the student may submit an attestation of military service that necessitated his absence from school. No notice is required if precluded by military necessity, such as service in operations that are classified or would be compromised by such notice.
- *Notification of intent to return to school.* The student must also give oral or written notice of her intent to return to the school within three years after the completion of the period of service. A student who is hospitalized or convalescing due to an illness or injury incurred or aggravated during the performance of service must notify the school within two years after the end of the period needed for recovery from the illness or injury. A student who fails to apply for readmission within these periods does not automatically forfeit eligibility for readmission but is subject to the school's established leave of absence policy and general practices.

A school must designate one or more offices that a student may contact to provide notification of service and notification of intent to return. The school may not require that these notices follow a particular format.

The school must promptly readmit the student into the next class or classes in the program beginning after he provides notice of intent to reenroll, unless he requests a later date or unusual circumstances require the school to admit him at a later date. This requirement supersedes state law—for example, a school must readmit a qualifying service member to the next class even if that class is at the maximum enrollment level set by the state.

The school must admit the student with the same academic status, which means

- to the same program to which the student was last admitted or, if that exact program is no longer offered, the program that is most similar to that program, unless she chooses a different program;
- at the same enrollment status, unless the student wants to enroll at a different enrollment status;
- with the same number of credit hours or clock hours previously completed, unless the student is readmitted to a different pro-

gram to which the completed credit hours or clock hours are not transferable, and

- with the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had.

If the student is readmitted to the same program, for the first academic year in which he returns, the school must assess the tuition and fee charges that he was or would have been assessed for the academic year during which he left the school. However, if his veterans education benefits or other service member education benefits will pay the higher tuition and fee charges that other students in the program are paying for the year, the school may assess those charges to the student as well.

If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, the school must assess no more than the tuition and fee charges that other students in the program are assessed for that academic year.

The cumulative length of the absence and of all previous absences from the school for military service may not exceed five years. Only the time the student spends actually performing service is counted. See the following additional information section for more about cumulative length of absence.

Helping students to be readmitted and when it might not occur

If the school determines that the student is not prepared to resume the program with the same academic status at the point where she left off or will not be able to complete the program, the school must make reasonable efforts at no extra cost to help her become prepared or to enable her to complete the program. This includes providing refresher courses and allowing the student to retake a pretest at no extra cost.

The school is not required to readmit the student if it determines

- that there are no reasonable efforts it can take to prepare her to resume the program at the point where she left off or to enable her to complete the program, or
- that after it makes reasonable efforts (those that do not place an undue hardship on the institution), the student is not prepared to resume or complete the program.

"Undue hardship" means an action requiring significant difficulty or expense considering the overall financial resources of the school and the impact of such action on its operation.

The school has the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where she left off or that she will not be able to complete the program.

Readmission for Service Members—Additional Information

34 CFR 668.18 (a) General

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

668.18 (e) Cumulative length of absence.

For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) Ordered to or retained on active duty under—

(A) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or

(L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

668.18 (g) Documentation.

(1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

Finally, a student's readmission rights terminate in the case of a dishonorable or bad conduct discharge, general court-martial, federal or state prison sentence, or other reasons as described in 34 CFR 668.18(h).

Executive Order 13607: Principles of Excellence

On April 27, 2012, the White House issued EO 13607, which created the Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members. The principles apply to all postsecondary schools that receive funding from federal military and veterans educational benefits programs. They strengthen consumer protections for students who receive these benefits and provide access to information to help them make informed choices about their college education. Adoption of the principles is voluntary but encouraged.

The principles describe requirements in the following key areas: (1) providing a standardized cost form, (2) providing federal aid information, (3) aggressive and fraudulent recruiting, (4) state authorization, (5) misrepresentation, (6) incentive compensation, (7) accreditation, (8) readmission, (9) refunds, (10) individual education plans, and (11) academic and financial counseling points of contact.

Title IV schools are likely already complying with many of the principles through their participation in the Title IV programs (for example, the refund requirement). One principle requires institutions to provide affected students with a personalized and standardized form describing the students' educational costs and how those may be covered by financial aid. The College Financing Plan (see the relevant section under "General Student Disclosures" in *Chapter 6*) helps schools satisfy that principle.

Audits, Standards, Limitations, & Cohort Default Rates

CHAPTER 4

This chapter discusses the requirement for annual compliance and financial statement audits. It also discusses the financial standards and limitations that pertain to schools' FSA eligibility as well as the annual calculation of school cohort default rates.

FSA AUDIT REQUIREMENTS FOR SCHOOLS

Audit requirements & waiver
HEA Sec. 487(c)
20 USC 1094
34 CFR 668.23(a)(1) to (5)
Waiver 34 CFR 668.27

A school that participates in any FSA program, including a participating foreign school, generally must have an independent auditor conduct an annual audit of its compliance with the laws and regulations for the FSA programs that it participates in (a compliance audit) and an audit of its financial statements. While a compliance audit covers the school's administration of the FSA programs, a financial statement audit provides the Department with information necessary to evaluate a school's status *vis-a-vis* the financial standards that are discussed later in this chapter. For information about compliance and accounting issues, a school can contact the school participation division (SPD) for its region.

The audits must be conducted in accordance with the Generally Accepted Accounting Principles (GAAP) and the Generally Accepted Government Auditing Standards (GAGAS). They must be prepared by an independent public accountant or a government auditor, except that a government auditor must meet the government auditing standards qualification and independence standard, including standards related to organizational independence. The compliance audit and financial statement audit may be performed by different auditors, but they must be submitted as one package via the Department's eZ-Audit website.

The source of guidance for the audits depends on the entity:

- For-profit schools and third-party servicers must have their audits conducted under the Office of Inspector General's (OIG) *Guide For Audits of Proprietary Schools and For Compliance Attestation Engagements of Third-Party Servicers Administering Title IV Programs* (Audit Guide).
- Foreign schools use the *Guide for Financial Statement Audits and Compliance Attestation Engagements of Foreign Schools* (Foreign School Audit Guide), newly updated for 2020.
- Public and private nonprofit schools follow the regulations that implement the Single Audit Act: 2 CFR Part 200 Subpart F—Audit Requirements. These regulations require schools to have

Audit requirements for federal awards
2 CFR Part 200 Subpart F
Requirements 200.501
Relation to other audit requirements 200.503

audits conducted in accord with *2 CFR Part 200, Appendix XI Compliance Supplement* (Compliance Supplement), published annually by the Office of Management and Budget (OMB). For many schools, this is a combined audit of all the federal programs they participate in. Note that 2 CFR Part 200 Subpart F does allow an FSA compliance audit under the criteria of the Audit Guide in certain circumstances.

The Audit Guide and Foreign School Audit Guide are available on the webpage for audits of proprietary and foreign schools and third-party servicers. The Compliance Supplement is available on the webpage for single audits.

The Office of Inspector General (OIG) also conducts audits, usually in cases where there is concern over a school's administration of the FSA programs. An OIG or other federal audit does not satisfy the requirement that a school have annual compliance and financial statement audits performed by an independent public accountant.

As noted, audit requirements also apply to third-party servicers. However, a school may never use a third-party servicer's audit in place of its own required audit because the school is ultimately liable for its own violations as well as those incurred by its third-party servicers.

AUDIT GUIDELINES AND WAIVERS

Audited financial statements

A school's financial statement must cover its most recently completed fiscal year and be prepared on an accrual basis according to GAAP. It must be audited by an independent auditor according to GAGAS and the instructions in the guide appropriate for the school, as noted.

The Department uses the information in a school's audited financial statement to evaluate the school's status vis-a-vis the financial standards discussed in this chapter. In addition to a school's audited financial statement, the Department may require that the school submit additional information. For example, the Department may require a school to submit or provide access to the auditor's work papers. Also, if the Department finds it necessary to evaluate a particular school's financial condition, the Department can require a school to submit audited financial statements more frequently than once a year.

FSA compliance audits

Compliance audits must be done by an independent auditor according to GAGAS and the guidance contained in the Compliance Supplement or the appropriate audit guide. The auditor may also find it useful to consult the accounting and record keeping guidance in the FSA Handbook and the *G5 Users Guide* (which is available on the G5 website).

A school (or third-party servicer) may use the same independent auditor or auditing firm for its required nonfederal audit as the one that usually audits its fiscal transactions. To produce unbiased conclusions, the auditor must be independent of those authorizing the expenditure of FSA funds.

The Department may require a school to provide a copy of its compliance audit report to guaranty agencies, lenders, state agencies, other federal agencies, or accrediting agencies.

Single Audit Act guidelines

As mentioned earlier, public and private nonprofit schools are required to have audits performed under the guidelines of the Single Audit Act and the Compliance Supplement for 2 CFR 200 Subpart F, which has distinct auditing and submission requirements. For instance, the deadline for these audits being submitted to the Department through the eZ-Audit website is no later than nine months after the end of the school's fiscal year. In addition, a copy of the audit as well as form SF-SAC must be submitted online to the Federal Audit Clearinghouse.

Because the Higher Education Act and its implementing regulations require annual submissions of schools' compliance and financial statement audits, a submission prepared under the Single Audit Act provisions that does not include a compliance audit does not meet the HEA audit requirement. Read the announcement from August 5, 2016.

However, if the school's auditor identifies its student financial assistance cluster, which includes the Title IV programs, as a low-risk major program (Type A) (as defined in 2 CFR 200.518) in a given year, that cluster does not need to be included in the compliance audit, and the school is not required to notify its school participation division of the low-risk assessment. See the announcements of March 29, 2018, and November 5, 2019, for more information.

As explained in the section on waivers, a nonprofit school that expends less than $750,000 of federal funds during a fiscal year is exempt from submitting an annual audit. However, it is still required to submit a financial statement to the Department within six months after the close of its fiscal year. The financial statement does not have to be audited by a CPA and may be created as compiled or reviewed statements. If the school has prepared a set of audited financial statements for its own use or for another entity, it must submit those statements to the Department.

The Compliance Supplement permits the submission of program-specific audits if an entity expends funds in only one federal program *and* the program's regulations do not require a financial statement audit. But because the FSA program regulations require a financial statement audit, a school may not submit a program-specific audit to satisfy the Department's audit requirement.

Criteria for granting a waiver
34 CFR 668.27(c)
Waiver for a public or nonprofit institution
2 CFR 200.501(d)

Waivers of the requirement for an annual FSA audit

A school may request a waiver of the requirement for an annual audit for up to three years. A proprietary school must have disbursed less than $200,000 in each of the two most recently completed award years to be eligible for the waiver, and the school must also meet the other criteria in 34 CFR 668.27. A public or private nonprofit institution that expends less than $750,000 in federal funds in a fiscal year is exempt from filing compliance audits after the school gains initial eligibility. This exception to the annual audit requirement may not be granted for the award year preceding a school's required recertification.

If the Department grants the waiver, the school does not have to submit its compliance or financial statement audit until six months after

- the end of the third fiscal year after the one the school last submitted compliance and financial statement audits for, or
- the end of the second fiscal year after the one the school last submitted compliance and financial statement audits for if the award year in which the school will apply for recertification is part of the third fiscal year.

A school's waiver request may include the fiscal year in which that request is made, plus the next two fiscal years.

The regulations do not waive the requirement that a school audit its administration of the FSA programs; they waive the requirement that these audits be submitted on an annual basis. Therefore, if a school is granted a waiver for three years, at the end of that time the school's next compliance audit must cover its administration of the FSA programs for each fiscal year in the waiver period. The financial statement audit must cover the last year of the waiver period. The auditor for a proprietary school must audit, and attest to, the school's annual 90/10 determination for each year in the waiver period, in accord with 34 CFR 668.23(d)(4).

A school remains liable for repaying any FSA funds it improperly expends during the waiver period. A compliance audit is the vehicle for discovering improper expenditures. Therefore, a school will be required to pay any liabilities when the school eventually submits a compliance audit for the fiscal years in which it made improper expenditures.

FSA consolidated statements

In some cases, a school's relationship with another entity may cause the Department to require a school to submit additional financial statements both of the school and the entity, such as audited consolidated financial statements; audited full consolidated financial statements; audited combined financial statements; or, under certain circumstances, audited financial statements of one or more related parties. This occurs when the Department determines that the activities or financial health of another entity may impact the school's total financial health. So that the Department can make this determination, a school must include in

Qualifying for and Effects of Waivers

Qualifying for a waiver

To qualify for a waiver, a school must demonstrate that it

- is not a foreign school;
- disbursed less than $200,000 in FSA program funds during each of the two completed award years prior to the audit period;
- agrees to keep records relating to each award year in the unaudited period for two years after the end of the regular record retention period for the award year;
- has participated in the FSA programs under the same ownership for at least three award years preceding the school's waiver request;
- is financially responsible under the general requirements of financial responsibility and does not rely on the alternative standards and requirements of exceptions to participate in the FSA programs;
- is not receiving funds under the reimbursement or cash monitoring system of payment;
- has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guaranty agency in the three years preceding the school's waiver request;
- has submitted its compliance audits and audited financial statements for the previous two fiscal years, and no individual audit disclosed liabilities in excess of $10,000; and
- submits a letter of credit in the amount as determined below, which must remain in effect until the Department has resolved the audit covering the award years subject to the waiver. For purposes of this section, the letter of credit amount is 10% of the total FSA program funds the school disbursed to or on behalf of its students during the award year preceding the school's waiver request.

The Department rescinds a waiver if the school

- disburses $200,000 or more of FSA program funds for an award year;
- undergoes a change in ownership resulting in a change of control; or
- becomes the subject of an emergency action or a limitation suspension, fine, or termination action initiated by the Department or a guaranty agency.

Effects of waivers—examples

Example 1: The school is still required to have its administration of the FSA programs audited for the waiver period. If a school is granted a waiver for three years, when the waiver period expires, the next audit must cover the school's administration of the FSA programs since the end of the period covered by its last submitted compliance audit. For example, if a school's fiscal year coincides with an award year (July 1–June 30) and it submits a compliance audit for its fiscal year that ends on June 30, 2018, and then receives a waiver, its next compliance audit is due six months after the end of its 2020–2021 fiscal year. When it submits that audit, it must cover the 2018–2019, 2019–2020, and 2020–2021 fiscal years.

Example 2: If a school's fiscal year ends June 30, 2018, and the school receives a waiver on May 1, 2018, that includes the 2018–2019, 2019–2020, and 2020–2021 fiscal years, the next compliance audit is due six months after the end of the school's 2020–2021 fiscal year.

its audited financial statements a detailed description of related entities based on the definition of a related entity in the *Statement of Financial Accounting Standards No. 57*. The description must include all related parties and a level of detail that would enable the Department to easily identify them. This information may include but is not limited to the name, location, and description of the related entity, including the nature and amount of any transaction between the entity and the school, financial or otherwise, regardless of when it occurred.

TIMING OF AUDIT SUBMISSIONS

Simultaneous FSA audit submissions

Both the compliance audit and the financial statement audit must be performed on a fiscal-year basis and submitted at the same time. In cases where the school's fiscal year does not coincide with an award year, the school's compliance audit will cover parts of two award years.

In 2020–2021 for schools using a calendar year as their fiscal year, the most recently completed one is the fiscal year that ends on December 31, 2020. For schools using the award year as their fiscal year, the most recently completed one will be the fiscal year that ends on June 30, 2021.

Submission dates for FSA audits

A school's or servicer's compliance and financial statement audits performed under the Audit Guide must be submitted to the Department within six months after the end of the school's or servicer's fiscal year. The following chart lists audit due dates and the period the audit must cover. (The chart provides information for the most common institutional fiscal-year-end dates.)

Audits performed under the Compliance Supplement must be submitted within nine months after the end of the school's fiscal year.

Audit submission due dates

School's fiscal year end date	*Both audits due*	*Period audited (financial and compliance)*
September 30, 2020	March 31, 2021	October 1, 2019, through September 30, 2020
December 31, 2020	June 30, 2021	January 1, 2020, through December 31, 2020
March 31, 2021	September 30, 2021	April 1, 2020, through March 31, 2021
June 30, 2021	December 31, 2021	July 1, 2020, through June 30, 2021

Generally, a school's first audit performed under these requirements must cover the entire period of time since the school began to participate in the FSA programs. Each subsequent audit must cover the period since the end of the period covered by the preceding audit that is accepted by the Department.

Small Business Administration National Ombudsman

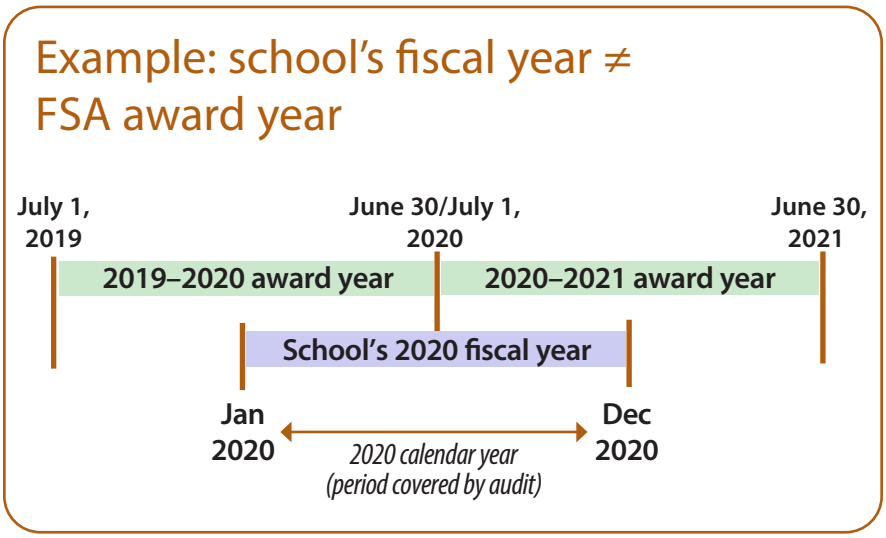
The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 regional fairness boards were established to receive comments from small businesses about federal agency enforcement actions. The ombudsman will evaluate annually the enforcement activities of each agency and rate its responsiveness to small business. If you wish to comment on the enforcement actions of the Department of Education, call 1-888-REG-FAIR (1-888-734-3247) or email ombudsman@sba.gov.

90/10 REVENUE TEST

90/10 Rule
HEA section 487
34 CFR 668.14(b)(16)
34 CFR 668.28

To be eligible for FSA participation, a proprietary school must derive at least 10% of its revenues for each fiscal year from sources other than the FSA programs or be subject to sanctions. The calculation of this percentage and the funds included must be arrived at using the cash basis of accounting. A school must determine its revenue percentages using the formula described on the following pages each fiscal year.

A proprietary school must report as a footnote to its audited financial statements the percentage of its revenues derived from the FSA programs for the fiscal year covered by the audit. The school must also report in the footnote the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.



Proprietary schools have 45 days after their most recent fiscal year has ended to report to the Department if they did not satisfy the 90/10 rule for that period.

- If a school fails to satisfy the 90/10 rule for any fiscal year, it becomes provisionally certified for up to two fiscal years after the fiscal year it failed to satisfy the revenue requirement. (Among other factors, the provisional certification is limited by the expiration date of the school's program participation agreement or PPA.)
- If a school fails to satisfy the 90/10 rule for two consecutive fiscal years, it loses its eligibility to participate in the FSA programs for at least two fiscal years.

A school must send notice of its failure to satisfy the 90/10 rule to the Department by U.S. mail or commercial overnight delivery to the following address:

U.S. Department of Education,
Federal Student Aid
School Eligibility Service Group
830 First Street, NE
Washington, DC 20202-5403

Schools can ask questions of their SPD; phone numbers and the general e-mail (CaseTeams@ed.gov) are on the SPD webpage.

If the school loses eligibility, it must immediately stop awarding FSA funds and follow the closeout procedures described in *Chapter 8*.

A school that converts from a proprietary to a nonprofit or public status for Title IV purposes must continue to report its compliance with the 90/10 revenue test for at least one complete fiscal year after the change in status has been approved by the Department. For example, a change in status is approved with an effective date of 10/31/18 for a school whose fiscal year ends on December 31. The school would be required to report the 90/10 revenue attestation for the complete 2018 fiscal year, and it would also be required to report its 90/10 compliance for its first complete fiscal year (2019) of participation as a nonprofit school. If the school failed the test for that first year under the new status, it would need to report an additional year. If there were other problems with the attestation, the school could also be required to report one more year.

Guidance on footnote disclosures can be found in the Audit Guide, in 34 CFR 668.23(d)(4), and in appropriate accounting references. See DCL GEN-08-12 for changes made by the *Higher Education Opportunity Act of 2008* (section 493), moving the 90/10 rule to the PPA from the definition of a proprietary institution of higher education.

Counting Revenues for the 90/10 Rule

Section 668.28(a) of the Student Assistance General Provisions provides the following explanation of how to count revenue from FSA vs. non-FSA sources: See Appendix C of Subpart B of the Student Assistance General Provisions for calculation procedures.

…

(3) Revenue generated from programs and activities.

The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in §668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under §668.8 if the program—

(A) Is approved or licensed by the appropriate state agency;

(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

(D) Provides training needed for students to maintain state licensing requirements; or

(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) Application of funds.

The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-federal public agencies or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement with a federal, state, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

(5) Revenue generated from institutional aid.

The institution must include the following institutional aid as revenue:

(i) For loans made to students and credited in full to the students' accounts at the institution on or after July 1, 2008, and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

[For rules on calculating the net present value of these loans, see 34 CFR 668.28(b) and Appendix C to Subpart B.]

(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(7) Funds excluded from revenues.

For the fiscal year, the institution does not include—

(i) The amount of Federal Work-Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

Counting Revenues for the 90/10 Rule, continued

(ii) The amount of funds received by the institution from a state under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match Title IV, HEA program funds;

(iv) The amount of Title IV, HEA program funds refunded or returned under §668.22. If any funds from the loan disbursement used in the return calculation under §668.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under §668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

Other 90/10 guidance

Cash basis of accounting

Except for institutional loans made to students under 34 CFR 668.28(a)(5)(i), a proprietary school must use the cash basis of accounting in calculating its revenue percentage under the 90/10 Rule. Under the cash basis of accounting, revenue is recognized when received rather than when it is earned.

Revenue

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. A school may recognize revenue only when the school receives cash, i.e., when there is an inflow of cash. As a result, in order for a school to recognize revenue under the cash basis of accounting, that revenue must represent cash received from a source outside the institution.

Tuition waivers

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 are not an inflow of cash to the school. Institutional scholarships are not revenues generated by the school unless they are donated by an unrelated or outside 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.

Revenues from loans

When a school 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.

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 a school's 90/10 calculation for the fiscal year in which the revenues were received, provided that the school's reported revenues are also reduced by the amount of recourse loan payments made to recourse loan holders 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. 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.

The sale of institutional loan receivables is distinguishable from the sale of a school'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 a school. That would not be true in the case of the sale of other school assets.

AUDIT AND AUDIT REVIEW PROCESS

Having the audit performed

The school or servicer must make its program and fiscal records, as well as individual student records, available to the auditor. (Required recordkeeping is discussed in *Chapter 7*.) Both the financial aid and business offices should be aware of the dates the auditors will be at the school and make sure that someone is on hand to provide requested documents and answer questions during that period.

At the end of the on-site review, the auditor conducts an exit interview. At a school, this exit interview is usually conducted with the personnel from the school's financial aid and other relevant offices. The exit interview is not only an opportunity for the auditor to suggest improvements in procedures, but it also gives the school or servicer a chance to discuss the draft report and review any discrepancies cited in the report. The exit interview is a good time to resolve any disagreements before the final report is prepared.

The final report is prepared by the auditor and submitted to the school or servicer.

Review of FSA audit submissions

The Department reviews the audit report for format and completeness and to ensure that it complies with the government's auditing standards.

We will use the general information to initially determine whether the audits are materially complete and done according to applicable accounting standards. Based on the financial data, we will also make a preliminary determination whether your school is financially responsible with respect to the financial responsibility ratios, or in the case of a change in ownership resulting in a change in control, whether your school satisfies the financial ratio requirements discussed later in this chapter. Later we will review submissions to determine whether your school must provide additional information or we should take further action.

Based on the audit findings and the school's or servicer's written explanation, the Department will determine if any funds were spent improperly. Unless the school or servicer has properly appealed the decision, it must repay any improperly spent funds within 45 days.

Access to records

Throughout the audit process, and for other examinations such as program reviews and state reviews, the school or servicer is required to cooperate fully with its independent auditor, the Department and its inspector general, the Comptroller General of the United States, its accrediting agency, and the appropriate guaranty agency.

Once the audit is complete, the school or servicer must give the Department and the OIG access to all records and documents needed to review the audit. A school that uses a third-party servicer must give the Department and the OIG access to all records and documents needed to review a third-party servicer's compliance or financial statement audit. In addition, the school's or servicer's contract with the auditor must specify that the auditor will give the Department and the OIG access to the records and documents related to the audit, including work papers. Cooperation includes providing timely and reasonable access to records (including computer records) for examination and copying and to personnel for the purpose of obtaining relevant information.

Third-party servicer audits
34 CFR 668.23(a)(3), (c), and (d)(4)

AUDITS FOR THIRD-PARTY SERVICERS

Audit requirements also apply to third-party servicers. If a servicer contracts with several FSA schools, a single compliance audit can be performed that covers its administrative services for all schools. If a servicer contracts with only one FSA school and that school's own audit sufficiently covers the functions performed by the servicer, the servicer does not have to submit a compliance audit. A servicer must submit its compliance audit within six months after the last day of the servicer's fiscal year. The Department may require a servicer to provide a copy of its compliance audit report to guaranty agencies, lenders, state agencies, the Department of Veterans Affairs, or accrediting agencies.

In addition to submitting a compliance audit, a servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs must submit annually audited financial statements. The financial statements must be prepared on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent auditor in accordance with Generally Accepted Government Auditing Standards (GAGAS) and any other guidance contained in audit guides issued by the Department's Office of the Inspector General.

If the Department determines that, based on audit findings and responses, a third-party servicer owes a liability for its administration of the FSA programs, the servicer must notify each school with which it has a contract of the liability. Generally, unless they submit an appeal, schools and servicers owing liabilities must repay those liabilities within 45 days of being notified by the Department.

The Department is aware that some third-party servicers have told schools not to report them as servicers, creating confusion about who should be reported. Also, some servicers have not filed annual compliance audits because they incorrectly determined that they don't meet the regulatory definition of a third-party servicer or because of the omission of specific audit procedures in the OIG Audit Guide for some services or functions performed on behalf of colleges. See DCL GEN-15-01 for clarification of the third-party servicer requirements in the regulations.

Using eZ-Audit to submit financial statements and audits

The eZ-Audit website provides a paperless, single point of submission for compliance and financial statement audits. It checks automatically for errors as data is entered and before submission, and it gives instant acknowledgment of receipt of the submission.

Schools must submit their compliance audits, audited financial statements, and letters confirming their status as public schools through eZ-Audit. This requirement applies to any compliance audits or financial statements schools must submit to begin or continue participating in the FSA programs under 34 CFR 600.20(a) or (b), any financial statements required due to a change in ownership resulting in a change of control as provided under 34 CFR 600.20(g), compliance audits and financial statements required annually under 34 CFR 668.23, and any compliance audits and financial statements required when a school ceases to participate in the FSA programs as provided under 34 CFR 668.26(b).

Beginning in August 2020, all entities that are required to submit compliance audits and financial statements to FSA will use eZ-Audit's web-based system to submit those documents; hard copies will no longer be sent to FSA. This is a change for foreign schools, third-party servicers, Federal Family Education Loan (FFEL) Program lenders, FFEL lender servicers, guaranty agencies (GAs), and GA servicers. Because these entities will be new to eZ-Audit, they must first register before gaining access to the system. See the July 17, 2020, announcement for more information.

To access the eZ-Audit website, one must be a registered user and sign and retain the eZ-Audit rules of behavior. Each entity must select an eZ-Audit institution administrator who will be responsible for managing its access to the eZ-Audit website. This administrator will receive a user name and password and will be responsible for granting access to additional users. Registration instructions and the rules of behavior are available at https://ezaudit.ed.gov.

Users go to the appropriate page on the audit website and

1. enter general information about the school's compliance audit and financial statement,
2. enter specific financial data directly from the audited financial statement, and
3. attach authentic electronic copies of the audit originals prepared and signed by the independent auditor.

Audit copies must be in a non-editable, portable document format (PDF) created using Adobe Acrobat version 5.0 or higher.

For help, users can email fsaezaudit@ed.gov or call the eZ-Audit help desk at 1-877-263-0780.

As noted earlier, a school may never use a third-party servicer's audit in place of its own required audit because the school is ultimately liable for its own violations as well as those incurred by its third-party servicers. (See *Chapter 3* for more information on third-party servicers.)

Financial responsibility
HEA Sec. 498(c)
34 CFR 668, Subpart L, Appendices A and B

FINANCIAL RESPONSIBILITY

To participate in the FSA programs, schools must demonstrate they are financially responsible. They provide the Department with the information necessary to evaluate their financial responsibility via the audited financial statement explained earlier.

What follows is an overview of the financial responsibility standards. Schools should refer to Subpart L of the Student Assistance General Provisions for complete information. They can also review the attachment to an April 2020 announcement, which is a list of Q's and A's pertaining to financial responsibility and eZ-Audit reporting requirements.

The Department determines whether a school is financially responsible based on its ability to provide the services described in its official publications and statements, to meet all of its financial obligations, and to provide the administrative resources necessary to comply with title IV, HEA program requirements.

The financial responsibility standards can be divided into two categories: (1) general standards, which are the basic standards used to evaluate a school's financial health, and (2) performance and affiliation standards, which are standards used to evaluate a school's past performance and to evaluate individuals affiliated with the school.

Financial responsibility and public schools
34 CFR 668.171(g)

Financial responsibility for public schools

A public school is financially responsible if its debts and liabilities are backed by the full faith and credit of the state or another government entity. The Department considers a public school to have that backing if the school notifies the Department that it is designated as a public school by the state, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation. The school must also provide the Department with a letter from an official of the appropriate government entity confirming the school's status as a public school. A letter from a government entity may include a confirmation of public school status for more than one school under that government's purview. The letter is a one-time submission and should be submitted as a separate document.

Public schools also must meet the past performance and affiliation standards discussed later and must submit financial statements prepared in accordance with generally accepted accounting principles (GAAP) and prepared on the accrual basis.

Financial responsibility for proprietary and private nonprofit schools

General standards
34 CFR 668.171(b)

General standards of financial responsibility

A proprietary or private nonprofit school is considered financially responsible if the Department determines that

- the school has a composite score of at least 1.5, as explained later in this chapter;
- the school has sufficient cash reserves to make required returns of unearned Title IV funds, as provided under the refund reserve standards explained later in this chapter;
- the school or persons affiliated with it are not subject to a condition of past performance, as explained later in this chapter;
- the school is able to meet all of its financial obligations and provide the administrative resources necessary to comply with Title IV program requirements. A school is not deemed able to meet its financial or administrative obligations if it
  - ◊ fails to make refunds under its refund policy or return Title IV funds it is responsible for under the R2T4 rules,
  - ◊ fails to make repayments to the Department for any debt or liability arising from its participation in the Title IV programs, or
  - ◊ is subject to a *mandatory triggering event* or to a *discretionary triggering event* that the Department determines is likely to have a material adverse effect on their financial condition. See "Mandatory and discretionary triggers" later in this chapter.

Audit opinions and disclosures
34 CFR 668.171(h)

Even if a school satisfies all of these general standards of financial responsibility, the Department does not consider it to be financially responsible if, in its audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion or if there is a disclosure in the notes to the financial statements that there is substantial doubt about the school's ability to continue as a going concern as required by accounting standards. This holds unless the Department determines that a qualified or disclaimed opinion does not have a significant bearing on the school's financial condition or that the substantial doubt about its ability to continue as a going concern has been alleviated.

A school that fails to meet any of the above criteria can still qualify as a financially responsible institution. It can submit an irrevocable letter of credit that is acceptable and payable to the Department for an amount that is not less than 50% of the Title IV funds the school received during its most recently completed fiscal year. A school can also continue to participate if it submits a 10% letter of credit and agrees to be provisionally certified. See, respectively, "Financial protection alternative for participating schools" and "Provisional certification alternative" later in the chapter for an explanation of these options.

When a change in ownership occurs, the Department applies the standards in 34 CFR 668.15.

Triggering events
34 CFR 668.171(c) and (d)

Mandatory and discretionary triggers

There are key differences between the two types of triggering events. Generally, the mandatory triggers reflect actions or events whose consequences are realized immediately and which evidence or cause the Department to presume an adverse material effect on the school's financial condition. The burden falls on the school to demonstrate otherwise when it notifies the Department that the event has occurred. On the other hand, discretionary triggers generally reflect actions or events whose consequences are less immediate and less certain. For a discretionary trigger, the Department will need to show that the event is likely to have a material adverse effect on the school's financial condition or jeopardize its ability to continue as a going concern. The Department will consider in the review any additional information provided by the school when it reports that event.

In general schools must report any triggering event to the Department within 10 days after the event occurs [see §668.171(f) for details about what and when to report]. However, in the case of the 90/10 trigger, schools have until 45 days after the end of their fiscal year to notify the Department.

The **mandatory triggers** are:

- The school incurs a liability from a settlement or a final judgment or determination arising from an administrative or judicial action or proceeding by a federal (which can include the Department) or state entity that results in the school's recalculated composite score dropping below 1.0 for the most recently completed fiscal year.
- For a proprietary school whose composite score is less than 1.5, there is a withdrawal of owner's equity by any means (e.g., a distribution of dividends or return of capital)—unless the withdrawal is a transfer to an entity in the affiliated group on whose basis the school's composite score was calculated—that results in the school's recalculated composite score dropping below 1.0 for the most recently completed fiscal year.
- For a publicly traded school any of the three following events occurs: (1) the U.S. Securities and Exchange Commission (SEC) issues an order suspending or revoking the registration of the school's securities or suspends trading of its securities on any national securities exchange; (2) the national securities exchange on which the school's securities are traded notifies the school that it is not in compliance with the exchange's listing requirements and, as a result, its securities are delisted, either voluntarily or involuntarily; or (3) the SEC is not in timely receipt of a required report and did not issue an extension to file the report.
- If, for the most recently completed fiscal year, the school is subject to two or more discretionary triggering events described below. When that happens, they become mandatory triggering events, unless an event is resolved before another one occurs.

The **discretionary triggers** are:

- The school's accrediting agency issued an order, such as a show cause order or similar action, that if not satisfied could result in the withdrawal or suspension of the school's accreditation for failing to meet the agency's standards.
- The school violated a provision in a security or loan agreement with a creditor causing it to require or impose on the school an increase in collateral or interest rates or payments; a change in contractual obligations; or other sanctions, penalties, or fees.
- The school's state licensing or authorizing agency notified the school that it has violated a requirement and that the agency intends to terminate its licensure or authorization if it does not take the steps necessary to comply with the requirement.
- For its most recently completed fiscal year, a proprietary school did not receive at least 10 percent of its revenue from sources other than Title IV HEA program funds (the 90/10 rule).
- As calculated by the Department, the school has high annual dropout rates. (The methodology for this is yet to be determined.)
- The school's two most recent official cohort default rates are 30 percent or greater, unless the school files an appeal for one or both of those fiscal years that either remains pending, results in reducing below 30 percent the default rate for one or both of those years, or precludes the rate from one or both years from resulting in a loss of eligibility.

Recalculating the composite score

Recalculating a composite score
34 CFR 668.171(e)

As explained under the first two mandatory triggers, the Department recalculates a school's most recent composite score in those instances. It does so by recognizing the actual amount of the liability, or cumulative liabilities, the school incurs (the first trigger) as an expense; it also treats the actual withdrawal, or cumulative withdrawals, of owner's equity (the second trigger) as a reduction in equity. Moreover, the Department accounts for these expenses or withdrawals by

- For liabilities incurred by a proprietary institution: (1) for the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount; (2) for the equity ratio, decreasing modified equity by that amount; and (3) for the net income ratio, decreasing income before taxes by that amount;
- For liabilities incurred by a non-profit institution: (1) for the primary reserve ratio, increasing expenses and decreasing expendable net assets by that amount; (2) for the equity ratio, decreasing modified net assets by that amount; and (3) for the net income ratio, decreasing change in net assets without donor restrictions by that amount; and

- For the amount of owner's equity withdrawn from a proprietary institution: (1) for the primary reserve ratio, decreasing adjusted equity by that amount; and (2) for the equity ratio, decreasing modified equity by that amount.

Relief for triggering events
34 CFR 668.171(f)(3)

Alleviating a triggering event

When a school first notifies the Department of a triggering event or when it responds to a preliminary determination by the Department that it is not financially responsible because of a triggering event, the school can try to relieve the effect of the event by, as appropriate,

- Demonstrating that the reported withdrawal of owner's equity was used exclusively to meet tax liabilities of the school or its owners for income derived from the school;
- Showing that the creditor waived a violation of a loan agreement. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation or imposes penalties or requirements, the school must describe those actions and demonstrate that complying with them will not adversely affect the school's ability to meet its financial obligations;
- Showing that the triggering event has been resolved or demonstrating that the school has insurance that will cover all or part of a liability arising under the relevant mandatory trigger; or
- Providing information about the circumstances that precipitated the trigger that demonstrates that the event has not or will not have a material adverse effect on the school.

The Department will consider the information the school provides when deciding whether to issue a final determination that the school is not financially responsible.

Financial Ratios
34 CFR 668.172

FINANCIAL RATIOS AND COMPOSITE SCORES

The composite score standard combines different measures of fundamental elements of financial health to yield a single measure of a school's overall financial health. This method allows financial strength in one area to make up for financial weakness in another area and gives an equitable measure of the financial health of schools of different sizes.

The composite score methodology considers proprietary schools (see Appendix A in Part 668 Subpart L) and private nonprofit schools (see Appendix B) separately because there are accounting and operational differences between these sectors of postsecondary schools. However, the basic steps used to arrive at the composite score are the same and are described later in this section. Appendices A and B have complete information on the calculation of the composite score.

Calculating a composite score

The first step in calculating a composite score is to determine the school's primary reserve, equity, and net income ratios by using information from the school's audited financial statement. These ratios take into account the total financial resources of the school. The primary reserve ratio represents a measure of a school's viability and liquidity. The equity ratio represents a measure of its capital resources and ability to borrow. The net income ratio represents a measure of its profitability.

Upon review, some items from a school's audited financial statement may be excluded from the calculation of the ratios. For example, the Department may exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs, from the ratio calculations. (See "Excluded items" later.)

As a result of the 2019 final regulations, long-term debt may be included in the primary reserve ratio only if it is associated with the school's property, plant, and equipment (PP&E) or construction in progress (CIP). The school's financial statements must disclose that its long-term debt exceeds 12 months and is associated with capitalized assets. However, to account for long-term debts that existed prior to the implementation of these regulations, their treatment in the composite score calculation will be grandfathered under the old rules. Schools should review the regulations and consult with their accountants when considering the treatment of long-term debt. The new rules are reflected in appendices A and B to Subpart L.

A strength factor score is then calculated for each ratio using equations established by the Department. A strength factor score reflects a school's relative strength or weakness in a fundamental element of financial health, as measured by the ratios. Specifically, the strength factor scores reflect the extent to which a school has the financial resources to: 1) replace existing technology with newer technology; 2) replace physical capital that wears out over time; 3) recruit, retain, and retrain faculty and staff (human capital); and 4) develop new programs.

A weighting percentage is applied to each strength factor score to obtain a weighted score for each ratio. The weighting percentages reflect the relative importance that each fundamental element has for a school in a particular sector (proprietary or private nonprofit).

The sum of the weighted scores equals the school's composite score. Because the weighted scores reflect the strengths and weaknesses represented by the ratios and take into account the importance of those strengths and weaknesses, a strength in the weighted score of one ratio may compensate for a weakness in the weighted score of another ratio.

Once a composite score is calculated, it is measured on a scale from negative 1.0 to positive 3.0 as shown in the following diagram. This scale reflects the probability a school will be able to continue operations and meet its obligations to students and the Department.

Accounting for operating leases
34 CFR 668.172(d)

Accounting for operating leases

The Department accounts for operating leases by

- Applying the Financial Accounting Standards Board's Accounting Standards Update (ASU) 2016-02, Leases (Topic 842) to all leases the school has entered into on or after December 15, 2018 (post-implementation operating/financing leases), as specified in the supplemental schedule (see Section 2 of both Appendix A and Appendix B to Subpart L);
- Treating leases the school entered into prior to December 15, 2018 (pre-implementation operating/financing leases), as they would have been treated prior to the requirements of ASU 2016-02, as long as the school provides information about those leases on the supplemental schedule and a note in, or on the face of, its audited financial statements; and
- Accounting for any adjustments, such as options the school exercises to extend the life of a pre-implementation operating/finance lease, as post-implementation operating/finance leases.

Financial ratio excluded items
34 CFR 668.172(c)

Excluded items

In calculating a school's ratios, the Department

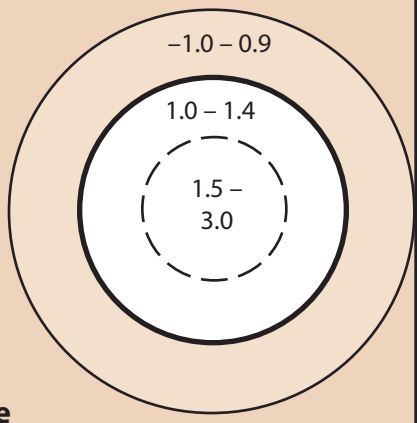
- Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;
- May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;
- Excludes all unsecured or uncollateralized related-party receivables;
- Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and
- Excludes from the ratio calculations federal funds provided to a school by the Department under programs authorized by the HEA only if
  - ◊ in the notes to the school's audited financial statement, or as a separate attestation, the auditor discloses by name and Catalog of Federal Domestic Assistance (CFDA) number the amount of HEA program funds reported as expenses in the statement of activities for the fiscal year covered by that audit or attestation; and
  - ◊ the school's composite score, as determined by the Department, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the ratio calculations.

Composite Score Scale

1.5 to 3.0 Financially responsible without further oversight.

1.0 to 1.4 In the "Zone." The school is considered financially responsible, but additional oversight is required.

–1.0 to 0.9 Not financially responsible. The school must submit a letter of credit of at least 50% of its FSA funding. The school may be permitted to participate under provisional certification with a smaller letter of credit—with a minimum of 10% of its FSA funding and additional oversight.



Example: Calculation Of A Composite Score For A Proprietary Institution*

Calculation of Ratios

$$\text{Primary Reserve Ratio} = \frac{\text{Adjusted equity}}{\text{Total expenses}} = \frac{\$760{,}000}{\$9{,}500{,}000} = 0.0800$$

$$\text{Equity Ratio} = \frac{\text{Modified equity}}{\text{Modified assets}} = \frac{\$810{,}000}{\$2{,}440{,}000} = 0.3320$$

$$\text{Net Income Ratio} = \frac{\text{Income before taxes}}{\text{Total revenues}} = \frac{\$510{,}000}{\$10{,}010{,}000} = 0.0509$$

Calculation of Strength Factor Score

Primary Reserve Strength Factor Score = 20 x Primary Reserve Ratio
20 X 0.0800 = 1.6000

Equity Strength Factor Score = 6 x Equity Ratio
6 X 0.3320 = 1.9920

Net Income Strength Factor Score = 1 + (33.3 x Net Income Ratio)
1 + (33.3 x 0.0509) = 2.6950

Calculation of Weighted Score

Primary Reserve Weighted Score = 30% x Primary Reserve Strength Factor Score
0.30 X 1.6000 = 0.4800

Equity Weighted Score = 40% x Equity Strength Factor Score
0.40 X 1.9920 = 0.7968

Net Income Weighted Score = 30% x Net Income Strength Factor Score
0.30 X 2.698 = 0.8094

Composite Score

Sum of All Weighted Scores 0.4800 + 0.7968 + 0.8094 = 2.0862 rounded to 2.1

* The definition of terms used in the ratios and the applicable strength factor algorithms and weighting percentages are found in the Student Assistance General Provisions (regulations) (34 CFR 668) Subpart L, Appendix A for proprietary schools and Appendix B for private nonprofit schools.

Refund reserve standards
34 CFR 668.173

REFUND RESERVE STANDARDS

One of the standards that a school must satisfy to be considered financially responsible is that it must have sufficient cash reserves to return FSA funds when a student withdraws. A school is considered to have sufficient cash reserves if it

- is located in a state that has an ED-approved tuition recovery fund and the school contributes to that fund, or
- for its two most recently completed fiscal years, the school made all required returns in a timely manner (see *Volume 5, Chapter 2* for more information on returns, including timely payment).

When a state submits a tuition recovery fund for approval, the Department will consider the extent to which the recovery fund provides returns to both in-state and out-of-state students, complies with FSA requirements for the order of return of funds to sources of assistance, and is replenished if any claims arise that deplete the fund.

Timely return of funds
34 CFR 668.173(b)

Returning funds in a timely manner

Unearned funds must be returned no later than 45 days after the date of the school's determination that the student withdrew. The regulations specify that a school has returned funds when it has

- deposited or transferred the funds into the bank account it maintains for federal funds (see the section below) no later than 45 days after the date it determines the student withdrew,
- initiated an electronic funds transfer (EFT) no later than 45 days after the date it determines that the student withdrew, or
- issued a check no later than 45 days (as supported by the school's records) after the date it determines that the student withdrew.

If a check is used to return unearned funds, the Department requires that the check be endorsed by ED no later than 60 days after the school's determination that a student withdrew to be considered a timely return.

After a school has returned unearned funds to its federal account, provided those funds were originally received from the Department under a process that allows the school to reuse the unearned funds, the school can use the funds to make disbursements to other eligible students through the same program and in the same award year.

Maintaining and accounting for funds
34 CFR 668.163

Deposit to operating or separate account

Unless the Department requires a school to use a separate account, the school may use its operating account for FSA purposes. In this case the school must designate that account as its federal bank account and have an auditable system of records showing that the funds have been allocated properly and returned in a timely manner. If there is no clear

audit trail, the Department can require the school to begin maintaining FSA funds in a separate bank account.

A school that maintains a separate federal bank account must deposit to that account, or transfer from its operating account to its federal account, the amount of unearned program funds, as determined under the return of Title IV funds regulations. The date the school makes that deposit or transfer is the date used to determine whether the school returned the funds within the 45-day time frame permitted in the regulations.

See the sections on accounting for funds and depository accounts in *Chapter 1* of *Volume 4*.

Compliance thresholds

Compliance thresholds
34 CFR 668.173(c)

The Department provides a small margin of error in determining that a school has paid all required refunds and returns on time. The Department considers a school to have paid returns in a timely manner if

- there is less than a 5% error rate in a sample of returns (composed of students for whom the school was required to return unearned funds) examined in a compliance audit, an audit conducted by the Office of the Inspector General (OIG), or a program review conducted by the Department or guaranty agency, or
- there are no more than two late returns in the sample (regardless of the number or percentage of late returns in the sample).

In addition, if the reviewer or auditor finds a material weakness or reportable condition in the school's report on internal controls relating to the return of unearned Title IV aid, the Department considers the school to have not paid returns in a timely manner.

Letter of credit required when funds are not returned in a timely manner

Public schools and schools covered by a state tuition recovery fund that has been approved by the Department are not subject to the letter of credit requirements. If any other school exceeds the compliance thresholds in either of its two most recently completed fiscal years, the school must submit an irrevocable letter of credit acceptable and payable to the Department. The letter of credit must be equal to 25% of the returns the school made or should have made during its most recently completed fiscal year.

A school that is required to submit a letter of credit must do so no later than 30 days after the earlier of the date that

- the school is required to submit its compliance audit;
- the OIG issues a final audit report;

- the designated department official issues a final program review determination;
- the Department issues a preliminary program review report or draft audit report, or a guaranty agency issues a preliminary report showing that the school did not return unearned funds for more than 10% of the sampled students; or
- ED sends a written notice to the school requesting the letter of credit that explains why the school has failed to return unearned funds in a timely manner.

Letters of credit are submitted to

Director, Performance Improvement & Procedures
U.S. Department of Education
Federal Student Aid
830 First Street, NE
UCP-3, MS 5435
Washington, DC 20002-8019

If the preliminary report finds that the school did not return unearned funds in a timely manner for 10% or fewer of the sampled students, it would generally be required to submit the letter of credit only if the final report shows that the school did not return unearned funds in a timely manner for 5% or more of all the students in the sample. If the final report indicates that a letter of credit is required, the school would have to submit it no later than 30 days after the final report is issued.

Exceptions to the letter of credit requirement

A school is not required to submit a letter of credit of less than $5,000. However, to meet the reserve requirement, such a school would need to demonstrate that it has available at all times cash reserves of at least $5,000 to make required returns.

In addition, a school may delay submitting a letter of credit while it asks for reconsideration of a finding that it failed to return unearned FSA funds in a timely manner. A school may request that the Department reconsider its finding if the school submits documents showing that

- the unearned FSA funds were not returned in a timely manner solely because of exceptional circumstances beyond the school's control and that the school would not have exceeded the applicable threshold had it not been for the exceptional circumstances; or
- it did not fail to make timely returns.

A school that submits an appeal, together with all required supporting documents, by the date the letter of credit would be due is not required to submit a letter of credit unless the Department notifies the school that its request has been denied.

ALTERNATIVES TO THE GENERAL FINANCIAL STANDARDS

Alternative standards and requirements
34 CFR 668.175

If a school does not meet the general standards for financial responsibility, the Department may still consider the school to be financially responsible or may allow it to participate under provisional certification if the school qualifies for an alternative standard. If the Department determines that a school that does not meet one or more of the general standards does not qualify for an alternative, the Department may initiate a limitation, suspension, or termination action against the school (see *Chapter 8* for more on corrective actions and sanctions).

Provisional certification
34 CFR 668.13

Letter of credit alternative for new schools

Letter of credit for new schools
34 CFR 668.175(b)

A new school (one seeking to participate in the FSA programs for the first time) that is not financially responsible solely because it has a composite score of less than 1.5 may still demonstrate financial responsibility. It can do so by submitting an irrevocable letter of credit, acceptable and payable to the Department, or another surety, which the Department specifies in the Federal Register, equal to at least 50% of the FSA program funds that the Department determines the school will receive during its initial year of participation.

Financial protection alternative for participating schools

Financial protection alternative for participating schools
34 CFR 668.175(c)

A participating proprietary or private nonprofit school that fails to meet one or more of the general standards or has an adverse audit opinion may still demonstrate financial responsibility. It can do so by submitting an irrevocable letter of credit, acceptable and payable to the Department (or providing other financial protection described below), that the Department determines is equal to at least 50% of the FSA program funds the school received during its most recently completed fiscal year. Note that this requirement does not apply to public schools.

Financial protection

Financial protection
34 CFR 668.175(h)

According to procedures established by the Department or as part of an agreement with a school, the Department may use the funds from that financial protection to satisfy the debts, liabilities, or reimbursable costs, including costs associated with allowed teach-outs, owed to the Department that are not otherwise paid directly by the school.

In lieu of a school submitting a letter of credit, the Department may permit the school to

- provide the amount required in the form of some other financial protection the Department specifies in the *Federal Register*;
- provide cash for the amount required; or
- enter into an arrangement under which the Department offsets the amount of Title IV funds that a school has earned in a manner that ensures that, no later than the end of a six- to twelve-month period selected by the Department, the amount offset

equals the amount of financial protection the school must provide. The Department provides the school any funds not used for the purposes described in the first paragraph of this section during the period covered by the agreement, or provides the school any remaining funds if it subsequently submits other financial protection for the amount originally required.

Zone alternative
34 CFR 668.175(d)

Zone alternative

A participating school that has a composite score of less than 1.5 but meets all other standards may demonstrate financial responsibility for up to three consecutive fiscal years if the Department determines that the school's composite score is equal to 1.0 to 1.4 for each of those years and the school meets specific monitoring requirements.

This alternative gives a school the opportunity to improve its financial condition over time without requiring the school to post a letter of credit or participate under provisional certification. Under the zone alternative, a school's operations, including its administration of the FSA programs, are monitored more closely. If a school does not score at least 1.0 in one of the three subsequent fiscal years or does not improve its financial condition to attain a composite score of at least 1.5 by the end of the three-year period, the school must satisfy another alternative standard to continue participating. In addition, if a school fails to comply with the information reporting or payment method requirements, the Department may determine that the school no longer qualifies under this alternative.

Under the zone alternative, a school

1. must request and receive funds under the cash monitoring or reimbursement payment methods, as specified by the Department (see *Volume 4, Chapter 2*);
2. may be required to submit its financial statement and compliance audit earlier than normally required (see the discussion of audit submission deadlines earlier in this chapter);
3. may be required to provide information about its current operations and future plans;
4. must require as part of its compliance audit that its auditor express an opinion on the school's compliance with the requirements of the zone alternative, including the school's administration of the payment method under which it received and disbursed FSA program funds; and
5. must provide timely information—within ten days of occurrence—on any of the following oversight and financial events:
   - ◊ Any event that causes the school, or related entity as defined in Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in the school's or related entity's most recent audited financial statement; or

◊ Any losses that are unusual in nature or infrequently occur, or both, as defined in accordance with Accounting Standards Update (ASU) No. 2015-01 and ASC 225.

Provisional certification alternative

Provisional certification alternative
34 CFR 668.175(f)

The Department may permit a participating proprietary or private nonprofit school to participate under provisional certification for up to three years if the school is not financially responsible because it does not satisfy one or more of the general standards, has an unacceptable audit opinion, is subject to a mandatory trigger or to a discretionary trigger that the Department determines will have an adverse material effect, has a recalculated composite score of less than 1.0, or has a past performance problem that has been resolved. The Department is not required to offer provisional certification to a school. It is an alternative that the Department may choose to offer in exceptional circumstances.

If the Department permits a school to participate under provisional certification, it will require the school to

- submit a letter of credit payable and acceptable to the Department (or provide other protection described under "Financial protection" earlier) for not less than 10%, as determined by the Department, of the FSA program funds the school received during its most recent fiscal year; this requirement does not apply to a public school backed by the full faith and credit of the state;
- demonstrate that it has met all of its financial obligations and was current on debt payments for its two most recent fiscal years; and
- comply with provisions 1–5 that are listed under the zone alternative.

The Department maintains the full amount of financial protection from the school until it first determines that the school has either: a composite score of 1.0 or greater based on a review of the audited financial statements for the fiscal year in which all liabilities from any triggering event required the financial protection, or a recalculated composite score of 1.0 or greater and any triggering event has ended.

If the school is still not financially responsible at the end of the provisionally certified period, the Department may again permit it to participate under a provisional certification but may require

- the school, or one or more persons or entities that exercise substantial control over it, to provide financial guarantees for an amount the Department determines is enough to satisfy any potential liabilities that may arise from the school's participation in the Title IV programs;
- one or more of the persons or entities that exercise substantial control over the school to be jointly or severally liable for any li-

abilities that may arise from the school's participation in the Title IV programs; and

- the school to provide, or continue to provide, the financial protection resulting from a mandatory or discretionary trigger until the school meets the composite score requirement above.

Provisional certification for schools where persons or entities owe liabilities

If a school is not financially responsible because the persons or entities that exercise substantial control over the school owe an FSA program liability, the Department may permit the school to participate under provisional certification if

- the persons or entities that owe the liability repay or enter into an agreement with the Department to repay the liability (or the school assumes the liability and repays or enters into an agreement to repay the liability);
- the school meets all the general standards of financial responsibility and demonstrates that it has met all of its financial obligations and was current on its debt payments for its two most recent fiscal years; and
- the school submits to the Department a letter of credit, payable and acceptable to the Department, for an amount determined by the Department (at least 10% of the FSA program funds received by the school during its most recent fiscal year).

The school also must comply with the requirements under the zone alternative.

In addition, the Department may require the school or persons or entities that exercise substantial control over the school to submit financial guarantees to the Department to satisfy any potential liabilities arising from the school's FSA program participation. The same persons may be required to agree to be jointly and severally liable for any FSA program liabilities.

Past performance
34 CFR 668.174

PAST PERFORMANCE

In addition to meeting the standards of financial responsibility and fulfilling all its financial obligations, a school must demonstrate that it properly administers the FSA programs. Past actions of the school or individuals affiliated with the school may reveal mismanagement of FSA program funds, thereby demonstrating that a school is not financially responsible. Therefore, in evaluating the way a school administers the FSA programs, the Department considers the past performance of both the school and individuals affiliated with the school.

Past performance of a school

Past performance of a school
34 CFR 668.174(a)

A school is not financially responsible if it

- in the last five years, has been subject to a limitation, suspension, or termination action or has entered into an agreement to resolve a limitation, suspension, or termination action initiated by the Department or a guaranty agency;
- in either of its two most recent FSA program reviews or audits, has had findings for the current fiscal year or two preceding fiscal years that required repayment of more than 5% of the FSA program funds received by the school;
- has been cited during the last five years for failing to submit audits as required; or
- has failed to satisfactorily resolve any compliance issues identified in program reviews or audit reports, upheld in a final decision of the Department.

Past performance of persons affiliated with a school

Past performance of persons
34 CFR 668.174(b)

A school is not deemed financially responsible if anyone who exercises substantial control over the school—or if any members of her family—either owes a liability for an FSA program violation or exercises or has ever exercised substantial control over another school or a third-party servicer that owes such a liability. This is true unless that person, family member, school, or servicer demonstrates that the liability is being repaid in accordance with an agreement with the Department.

The Department may consider a school that does not meet this requirement to be financially responsible if the school notifies or demonstrates to the Department

- that an acceptable portion of the liability was repaid according to the regulations;
- that the liability is currently being repaid under a written agreement with the Department; or
- (1) why the person who exercises substantial control should nevertheless be considered to lack that control, or (2) why the person who exercises substantial control and each member of that person's family does not or did not exercise substantial control over the school or servicer that owes the liability.

Past performance and exercise of substantial control
34 CFR 668.174(b)(1) and (c)

A school must report any changes of control in which a person acquires the ability to affect substantially the school's actions. Such changes in control trigger a review to determine if the school is financially responsible (see *Chapter 5*).

Conditions of institutional ineligibility
34 CFR 600.7

STUDENT AND COURSE LIMITATIONS

An otherwise eligible school becomes ineligible if it exceeds

- the 50% limit on students without a high school diploma or equivalent,
- the incarcerated student limitation (25%), or
- the correspondence course limitation (50%) or the correspondence student limitation (50%).

A school must calculate these percentages to demonstrate compliance with a requirement or to demonstrate eligibility for a limitation waiver. For each of the tests, the 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. 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.

For each of the limitation requirements, the school must notify the Department (via Section G of the E-App) 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 notification must occur by July 31 after the end of an award year. The Department will advise the school of its options, including whether it might be eligible for a waiver. (Waivers are available for the limitations for correspondence students, incarcerated students, and students without a high school diploma or equivalent.) 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 for which the school failed to meet the requirement.

If a school loses its eligibility because it failed to meet one or more of the limitation requirements, the school cannot regain eligibility until it can demonstrate that it was in compliance with all of the limitation requirements for the most recently completed award year. Once this has occurred, the school may apply to regain its eligibility. In addition, 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.

In addition to the limitations explained in this chapter, 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. See *Chapters 1* and *3*. A school that becomes ineligible because of one of these factors must immediately stop awarding FSA funds and follow the steps for a school that has lost its FSA participation. See *Chapter 8*.

Limitation on students admitted without a high school diploma or equivalent

A school that does not provide a 4-year bachelor's degree program or a 2-year associate degree program is ineligible 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 public or private nonprofit institution exceeds the 50% limit because it serves significant numbers of these 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 school's regular students (those students not receiving job training through contracts with federal, state, or local government agencies) do not have a high school diploma or its equivalent. If granted, the waiver may be extended in each year the public or private nonprofit school continues to meet the requirements. The public or private nonprofit school's calculation must be attested to by an independent auditor each year an audit is conducted.

Incarcerated student limitation and waiver

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

A school is ineligible if, in its latest complete award year, more than 25% of its regular students are incarcerated. For information on the eligibility of incarcerated students for FSA, see *Volume 1, Chapter 1*.

A public or private nonprofit school can ask the Department to waive this limitation. If granted, the waiver is effective as long as the school continues to meet the waiver requirements each award year. For a school offering only 2-year or 4-year programs that lead to associate or bachelor's degrees, the waiver applies to all programs at the school. But if the school offers other types of programs, the waiver would apply to any of the school's 2-year associate degree programs or 4-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 34 CFR 600.7(e)(2) of the institutional eligibility regulations and must be attested to by an independent auditor.

A public or private nonprofit school may request the waiver using the E-App (**https://eligcert.ed.gov**) by answering the questions in Section G and explaining in question 69.

Incarcerated student definition—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 (this does not include detention in a halfway house, home detention, or weekend-only sentences).

Correspondence study limitation
Sec. 102(a)(3)(A) and (B) of the HEA
34 CFR 600.7(a)(1)(i) and (ii) and
600.7(b)(2)(i) and (ii)

Correspondence course and student limitations

In general, a school is ineligible 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 students were enrolled in correspondence courses (correspondence student limitation). This limitation may be waived for a school that offers a 2-year associate degree or 4-year baccalaureate degree program if the school demonstrates to the Department that in that award year, the students enrolled in its correspondence courses receive no more than 5% of the total FSA program funds received by all of the school's students.

Carl D. Perkins Career and Technical Education Act of 2006
20 U.S.C. 2301

Note that the correspondence course and student limitations do not apply to a school that exclusively or mainly provides vocational adult education or job training as defined under Sec. 3(3)(C) of the Carl D. Perkins Career and Technical Education Act of 2006.

Also note that the 50% limits apply to the school, not to its individual programs. An educational program composed entirely of correspondence courses could still be an eligible program if no more than 50% of the school's courses were offered through correspondence and the program met other eligibility requirements. For more on correspondence study vis-à-vis program eligibility, student eligibility, and cost of attendance, see *Chapter 2*; *Volume 1, Chapter 1*; and *Volume 3, Chapter 2* respectively.

Notifying ED when limit is exceeded
34 CFR 600.7(h)

The school's correspondence course calculation and correspondence student calculation must be attested to by an independent auditor.

A school is the sum only of its eligible programs

Some schools offer programs that are eligible for FSA as well as those that are not. For FSA program purposes, we consider an eligible institution to be the sum of its eligible programs. To minimize the effect on its institutional eligibility of offering programs solely by correspondence that do not lead to a degree, a school might choose to identify those programs as not part of its FSA-eligible programs. A program (and students enrolled therein) that was so identified would not be considered part of the school in these two formulas.

COHORT DEFAULT RATES

Default rates
HEA Sec. 435(m)
20 U.S.C. 1082, 1085, 1094, 1099c
34 CFR Part 668 Subpart N
DCL GEN-14-03

A school's eligibility for the FSA programs can be affected by a high cohort default rate (CDR). The Department calculates a school's CDR based on information from guaranty agencies and federal loan servicers.

The Department sends draft default rates to participating schools in February to allow each school an opportunity to review and correct the data that will be used to calculate its official cohort default rates. In September of each year, the Department issues the official cohort default rates. These rates are electronically delivered to schools and posted on the NSLDS Professional Access website. Schools must be enrolled in the eCDR process for electronic delivery of the rates. They can sign up for that process by completing the enrollment form on the SAIG Enrollment website.

Time frames for cohort default rates

A school's annual CDR is based on a "cohort" of students who received FFEL or Direct Loans at the school and entered repayment in a single fiscal year—the federal fiscal year, October 1–September 30.

For instance, a school's FY2017 CDR is based on the cohort of students who received FFEL or Direct Loans at the school and entered repayment on those loans between October 1, 2016, and September 30, 2017. This number becomes the denominator (the lower part of the fraction) in the CDR calculation.

$$\frac{\text{X}}{\text{Total borrowers who entered repayment during FY2017}}$$

The Department tracks this group of students during the fiscal year in which they enter repayment and through the end of the second following fiscal year. The number of students who default on their loans (or meet other related conditions) during those three fiscal years becomes the numerator (top part of the fraction) in the CDR calculation.

$$\frac{\text{Total borrowers who entered repayment in FY2017 and defaulted in FY2017, 2018, and 2019}}{\text{Total borrowers who entered repayment during FY2017}}$$

Because it takes three years to track the outcomes, the initial FY2017 CDR for a school is not released until three years later, at the beginning of 2020. This is one of the reasons that schools should closely monitor student borrowing and implement effective default prevention procedures as soon as possible. The steps taken to help students this year may reduce the number of defaults in the CDR three years from now.

The terminology, criteria, calculations, and exceptions for the rates are described in more detail in the *Cohort Default Rate Guide*.

Calculating the Percentages

Calculating the Percentage of Correspondence Courses

- If a school offers a course both by correspondence and residential training, the course counts twice, as a correspondence course and as a residential course. Thus, it would count as one in the numerator and as two in the denominator.
- Regardless of how many sections of a course or program are offered during the award year (as a residential or as a correspondence course), the course is counted only once under each type.
- A program not offered in courses or modules counts as one correspondence course.

Using the latest complete award year, the formula for determining the percentage of correspondence courses is as follows:

$$\frac{\text{number of school's correspondence courses}}{\text{total number of school's courses}} = \text{\% of correspondence courses}$$

Calculating the Percentage of Correspondence Students

- All regular students enrolled in an institution's Title IV-eligible programs must be counted. (A regular student is "a person enrolled for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by the school.")
- A school must use a straight head count of enrolled students, including full-time and part-time students and students who don't receive aid as well as FSA recipients.
- If a student withdrew from the school and received a full refund, the student is not counted.

Using the latest complete award year, the formula for determining the percentage of enrolled students is as follows:

$$\frac{\text{number of regular students enrolled in the school's correspondence courses}}{\text{number of regular students enrolled in all of the school's courses}} = \text{\% of correspondence students}$$

Consequences of high cohort default rates

High default rates
34 CFR 668.206

Schools face sanctions under the following conditions:

- For a cohort default rate of greater than 40 percent for any year, schools lose eligibility to participate in the Direct Loan Program.
- For a default rate of 30 percent or more for any year, schools must create a default prevention taskforce that will develop and implement a plan to address the high default rate. That plan must be submitted to the Department for review.
- For a default rate of 30 percent or more for a second consecutive year, schools must submit to the Department a revised default prevention plan and may be placed on provisional certification.
- For a cohort default rate of 30 percent or more for three consecutive years, schools lose eligibility to participate in both the Direct Loan Program and the Federal Pell Grant Program.

Moreover, a school is not considered to be administratively capable when

- the CDR for Federal Stafford/SLS loans or Direct Subsidized/Unsubsidized Loans made to students for attendance at the school equals or exceeds 30% for two of the three most recent fiscal years or
- the CDR for Perkins loans made to students for attendance at the school exceeds 15%. See *Volume 6* for other rules and associated penalties related specifically to high Perkins default rates.

Default rates and administrative capability
34 CFR 668.16(m)

When a high default rate demonstrates a lack of administrative capability, a school may become ineligible to participate in the Direct Loan, Pell Grant, or Perkins programs, or the Department may choose to provisionally certify such a school. For detailed information on default rates, including challenges and appeals, refer to the *Cohort Default Rate Guide* on the IFAP website.

Default prevention and management plan

As mentioned, if a school's cohort default rate is equal to or greater than 30%, it must establish a default prevention task force that prepares a plan that

- identifies the factors causing the default rate to exceed the threshold,
- establishes measurable objectives and the steps the school will take to improve the default rate, and
- specifies the actions the school will take to improve student loan repayment, including counseling students on repayment options.

A school must submit its default prevention plan to its school participation division for review. If the cohort default rate is equal to or greater than 30% for two consecutive fiscal years, the default prevention plan must be revised and submitted again for review.

Default prevention and management plan for new schools

New schools are required to implement a default prevention and management plan prior to certification. In addition, a school that undergoes a change in ownership that results in a change in control or a school that changes its status as a main campus, branch campus, or additional location must implement a default management plan.

A school applying to participate is exempt from submitting a default plan if the school, including its main campus and any branch campus, does not have a cohort default rate greater than 10% and the new owner of the school does not own and has not owned any other school that had a cohort default rate greater than 10% during the owner's tenure.

Default rate and contact information on the Web

The Operations Performance Division in Federal Student Aid responds to questions about cohort default rates and reviews cohort default rate challenges, adjustments, and appeals. It also provides technical assistance and outreach to schools to assist them in lowering their default rates. More information, including searchable default rates for all schools participating in the FSA programs, is available on the default management website. Schools can also call the hotline at (202) 377-4259 or email fsa.schools.default.management@ed.gov.

Updating Application Information

This chapter describes the regular recertification of schools, as well as changes that can affect a school's participation and how and when to report these changes to the Department on the E-App.

RECERTIFICATION

Recertification
Sec 498(g) and (h) of the HEA
34 CFR 600.20(b) and (f)

A school may be certified to participate for up to six years. Recertification is the process through which a school that is presently certified to participate in the FSA programs applies to have its participation extended beyond the expiration date of its current **Program Participation Agreement (PPA)**. The Department will notify a school six months prior to the expiration of its PPA. The school must submit a materially complete application before the expiration date in its PPA.

If a school that is currently certified submits its materially complete application to the Department no later than 90 calendar days before its PPA expires, its PPA remains valid, and its eligibility to participate in the FSA programs continues until its application is either approved or not approved. This is true even if the Department does not complete its evaluation of the application before the PPA's expiration date. (For example, if a school's PPA expires on June 30 and it submits its application by March 31, the school remains certified during the Department's review period—even if the review period extends beyond June 30.) If the 90th day before the PPA's expiration falls on a weekend or a federal holiday and the school submits its application (E-App) no later than the next business day, the Department considers the application to be submitted 90 days before the PPA expires.

If the school's application is not received at least 90 days before the PPA expires or is not materially complete by that date, the school's PPA will expire on the scheduled expiration date and the FSA program funding will cease. If a school's eligibility lapses, the school may not continue to disburse FSA funds until it receives the Department's notification that the school is again eligible to participate in the programs.

The school participation division (SPD) will contact the school if it has questions about the application, generally within 90 days of the Department receiving it. If a school's application is approved, the Department will send an electronic notice to the president and financial aid officer notifying them that the PPA is available to print, review, sign, and return. If the application is not approved, ED will notify the school and explain why.

Eligible nonparticipating school
34 CFR 600.20(b)(1)

Nonparticipating eligible schools are only required to renew their eligibility when the Department requests it. Their eligibility status continues indefinitely as long as they continue to meet the institutional eligibility requirements. If a school wants to be certified to participate in the FSA programs, it must submit an application and supporting documentation (see *Chapter 1*).

Changes in ownership
HEA Sec. 498(i)
34 CFR 600.31
Family defined
34 CFR 600.21(f)
Excluded Transactions
34 CFR 600.31(e)(1) and (2)
Change in ownership–publicly traded corporation
34 CFR 600.31(c)(2)

CHANGE IN OWNERSHIP

Changes to previous applications, including changes in ownership, reporting, expanding eligibility, and certification, must be submitted to the Department through the E-App.

Supporting documents can be mailed to the following address:

U.S. Department of Education
Federal Student Aid
School Eligibility Service Group
830 First Street, NE
Washington, DC 20002-5403

To verify receipt of the documents, one can call 202-377-3161. Questions can be sent via email to caseteams@ed.gov.

Control and ownership interest
Definition of control
34 CFR 600.31(b)
Ownership interest
34 CFR 668.15(f)

Change in ownership that results in a change of control, structure, or governance

A change of ownership that results in a change in control occurs when a person who has or gets an ownership interest in the entity (or the parent of that entity) that owns the school gets or loses the ability to control the school. A person can be a legal entity or a natural person. The parent or parent entity is one that controls the specified entity directly or indirectly through one or more intermediaries.

Covered transactions

The most common example of this change in controlling interest is when the school is sold to a new owner. Other kinds of "covered transactions" include

- the transfer of the controlling interest of stock of the school or its parent corporation;
- the merger of two or more eligible schools;
- the division of one school into two or more schools;
- the transfer of the liabilities of a school to its parent corporation;
- a transfer of assets that comprise a substantial portion of the educational business of the school, except if it is exclusively in the granting of a security interest in those assets; or

- a change in status as a for-profit, nonprofit, or public institution.

Excluded transactions

Excluded transactions
34 CFR 600.31(e)

A transfer of ownership and control of all or part of an owner's equity or partnership interest in a school, its parent corporation, or another legal entity that has signed the school's PPA is **not** considered a change in ownership and control if the transfer is from an owner to a family member or—upon the retirement or death of the owner—to a person not a family member who for at least two years preceding the transfer has established and retained an ownership interest in the school and has been involved in its management. A family member of an owner includes: his spouse; his or his spouse's parent, stepparent, sibling, step-sibling, child, stepchild, grandchild, or step-grandchild; his child's spouse; and his sibling's spouse.

Changes at public institutions

The Department does not consider that a public institution has undergone a change in ownership that results in a change of control if there is a change in governance, and the school after the change remains a public institution, provided

- the new governing authority is in the same state as included in the institution's program participation agreement; and
- the new governing authority has acknowledged the public institution's continued responsibilities under its PPA.

Within 10 days of undergoing a change in governance, however, a public institution must report that change to the Department. The school must also explicitly acknowledge its continued responsibilities under its PPA. If the documentation transferring control of a public institution to another in-state entity does not specifically acknowledge those responsibilities, the school must acknowledge them in a separate letter.

Change in ownership for closely held corporations

A *closely held corporation* (including the term *close corporation*) is

- a corporation that qualifies under the law of the state of its incorporation or organization as a closely held corporation; or
- if the state of incorporation or organization has no definition of closely held corporation, a corporation whose stock is held by no more than 30 persons and has not been and is not planned to be publicly offered.

For a closely held corporation, a change in ownership and control occurs when

- a person acquires more than 50% of the total outstanding voting stock of the corporation;

- a person who holds an ownership interest in the corporation acquires control of more than 50% of the outstanding voting stock of the corporation; or
- a person who holds or controls 50% or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

Change in ownership for publicly traded corporations

For *publicly traded corporations*, a change in ownership and control occurs when

- a person acquires ownership and control of the corporation such that the corporation is required to file a Form 8K with the Securities and Exchange Commission (SEC) notifying that agency of the change in control, or
- a person who is a controlling shareholder of the corporation ceases to be a controlling shareholder.

A controlling shareholder is a shareholder who holds or controls through agreement *both* 25% or more of the total outstanding voting stock of the corporation *and* more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, held in mutual funds, held through a profit-sharing plan, or held in an employee stock ownership plan (ESOP).

For a publicly traded corporation, when a change of ownership occurs, instead of a same-day balance sheet, the school may submit its most recent quarterly financial statement as filed with the SEC. Together with its quarterly financial statement, the school must submit copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to ED.

Consider a publicly traded school that is provisionally certified because of one change in ownership and experiences another. If any controlling shareholder on the newer change of ownership application was listed on the ownership application for which the provisional approval was granted, the expiration date for the original provisional certification remains unchanged if the newer application is approved.

Change in ownership in other instances

"Other entities" include limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities. A change in ownership and control of an entity that is neither closely held nor required to be registered with the SEC occurs when

- a person who has or acquires an ownership interest gets control of both the corporation and at least 25 percent of the total of outstanding voting stock of the corporation; or

- a person who holds control of the corporation and ownership or control of at least 25 percent of the total outstanding voting stock of the corporation ceases to control the corporation or to own or control that percentage of its stock.

For a **general partnership or sole proprietorship**, a change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described earlier.

In a **wholly owned subsidiary**, substantially all of the outstanding voting securities are owned by its parent together with the parent's other wholly owned subsidiaries. It changes ownership and control when its parent entity changes ownership and control as described earlier.

A **nonprofit institution** changes ownership and control when a change takes place that is described under "Covered transactions."

Training and default management plan

If a school undergoes a change in ownership or control, the school's owner/CEO (or a high-level school official designated by that person) and its chief financial aid administrator must attend the Fundamentals of Federal Student Aid Administration training. If the owner/CEO and/or the financial aid administrator have not changed, the school may request a waiver of the training requirement from its school participation division. ED may grant or deny the waiver for the required individual, require another official to take the training, or require alternative training.

A school that changes ownership or changes its status as a parent or subordinate institution must adopt the Sample Default Prevention Plan or develop its own default management plan that is approved by the Department. The school must implement the plan for at least two years.

A school is exempt from submitting a default management plan if

- the parent school and the subordinate school both have a cohort default rate of 10% or less, and
- the new owner of the parent or subordinate school does not own, and has not owned, any other school with a cohort default rate over 10%.

CHANGES IN OWNERSHIP INTEREST AND 25% THRESHOLD

25% Threshold
34 CFR 600.31(c)(2)(ii)(A)

Ownership or ownership interest means a legal or beneficial interest in a school or its corporate parent or a right to share in the profits derived from the operation of a school or its corporate parent. The school must report any change in ownership interests whenever

- an owner acquires a total interest of 25% or greater,

- an owner who held a 25% or greater interest reduces his or her interest to less than 25%, or
- an owner of a 25% or greater interest increases or reduces her interest but remains the holder of at least a 25% ownership interest.

Ownership or ownership interest does not include an ownership interest held by an ESOP, a mutual fund that is regularly and publicly traded, a U.S. institutional investor as defined by the SEC, or a profit-sharing plan of the school or its corporate parent (provided that all full-time permanent employees of the school or corporate parent are included in the plan).

Because of these reporting requirements, even though transferring ownership interest through death or retirement may be excluded from being considered a change in ownership resulting in a change of control, the resulting change in percentages of ownership interests must be reported to the Department.

A school must report any changes that result in an individual or owner (including a corporation or unincorporated business entity) acquiring the ability to substantially affect the actions of the school. Such a change must be reported within 10 days of the change. A school owned by a publicly traded corporation must report the change within 10 days after the corporation learns of the change. Adherence to these requirements is enforced during the institutional participation approval process, program reviews, and audit process. All schools are bound by these reporting requirements, and substantial penalties may be imposed on schools that fail to comply with them.

An individual or corporation has the ability to substantially affect the school's actions when he or it

- personally holds, or holds in partnership with one or more family members, at least a 25% ownership interest in the school;
- personally represents (with voting trust, power of attorney, or proxy authority), or represents in partnership with one or more family members, any individual or group holding at least a 25% ownership interest in the school;
- is the school's general partner, chief executive officer (or other executive officer), chief financial officer, individual designated as the lead program administrator for the FSA programs at the school, or a member of the school's board of directors; or
- is the chief executive officer (or other officer) for any entity that holds at least a 25% ownership interest in the school or is a member of the board of directors for such an entity.

To ensure that its FSA program participation isn't jeopardized, a school must report to the Department an ownership change (including the names of persons involved). On receiving the notification, the Department will investigate and notify the school whether a change in ownership resulting in a change of control has occurred that will require the school to submit a materially complete application.

STEPS TO BE TAKEN DURING A CHANGE IN OWNERSHIP

Steps to be taken by former owners

If a school is changing control, the former owners must notify the Department about the change and the date it occurs, and provide any supporting information the Department requests. This must be at the same time that the owner notifies the school's accrediting agency but no later than 10 days after the change occurs. (If the former owner fails to notify the Department, the prospective owner is responsible for doing so.) The current owner also must notify the state agency that licenses or approves the school.

Steps to be taken by prospective owners

The prospective owner should ask the former owner for copies of the school's Eligibility and Certification Approval Report (ECAR), refund policy, return of FSA funds policy, any required default management plan, program reviews, audited financial statements (for at least the two most recently completed fiscal years), and compliance audits. The prospective owner will need this information to receive approval to participate.

Accompanying the application must be audited financial statements for the school's two most recently completed fiscal years (if the school has not yet submitted statements for those years), an audited balance sheet showing the financial condition of the school at the time of the change, and a default management plan (if required). Each participating school must demonstrate financial responsibility independently. If the entity that has acquired the school is an ongoing entity (partnership or corporation), the school must also submit completed audited financial statements of the acquiring entity for the last two consecutive fiscal years. For information on financial responsibility and submitting audited financial statements see *Chapter 4*.

The school also must submit proof that its accreditation is continued under the new ownership or control, along with a photocopy of its state legal authorization under the new ownership.

The school may not award FSA program funds until it receives a new PPA signed on behalf of the Secretary.

Although a separate financial aid compliance audit is not required when there is a change in ownership, structure, or governance, the prospective owner may choose to have the accounts audited before they are closed out. Questions about FSA accounts or closeout procedures should be addressed to the appropriate school participation division.

Accepting liabilities and responsibility for return of funds

If new owners acquire a school or if a school is the result of the merger of two or more schools that formerly were operating separately, the new owner is liable for any debts that accrued from the former owner's FSA program administration. A new owner accepts liability for any federal funds that were given to the school but that were improperly spent before the date the change in ownership, structure, or governance became effective. A new owner must also abide by the school's refund and the FSA Return of Funds policy for students enrolled before the date the change became effective, and must honor all student enrollment contracts signed before the date of the change.

Payments to eligible students

Before the change in ownership, structure, or governance takes place, the former owner should make sure that all students receive any FSA payments already due them for the current payment period and that all records are current and comply with federal regulations. If the school needs additional funds for its students for the current payment period, it should request them and disburse them to all eligible students before the change takes place.

The school loses its approval to participate in the FSA programs when the change takes place. Generally, a school may

- use Pell or TEACH Grant or Campus-Based funds that it has received or request additional Pell Grant or Campus-Based funds from the Department to satisfy any unpaid commitment made to students from the date the school's participation ended until the scheduled completion date of the payment period; and
- credit a student's account with the proceeds of a second or subsequent disbursement of a Direct Loan to satisfy any unpaid commitment made to the student under the Direct Loan Program from the date participation ends until the scheduled completion of that period of enrollment. (The proceeds of the first disbursement of the loan must have been delivered to the student or credited to the student's account prior to the end of the participation.)

The school must notify all new students that no federal aid funds can be disbursed until the school's eligibility is established and a new PPA signed by the Department is received.

Beginning on the date that the change becomes effective, the school may no longer award FSA funds. If the school's prospective owners wish

the school to participate in one or more of the FSA programs, the school must submit a materially complete application to the Department.

The school can apply for preacquisition review and temporary provisional approval after the change in ownership (described in the next section).

TEMPORARY APPROVAL FOR CONTINUED PARTICIPATION

Temporary approval
HEA Sec. 498(i)(4)
34 CFR 600.20(g) and (h)
Audits
34 CFR 668.23

The Department, at its discretion, may permit a school undergoing a change in ownership that results in a change in control to continue to participate in the FSA programs on a provisional basis if the school meets the following specific requirement.

The school must submit a materially complete application that must be received by the Department no later than 10 business days after the change becomes effective. A materially complete application for the purpose of applying for a temporary approval must include

- a completed application form;
- a copy of the school's state license or equivalent that was in effect on the day before the change in ownership took place;
- a copy of the accrediting agency's approval (in effect on the day before the change in ownership) that granted the school accreditation status including an approval of the nondegree programs it offers;
- financial statements of the school's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of the generally accepted accounting principles (GAAP), published by the Financial Accounting Standards Board, and the generally accepted governmental auditing standards (GAGAS) published by the U.S. General Accounting Office (submitted via the eZ-Audit website);
- audited financial statements for the school's new owner's two most recently completed fiscal years that are prepared and audited in accordance with GAAP and GAGAS, or acceptable equivalent information for that owner (submitted via the eZ-Audit website); and
- a completed signature page, Section L.

If the application is approved, the school participation division will send the school a Temporary Provisional Program Participation Agreement (Temporary PPA). The Temporary PPA extends the terms and conditions of the PPA that were in effect for the school before its change of ownership.

The Temporary PPA expires on the earliest of the

- date that the Department signs a new program participation agreement;
- date that the Department notifies the school that its application is denied; or
- last day of the month following the month in which the change of ownership occurred unless the school provides the necessary documents described as follows.

The Department can automatically extend the Temporary PPA on a month-to-month extension if, prior to the expiration date, the school submits

- a same day balance sheet showing the school's financial position on the day the ownership changed, prepared in accordance with GAAP and audited in accordance with GAGAS;
- approval of the change of ownership from the school's state agency that legally authorizes postsecondary education in that state (if not already provided);
- approval of the change of ownership from the school's accrediting agency (if not already provided); and
- a default management plan that follows examples provided by the Department or notification that it is using the Department's plan or is exempt from providing a plan.

PRE-ACQUISITION REVIEW

Schools may submit an E-App marked "pre-acquisition review" before a change in ownership (CIO) takes place. Although the Department will issue a response letter following its pre-acquisition review, that letter does not tell the school the Department's decision on whether the CIO application will be approved. Also, any guidance or indications of the Department's position in the response are preliminary and subject to final determination when the Department conducts its review following the closing of the CIO transaction.

The Department has recently begun to provide schools with two options for pre-acquisition review of CIO transactions: an abbreviated pre-acquisition review (APAR) or a comprehensive pre-acquisition review (CPAR).

The APAR option

When a CIO occurs, the Department may continue the school's participation on a provisional basis if the school submits a materially complete application that the Department receives no later than 10 business days after the change occurred. See 34 CFR 600.20(g). The APAR option may be useful to a school that wants the Department's

limited guidance on whether its new owner's financial statements satisfy 34 CFR 600.20(g)(2)(iv), which is one of the requirements for a materially complete application. In addition, the Department will provide guidance to ensure that the financial statements will be submitted by the correct new owner entity.

If the new owner is unable to provide two years of financial statements that are prepared and audited according to 34 CFR 668.23(d) [as required by 34 CFR 600.20(g)(2)(iv)], the new owner must post an irrevocable letter of credit (LOC) to meet the requirements of a materially complete application. If a school already knows that it will have to post an LOC because it does not have two years of financial statements, the APAR may nevertheless be useful if the school wishes to obtain guidance on the amount of the LOC since it must be posted within 10 business days following the closing of the CIO transaction.

The Department's response to an APAR will not include any guidance to the school or the potential new owner about other conditions that may be imposed or whether the Department sees any impediments to approving the CIO. The APAR only focuses on whether the Department will require an LOC to be posted for a materially complete application and the amount of that LOC. Although the timing cannot be guaranteed, the Department's goal is to issue a response letter within 60 days after submission of all documents and information requested by the Department for the APAR.

The CPAR option

The CPAR is a thorough review of the school's application and the proposed transaction. The CPAR not only provides guidance on whether an LOC is required (as described above) but also identifies any impediments to the approval of the CIO and the conditions the Department is likely to impose if it approves the school's eligibility under the new ownership or structure.

The CPAR includes the review and analysis of several categories of documents and information, and that documentation is usually voluminous, so a CPAR takes a considerable amount of time to process. The Department is unable to predict exactly how long a CPAR review will take; it will depend on the size, scope, and complexity of the transaction. A large or complex transaction typically can take months to review. The Department is also unable to prioritize its reviews based on the near-daily requests of schools and their counsel to "expedite because the parties want to close" or the fact that the school's accreditor wants to see the Department's pre-acquisition review response prior to its own review of the CIO. The Department tries to process applications in order of receipt, and the time for processing is further affected by the number of pre-acquisition review applications in the queue of any particular SPD.

Please note: A pre-acquisition review is not required, and a school may close its transaction without requesting such a review. So long as the school complies with its program participation agreement and all regulatory requirements are being met, including compliance with 34 CFR 600.20(g) and (h), the school may continue to participate in the Title IV programs pending the Department's review and final determination on the CIO. However, if the new owner's financial statements do not meet the requirements of 34 CFR 600.20(g)(2)(iv), or if financial statements from the incorrect entity are submitted, the school will have failed to submit a materially complete application.

If an LOC is required for a materially complete application, it must be posted within 10 business days following the closing of the CIO transaction. The form of the LOC will be provided by the SPD as an attachment to the pre-acquisition response.

In addition, following the post-closing review of the same-day balance sheet and other indicators of financial responsibility, the Department may require a separate LOC (or require an existing financial responsibility LOC to be increased) even if an LOC was not required for a materially complete application.

All LOCs submitted to the Department must be issued by a financial institution insured by the Federal Deposit Insurance Corporation.

Reporting changes on the E-App
34 CFR 600.21
Adding a location or program
34 CFR 600.20(c)(1)
No disbursing before approval
34 CFR 600.20(f)(3)
No disbursing before reporting
34 CFR 600.21(d)

REPORTING SUBSTANTIVE CHANGES

A school is required to report changes to certain information on its approved application, as listed in the following sections. A school may also wish to expand its FSA eligibility and certification. Some of these changes require the Department's written approval before the school may disburse the FSA program funds; others do not. **If a school does not obtain ED approval for a new location, branch, program, or increase in program offering, the school is liable for all FSA funds it disburses to students enrolled at that location or branch or in that program.**

If a change occurs in an E-App item not listed in the following sections, the school must update the information when it applies for recertification.

When the Department is notified of a change, if further action is needed, it will tell the school how to proceed, including what materials and what additional completed sections of the E-App need to be submitted. If a school has questions about changes and procedures, it should contact its SPD.

After receiving the required materials (and depending on the circumstances), the Department will evaluate the changes, approve or deny them, and notify the school.

So that we can alert a school of important issues in its administration of the Title IV programs, a school should promptly update its information in IPEDS and on the E-App when there is a change to its chief financial officer, director of financial aid, or their contact information.

Approval required from accreditor and state agency

For a change requiring written approval from the Department (unless otherwise noted) and for some changes that do not require written approval from the Department, a school must obtain approval from the appropriate accrediting agency and state authorizing agency.

Notification of school closure or bankruptcy

If a school closes or files for bankruptcy, the school must notify the Department within 10 calendar days of either event by sending a letter on the school's letterhead that indicates the date the school closed or plans to close, or the date the school filed for bankruptcy, as appropriate.

A school that is considering adding a branch or an additional location should include in its deliberations the effect that a closure of a branch or additional location might have on the school's financial condition.

If a branch or additional location of an institution closes and borrowers who attended the school obtain loan discharges by reason of the closure of the branch or location (or improper loan certifications), the Department will pursue recovery against the larger institution, its affiliates, and its principals. Refer to HEA 437(c)(1).

Notifying ED when certain limitations are exceeded

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted application (limitations on students who are enrolled without a high school diploma or equivalent, incarcerated students, and correspondence study), the school must use the E-App to notify ED, which will advise the school of its options, including whether it might be eligible for a waiver. See *Chapter 4*.

CHANGES TO LOCATION, BRANCH, OR CAMPUS

The ECAR that the Department sends to the school lists the educational programs and locations that are eligible. (The eligibility of a school and its programs does not automatically include separate locations and extensions.) If, after receipt of the ECAR, a school wishes to add a location at which at least 50% of an educational program is offered, it must notify the Department.

Eligibility of additional locations

For purposes of qualifying as an eligible location, an additional location is not required to satisfy the two-year requirement unless

- the location was a facility of another school that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the school or its students;
- the applicant school acquired, either directly from the school that closed or ceased to provide educational programs, or through an intermediary, the assets at the location; and
- the school from which the applicant school acquired the assets of the location is not making payments according to an agreement to repay a liability for an HEA program violation.

Commonality of ownership or management
34 CFR 668.207(b)

Notwithstanding this, an additional location is not required to satisfy the two-year requirement if the applicant school and the original school are not related parties and there is no commonality of ownership, control, or management between the institutions and the applicant school agrees

- to be liable for all improperly expended or unspent FSA program funds received during the current academic year and up to one academic year prior by the school that has closed or ceased to provide educational programs;
- to be liable for all unpaid refunds owed to students who received FSA funds during the current academic year and up to one academic year prior; and
- for the students who were enrolled before the date of the acquisition of the assets of the additional location, to abide by the refund policy on institutional charges of the school that has closed or ceased to provide educational programs.

Each site must be legally authorized. To apply for eligibility for an added location, the school must submit an E-App to the Department with the required application sections completed, a copy of the accrediting agency's notice certifying that the new location is included in the school's accredited status, and a copy of the legal authorization from the state in which the additional site is physically located.

Teach-outs at additional locations
HEA Sec. 498(k)
34 CFR 600.32(d)

Teach-outs at closed or closing school locations

A school that conducts a teach-out at a site of a closed school may apply to have that site approved as an additional location if the closed school ceased operations or if it is closing and is engaged in an orderly teach-out plan that the Secretary has approved. Also, the teach-out must be approved by the closed or closing school's accrediting agency.

The school that conducts the teach-out may establish a permanent additional location at the closed school without having to satisfy the two-year requirement and without assuming the liabilities and cohort default rate of the closed institution, provided the schools are not commonly owned or managed.

Reporting a new location

All schools are required to report (using the E-App) to the Department when adding an additional accredited and licensed location where they will offer 50% or more of an eligible program if the school wants to disburse FSA funds to students enrolled at that location.

Schools must not disburse FSA program funds to students at a new location before the school has reported that location and submitted any required supporting documents to the Department. Once it has reported a new licensed **and** accredited location, unless it is a school that is required to apply for approval for a new location (see below), a school may disburse FSA program funds to students enrolled at that location.

Note that an additional location must be one where students receive instruction, however that occurs. If the site is one from which the training is electronically transmitted and no student can actually attend there, the Department considers this an administrative site and will not approve it as an additional location. Also, an additional location cannot be at the same address as a main location, nor can there be more than one additional location at the same place; the Department will only approve one school, with a single OPEID number, at a given address.

Applying for approval of a new location

If a school meets one or more of the following criteria, it must apply for *and wait for approval* before disbursing FSA funds at an additional location where it will be offering 50% or more of an eligible program:

- The school is provisionally certified.
- The school is on the cash monitoring or reimbursement system of payment.
- The school has acquired the assets of another school that provided educational programs at that location during the preceding year, and the other school participated in the FSA programs during that year.
- The school would be subject to a loss of eligibility under the cohort default rate regulations if it adds that location.
- The school was previously notified by the Department that it must apply for approval of an additional location.

The Department will review the information and will evaluate the school's financial responsibility, administrative capability, and eligibility. Depending upon the circumstances, the Department may conduct an on-site review. If it approves the additional location, a revised ECAR and Approval Letter will be issued. The location is eligible as of the date of the Department's determination.

Changing the status of a campus or branch

If a school wishes to seek approval for a branch campus, the school must submit a completed application with the required supplemental documentation (see the list at the end of the chapter) on (1) the main campus and (2) the proposed branch campus.

A branch campus of an eligible proprietary institution of higher education or postsecondary vocational school must be in existence for at least two years (after it is certified in writing by the Department as a branch campus) before seeking to be designated as a main campus or a freestanding school.

CHANGES TO EDUCATIONAL PROGRAMS

Adding a program and determining eligibility

When a school has received an ECAR and wants to add an educational program, it can often self-certify the eligibility of that program. However, in some cases it cannot: the Department must determine the program's eligibility when

- the school has been provisionally certified,
- the school is receiving funds under heightened cash management,
- progress in the program is measured by direct assessment,
- the school is subject to the two-year rule,
- the program is a comprehensive transition and postsecondary program,
- it is an undergraduate program of 300–599 clock hours and admits as regular students those who have not completed the equivalent of an associate degree (i.e., a short-term program), or
- the Department has informed the school that it must request approval before adding additional programs.

Within 10 days of the school receiving final approval to add the program from its accreditation agency, governing authority, and other oversight bodies, the school must submit an E-App with the appropriate sections completed and copies of the approvals from the accrediting agency and state authorizing agency. The Department will evaluate the submission and if it approves the program will send a revised ECAR and approval letter to the school. For more on program eligibility, see *Chapter 2*.

In all instances other than those just listed, a school may determine programs' eligibility. Before it self-certifies these programs to be eligible and disburses funds to enrolled students, it must have received both the required state and accrediting agency approvals. The school must include

any self-certified programs on its next recertification application and provide copies of the state and accreditor approvals. For new gainful employment programs, the school must update the ECAR within 10 days of receiving final approval from its accreditation agency, governing authority, and other oversight bodies to make the change.

If the school's self-determination of eligibility for an educational program is found to be incorrect, the school is liable for all FSA program funds received for the program and all FSA program funds received by or for students enrolled in that program. See 34 CFR 600.10(c)(3).

Limitations for schools subject to the "2-year rule"

For schools subject to the 2-year rule (see *Chapter 1*), during the school's initial period of participation in the FSA programs, the Department will not approve adding programs that would expand the school's eligibility beyond the current ECAR. An exception may be considered if the school can demonstrate that the program was legally authorized and continuously provided for at least two years prior to the date of the request.

In addition, a school subject to the 2-year rule may not award FSA funds to a student in a program that is not included in the school's approval documents.

Updating a program

The school must update information about its educational programs when completing its recertification application. This includes updating CIP codes, program names, and program lengths. A school must update its E-App with changes to GE programs within 10 days of making the change. Schools should note that making a significant change to a program may result in the creation of a new program. (Classification of Instructional Programs or CIP codes are developed by the U.S. Department of Education's National Center for Education Statistics.)

CHANGES IN ACCREDITATION

Changing accrediting agencies
34 CFR 600.11

A school must notify the Department if it wants to change its institution-wide accreditor (primary accrediting agency) or add another such accreditor. In both cases the school must demonstrate a reasonable cause for the change. The Department will **not** determine the cause to be reasonable if the school

- has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless that action has been rescinded by the same accrediting agency; or
- has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

There are exceptions to these limitations. The Department may find that a school's cause for changing an accrediting agency is reasonable if the agency did not provide the school due process rights (as defined in 34 CFR 602.25); the agency applied its standards and criteria inconsistently; or if the adverse action, show cause, or suspension order was the result of the agency's failure to respect the school's stated (including religious) mission. Also, the Department may determine a school's cause for seeking multiple accreditation is reasonable if it is based primarily on the agency's geographic area, program-area focus, or mission.

Change in institution-wide accreditation

If the school decides to change its institution-wide accreditation (primary accrediting agency), it must notify the Department when it begins the accreditation application process with a different agency. (Note that it must also notify the Department when it completes the process.) As part of the notice, the school must submit materials about its current accreditation and materials demonstrating reasonable cause for changing accreditation. If the school fails to notify the Department of the proposed change to its institution-wide accreditation, or if the school does not provide the materials just described, the Department will not recognize the school's existing accreditation. If this happens, or if the school drops its association with its former accreditor before obtaining Department approval of the change, the school would no longer have accredited status and would no longer be eligible to award FSA funds.

Therefore, when a school secures new institution-wide accreditation, it must notify the Department using the online electronic application (E-App). At that time, it must advise the Department which accrediting agency will be its accreditor for purposes of FSA gatekeeping. Only after the Department provides written notice that it recognizes the new accreditor as the institution's primary accreditor should the school drop its association with its prior accreditor.

Changing to accreditation by more than one institution-wide accrediting agency

If the school decides to become accredited or preaccredited by more than one institution-wide accrediting agency, it must notify the Department when it begins the process of adding that accreditation. It must also provide each accrediting agency as well as the Department the reason(s) for wanting accreditation by more than one agency.

As part of the notice, the school must report (in question 15 of the E-App) its current institution-wide accrediting agency, the prospective institution-wide accrediting agency, and the reason (in question 69 of the E-App) it wishes to be accredited by more than one agency. If the school obtains the additional institution-wide accreditation and fails to notify the Department of the reason for the additional accreditation, the Department will not recognize the school's accredited status with either agency. This means the school would lose its accredited status and its eligibility to award FSA funds.

If a school becomes accredited by more than one agency, it must notify its school participation division of which agency's accreditation or preaccreditation it will use to establish its FSA program eligibility.

Loss of accreditation

Note that for the accreditation or preaccreditation of a school to be recognized, it must agree to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

If a school loses its primary accreditation, it is ineligible to participate in the FSA programs and must notify the Department within 10 days of the loss of accreditation. However, if a school's accrediting agency loses its recognition from the Department, the school has up to 18 months in which to obtain accreditation from another recognized agency. Other changes in accreditation may also jeopardize institutional participation.

CHANGES TO THIRD-PARTY SERVICERS

Schools are required to notify the Department of all 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.

The school must promptly notify the Department of any of the following changes to servicer arrangements

- 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.

A school notifies the Department by updating Section J of the E-App within 10 days of the date of the change or action. This notification must include the name and address of the servicer and the nature of the change or action.

A school is only required to submit a copy of its contract with a third-party servicer if the Department requests it. A school is not required to submit the contract as part of the recertification process. (See *Chapter 3* for more information about contracts with third-party servicers.)

Changes Requiring Written Approval From the Department

All schools must report and wait for written approval from the U.S. Department of Education before disbursing funds when the following occur:

1. a change in accrediting agency (notify the Department when you begin making any change that deals with your school's institution-wide accreditation)
2. a change in state authorizing agency
3. a change in institutional structure
4. an increase in the level of educational programs (e.g. associate degree to baccalaureate degree programs, baccalaureate degree to graduate degree programs, etc.) beyond the scope of current approval
5. the addition of short-term (300–599 clock-hour) programs
6. the addition of direct assessment programs or comprehensive transition and postsecondary programs
7. changes to the FSA programs (Pell Grants, Direct Loans, etc.) for which the school is approved* (approvals from your accrediting agency and state authorizing agency are not required for this change)
8. a change in the type of ownership
9. a change in ownership
10. the addition of an accredited and licensed location if the institution would be subject to a loss of eligibility under the cohort default rate regulations (34 CFR 668.188) if it adds that location
11. the addition of an educational program or a location at which the school offers or will offer 50 percent or more of an educational program if a school
    a) is provisionally certified; or
    b) is on the cash monitoring or reimbursement system of payment; or
    c) has acquired the assets of another school that provided educational programs at that location during the preceding year, and the other school participated in the FSA programs during that year; or
    d) has been advised by the Department that the Department must approve any new location or program before the school may begin disbursing FSA funds.

When one of the changes that requires the Department's written approval occurs, a school must notify the Department. The school must apply to the Department for approval of the change via the E-App within 10 calendar days of the change (in the case of a change in ownership, 10 *business* days). As soon as the school has received approvals for the change from its accrediting agency and state authorizing agency, it must send to the Department

- copies of the approval for the change,
- any required documentation, and
- Section L of the E-App containing the original signature of the appropriate person.

* For TEACH Grants, select "Add TEACH Grants" and then use question 69 to explain the eligibility criteria that your school meets for TEACH participation. See DCL GEN 08-07.

Changes That Do Not Require the Department's Written Approval

Though they need not wait for the Department's approval before disbursing funds, all schools must **report** the following information to the Department:

1. change to name of the school*
2. change to the name of a CEO, president, or chancellor
3. change to the name of the chief fiscal officer or chief financial officer
4. change in the individual designated as the lead program administrator (financial aid administrator) for the FSA programs
5. change in governance of a public institution
6. a decrease in the level of program offering (e.g., the school drops all its graduate programs)
7. change from or to clock hours or credit hours
8. change in the length of a program in credit/clock hours or weeks of instruction
9. address change for a principal location*
10. name or address change for other locations*
11. the closure of a branch campus or additional location that the school was required to report
12. the addition of an accredited and licensed location under certain conditions (34 CFR 600.20(c)(1))
13. change to the school's third-party servicers that deal with the FSA program funds
14. changes related to GE programs, including
    a) establishing the eligibility or reestablishing the eligibility of the program,
    b) discontinuing the program's eligibility as a result of debt-to-earnings rates,
    c) ceasing to provide the program for at least 12 consecutive months,
    d) losing program eligibility,
    e) changing the program's name, CIP code, or credential level,
    f) updating the certification pursuant to 668.414(b).

When one of these changes occurs, a school must notify the Department by reporting the change and the date of the change to the Department via the E-App within 10 calendar days of the change. In addition, a school must mail to the School Eligibility Service Group (See the address under Change in Ownership at the beginning of this chapter.)

- any required supporting documentation, and
- Section L of the E-App containing the original signature of the appropriate person.

* For programmatic changes that only require the school to notify the Department, that notification must be provided at least 10 days before the first day the school intends to offer classes in the program.

Foreign School Reporting on the E-App

In addition to—or, where appropriate, instead of—the information listed above, a foreign school must report changes to its postsecondary authorization, degree authorization, program equivalence, or program criteria to its U.S. administrative or recruiting office.

A foreign medical school must report changes to the facility at which it provides instruction, its authorizing entity, the approval of its authorizing entity, the length of its program, or the clinical or medical instruction that it provides in the U.S. It must report and wait for approval of an added location that offers all or a portion of the core clinical training or required clinical rotations unless the location is accredited by the Liaison Committee on Medical Education (LCME) or American Osteopathic Association (AOA). A foreign medical school must report, but is not required to wait for approval of, an added location that offers all or a portion of the clinical rotations that are not required; reporting of such a location is not required if the location is accredited by the LCME or AOA or if it is not used regularly but is chosen by students who take no more than two electives at the location for no more than a total of eight weeks.

A foreign veterinary school must report changes to the clinical instruction that it provides in the United States.

Other Changes Reported on the E-App

- Change of address for FSA mailings to an address different than the legal street address
- Change of address for FSA mailings to an additional location that is different than the legal street address
- Change of taxpayer identification number (TIN)
- Change of DUNS number
- Change in board members
- Reporting foreign gifts (see *Chapter 12*)
- Changes to an institution's website address
- Change of phone/fax/email of CEO, president, or chancellor
- Change of phone/fax/email of CFO
- Change of phone/fax/email of financial aid administrator

Documentation Required for Approval of a Branch Campus

The following required supplemental documentation must be submitted for the school participation division to make a determination as to whether a non-main campus educational site is an eligible branch campus:

- A statement listing the distance between the main institution and the applicant non-main campus educational site
- State authorization of the quasi-independent status of the non-main campus educational site from the main institution in any of the following forms: applicable state law, state charter, university system organization document, or state department of education or state board or regents' regulations or documentation
- State authorization (in any of the four forms above) for the non-main educational site to have its own faculty and administrative staff, its own operating budget, and its own authority to hire and fire faculty and staff
- An official statement from the school describing the hiring authority of the non-main educational site
- A statement from the main institution's primary accrediting agency indicating that it has accredited both the main institution and the non-main educational site through separate on-site visitations and that the non-main educational site's accreditation is distinct yet dependent upon the main institution
- A specific description of the relationship between the main campus of an institution of higher education and all of its branches, including a description of the student aid processing that is performed by the main campus and that is performed at its branches
- The operating budget of the non-main campus educational site for the current year and the two prior fiscal years
- Consolidated financial statements for the prior two years showing a breakdown of the applicant's financial circumstances
- Other documents requested by the school participation division

Consumer Information and School Reporting

CHAPTER 6

This chapter describes information that a school must disclose to the public and report to the Department. This is information about: financial aid; the school's campus, facilities, and student athletes; campus security and fire safety; drug and alcohol abuse prevention and programs about them. The chapter also discusses counseling for students receiving FSA loans and disclosures that must be made for private education loans. Additional disclosure requirements that are specific to disbursements of FSA loans are described in Volume 4.

The obligation of schools to disclose information to the public and report it to the Department is consequential. In addition to limiting, suspending, or terminating the participation of any school that fails to comply with the consumer information requirements, the Department may impose civil fines of up to $59,017 for each violation. See the February 3, 2021, *Federal Register* for information about the adjustment of civil monetary penalties for inflation. To assess your school's compliance with the provisions of this chapter, see the FSA Assessment module "Consumer Information."

Civil penalty
HEA Sec. 487(c)(3)(B)
34 CFR 668.84

AVAILABILITY OF INFORMATION

Consumer information
HEA Sec. 485(f), 20 USC 1092
34 CFR 668.41–49
Notice to enrolled students
34 CFR 668.41(c)

Notice to enrolled students

Each year a school must distribute to all enrolled students a notice of the availability of the information it must provide in the following general categories:

- general disclosures for enrolled or prospective students,
- annual security report and annual fire safety report,
- report on athletic program participation rates and financial support data (Equity in Athletics Data or EADA), and
- FERPA information (Family Educational Rights and Privacy Act of 1974, discussed in Chapter 7). The Department's FERPA website has a model notification.

The notice must list and briefly describe the information and tell students how to obtain it. It must be provided on an individual basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet or intranet website does not constitute a notice.

Web dissemination
34 CFR 668.41(b), (c)(2), (e)(2) through (4), and (g)(1)(ii)

Web dissemination

A school may meet the requirements for the general disclosures and the EADA, security, and fire safety reports by posting the information online.

- *Enrolled students or current employees*—the school may post the information on an Internet website or an intranet website that is reasonably accessible to its students and employees.
- *Prospective students or prospective employees*—the school may post the information on an Internet website.

A school that uses Internet or intranet disclosure for this purpose must include in its annual notice to enrolled students the exact electronic address of the information and a statement that the school will provide a paper copy of the information on request.

With Internet or intranet distribution of the security and fire safety reports to current employees, a school must distribute to them by October 1 of each year a notice that includes a statement of the reports' availability, the exact electronic address at which they are posted, a brief description of their contents, and a statement that the school will provide a paper copy of the reports upon request.

The same information must be included in a notice to prospective students and employees if a school decides to use the Web to provide annual security or fire safety reports to them. The difference is that there is no annual date for distribution of this notice; also note that the school must use an Internet, rather than an intranet, site.

The National Postsecondary Education Cooperative (NPEC) issued *Information Required to Be Disclosed Under the Higher Education Act of 1965: Suggestions for Dissemination* (NPEC 2010-831), which is available on the website for the National Center for Education Statistics (NCES). Note: NPEC was established by the NCES in 1995 as a voluntary organization comprising federal agencies, postsecondary schools, associations, and others with an interest in postsecondary education data collection. The information and opinions in NPEC publications do not necessarily represent the policy or views of the U.S. Department of Education.

Availability of employees for information dissemination purposes

Availability of Employees
34 CFR 668.44

A school must designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining information on the school, financial assistance, graduation and completion rates, security policies, and crime statistics, as described in the following sections. If the school designates one person, he shall be available upon reasonable notice to any enrolled or prospective student throughout the normal administrative working hours of the school. If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available upon reasonable notice throughout the normal administrative working hours of the school.

The Department may waive this requirement if the school's total enrollment or the portion participating in the FSA programs is too small to necessitate an employee or group of employees being available on a full-time basis. The granting of a waiver does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements. The school must request this waiver from the Department.

GENERAL STUDENT DISCLOSURES

General disclosures
HEA Sec. 485
34 CFR 668.41(d)
Financial assistance
34 CFR 668.42
Definitions
34 CFR 668.41(a) and 668.47(b)

A school must make the following information available to any enrolled or prospective student through appropriate publications, mailings, or electronic media.

Financial assistance available to students

At a minimum, the school must publish and make readily available to current and prospective students a description of all the federal, state, local, private, and institutional need-based and non-need-based student financial assistance programs available to them.

For each of these financial aid programs, the information provided by the school must describe

- the procedures and forms by which students apply for assistance,
- the student eligibility requirements,
- the criteria for selecting recipients from the group of eligible applicants, and
- the criteria for determining the amount of a student's award.

The school may describe its own financial assistance programs by listing them in general categories.

The school must also describe the rights and responsibilities of students receiving financial aid (and specifically federal aid). This description must include

- criteria for continued student eligibility under each program;
- satisfactory academic progress (SAP) standards that students must meet to receive financial aid and criteria by which those who have failed to maintain SAP may re-establish aid eligibility (see *Volume 1*);
- the method by which financial assistance disbursements will be made to students and the frequency of those disbursements;
- the way the school provides for Pell-eligible students to obtain or purchase required books and supplies by the seventh day of a payment period (see *Volume 4* for conditions) and how the students may opt out;
- the terms of any loan received by students as part of their financial assistance package, a sample loan repayment schedule, and the necessity for repaying loans;
- the general conditions and terms applicable to any employment provided to students as part of their financial assistance package;
- the terms and conditions of the loans students receive under the Direct Loan Program; and
- the exit counseling information the school provides and collects as described later in this chapter. (Also see *Volume 6* for Perkins Loan exit counseling.)

Verification policies and procedures
34 CFR 668.53

Explaining verification requirements

Although it is not among the financial aid disclosures given to all students, you should be aware of the following information that must be provided in writing to students who are selected for verification:

1. Documents required for verification.
2. Student responsibilities—including correction procedures, deadlines for completing any actions required, and the consequences of missing the deadlines.
3. Notification methods—how your school will notify students if their awards change as a result of verification and the time frame for such notification.
   34 CFR 668.53

See the *Application and Verification Guide*, *Chapter 4*, for complete information about verification.

Prospective student definition—One who has requested from an eligible school information about enrolling there or who has been contacted by the school directly, or indirectly through advertising, about enrolling.

Consumer information from the Department

The Department is required to make available to schools, lenders, and secondary schools descriptions of the FSA programs to assist students in gaining information through school sources and to assist schools in carrying out the FSA program requirements. We provide comprehensive student aid information to students and their families through the Student Aid website. Colleges and high schools may find student/borrower publications such as the College Preparation Checklist under resources in the Financial Aid Toolkit.

Information about the school's academic programs, costs, facilities, and policies

Institutional information
34 CFR 668.43

At a minimum, the school must provide to enrolled and prospective students the following information about itself.

Academic programs

- the current degree programs and other educational and training programs
- the instructional, laboratory, and other physical facilities that relate to the academic programs
- the school's faculty and other instructional personnel
- any plans by the school to improve academic programs, upon a determination by the school that such a plan exists
- a description of the written arrangements it has entered into (See Written Arrangements in *Chapter 2.*)
- information about whether completion of a program meets educational requirements for a specific professional license or certification needed for employment in an occupation in a state if the program is designed to do so or is advertised as doing so; this includes lists of the states where the requirements are met, where they are not met, and where the school has not made a determination.

  If the school determines (or has not made a determination) that a program's curriculum does not meet the educational requirements for licensure or certification for a state where a prospective student is located, the school must disclose that to the student prior to her enrollment in the program. If the school determines that a program's curriculum does not meet the licensure or certification requirements for a state in which a student who is currently enrolled in the program is located, the school must disclose that to the student within 14 calendar days of making the determination. These disclosures must be made directly to the student in writing, which may include email or other electronic communication. Also, the rules under "Determining student location" in Chapter 1 apply here as well.

School costs

- tuition and fees charged to full-time and part-time students
- estimates of costs for necessary books and supplies
- estimates of typical charges for room and board
- estimates of transportation costs for students
- any added cost of a program a student is enrolled in or inquires about

The Department's College Affordability and Transparency Center contains information for students, parents, and policymakers about costs at America's colleges. The website allows users to view schools by sector with the highest and lowest tuition and net prices (the price of attendance after considering all grant and scholarship aid). The site also includes the College Scorecard, which displays the typical student cost, graduation rate, loan default rate, and median borrowing amount for the school one types in. The site also links to the net price calculators for many schools and to the College Navigator website, which allows students to search for schools they might want to attend according to various criteria.

Withdrawal procedures, refunds, and return of aid

- the requirements and procedures for officially withdrawing from the school
- the school's refund policy for the return of unearned tuition and fees or other refundable portions of costs paid to the school
- a summary of the requirements for the return of FSA grant or loan funds (R2T4) under §668.22 "Treatment of title IV funds when a student withdraws" (see *Volume 5*)

Accreditation and licensure

- the names of associations, agencies, or governmental bodies that accredit, approve, or license the school and its programs
- the procedures by which documents describing that activity may be reviewed—the school must make available for review, upon request of any enrolled or prospective student, a copy of the documents describing the school's accreditation and its state, federal, or tribal approval or licensing
- contact information for filing complaints with its accreditor, its state approval or licensing entity, and any other state official or agency that would appropriately handle student complaints

Arbitration agreements, class action waivers, and enrollment
34 CFR 668.41(h)
685.304(a)(6)(xiii–xv)

Arbitration agreements and class action waivers as a condition of enrollment

A school that requires students receiving Title IV aid to agree to a pre-dispute arbitration agreement or a class action waiver as a condition of enrollment must make available to enrolled and prospective students

and the public a plain language disclosure of those conditions of enrollment. This disclosure also must state that

- the school cannot require a borrower to participate in arbitration or any internal dispute resolution prior to filing a borrower defense to repayment application with the Department;
- the school cannot in any way require students to limit or waive their ability to file a borrower defense claim;
- and any arbitration required by a pre-dispute arbitration agreement starts the clock of the limitations period for filing a borrower defense to repayment application.

Borrower defense to repayment
34 CFR 685.206(e)

The plain language disclosure must be in 12-point font on the school's admissions information webpage and in the admissions section of its catalogue. The school may not rely solely on an intranet website to provide this notice to prospective students or the public.

Note that paragraphs xiii, xiv, and xv in the highlighted section citing regulations later in the chapter also pertain to these agreements and waivers and how schools must inform Title IV loan borrowers about them as part of entrance counseling.

Disability

- the services and facilities available to students with disabilities, including intellectual disabilities (see *Volume 1* for a definition)

FSA eligibility for study abroad

- a statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the FSA programs

Definitions

Class action—a lawsuit or an arbitration proceeding in which one or more parties seeks class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23.

Class action waiver—any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student that relates to the making of a Direct Loan or the provision of educational services for which the student received title IV funding and prevents an individual from filing or participating in a class action that pertains to those services.

Pre-dispute arbitration agreement—any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student requiring arbitration of any future dispute between the parties relating to the making of a Direct Loan or provision of educational services for which the student received title IV funding.

Transfer of credit policies

- any established criteria the school uses regarding the transfer of credit earned at another institution
- a list of postsecondary schools with which the school has established an articulation agreement
- written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other demonstrated competency or learning

Contact information

- the titles of persons designated by the school to provide information to enrolled and prospective students and information regarding how and where those persons may be contacted

Vaccination policies

- the policies of the school regarding vaccinations

Teach-out plan

- if applicable, a notice that the school is required by its accrediting agency to maintain a teach-out plan and the reason for that requirement under §602.24(c)(1)

Final judgment against a school

- a notice when an enforcement action or prosecution is brought against the school by a state or federal law enforcement agency and a final judgment, if rendered, would cause an adverse action by an accrediting agency against the school; revocation of state authorization; or limitation, suspension, or termination of title IV eligibility

Penalties and institutional policies on copyright infringement

- a statement that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities
- a summary of the penalties for violation of federal copyright laws (see the sample statement)
- a description of the school's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the school's information technology system

- the legal alternatives for downloading or otherwise acquiring copyrighted material, based on the school's periodic review described in *Chapter 7* (This information is to be provided through a website or other means.)

Student activities

- information, which must be easily accessible on the school's website, about the student activities the school offers

Student body diversity

- information about student body diversity, including the percentage of enrolled, full-time students who are (1) male, (2) female, (3) federal Pell grant recipients, and (4) self-identified members of a major racial or ethnic group

Net price calculator

All Title IV schools that enroll full-time, first-time degree- or certificate-seeking undergraduate students must have on their website a net price calculator. The net price is the cost of attendance minus the average yearly grant and scholarship aid. The calculator provides estimated net price information to current and prospective students and should be based, as much as possible, on their individual circumstances.

ED's National Center for Education Statistics has developed a template that schools can use to create their own customized net price calculator, or they can develop their own calculator. If they develop their own, it must include at a minimum the same data elements found in the Department's calculator template. The Net Price Calculator Information Center provides the template, FAQs, and other resources for schools to develop their own calculators. See also GEN-13-07.

Sample Statement of Penalties for Copyright Infringement

A school has the option to use this sample statement to meet the requirement that it disseminate a summary of the penalties for violating federal copyright law. The sample statement and other copyright requirements are included in DCL GEN 10–08. See *Chapter 7* for the requirement to develop copyright policies. 34 CFR 668.43(a)(10)

Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than $750 and not more than $30,000 per work infringed. For "willful" infringement, a court may award up to $150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees.
For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to $250,000 per offense. For more information, please see the website of the U.S. Copyright Office at **https://copyright.gov**.

Estimates produced by the net price calculator must be accompanied by a clear and conspicuous disclaimer stating that they may change; that it does not represent a final determination or actual award; and that it is not binding on the Department, the school, or the state. The disclaimer must include a link to the FAFSA website and state that students must complete the FAFSA to receive an actual Title IV financial aid award.

The College Financing Plan (formerly the Financial Aid Shopping Sheet)

The Financing Plan is a resource to help consumers understand educational costs and the aid available to meet those costs. It is a single page the Department developed that may be used as a stand-alone financial aid offer or as a cover sheet with a school's existing aid offer. The standard format helps consumers easily compare the cost of attendance and aid offers across schools. Use of the plan is voluntary, though we encourage schools to adopt it for their students. Also, for schools that receive federal funds under the military and veterans educational benefits programs, using the plan helps meet a disclosure requirement of Executive Order 13607 (see the end of *Chapter 3*). For more information, including templates, technical specifications, and FAQs, go to the College Financing Plan webpage. New for 2021–2022, there are separate forms for undergraduate and graduate/professional students.

The Department has also issued some recommendations for schools about their aid offers. See the April 15, 2019, announcement for an explanation of the following main points:

1. Avoid calling your financial aid offer an "award," and avoid calling it a "letter."
2. Avoid issuing a financial aid offer that does not include cost of attendance.
3. Avoid listing the cost of attendance without breaking it down into clear components.
4. Avoid listing grant and/or scholarship aid, loans, and work-study together.
5. Avoid listing student loans without clarifying the source (federal, state, institutional, or private).
6. Avoid listing parent PLUS loans with student loans.
7. Avoid issuing a financial aid offer without critical next steps.
8. Avoid issuing a financial aid offer without net cost calculated.

Rates
Completion/graduation rates
34 CFR 668.45
Retention rates
34 CFR 668.41c and 45

COMPLETION, GRADUATION, TRANSFER, RETENTION, AND PLACEMENT RATES

Each year a school must determine the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students and report it to the Department via the IPEDS website. If

the school's mission includes providing substantial preparation for students to enroll in another eligible school, it must also determine the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students.

The annual rates are based on the 12-month period that ended August 31 of the prior year. The rates will track the outcomes for students for whom 150% of the normal time for completion or graduation has elapsed. Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs. (See the IPEDS instructions for further details on calculating the rate.)

A school must make these annual rates available to the public no later than July 1. With requests from prospective students, the information must be made available prior to them enrolling or entering into any financial obligation with the school.

Waiver of completion/graduation data calculation

Waiver of completion/graduation data calculation
34 CFR 668.45(e)(1)

A school does not have to calculate and make available its completion or graduation rate (and, if applicable, transfer-out rate) if it is a member of an athletic association or conference that has voluntarily published completion or graduation rate data or has agreed to publish data and the Department has granted a waiver of the requirements to provide these rates to coaches and guidance counselors.

To receive a waiver, your school or its athletic association or conference must submit a written application to the Department that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

Even if the waiver is granted, your school must comply with the requirements of §668.41(d)(3) (upon request, providing its retention rate to a prospective student) and (f) (providing retention rates and completion or graduation rates for prospective student athletes and their parents, high school coach, and guidance counselor).

Optional calculations

Optional calculations
34 CFR 668.45(f)

In addition to calculating the completion or graduation rate as described, a school may, but is not required to

1. calculate a completion or graduation rate for students who transfer into the school;
2. calculate a completion or graduation rate for students who have left school to serve in the armed forces, on official church missions, or with a foreign aid service of the federal government,

such as the Peace Corps, or who are totally and permanently disabled; and

3. calculate a transfer-out rate, even if the school determines that its mission does not include providing substantial preparation for its students to enroll in another eligible school.

Reporting rates to IPEDS

The graduation, completion, and transfer-out rates are reported through the Department's Integrated Postsecondary Education Data System (IPEDS) website. The IPEDS survey is conducted by the National Center for Education Statistics (NCES). You can also find tutorials, instructions, FAQs, tip sheets, and other information on the website.

Information can only be reported to this system by the school's designated "keyholder." Schools may change keyholders any time during the year by contacting the IPEDS Help Desk at 1-877-225-2568 or **ipedshelp@rti.org** or by contacting

Tara Lawley
202-245-7081
Team Lead, IPEDS Operations
550 12th St SW
Washington, DC 20202

Schools' graduation rates are displayed on the IPEDS College Navigator website.

Retention rate data
34 CFR 668.41(d)(3) and 43(a)(17)

Retention, placement, and post-graduate study

The school must also provide information on

- its retention rate reported to IPEDS. The information must be made available to prospective students requesting it prior to them enrolling or entering into any financial obligation with the institution. The retention rate is for certificate- or degree-seeking, first-time, full-time, undergraduate students entering the school.

Placement and employment information
34 CFR 668.41(d)(5) and 43(a)(14)

- the placement of, and types of employment obtained by, graduates of the school's degree or certificate programs. Placement rate information may be gathered from state data systems, alumni or student satisfaction surveys, the school's placement rate for any program—if it publishes or uses in advertising such a rate—or other relevant sources, such as the National Survey of Student Engagement or the Community College Survey of Student Engagement. Note that the school's accrediting agency or state may require the school to disclose this information.

Types of graduate and professional education
34 CFR 668.41(d)(6) and 43(a)(15)

- for graduates of the school's 4-year degree programs, the types of graduate and professional education they enroll in. This information may be gathered from state data systems, alumni or student satisfaction surveys, or other relevant sources.

CAMPUS CRIME AND SAFETY INFORMATION

Annual security report and fire safety report
34 CFR 668.41(e)

Schools have Title IV responsibilities related to campus crime. They must: (1) maintain a log that records details about crimes that occur within the schools' "Clery geography;" (2) submit statistics about these crimes to the Department annually; and (3) create an annual security report that contains those statistics as well as relevant policies and other information and distribute that report to students and employees. Similarly, schools that have on-campus student housing must also maintain a log that records details of fires that occur in that housing, submit statistics about the fires to the Department annually, and create an annual fire safety report containing the statistics and other relevant information and distribute the report to students and employees.

Clery/Campus Security Act

Clery/Campus Security Act
HEA Sec. 485(f)
20 U.S.C. 1092(f)
34 CFR 668.46

The full title of the Clery Act is the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. It has been amended several times, most recently by the Violence Against Women Reauthorization Act of 2013 (VAWA). Among other provisions, VAWA requires institutions to compile statistics for certain crimes that are reported to campus security authorities or local police agencies, including incidents of sexual assault, domestic violence, dating violence, and stalking. These crime statistics must be reported to the Department through the web-based data collection. Schools must also include certain policies, procedures, and programs pertaining to these crimes in their annual security reports.

See the Campus Safety and Security website for the campus crime and fire safety statistics for schools. Crime statistics are also on the College Navigator site.

Crime log

Crime log
34 CFR 668.46(f)
Missing persons
34 CFR 668.46(h)
Emergency response & evacuation
34 CFR 668.46(g)

Any institution that has a campus police or security department must create, maintain, and make available an easily understood daily crime log. The daily crime log must include the nature, date, time, general location of each crime that occurs within the institution's Clery geography, and the disposition of the complaint, if known. Entries must be made within two business days of the report of the information, unless the disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

An institution may withhold this information if there is clear and convincing evidence that releasing it would jeopardize an ongoing criminal investigation or safety of the individual, cause the suspect to flee or evade detection, or result in the destruction of evidence. The school must disclose any withheld information once the adverse effect is no longer likely to occur.

An institution is required to make the crime log for the most recent 60-day period open to public inspection during normal business hours.

The school must make any portion of the log older than sixty days available within two business days of a request for public inspection.

Crimes to be reported
34 CFR 668.46(c)(1)

Crimes to be reported

A school must report to the Department and disclose in its annual security report statistics for the three most recent calendar years the number of each of the following crimes that occurred on or within its Clery geography (see *Definitions Related to Crime Reporting* in this chapter) and that are reported to local police agencies or to a campus security authority:

1. Primary crimes, including criminal homicide (murder, non-negligent manslaughter, and negligent manslaughter); sex offenses (rape, fondling, incest, and statutory rape); robbery; aggravated assault; burglary; motor vehicle theft; arson
2. Arrests and referrals for disciplinary actions, including arrests for liquor law violations, drug law violations, and illegal weapons possession and persons not arrested for one of those offenses but who were referred for campus disciplinary action
3. Hate crimes, including the number of each type of primary crime listed above that is determined to be a hate crime and the number of the following that are determined to be hate crimes: larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property
4. Dating violence, domestic violence, and stalking

Bookstores and safety reporting

If a school contracts with an entity to provide bookstore services and the bookstore is on campus or if it is in any off-campus building or property owned or controlled by the school, the school must include the bookstore among the locations for which it reports campus crime and safety information.

Crimes reported must be recorded
34 CFR 668.46(c)(2)

Reported crimes must be recorded

A school must include in its crime statistics all crimes listed above occurring on or within its Clery geography that are reported to a campus security authority for the purpose of Clery Act reporting. Clery Act reporting does not require initiating an investigation or disclosing personally identifying information about the victim.

A school may not withhold or remove a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar noncampus official. But a school may withhold or remove a reported crime from its statistics when sworn or commissioned law enforcement personnel have fully investigated the reported crime and have made a formal determination that the crime report is false or baseless and therefore unfounded. Only sworn or commissioned law enforcement personnel may "unfound" a crime report for these purposes. The recovery of stolen property, the low value of stolen property, the

refusal of the victim to cooperate with the prosecution, and the failure to make an arrest do not unfound a crime report.

A school must report to the Department and disclose in its annual security report statistics the total number of crime reports that were unfounded and subsequently withheld from its crime statistics.

Fire log

Fire safety policies and statistics
HEA 485(i)
34 CFR 668.49
Fire safety log
34 CFR 668.49(d)

Any institution that maintains on-campus housing facilities must maintain a fire log. The fire log must be a written and easily understood record of any fire that occurred in an on-campus student housing facility. The log must include the nature, date, time, and general location of each fire. Fires must be recorded in the log within two business days.

Institutions must make the fire log for the most recent 60-day period open to public inspection and any portion of the log older than 60 days available within two business days of a request for public inspection.

Annual submission of campus security and fire safety statistics

Each year, the Department sends a letter to the school's president or chief executive officer with information on accessing the Campus Safety and Security Survey website (**https://surveys.ope.ed.gov/security**), where schools submit statistics for the crimes described under *Crimes to be Reported* in this chapter, and for fire safety (see below) for the three most recent calendar years that have available data. The website explains how to tabulate these statistics. The letter contains any changes to the survey, the collection dates for the survey, the name of the person who completed the reporting (the campus safety survey administrator) at the school the previous year, and a new ID and password for completing the survey.

Schools with any on-campus student housing facility must submit annual fire safety statistics to the Department. The report must include statistics on the number and causes of fires, as well as fire-related injuries, death, and property damage for each on-campus student housing facility. The fire safety statistics are due at the same time as the crime statistics.

Distributing the security and fire safety reports

Distributing the security and fire safety reports
Published together or separately
34 CFR 668.41(e)(6)
Current students and employees
34 CFR 668.41(e)(1)
Prospective students and employees
34 CFR 668.41(e)(4)

The two reports can be published together or separately. If published together, the title of the document must clearly state that it contains both the Annual Security Report and the Annual Fire Safety Report. If published separately, each report must contain information on how to directly access the other report.

Definitions Related to Crime Reporting

Clery geography—For the purpose of collecting statistics on the crimes described under *Crimes to be reported* in this chapter, Clery geography includes buildings and property that are part of the institution's campus, the institution's non-campus buildings and property, and public property within or immediately adjacent to and accessible from the campus. When recording crimes in the crime log, Clery geography includes, in addition to the locations above, areas within the patrol jurisdiction of the campus police or security department.

Campus—Any building or property owned or controlled by the school within the same reasonably contiguous geographic area and used by the school in direct support of, or in a manner related to, its educational purposes, including residence halls; also, any building or property that is within or reasonably contiguous to the above area that is owned by the school but controlled by another person, is frequently used by students, and supports school purposes (such as a food or other retail vendor).

Noncampus building or property—any building or property that is owned or controlled by

- a student organization officially recognized by the school or
- the school and that is used in support of its educational purposes, is frequently used by students, and is **not** within the same reasonably contiguous geographic area of the school.

On-campus student housing facility—a dormitory or other residential facility for students that is located on a school's campus.

Dating violence—violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic violence—a felony or misdemeanor crime of violence committed by

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies [under VAWA], or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Hate crime—a crime reported to local police agencies or to a campus security authority that shows evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. In their recording, schools must identify the actual or perceived category of the victim that motivated the crime. The categories are: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, and disability.

Sexual assault—An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in 34 CFR Subpart D, Appendix A.

Stalking—engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Programs to prevent dating violence, domestic violence, sexual assault, and stalking—Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that

- are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and
- consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

These include both primary prevention and awareness programs aimed at incoming students and new employees, and ongoing prevention and awareness campaigns for current students and employees. See 34 CFR 668.46(j) for more information.

34 CFR 668.41(a) and 46(a)

Required Contents of Annual Campus Security and Fire Safety Reports

The Annual Security Report [34 CFR 668.46(b)] must include

(1) The crime statistics submitted to the Department (see the discussion under *Annual submission of campus security and fire safety statistics* later in this chapter).

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—
- Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in this chapter;
- Policies for preparing the annual disclosure of crime statistics;
- A list of the titles of each person or organization to whom students and employees should report criminal offenses for the purpose of making timely warning reports and the annual statistical disclosure; (See the discussion under *Crimes to be reported* later in this chapter for criminal offenses that must be reported); and
- The policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—
- Addresses the enforcement authority of security personnel, including their relationship with state and local police agencies, whether those security personnel have the authority to arrest individuals, and any agreements, such as written memoranda of understanding between the institution and such agencies, for the investigation of alleged criminal offenses;
- Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies when the victim of a crime elects or is unable to make such a report; and
- Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of state underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of federal and state drug laws.

(10) A description of any drug or alcohol abuse education programs, as described in this chapter. For the purpose of meeting this requirement, an institution may cross-reference the materials it uses to comply with the requirements later in this chapter.

(11) A policy statement about the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and about the procedures the institution will follow when these crimes are reported. The statement must include
- A description of the institution's educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking [see 34 CFR 668.46(j)];
- Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about
  1. The importance of preserving evidence that may help to prove that the alleged criminal offense occurred or to obtain a protection order;
  2. How and to whom the alleged offense should be reported;
  3. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to: notify those authorities, including on-campus and local police; be assisted by campus authorities in notifying law enforcement authorities; and decline to notify such authorities; and
  4. Where applicable, the rights of victims and the institution's responsibilities for orders of protection, "no-contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.

Required Contents of Annual Campus Security and Fire Safety Reports (continued)

- Information about how the institution will protect the confidentiality of victims and others, including how it will
  1. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without using identifying information about the victim; and
  2. Keep confidential any protective measures for the victim, as long as that confidentiality would not impair the institution's ability to provide those measures.
- A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;
- A statement that the institution will provide written notification to victims about options for academic, living, transportation, and working situations or protective measures. The institution must make such accommodations if the victim requests them and they are reasonably available, regardless of whether he chooses to report the crime to campus police or local law enforcement;
- An explanation of the procedures for institutional disciplinary action in cases of these alleged crimes [see 34 CFR 668.46(k)]; and
- A statement that when students or employees report to the school that they have been a victim of dating violence, domestic violence, sexual assault, or stalking, the school will provide them a written explanation of their rights and options.

(12) A statement advising the campus community where law enforcement agency information provided by a state under 42 USC 14071(j), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(13) A description of the school's emergency response and evacuation procedures as discussed under *Emergency response and evacuation* later in this Chapter.

(14) A statement of the school's policy regarding missing student notification procedures as described under *Missing persons procedures* later in this Chapter.

The Annual Fire Safety Report [34 CFR 668.49(b)] must include

(1) The fire statistics submitted to the Department.

(2) A description of each on-campus student housing facility fire safety system.

(3) The number of fire drills held during the previous calendar year.

(4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.

(5) The institution's procedures for student housing evacuation in the case of a fire.

(6) The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.

(7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

(8) Plans for future improvements in fire safety, if determined necessary by the institution.

Distribution to enrolled students and current employees

By October 1 of each year, a school must distribute to all enrolled students and current employees its annual security and fire safety reports through appropriate publications and mailings including

- direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;
- a publication or publications provided directly to each individual; or
- posting on an Internet or intranet website (see the conditions for Web distribution at the beginning of this chapter).

Availability to prospective students and employees

For each of the reports, the school must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. A school must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee.

If the school chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet website, the school must follow the procedures for Web dissemination described earlier.

Missing persons procedures

Missing persons procedures
HEA section 485(j)
34 CFR 668.46(h)

A school that provides on-campus student housing must establish a missing student notification policy and include a description of the policy in its annual security report to the campus community. The policy must

- include a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- require that any missing student report be referred immediately to the school's police or campus security department (if the school doesn't have such a department, it must refer the report to the local law enforcement agency that has jurisdiction in the area);

Clery Act Guidance

In 2020 the Department rescinded the *Handbook for Campus Safety and Security Reporting* after determining that it created additional requirements that expanded the scope of the statute and regulations and that this guidance was unnecessarily voluminous and a burden to colleges. See the announcement of October 9, 2020, for more information.

- include an option for each student to identify a contact person or persons whom the school shall notify within 24 hours of a determination (by the school's police or campus security department or the local law enforcement agency) that the student is missing.
- advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;
- advise students that if they are under 18 years of age and not emancipated, the school must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and
- advise students that the school will notify the local law enforcement agency within 24 hours of the determination that the student is missing unless the local law enforcement agency was the entity that made the determination that the student is missing.

When a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours, the school must notify within 24 hours

- the contact person (if the student has designated one), and
- the student's custodial parent or guardian (if the student is less than 18 years old and is not emancipated).

In all cases, the school must inform the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

The requirements for a school to establish missing persons procedures do not provide a private right of action to any person to enforce a provision of the subsection or create a cause of action against any institution of higher education or any employee of the institution for any civil liability.

Emergency response and evacuation
34 CFR 668.46(g)

Emergency response and evacuation procedures

A school must develop emergency response and evacuation procedures and include a description of its procedures in its annual security report to the campus community.

A school must develop procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

At a minimum, schools must have procedures to

- confirm that a significant emergency or dangerous situation (as described above) exists;
- determine the appropriate segment or segments of the campus community to receive a notification, the content of the notification, and to initiate the notification system;
- disseminate emergency information to the larger community; and
- test the emergency response and evacuation procedures on at least an annual basis, including announced or unannounced tests.

The school must publicize its emergency response and evacuation procedures in conjunction with at least one test per calendar year. The school must document each test with a description of the exercise, stating the date and time, and indicating whether it was announced or unannounced. Tests are defined as regularly scheduled drills, exercises, and appropriate follow-through activities designed for assessment and evaluation of emergency plans and capabilities.

The school must compile a list of the titles of those persons or organizations responsible for determining whether an emergency or dangerous situation exists and who are authorized to initiate the notification process and include this information in the annual report.

In an emergency or a dangerous situation, a school must, without delay and accounting for the safety of the community, determine the content of the notification and initiate the notification system unless issuing a notification will, in the judgment of responsible authorities, compromise efforts to assist a victim or contain, respond to, or otherwise mitigate the emergency.

Timely warning and emergency notification

Timely warning and emergency notification
34 CFR 668.46(e)

A school must, in a manner that is timely and that withholds as confidential the names and other identifying information of victims, and that will aid in the prevention of similar crimes, report to the campus community on crimes that are

- included in its campus crime statistics (see the section *Crimes to be Reported* in this chapter), or
- reported to local police agencies or to campus security authorities (as identified under the school's statement of current campus policies), and
- considered by the school to represent a threat to students and employees.

A school is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

If there is an immediate threat to the health or safety of students or employees occurring on campus, a school must follow its emergency notification procedures. A school that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the school must provide adequate follow-up information to the community as needed.

Drug and alcohol abuse prevention
34 CFR 86
34 CFR 668.14(c)(1)
Drug-Free Schools and Communities Act (Public Law 101-226)

DRUG AND ALCOHOL ABUSE PREVENTION

A school that participates in the FSA programs must provide to its students, faculty, and employees information to prevent drug and alcohol abuse, and it must also have a drug and alcohol prevention program, as discussed later.

In addition, a school that participates in the Campus-Based Programs must have a drug-free awareness program for its employees that includes a notice to them of unlawful activities and the actions the school will take against an employee who violates these prohibitions.

Information to be included in drug prevention materials for students and employees

A school must provide the following in its materials:

- Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of drugs and alcohol by students and employees on the school's property or as part of the school's activities
- A description of the sanctions under local, state, and federal law for unlawful possession, use, or distribution of illicit drugs and alcohol
- A description of any drug and alcohol counseling, treatment, or rehabilitation programs available to students and employees
- A description of the health risks associated with the use of illicit drugs and alcohol
- A clear statement that the school will impose sanctions on students and employees for violations of the standards of conduct (consistent with local, state, and federal law) and a description of these sanctions, up to and including expulsion, termination of employment, and referral for prosecution

Notice of penalties
HEA section 485(k)

A school must provide to every student upon enrollment a separate, clear, and conspicuous written notice with information on the penalties associated with drug-related offenses. For students who have lost Title IV eligibility due to drug convictions, the school must provide a separate, clear notice of the loss and how to regain eligibility. See *Volume 1* of the Handbook for information about losing and regaining eligibility in these cases.

Distribution of materials to all students and employees

The school may include this information in publications such as student or employee handbooks, provided that these publications are distributed to each student and employee. Merely making drug prevention materials available to those who wish to take them is not sufficient. The school must use a method that will reach every student and employee, such as the method used to distribute grade reports or paychecks.

The school must distribute these materials annually. If new students enroll or new employees are hired after the initial distribution for the year, the school must make sure that they also receive the materials.

Drug and alcohol abuse prevention program

Failure to have a prevention program
34 CFR 86.301

Every participating school must certify that on the date it signs the Program Participation Agreement it has a drug and alcohol abuse prevention program in operation that is accessible to any officer, employee, or student at the school. 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. As a part of this biennial review, the school must determine

- the number of drug and alcohol-related violations and fatalities that occur on a school's campus or as part of any of the school's activities and that are reported to campus officials; and
- the number and type of sanctions that are imposed by the school as a result of drug and alcohol-related violations and fatalities on the school's campus or as part of any of the school's activities.

The school must make available upon request the results of the review as well as the data and methods supporting its conclusions.

The effectiveness of a school's prevention program may be measured by tracking the number of drug- and alcohol-related disciplinary actions, treatment referrals, and incidents recorded by campus police or other law enforcement officials. You may also find it useful to track the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse and to survey student, faculty, and employee attitudes and perceptions about the drug and alcohol problem on campus.

If a school does not certify that it has a prevention program or fails to carry out a prevention program, the Department may terminate any or all forms of federal financial aid to the school and may require it to repay any or all federal financial aid that it received while not in compliance.

Additional sources of information

Schools that are developing prevention programs should consult the Substance Abuse & Mental Health Services Administration (SAMHSA), in particular the Drug-Free Workplace webpage and helpline (1-800-967-5752). These provide information about workplace programs and drug testing. SAMHSA is a division of the U.S. Department of Health & Human Services and also provides a treatment and referral hotline 1-800-662-HELP (1-800-662-4357) as well as publications on drug abuse and prevention, among other topics.

Government-wide requirements for drug-free workplace
34 CFR 84
Drug-Free Workplace Act of 1988 (Public Law 101-690)

Drug-Free Workplace requirements for Campus-Based schools

Because schools apply for and receive their Campus-Based allocation directly from the Department, they are considered to be federal grant recipients and as such are required to make a continuing, good faith effort to maintain a drug-free workplace. The steps a school must take include

- establishing a drug-free awareness program to provide information to employees,
- distributing a notice to 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.

INFORMATION ABOUT ATHLETICS

Equity in Athletics Disclosure Act (EADA)
HEA Section 485(e) and (g)
20 USC 1092
34 CFR 668.41(g)
34 CFR 668.47

The EADA Report

The Equity in Athletics Disclosure Act (EADA) requires a school that has an intercollegiate athletic program to make prospective students aware of its commitment to provide equitable athletic opportunities for its male and female students. As part of this requirement, each fall schools must report information to the Department and make it available to students, prospective students, and the public in easily accessible places. The annual report, officially called *The Report on Athletic Program Participation Rates and Financial Support Data* and commonly referred to as the EADA Report, must include information on

- the number of male and female full-time undergraduate students that attended the school (undergraduate students are those who are consistently designated as such by the school),
- the total amount and ratio of athletically related student aid awarded to male athletes compared to female athletes,
- the expenses incurred by the school for men's and women's sports,
- total annual revenues for men's or women's sports,
- the annual school salary of non-volunteer head coaches and assistant coaches for men's and women's teams, and
- for each varsity team in intercollegiate competition, the number and gender of participants and coaches, operating expenses, etc.

A school must publish its EADA report by October 15 and make it available upon request to students, prospective students, and the public. For example, a school may make hard copies of the report available in intercollegiate athletic offices, admissions offices, or libraries, or by providing a copy to all students in their electronic mailbox.

A school must provide the report promptly to anyone who requests the information. For example, a school may not refuse to provide a copy of the report to the news media, and the school may not require an individual requesting the information to come to the school to view the report. A school may not charge a fee for the information.

A school must submit its equity in athletics report to the Department via the EADA survey website annually within 15 days of making it available to students, prospective students, and the public. Note that a password and user ID are required for use of this website. They are sent by the Department to the chief administrator at the school. For help with this site, contact **eadahelp@westat.com**. The Department posts the EADA reports for participating schools on the Web.

For specific categories and reporting rules, please see the EADA User's Guide for the online survey.

Completion and graduation rates for student athletes

As part of their EADA disclosures, schools that offer athletically related student aid must produce an annual report that includes the following:

- The number of students, categorized by race and gender, who attended the school in the year prior to the submission of the report.
- The number of the students above who received athletically related student aid, categorized by race and gender within each sport.

- The completion or graduation rate and, if applicable, transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in 34 CFR §668.45(a)(1), categorized by race and gender.
- The completion or graduation rate and, if applicable, transfer-out rate of the entering students described in §668.45(a)(1) who received athletically related student aid, categorized by race and gender within each sport.
- The average completion or graduation rate and, if applicable, transfer-out rate for the four most recent completing or graduating classes of entering students described in §668.45(a)(1), (3), and (4), categorized by race and gender. If a school has rates for fewer than four of those classes, it must disclose the rates it has.
- The average completion or graduation rate and, if applicable, transfer-out rate of the four most recent completing or graduating classes of entering students described in §668.45 (a)(1) who received athletically related student aid, categorized by race and gender within each sport. If a school has rates for fewer than four of those classes, it must disclose the rates it has.

Exception to providing completion/graduation rates for student athletes
34 CFR 668.41(f)(1)(ii)

A school must provide this report to prospective student athletes, their parents, high school coaches, and guidance counselors. A school does not have to provide the report to the high school coach and guidance counselor if

- the institution is a member of a national collegiate athletic association,
- the association compiles data on behalf of its member institutions, which the Department determines are substantially comparable to those required by §668.48(a), and
- the association distributes the compilation to all secondary schools in the United States.

The definition of athletically related student aid used here is the same definition that is also used for the EADA disclosure requirements. The definitions of certificate- or degree-seeking students, first-time undergraduate students, undergraduate students, and normal time are the same as those used for the calculation of completion or graduation and transfer-out rates for a school's general student body cohort.

Undergraduate students—For purposes of §668.45 and 668.48 (completion and graduation rates for students and student athletes) only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate. 34 CFR 668.41(a)

Certificate or degree-seeking student—one enrolled in a course of credit and recognized by the school as seeking a degree or certificate.

TEXTBOOK INFORMATION

Textbook information
HEA section 133

To the maximum extent practicable, a school must post verified textbook pricing information for both required and recommended materials for all classes (i.e., not just the school's online classes) on the schedule that the school has posted online.

This pricing information must include the International Standard Book Number (ISBN) and retail price for all required and recommended textbooks and supplemental materials for each course listed in the institution's course schedule used for preregistration and registration. If the ISBN is not available, the pricing information must include the publisher and copyright date, as well as the title and author. If the school determines that disclosure of this pricing information is not practicable, it may substitute the designation "To Be Determined (TBD)" in lieu of the required pricing information.

If applicable, the school must include on its written course schedule a reference to the textbook information available on its Internet schedule and the Internet address for that schedule.

Schools are encouraged to provide information on renting textbooks, purchasing used textbooks, textbook buy-back programs, and alternative content delivery programs.

A school must provide the following information to its bookstore if the bookstore requests it:

- the school's course schedule for the subsequent academic period; and
- for each course or class offered, the information it must include on its Internet course schedule for required and recommended textbooks and supplemental material, the number of students enrolled, and the maximum student enrollment.

The statutory requirement about textbook disclosures was described in DCL GEN-08-12. Further guidance was given in GEN-10-09. Also note that the law requires textbook publishers to provide information to faculty about pricing, copyright dates of previous editions, content revisions, alternate formats, etc.

LOAN COUNSELING

Loan counseling and disclosures to borrowers
DL: 34 CFR 685.304
Perkins: 34 CFR 674.42(b)

Entrance counseling

Entrance counseling is required for all first-time student Direct Loan borrowers. Before making the first disbursement of a Direct Subsidized or Unsubsidized Loan to a borrower who has not received a prior Direct Subsidized or Unsubsidized Loan or Federal Stafford or SLS Loan, you must ensure that he receives entrance counseling. Similarly, you must ensure that a graduate or professional student who is borrowing a Direct

PLUS Loan has received entrance counseling, unless he received a prior graduate/professional Direct or Federal PLUS Loan. Entrance loan counseling is not required for parent PLUS borrowers.

Entrance counseling must give borrowers comprehensive information on the terms and conditions of, and their responsibilities regarding, the loan; see "DL Entrance Counseling—Required Elements" in this chapter. This information may be provided during an in-person counseling session, on a separate written form that the borrower signs and returns to the school, or online or by interactive electronic means, with the borrower acknowledging receipt of the information.

If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that students finish the counseling, which may include completing a test of their understanding of the terms and conditions of the loan. If a standardized, interactive electronic tool is used for counseling, the school must give the borrower any required information that is not addressed in the tool in person or in a separate written or electronic document.

A school must have someone with expertise in the Title IV programs reasonably available shortly after the counseling to answer students' questions. As an alternative, if students are enrolled in an approved correspondence, distance education, or study-abroad program, they may be provided with written counseling materials before the loan is disbursed.

You may not require that students complete additional counseling beyond entrance counseling. However, your entrance counseling policy can require more than the minimum specified by the regulations (as detailed later in this chapter) as long as the additional requirements are reasonable as to time, effort, and relevance to the students' borrowing and are not administered in a way that unreasonably impedes students' ability to borrow. For example, your entrance counseling can

- contain extra information as part of in-person individual or group training or through your website, other electronic means, written materials, or different methods.
- require that first-time student borrowers take a test or evaluation of what they learned in counseling, though you cannot establish a passing score that they must achieve to get a Direct Loan.
- require students to complete a worksheet, budget, or other exercise designed to improve financial literacy and understanding of the implications of borrowing, but you cannot require them to justify the need for a loan.
- require students to participate in a workshop, loan orientation presentation, or similar activity.

Also, although you cannot mandate it, you can encourage borrowers to participate in counseling beyond entrance counseling to be better informed about borrowing, the terms of their Direct Loans, their

repayment responsibilities and options, and the consequences of default. And your school has the academic prerogative, of course, to provide financial literacy classes, on a credit or non-credit basis, that include information on budgeting, debt management, anticipated earnings by profession, elements of loan counseling, etc., though receipt of a Direct Loan cannot be contingent on such a class. See DCL GEN-15-06.

Special PLUS loan counseling

Special loan counseling is required for any PLUS Loan applicant, student or parent, who has an adverse credit history but who qualifies for a PLUS Loan either by getting a loan endorser or by documenting to the satisfaction of the Department that there are extenuating circumstances related to the adverse credit. While the special PLUS counseling is mandatory only for these borrowers, any PLUS borrower can voluntarily complete this counseling. See 34 CFR 685.200(b)(5) and (c)(2)(viii).

Note that the special counseling described above is separate from the entrance counseling that all graduate and professional student PLUS Loan borrowers must complete in accordance with 34 CFR 685.304(a)(2).

Annual student loan acknowledgement

A new kind of loan counseling requirement will be added to the MPN confirmation process in 2021: the annual student loan acknowledgement. This will require student and parent borrowers to view how much they currently owe in federal student loans and to acknowledge that they have seen this amount before they can receive the first disbursement of the first Direct Loan for each award year (the one to which the loan is assigned in the COD System). It does not replace any other existing loan counseling requirement or any similar process that a school may already have (perhaps to fulfill a state requirement).

The loan acknowledgement occurs only once per award year, and it is not school-specific. Borrowers who complete the process for a loan at one school will not complete the process for another loan associated with that same award year again, even if they receive the other loan at a different school. Nor is the acknowledgement specific to a loan type. For example, if a graduate student receives a Direct Unsubsidized Loan for which she has completed the loan acknowledgement, then later receives a Direct PLUS Loan that is assigned to the same award year as the first loan, she does not have to complete another acknowledgement before receiving the first PLUS Loan disbursement.

Borrowers will be able to complete the acknowledgement online, independently from other processes—they are not required to complete an MPN or entrance counseling first. It can be completed whether or not a loan origination record is on file.

The annual student loan acknowledgement will begin with loans associated with the 2021–2022 award year. See the April 21, 2020, announcement for more information.

DL Entrance Counseling—Required Elements

Entrance counseling for Direct Subsidized and Unsubsidized Loans 34 CFR 685.304(a)(6)

Entrance counseling for Direct Subsidized and Unsubsidized loan borrowers must:

(i) Explain the use of a master promissory note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System (NSLDS) and how the borrower can access the borrower's records;

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan;

(xiii) For loans first disbursed on or after July 1, 2020, if, as a condition of enrollment, the school requires borrowers to enter into a pre-dispute arbitration agreement, as defined in §668.41(h)(2)(iii), or to sign a class action waiver, as defined in §668.41(h)(2)(i) and (ii), the school must provide a written description of the school's dispute resolution process that the borrower has agreed to pursue, including the name and contact information for the individual or office at the school that the borrower may contact if the borrower has a dispute relating to the borrower's loans or to the provision of educational services for which the loans were provided;

(xiv) For loans first disbursed on or after July 1, 2020, if, as a condition of enrollment, the school requires borrowers to enter into a pre-dispute arbitration agreement, as defined in §668.41(h)(2)(iii), the school must provide a written description of how and when the agreement applies, how the borrower enters into the arbitration process, and who to contact if the borrower has any questions;

(xv) For loans first disbursed on or after July 1, 2020, if, as a condition of enrollment, the school requires borrowers to sign a class-action waiver, as defined in §668.41(h)(2)(i) and (ii), the school must explain how and when the waiver applies, alternative processes the borrower may pursue to seek redress, and who to contact if the borrower has any questions; and

(xvi) For first-time borrowers, explain the limitation on eligibility for Direct Subsidized Loans and possible borrower responsibility for accruing interest, including—

(A) The possible loss of eligibility for additional Direct Subsidized Loans;

(B) How a borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are calculated;

(C) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans; and

(D) The impact of borrower responsibility for accruing interest on the borrower's total debt.

Entrance counseling for graduate or professional students (Direct PLUS Loan borrowers) 34 CFR 685.304(a)(7)

Entrance counseling for graduate or professional student Direct PLUS loan borrowers must:

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in §685.301(a)(3)(i)(A) through §685.301(a)(3)(i)(C);* and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section. [See the entrance counseling requirements (i)–(xii) above.]

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* §685.301(a)(3)(i) requires that the counseling provide the borrower with a comparison of—

(A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan and periods when interest accrues on a Direct PLUS Loan; and

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment.

DL Exit Counseling—Required Elements

34 CFR 685.304(b)(4)

Exit counseling must:

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options, including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt management strategies that are designed to facilitate repayment;

(vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section [see entrance counseling requirements (i), (ii), and (iv) earlier];

(viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a Title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;*

(x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of Title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain Title IV loan status information;

(xii) Explain to first-time borrowers—

(A) How the borrower's maximum eligibility period, remaining eligibility period, and subsidized usage period are determined;

(B) The sum of the borrower's subsidized usage periods at the time of the exit counseling;

(C) The consequences of continued borrowing or enrollment, including—

(1) The possible loss of eligibility for additional Direct Subsidized Loans; and

(2) The possibility that the borrower could become responsible for accruing interest on previously received Direct Subsidized Loans and the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan during in-school status, the grace period, authorized periods of deferment, and certain periods under the Income-Based Repayment and Pay As You Earn Repayment plans;

(D) The impact of the borrower becoming responsible for accruing interest on total student debt;

(E) That the Secretary will inform the student borrower of whether he or she is responsible for accruing interest on his or her Direct Subsidized Loans; and

(F) That the borrower can access NSLDS to determine whether he or she is responsible for accruing interest on any Direct Subsidized Loans;

(xiii) A general description of the types of tax benefits that may be available to borrowers; and

(xiv) Require the student borrower to provide current information concerning name, address, Social Security number, references, and driver's license number and state of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

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* Section 485 requires the Secretary (i.e., the Department) to provide "descriptions of federal student assistance programs, including the rights and responsibilities of student and institutional participants," including "information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations" for their loans.

Section 485(d) also refers to information

- to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, finance charges, and samples of loan consolidation profiles.
- concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service.
- on the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization.
- on state and other prepaid tuition programs and savings programs and disseminates such information to states, eligible institutions, students, and parents in departmental publications.

Exit counseling

A Direct Loan student borrower or a Perkins Loan borrower who is graduating, leaving school, or dropping below half-time enrollment is required to complete exit counseling. If he drops out without notifying your school, you must confirm that he has completed online counseling or mail exit counseling material to him at his last known address. It is also acceptable to email the information to his home (not school) email address if you have it. The PDF version of the *Exit Counseling Guide for Federal Student Loan Borrowers* satisfies this requirement for Direct Loan student borrowers. You may also send the student a **direct link** to the exit counseling materials online. Whatever method you choose must be used within 30 days of learning that the borrower has withdrawn or failed to participate in an exit counseling session.

When mailing exit materials to students who have left school, you're not required to use certified mail with a return receipt requested, but you must document in their file that the materials were sent. If they don't provide updated contact information, you don't need to take further action.

Providing borrower information at separation

Personal information collected for exit counseling provided by the school must be given to students' loan servicers within 60 days. Students authorize their school to release information to servicers in the loan promissory note they signed. No further permission is needed. Students who complete loan exit counseling online fulfill this requirement; NSLDS provides the completion information to the loan holders.

Counseling methods

The Direct Loan Program offers online entrance and exit counseling for students on the Studentaid website. PLUS loan credit counseling for parents and graduate students is also available there. Your school will receive notification (via SAIG) of online loan counseling completed by borrowers, and completion information can also be viewed on the COD website. If your school documents that borrowers have completed the Department's online counseling, it has satisfied its counseling responsibility.

Your school may also elect to provide entrance counseling through an in-person session or by providing a separate written form to the student that she signs and returns to the school. If your staff are conducting in-person counseling sessions, charts, handouts, audiovisual materials, and question-and-answer sessions can help convey the information in a more dynamic manner. We also recommend the use of written tests or interactive programs to ensure that the student understands the terms and conditions of his loans. Counseling materials, such as the entrance and exit counseling guides, are available in the Financial Aid Toolkit. The DL regulations explain how a school may adopt alternative approaches as a part of its quality assurance plan; see 34 CFR 685.304(a)(8).

Regardless of the counseling methods your school uses, it must document that the student received entrance and exit counseling, and it must ensure that an individual with expertise in the FSA programs is reasonably available shortly after the counseling to answer the student's questions.

TEACH Grant counseling

All TEACH Grant recipients must have initial counseling before receiving their first grant and subsequent counseling before receiving each subsequent TEACH Grant. TEACH Grant initial and subsequent counseling, as well as agreement to serve (ATS) processes, must be completed on the Department's website.

Schools that participate in the TEACH Grant Program must also ensure that all grant recipients get exit counseling before they cease enrollment at the school where they received TEACH Grants, at a time determined by the school. Schools may provide TEACH Grant exit counseling themselves, or they may require grant recipients to complete the counseling on the StudentLoans.gov site.

Your school will receive daily system generated responses from COD when a student has completed TEACH Grant exit counseling and chosen to notify your school. Your school will also receive a weekly report from COD on all students who have completed TEACH exit counseling and chosen to notify your school.

If a student fails to complete exit counseling electronically on StudentLoans.gov, you must ensure that the counseling is provided either in person, through interactive electronic means, or by mailing written counseling materials (such as the PDF version of the exit counseling guide) to the student's last known address. Instead of mailing the counseling materials, you may also simply send the student a **direct link** to the counseling materials online.

For students who are unofficial withdrawals (see *Volume 5, Chapter 1*), you must provide exit counseling within 30 days of learning of the withdrawal.

Counseling for correspondence and study-abroad students

If the student has enrolled in a study-abroad program (approved by a U.S. school for credit) or a correspondence or distance learning program and has not previously received an FFEL or Direct Loan at that school, the school must document that the student has completed online entrance counseling that meets FSA requirements or provide entrance counseling information by mail before releasing loan money.

In the case of exit counseling for correspondence programs or study abroad programs, the school may mail or email the borrower written counseling materials within 30 days after the borrower completes the program, with a request that he provide the contact and personal

information that would ordinarily have been collected through the counseling process.

Providing additional information

Your school can take additional steps to counsel students, for example, in developing a budget, estimating need for loans, and planning for repayment. You can reinforce messages to borrowers; for example, with each disbursement you can remind them about the importance of SAP, planning for future employment, and staying in touch with the loan servicer. More ideas for loan counseling are given in the "Sample Default Management and Prevention Plan."

Financial literacy and at-risk students

You should provide borrowers with counseling at various stages of enrollment, interactive tools to manage debt, repayment options, school contact information, and information about the income potential of occupations relevant to their course of study. You can give this information through a variety of media such as face-to-face counseling, classes, publications, e-tutorials, e-mailed newsletters, and supplements to financial aid offers. You can offer a financial literacy course on a credit or non-credit basis as long as receiving a loan is not contingent upon taking the course. You should also refer borrowers to the Department's Financial Awareness Counseling Tool, which is a tutorial like loan counseling.

In addition, the Financial Literacy and Education Commission, which includes the Departments of Education and the Treasury among other federal agencies, has published a report, *Best Practices for Financial Literacy and Education at Institutions of Higher Education*, which schools may find helpful with their financial literacy counseling.

You should identify and provide special counseling for at-risk students, such as those who withdraw prematurely from their educational programs, who do not meet SAP standards, or both.

Private education loans
20 USC 1019, 15 USC 1650(a)(8)
34 CFR 668.14(b)(28) and (29)

PRIVATE EDUCATION LOANS

A private education loan is a non-FSA loan that is made to a borrower expressly for postsecondary education expenses, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. (See the following definition of private education loan for exclusions.)

Loans made under Titles VII and VIII of the Public Health Service Act, which are administered by the Health Resources and Services Administration, are considered to be private education loans. These include Health Professions Student Loans, Primary Care Loans, Loans for Disadvantaged Students, and Nursing Student Loans.

If a private education loan is part of a preferred lender arrangement, it is subject to the rules for those arrangements (described later in this section).

Disclosures required for private education loans

A school or institution-affiliated organization that provides information regarding a private education loan from a lender to a prospective borrower must provide the following disclosures, even if it does not participate in a preferred lender arrangement.

The private education loan disclosures must

- provide the prospective borrower with the information required by 15 U.S.C. 1638(e)(1) [12 CFR 226.47(a) in the Federal Reserve System regulations], and
- inform the prospective borrower that she may qualify for FSA loans or other assistance from the FSA programs and that the terms and conditions of an FSA loan may be more favorable than the provisions of private education loans.

The school or affiliate must ensure that information about private education loans is presented in such a manner as to be distinct from information about FSA loans.

The school must, upon the request of the applicant, discuss with her the availability of federal, state, and institutional student financial aid.

Self-certification form for private education loans

Self-certification form
34 CFR 601.11(d), 668.14(b)(29)

A lender must obtain a signed, completed Private Education Loan Applicant Self-Certification from the loan applicant before initiating a private education loan. The applicant may get a copy of the form from the private lender and submit it to your school for completion or confirmation. Your school may also, at its option, provide the information needed to complete the form directly to the lender.

If the loan applicant (the student or parent) requests a copy of the self-certification form from your school, you must provide it. You may post an exact copy of the form on your website for applicants to download, or you may provide them a paper copy directly.

The applicant may also ask, if the student has been enrolled or admitted to your school, that you complete section 2 before providing him the form. You must do that to the extent that you have the information. Section 2 of the form collects the student's cost of attendance (see *Volume 3, Chapter 2*), the estimated financial assistance (EFA), and the difference between them. The EFA includes, for students who have completed the FAFSA, the amounts of aid that replace the EFC, which you determined according to the rules in *Volume 3, Chapter 7*; it does not include the private education loan(s) that the self-certification form is for.

The self-certification must be printed by the school or lender with black ink on white paper. The typeface, point size, and general presentation of the form may not be changed from the version approved by OMB. The only changes that may be made to the form are:

- Bold type in section headings may be removed, and bold or italic type may be added to the instructions.
- Schools and lenders may use any blank spaces at the top, bottom, or sides of the form for bar coding or other school/lender-specific information. However, such space may not be used to include the student's or parent's Social Security number.

Schools as private lenders

Note that if a school solicits, makes, or extends private education loans, it is considered to be a private educational lender subject to the Federal Reserve's regulations on such. When the school is the lender, it must complete and give the self-certification form to the loan applicant and get the signed form back from the applicant before making the private education loan.

In some cases a school may be making more than one private education loan to an applicant. For example, a school may be providing a loan funded by the school (or from donor-directed contributions) and a Public Health Service loan. In such cases, the school can provide one self-certification form to the applicant.

Definitions

Private educational lender—(1) a financial institution, as defined in section 1813 of Title 12 that solicits, makes, or extends private education loans; (2) a federal credit union, as defined in section 1752 of Title 12 that solicits, makes, or extends private education loans; or (3) any other person engaged in the business of soliciting, making, or extending private education loans. 15 USC 1650(a)(7)

Private education loan—As defined in 12 CFR 226.46(b)(5), a loan provided by a private educational lender that is not a title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. A private education loan does not include—

1. An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or
2. An extension of credit in which the educational institution is the lender if—
   i. The term of the extension of credit is 90 days or less; or
   ii. An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

34 CFR 601.2(b)

Institution-affiliated organization—one that is directly or indirectly related to a covered institution and that recommends, promotes, or endorses education loans for students attending the covered institution or their families. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization of a covered institution and does not include any lender with respect to any education loan secured, made, or extended by such lender. 34 CFR 601.2

Preferred lender lists

Preferred lenders
HEA 153(a)(2)(A)
20 USC 1019a(a)(1)(A) and 1019b(c)
15 USC 1638(e)(11)
34 CFR 601.10
12 CFR 226.47

For any year in which the school has a preferred lender arrangement, it will at least annually compile, maintain, and make available for students attending the school and the families of such students a list in print or other medium of the specific lenders for private education loans that the school recommends, promotes, or endorses in accordance with such preferred lender arrangement.

The school's preferred lender list must fully disclose

- why it participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and
- that the students attending the school (or their families) do not have to borrow from a lender on the preferred lender list; and
- when available, the information identified on a model disclosure form to be developed by the Department for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

The school is required to

- exercise a duty of care and a duty of loyalty to compile the preferred lender list, without prejudice and for the sole benefit of the school's students and their families; and
- not deny or otherwise impede the borrower's choice of a lender for those borrowers who choose a lender that is not included on the preferred lender list. This requirement is also included in the school's Code of Conduct; see Chapter 3.

The preferred lender list must also prominently disclose the method and criteria used by the school in selecting lenders to ensure that such lenders are selected on the basis of the best interests of the borrowers, including

- payment of origination or other fees on behalf of the borrower,
- highly competitive interest rates or other terms and conditions or provisions of FSA loans or private education loans,
- high-quality servicing for such loans, or
- additional benefits beyond the standard terms and conditions or provisions for such loans.

The preferred lender list must indicate, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list. If a lender is an affiliate of another lender on the preferred lender list, the listing must describe the details of this affiliation.

Preferred lender disclosures

For each type of private education loan offered under a preferred lender arrangement, a school (or institution-affiliated organization) must disclose

- the maximum amount of FSA grant and loan aid available to students in an easy-to-understand format,
- the Truth in Lending information [15 USC 1638(e)(11)] for each type of private education loan offered through a preferred lender arrangement to the school's students and their families, and
- when available, the information identified on a model disclosure form to be developed by the Department for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

Truth in Lending Act
TILA section 128(e)(1)
15 USC 1638(e)(1)
12 CFR 226.46 through 226.48

The school must disseminate this information on its website and in all informational materials such as publications, mailings, or electronic messages or materials that are distributed to prospective or current students and their families and describe financial aid that is available at an institution of higher education.

Use of institution and lender name

Use of school or lender name
34 CFR 612
20 USC 1019a(a)(2)–(a)(3)

A school or school-affiliated organization that participates in a preferred lender arrangement regarding private education loans must not agree to the lender's use of its name, emblem, mascot, or logo in the

Definitions

Covered institution—Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any federal funding or assistance.

Preferred lender arrangement—An agreement between a lender and a school or an institution-affiliated organization of the school under which the lender provides education loans to the students at the school or their families and that involves the school or its institution-affiliated organization recommending, promoting, or endorsing those loans.

A preferred lender arrangement does not include agreements with respect to loans made under the Direct Loan Program.

For the purpose of this definition, an arrangement does not exist if the private education loan made to a student attending the school is made by the school or by an institution-affiliated organization of the school and the loan is

- funded by the school's or its institution-affiliated organization's own funds;
- funded by donor-directed contributions;
- made under title VII or title VIII of the Public Service Health Act; or
- made under a state-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

34 CFR 601.2(b)

marketing of private education loans to students attending the school in any way that implies that the loan is offered or made by the school or its affiliate instead of the lender. This prohibition also applies to other words, pictures, or symbols readily identified with the school or affiliate.

The school or its affiliate must also ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

MISREPRESENTATION

Misrepresentation
34 CFR Subpart F
Definition
34 CFR 668.71(c)
Misrepresenting educational program
34 CFR 668.72
Misrepresenting financial charges
34 CFR 668.73
Employability of graduates
34 CFR 668.74

Misrepresentation is defined as a false, incorrect, or misleading statement made directly or indirectly to a student, prospective student, state agency, an accrediting agency, the public, or the Department.

A *misleading statement* includes any statement that has the likelihood or tendency to mislead. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. A statement may still be misleading, even if it is true on its face.

A statement is any communication made in writing, visually, orally, or through other means. This definition applies to statements made by an eligible school, the school's representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services.

Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the school required the student to make such an endorsement or testimonial to participate in a program.

A school, one of its representatives, or a related party engages in *substantial misrepresentation* when it misrepresents the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentation is defined as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment. Substantial misrepresentations are prohibited in all forms, including those made in any advertising or promotional materials or in the marketing or sale of courses or programs of instruction offered by the institution. A school is responsible for the harm caused by its misrepresentations, even if such misrepresentations cannot be attributed to institutional intent or knowledge and are the result of inadvertent or innocent mistakes.

Misrepresentation Regulations

34 CFR 668.72 Nature of educational program

Misrepresentation concerning the nature of an eligible institution's educational program includes but is not limited to false, erroneous, or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) Whether a student may transfer course credits earned at the institution to any other institution;

(2) Conditions under which the institution will accept transfer credits earned at another institution;

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance to a labor union or similar organization; or

(2) To receive, to apply to take, or to take the examination required to receive, a local, state, or federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the states in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, or equipment;

(g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(j) The availability of part-time employment or other forms of financial assistance;

(k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(l) The nature or extent of any prerequisites established for enrollment in any course;

(m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate state educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate state educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or

(o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)

34 CFR 668.73 Nature of financial charges

Misrepresentation concerning the nature of an eligible institution's financial charges includes but is not limited to false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or

(e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

34 CFR 668.74 Employability of graduates

Misrepresentation regarding the employability of an eligible institution's graduates includes but is not limited to false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including but not limited to the use of phrases such as "Men/women wanted to train for * * *," "Help Wanted," "Employment," or "Business Opportunities";

(e) Government job market statistics in relation to the potential placement of its graduates; or

(f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

(Authority: 20 U.S.C. 1094)

Sanctions

If the Department determines that an eligible institution has engaged in substantial misrepresentation, it may

- revoke the school's program participation agreement if the school is provisionally certified under 34 CFR 668.13(c);
- impose limitations on the school's participation in the FSA programs if it is provisionally certified;
- deny participation applications made on behalf of the school; or
- initiate a proceeding against the school under 34 CFR 668, subpart G; such an action could require that when the misrepresentation results in a successful borrower defense to repayment of a loan first disbursed on or after July 1, 2020, the school must pay the Department the amount of the loan to which the defense applies.

  [A "borrower defense" claim can result when there is an act or omission by the school that relates to the loan the student received for enrollment or educational services and that would be a cause of legal action against the school under state law. It includes one or both of the following: a defense to repayment of a Direct Loan owed to the Department, in whole or in part, or a claim to recover amounts previously collected by the Department on the Direct Loan, in whole or in part. See 34 CFR 685.206(c)(1)]

Recovery of funds from school
34 CFR 685.206(e)(16) and 308(a)(3)

FOREIGN GIFTS, CONTRACTS, AND OWNERSHIP

Foreign gifts and contracts
HEA Sec. 117
U.S.C. Sec. 1011f

Under the circumstances described below, schools must report to the Department information about foreign ownership or control and about gifts from or contracts with any foreign source that are, singly or in combination, worth $250,000 or more in a calendar year.

A school (and each campus of a multi-campus school) must report this information if it

- 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 aid (directly or indirectly through another entity or person) or receives support from the extension of such aid to any of the school's sub-units.

Schools that are owned or controlled by a foreign source must file two reports per year: one no later than January 31 and the other no later than July 31. Other schools that receive a gift from or enter into a contract with a foreign source that meets the threshold stated above, must file a report no later than January 31 or July 31, whichever is sooner.

Previously schools reported this information using question 71 on the E-App, but now they must use the online reporting system instead. Data that schools report include:

- Whether they are owned or substantially controlled by a foreign source, the identity of the source, the date ownership or control began, and changes resulting from it.
- Gift amounts from a foreign source that, singly or in combination, meet the $250,000 threshold. This includes restricted gifts.
- Contract amounts (and other terms) with a foreign source that meet the same threshold. This includes restricted contracts.
- The name and address of the foreign source and what type it is: (1) a foreign government, (2) a foreign legal entity, (3) a person who is not a citizen or national of the U.S. or one of its protectorates or territories, or (4) an agent acting on behalf of one of these sources (1–3).
- For restricted or conditional gifts or contracts, a detailed description of the restrictions or conditions. This includes which situations they relate to that are listed in the definition below.

Note that what schools report has changed from what used to be reported on the E-App. See the June 22, 2020, announcement for more details about the new reporting method and the information that schools will now report. Appendix A of the announcement has an outline of the report, and Appendix B has a list of Q's and A's.

Finally, the report contains an acknowledgement of a failure to comply. The information collected in the report is subject to 18 U.S.C. §1001, which provides that a person may be subject to fines and imprisonment if he knowingly falsifies or conceals a material fact, makes any materially false or fraudulent statement or representation, or makes or uses any document that contains a materially false or fraudulent statement. Also, if a school fails to fulfill the obligations of HEA Section 117, the Secretary of Education may request the Department of Justice to undertake a civil action in federal district court.

Background information and resources related to HEA Section 117 can be found on the Department's website. For technical questions or access issues, email ForeignGiftsAccess@ed.gov.

ANTI-LOBBYING PROVISIONS

Prohibition on use of FSA funds

Prohibition on use of FSA funds
20 USC 1011m
34 CFR Part 82

FSA funds may not be used to pay any person for trying to influence a member of Congress, an employee of a member of Congress, or an officer or employee of Congress or any agency.

This prohibition applies to the making of a federal grant or loan, awarding federal contracts, and entering into federal cooperative agreements, as well as to the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.

Also, FSA funds may not be used to hire a registered lobbyist or pay any person or entity for securing an earmark. Schools receiving FSA funds will have to certify their compliance with these requirements annually.

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.

Definitions

Foreign source—This term comprises
- a foreign government, including an agency of a foreign government;
- a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;
- an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and
- an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.

Gift—Any gift of money or property.

Contract— Any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties.

Restricted or conditional gift or contract—Any endowment, gift, grant, contract, award, present, or property of any kind which 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.

HEA §117(h)
20 U.S.C. §1011f(h)

Campus-Based disclosure

If a school that receives more than $100,000 in Campus-Based funds has used *non-federal* funds to pay any person for lobbying activities in connection with the Campus-Based Programs, the school must submit a disclosure form (Standard Form LLL) to the Department. The school must update this disclosure at least annually and when changes occur.

The disclosure form must be signed by the chief executive officer (CEO). A school is advised to retain a copy in its files.

The school must require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

FIRST AMENDMENT VIOLATIONS

Submission of final court judgments
34 CFR 75.500(b)–(c) and 76.500(b)–(c)

Reporting final court judgments

Public schools that receive direct grants, including Pell grants, from the Department and that are legally required to abide by the First Amendment to the U.S. Constitution must comply with protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a state or federal court that the school or one of its employees, acting in his or her official capacity, violated the First Amendment. A final judgment is one that the school chooses not to appeal or that is not subject to further appeal.

Private schools must comply with their stated policies regarding freedom of speech, including academic freedom. The Department will determine that a private institution has not complied with its stated policies only if there is a final, non-default judgment by a state or federal court that the school or one of its employees, acting on behalf of the school, violated its institutional policy regarding freedom of speech or academic freedom.

Both public and private schools subject to the above judgments must submit to the Department a copy of the court's final, non-default judgment no later than 45 calendar days after the judgment is entered. This requirement became effective November 23, 2020; it applies only to violations of the First Amendment or a school's freedom of speech policy that occur on or after that date and bring a final judgment, as explained above.

Equal treatment of religious student organizations

Equal treatment of religious student organizations
34 CFR 75.500(d) and 76.500(d)

Public schools that receive direct grants from the Department cannot deny to any student organization whose stated mission is religious in nature any right, benefit, or privilege that is otherwise afforded to other student organizations at the school because of its beliefs, practices, policies, speech, membership standards, or leadership standards that are informed by sincerely held religious beliefs. Such rights and benefits include but are not limited to full access to the facilities of the school, distribution of student fee funds, and official recognition of the organization by the school. Anyone may report a violation of this requirement to the Department by emailing religiousliberty@ed.gov.

See the November 25, 2020, Federal Register notice for more information about these First Amendment issues.

VOTER REGISTRATION

If a participating school is located in a state that requires voter registration prior to election day and/or does not allow registration at the time of voting, then the school must make a good-faith effort to distribute voter registration forms to its students. This requirement was included in the National Voter Registration Act of 1993 (also known as the "NVRA" or "motor voter law").

The Department of Justice identified that the requirements of the NVRA apply to 44 states and the District of Columbia. Six states—Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming—are exempt from the NVRA. Likewise, the territories are not covered by the NVRA (Puerto Rico, Guam, Virgin Islands, American Samoa).

The school must make the voter registration forms widely available to its students and must individually distribute the forms to its degree- or certificate-seeking (FSA-eligible) students. The school can mail paper copies, or it may send an electronic message to each student with a voter registration form or with an Internet address where the form can be downloaded. The message must be devoted exclusively to voter registration.

In applicable states, 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.

EXCLUSIONS FOR FOREIGN SCHOOLS

Many of the consumer information requirements described in this chapter do not apply to foreign schools. Following is a list of those that do not apply with the relevant regulatory or statutory citation. For details see the November 2018 *Federal Register* notice.

- Transfer of credit policies and articulation agreements (34 CFR 668.43(a)(11))
- Copyright infringement policies and sanctions, including computer use and file sharing (34 CFR 668.43(a)(10))
- School and program accreditation, approval, or licensure (34 CFR 668.43(a)(6))
- Drug and alcohol abuse prevention program (34 CFR 86.100 and 86.103; 20 U.S.C. 1011i)
- Completion/graduation and transfer-out rates for students receiving athletically related student aid (34 CFR 668.41(f) and 668.48)
- Intercollegiate athletic program participation rates and financial support (Equity in Athletics Disclosure Act) (34 CFR 668.41(g) and 668.47(c))
- Completion/graduation and transfer-out rates (including disaggregated completion/graduation rates) (34 CFR 668.41(d) and 668.45)
- Placement in employment (34 CFR 668.41(d))
- Job placement rates (34 CFR 668.14(b)(10))
- Types of graduate and professional education in which the institution's graduates enroll (34 CFR 668.41(d)(6))
- Retention rate (34 CFR 668.41(d)(3))
- Security report—missing person notification policy (34 CFR 668.46(b)(14) and 668.46(h))
- Fire safety report (34 CFR 668.41(e) and 668.49)
- Fire log (34 CFR 668.49(d))
- State grant assistance (34 CFR 668.14(b)(11))
- Notice of federal student financial aid penalties for drug law violations (20 U.S.C. 1092(k))
- Vaccinations policy (20 U.S.C. 1092(a)(1))
- Student body diversity (20 U.S.C. 1092(a)(1)(Q))
- Textbook information (20 U.S.C. 1015b)
- Accountability for programs that prepare teachers (20 U.S.C. 1022d–1022g)
- Voter registration forms (20 U.S.C. 1094(a)(23))
- Constitution Day (36 U.S.C. 106)

Record Keeping, Privacy, & Electronic Processes

Schools must maintain detailed records to show that FSA funds are disbursed in the correct amounts to eligible students. These records must be retained for a certain amount of time and made available to authorized parties in the course of audits, program reviews, or investigations. Personally identifiable information in these records must be safeguarded and may only be released to other parties under certain conditions specified in the regulations. You may wish to share the contents of this chapter with your school's IT office or provider.

REQUIRED RECORDS

Record keeping
34 CFR 668.24

A school must keep comprehensive, accurate program and fiscal records related to its use of FSA program funds. Complete and accurate records are important. Program and fiscal records must demonstrate the school is capable of meeting the administrative and fiscal requirements for participating in the FSA programs. Records must demonstrate proper administration of FSA program funds and 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 according to program regulations. To assess your compliance with the provisions of this chapter, see Activity 2 on the fiscal management page of the FSA Assessments website.

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

Closed school or branch

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. A school that formerly participated in the FFEL Program must also provide access for the appropriate guaranty agency.

If a school has an additional location or branch that closes, the school should maintain its loan records beyond the end of the three-year record retention requirement to respond to the Department or to refute borrower claims of eligibility for discharge.

Records related to school eligibility

A school must establish and maintain on a current basis any application the school submitted for FSA program funds. Other program records that must be maintained include:

- Program Participation Agreement (PPA), approval letter, and Eligibility and Certification Approval Report (ECAR),
- application portion of the FISAP,
- accrediting and licensing agency reviews, approvals, and reports,
- state agency reports,
- audit and program review reports,
- self-evaluation reports, and
- other records, as specified in regulation, that pertain to financial responsibility and standards of administrative capability.

Records relating to student eligibility

A school must keep records that substantiate the eligibility of students for FSA funds, such as:

- cost of attendance information,
- documentation of a student's satisfactory academic progress (SAP),
- documentation of student's program of study and the courses in which the student was 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 and resolve conflicting information,
- documentation of all professional judgment decisions, and
- financial aid history information for transfer students.

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.

The fiscal records a school must maintain include but are not limited to the following:

- 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, and
- the fiscal operations report portion of the FISAP.

A school must also maintain records that support data appearing on required reports, such as:

- Pell Grant statements of accounts,
- cash requests and quarterly or monthly reports from the G5 payment system,
- FSA program reconciliation reports,
- audit reports and school responses,
- state grant and scholarship award rosters and reports,
- accrediting and licensing agency reports, and
- records used to prepare the income grid on the FISAP.

Loan program records

Loan program records
34 CFR 668.24, 682.610, and 685.309(c)

There are special record keeping requirements in the Direct and FFEL loan programs. A school must maintain

- A copy of the paper or electronic loan certification or origination record, including the loan amount and the period of enrollment.
- The cost of attendance, estimated financial assistance, and expected family contribution used to calculate the loan amount (and any other information that may be required to determine the borrower's eligibility, such as the student's Federal Pell Grant eligibility or ineligibility).
- The date(s) the school disbursed the loan funds to the student (or to the parent borrower), and the amount(s) disbursed. (For loans delivered to the school by check, the date the school endorsed each loan check, if required.)
- Documentation of the confirmation process for each academic year in which the school uses the multi-year feature of the Master Promissory Note. This may be part of the borrower's file, but acceptable documentation can also include a statement of the confirmation process that was printed in a student handbook or other financial aid publication for that school year. The documentation may be kept in paper or electronic form. There is no retention limit for this documentation; you must keep it indefinitely because it may affect the enforceability of loans.

A school must keep records relating to a student or parent borrower's eligibility and participation in the Direct Loan or FFEL program for three years after the end of the award year in which the student last attended the school. A school must keep all other records relating to the school's participation in the Direct Loan or FFEL program for at least three years after the end of the award year in which the records are submitted.

Campus-Based records

Schools participating in the Campus-Based Programs must keep the FISAP and any records supporting the data used to create it (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. Consider the Fiscal Operations Report for 2019–2020 and Application to Participate for 2021–2022. It is submitted during the 2020–2021 award year by October 1, 2020. That award year ends on June 30, 2021, so schools must retain the data used to create that FISAP until at least June 30, 2024 (three years from June 30, 2021).

See *Volume 6—Campus-Based Programs*, *Chapter 1*, for a discussion of the record-keeping requirements for the FWS and FSEOG programs, and see *Chapter 3* of that volume about Perkins record keeping.

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, FFEL/DL reports must be kept for three years after the end of the award year in which they were submitted, while borrower records must be kept for three years from the end of the award year in which the student last attended.

Different retention periods are necessary to ensure enforcement and repayment of Perkins loans, which are normally held by the school. 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.

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 8* 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.

There are also additional record retention requirements that apply to schools granted waivers of the audit submission requirements.

Summary of Record Retention Requirements

From 34 CFR 668.24 Record retention and examinations.

Program Records

A school must establish and maintain, on a current basis, any application for FSA funds and 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 of FSA program funds.

Fiscal records

A school must 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 school financial activity.

Records for FSA recipients

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 program funds,
- 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 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 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,
- Reports and forms used by the school 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 6*).

Minimum Record Retention Periods

Pell and TEACH grants, Campus-Based Program records

3 years from the end of the award year for which the aid was awarded

Except:

- Fiscal Operations Report (FISAP) and supporting records—3 years from the end of the award year in which the report was submitted
- Perkins repayment records*—Until the loan is satisfied, or the documents are no longer needed to enforce the obligation
- Perkins original promissory notes—3 years from the date the loan is assigned to ED, canceled, or repaid

Direct Loans & FFEL

- Records related to borrower's eligibility and participation—3 years from the end of the award year in which the student last attended
- All other records, including any other reports or forms—3 years from the end of the award year in which the report was submitted

* includes original repayment schedule, though manner of retention remains same as promissory note

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

Record retention requirements for the Institutional Student Information Record (ISIR) are discussed here. All other record information, regardless of the format used, 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.

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 stored electronically and the promissory note must be retrievable in a coherent format. Because MPNs are stored in COD, this requirement can be satisfied through COD.

Requirements for electronic promissory notes
34 CFR 668.24(d)(3)(i) through (iv)

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.

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.

Hard copies of SARs that students submit to schools must be maintained and available in their original format or in an imaged media format. The ISIR, an electronic record, must be maintained and available in its original format (e.g., 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.

EXAMINATION OF RECORDS

Location

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

A school is not required to maintain records in any specific location. For example, it may be more appropriate for a school to maintain some records in the financial aid office while maintaining others 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.

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. See Chapter 4 for more information on independent audits and Chapter 8 for information on program reviews. A school must also provide this cooperation to its accrediting agency and to any guaranty agency in whose program the school participates.

Cooperation must be extended to the following individuals and their authorized representatives: an independent auditor, the Secretary of the Department of Education, the Department's Inspector General, and the Comptroller General of the United States.

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 all personnel associated with its or its servicer's administration of the FSA programs so that any of the agents listed above may obtain relevant information. A school or servicer must allow those personnel to supply all relevant information and to be interviewed without the presence of the school's or servicer's management (or tape recording of the interviews by the school or servicer).

If requested by the Department, a school or servicer must provide promptly any information the school or servicer has regarding 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.

PRIVACY OF STUDENT INFORMATION UNDER FERPA

The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law that protects the privacy of students' education records, which are records that are: (1) directly related to a student; and (2) maintained by an education agency or postsecondary institution or by a party acting for the agency or institution. A student housing facility owned by a third party that has a contract with a school to provide housing for its students is considered under the control of the school (whether the rent is paid directly by the student or by the school on her behalf). Records maintained by the third party or the school related to students living in that housing are subject to FERPA. Note: 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 citations

20 USC 1232g
34 CFR 99.7 Notification of FERPA Rights
§ 99.8 Law enforcement unit records
§ 99.10–12 Right of student to review records
§ 99.20–22 Right of student to request amendment to records
§ 99.30 Prior consent requirement
§99.31 When prior consent is not required to disclose information
§ 99.32 Record keeping requirement
§ 99.33 Limitations on redisclosure
§ 99.34 Disclosure to other agencies/ institutions
§ 99.35 Disclosure to certain authorities for audit or evaluation of education programs

At the postsecondary level, FERPA affords eligible students with certain rights. FERPA defines an "eligible student" as a student who has reached 18 years of age or is attending an institution of postsecondary education at any age. With exceptions such as those noted in this section, FERPA affords postsecondary students the right to inspect and review their education records, the right to seek to have their records amended and the right to have some control over the disclosure of personally identifiable information from their education records.

These rules apply to all education records a school keeps, including admissions records (only if the student was admitted), academic records, and any financial aid records pertaining to the student. Therefore, the financial aid office is not usually the office that develops a school's FERPA policy or the notification to students, although it may have some input.

You can read the FERPA model notification that the Department has posted online. Also, the *Guide for Developing High-Quality Emergency Operations Plans for Institutions of Higher Education* includes a helpful FERPA section, among other guidance. And the Department has issued a technical assistance document that provides information on FERPA and HEA legal requirements related to preparing for and addressing situations that threaten the health or safety of the campus community. The Department's Student Privacy Policy Office (SPPO) administers FERPA; for more information, see the Protecting Student Privacy website.

Sole possession records

Sole possession records are exempted from the definition of education record and thus are not subject to FERPA. They are kept in the sole possession of the maker of the record and are

- used as a memory or reference tool,
- not accessible or revealed to any other person except a temporary substitute for the maker of the record, and
- maintained by the school official unbeknownst to and not shared with other individuals, except persons acting as a temporary substitute for a school official.

Student's right to review education records under FERPA

A school must provide a student with an opportunity to review his or her education records within 45 days of the receipt of a request. A school is only required to provide the student with copies of education records or make other arrangements to provide the student access to the records if a failure to do so would effectively prevent the student from obtaining access to the records. 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.

While the rights under FERPA have transferred from a student's parents to the student when the student attends a postsecondary institution, FERPA does permit a school to disclose a student's education records to his or her parents if the student is a dependent student under IRS rules.

Note that the IRS definition of a dependent is quite different from that of a dependent student for FSA purposes. For IRS purposes, students are dependent if they are listed as dependents on their parent's income tax returns. (If the student is a dependent as defined by the IRS, disclosure may be made to either parent, regardless of which parent claims the student as a dependent.)

There are other situations in which information about a student may be disclosed to her parents. A school official may

- disclose information from a student's education records to parents in the case of a health or safety emergency involving the student.
- let parents of students under the age of 21 know when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.
- share with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record.

Prior written consent to disclose the student's records

Except under one of the special conditions described in this section, a student must provide written consent before an education agency or institution may disclose personally identifiable information from the student's education records.

The written consent must state the purpose of the disclosure, specify the records that may be disclosed, identify the party or class of parties to whom the disclosure may be made, and be signed and dated.

If the consent is given electronically, the consent form must identify and authenticate a particular person as the source of the electronic consent and indicate that person's approval of the information contained in the electronic consent.

The FERPA regulations include a list of exceptions where the school may disclose personally identifiable information from the student's file without prior written consent. Several of these allowable disclosures are of particular interest to the financial aid office, since they are likely to involve the release of financial aid records.

Disclosures to school officials

Some of these disclosures may be made to officials at your school or another school under certain conditions. Typically, these might include disclosures of admissions records, grades, or financial aid records. Disclosure may be made to the following individuals:

- other school officials, including teachers, within the school whom the school has determined to have legitimate educational interests, and
- officials of another postsecondary school or school system where the student receives services or seeks to enroll.

Third-party servicers that your school has contracted with to perform Title IV functions are considered school officials under FERPA when they perform any of the following:

- perform a school service or function for which your school would otherwise use employees,
- are under the control of your school with respect to the use and maintenance of education records, and
- comply with FERPA requirements about the use of personal information from education records.

A school official may disclose personal information from student education records to a third-party servicer who meets the above criteria if the official determines that the third-party servicer has a "legitimate educational interest." Your school must include in its annual notification of rights under FERPA the criteria for determining who is a school

official and what constitutes a legitimate educational interest. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Also, for such servicers to receive disclosures without student consent as though they were school officials, they must not use that personal information to set up a bank account or maintain a credit balance for students. See DCL GEN-12-08.

If your school routinely discloses information to other schools where students seek to enroll, it should include this information in its annual privacy notification to students, or, if not, your school must make a reasonable attempt to notify students at their last known address.

Crime and security records

There are two different FERPA provisions concerning the release of records relating to a violent crime. One concerns the release to the victim of any outcome involving an alleged crime of violence [34 CFR 99.31(a)(13)]. A separate provision permits a school 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 school's policy on the offense [34 CFR 99.31(a)(14)].

Records created and maintained by a school's law enforcement unit are exempt from the privacy restrictions of FERPA. A school may disclose information from these "law enforcement unit records" to anyone—including parents or federal, state, or local law enforcement authorities—without the student's consent pursuant to school policy and/or state law.

Disclosures to government agencies

Disclosures may be made for audit, evaluation, and enforcement purposes to authorized representatives of the U.S. Department of Education, which include employees of the Department—such as those of the National Center for Education Statistics and the offices of Federal Student Aid, Postsecondary Education, Inspector General and Civil Rights—as well as firms under contract to the Department to perform certain administrative functions or studies.

In addition, disclosure may be made if it is in connection with financial aid the student has received or applied for. Such disclosure may only be made if the student information is needed to determine the amount of the aid or the conditions or student's eligibility for the aid or to enforce the terms or conditions of the aid.

Schools may, without violating FERPA, release personally identifiable information on nonimmigrant students with an F, J, or M visa to U.S. Immigration and Customs Enforcement in compliance with the Student Exchange Visitor Information System program.

Disclosures in response to subpoenas or court orders

Subpoena citations
20 USC 1232g(b)(1)(J)(i) and (ii), (b)(2)(B)
20 USC 1232g(b)(4)
34 CFR 99.31(a)(9)
34 CFR 99.32

FERPA permits schools to disclose personally identifiable information from a student's education records without the student's consent to comply with a lawfully issued subpoena or court order. In most cases the school must make a reasonable effort to notify the student who is the subject of the subpoena or court order before complying so that he may seek protective action. However, the school does not have to notify the student if the court or issuing agency has prohibited such disclosure if certain conditions are met.

A school may also disclose information from education records, without the consent or knowledge of the student, to representatives of the U.S. Department of Justice in response to an ex parte order issued in connection with the investigation of crimes of terrorism. "Terrorism" and "crimes of terrorism" are defined in 18 USC 2331 and 2332b(g)(5)(B).

Documenting the disclosure of information

A school does not have to record requests for access made by the eligible student, a school official who has a legitimate educational interest, some court orders or subpoenas, or a party seeking directory information or who has written consent from the eligible student.

Otherwise, a school must keep a record of each request for access and each disclosure of personally identifiable student information to other parties. The record of the request and disclosure 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.

For instance, if Department officials request student records in the course of a program review, the school must document in each student's file that his or her records were disclosed to representatives of the Department. An easy 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 program review conducted by a Department regional office.

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

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.

> The School Participation Division 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 program review staff to find out if any redisclosure is anticipated.

FERPA Responsibilities and Student Rights

A school is required to

- ✔ annually notify students of their rights under FERPA;
- ✔ include in that notification the procedure for exercising their rights to inspect and review education records; and
- ✔ maintain a record in a student's file listing to whom personally identifiable information was disclosed and the legitimate interests the parties had in obtaining the information (does not apply to school officials with a legitimate educational interest or to directory information).

A student has the right to

- ✔ inspect and review any education records pertaining to the student;
- ✔ request an amendment to his/her records; and
- ✔ consent to disclosure of personally identifiable information from education records, except when FERPA permits disclosure without consent.

HIPAA (Privacy of Health Records) and FERPA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) sets standards to protect the confidentiality of health information.

However, the HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described here.

Your school's disability services office normally obtains and maintains health records for each student who applies for services or waivers, so the receipt and maintenance of health records by student services units is well established. Note: In many cases a student receiving a waiver from a school's academic progress policy would also have applied for services from your school's disability services office. Since most financial aid offices are not used to handling medical records, you may find it more practical to have the disability services office maintain the record and to reference that record in your file in the financial aid office. Of course, you will have to ensure that the record maintenance requirements are complied with.

You can read guidance on HIPAA and FERPA developed jointly by the U.S. Department of Health & Human Services (HHS) and the Department of Education. For more information on HIPAA, see HHS's HIPAA website. You can also read FAQs about FERPA and HIPAA in the section of that website for professionals. HIPAA regulations are published as 45 CFR Parts 160, 162, and 164.

HIGHER EDUCATION ACT DATA USE LIMITATIONS

FAFSA data restrictions
HEA Section 483(a)(3)(E)
NSLDS restrictions
HEA Section 485B(d)(2)

The HEA also provides limitations on the uses of certain types of data. The provisions of the HEA apply differently to information collected on or derived from the FAFSA. This means that the HEA's provisions apply to data on the ISIR (including award and disbursement information) and to data included in NSLDS (including data on the ISIR from NSLDS).

The HEA restricts the use of the FAFSA/ISIR data to the application, award, and administration of aid awarded under the Title IV programs, state aid, or aid awarded by eligible institutions. The Department interprets "administration of aid" to include audits and program evaluations necessary for the efficient and effective administration of those student aid programs.

The HEA also prohibits nongovernmental researchers or policy analysts from accessing PII from NSLDS and prohibits the use of NSLDS data for marketing purposes. It is important to note that these prohibitions are applicable to all NSLDS data, including NSLDS data received by institutions via the ISIR.

Sharing FAFSA Data

An institution of higher education may, with explicit written consent of an applicant who has completed a FAFSA under section 483(a), provide such information collected from the applicant's FAFSA as is necessary to a scholarship-granting organization, including a tribal organization (defined in section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304), or to an organization assisting the applicant in applying for and receiving federal, state, local, or tribal assistance

Guidance on the Use of Financial Aid Information for Program Evaluation and Research

The Department of Education's Privacy Technical Assistance Center (PTAC) has published *Joint Guidance on the Use of Financial Aid Information for Program Evaluation and Research* to help schools understand using student financial aid information for program evaluation and research. That guidance is available at

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FSA_final_0.pdf

The Department established PTAC as a "one-stop" resource for education stakeholders to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems and other uses of student data. Additional information regarding these matters may be found at PTAC's website. PTAC's resources on disclosure avoidance and de-identification, is available at

https://studentprivacy.ed.gov/

If you have questions about the PTAC guidance or other privacy or security matters related to student financial aid information, please contact the PTAC Help Desk by email at **PrivacyTA@ed.gov** or by phone at **855-249-3072**.

that is designated by the applicant to assist the applicant in applying for and receiving financial assistance for any component of the applicant's cost of attendance (defined in section 472 of the HEA) at that institution.

An organization that receives such information is prohibited from selling or otherwise sharing such information.

See the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019.

Information security requirements
15 USC 6801(b), 6805(b)(2)
Federal Trade Commission regulations
16 CFR 313.3(n) and 314.1–5

THE E-SIGN ACT AND INFORMATION SECURITY

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) provides, in part, that a signature, contract, or other record relating to a transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form or because an electronic signature or electronic record was used in its formation. The E-Sign Act permits lenders, guaranty agencies, and schools to use electronic signatures and electronic records in place of traditional signatures and records that, under the HEA and underlying regulations, otherwise must be provided or maintained in hard-copy format.

Unless a statute or regulation specifically requires a school to provide or maintain a record or document on paper, obtain a pen and paper signature, or send a notification or authorization via U.S. mail, your school may, respectively,

- provide and maintain that record electronically,
- obtain the signature electronically as long as the electronic process complies with the E-Sign Act and all other applicable laws,
- provide notices or receive authorizations electronically. You may also use an electronic process to provide required notices and make disclosures by directing students to a secure website that contains the required notifications and disclosures.

For additional information on electronic transactions involving student loans, see Section 2 of *Standards for Electronic Signatures in Electronic Student Loan Transactions*, in GEN-01-06.

Obtaining voluntary consent for electronic transactions

Before using electronic transactions to communicate with a recipient of FSA funds, the recipient must affirmatively consent to the use of an electronic record. The recipient's consent must be voluntary and based on accurate information about the transactions to be completed. This consent to participate in electronic transactions is required for all financial information provided or made available to student loan borrowers and for all notices and authorizations to FSA recipients required under 34 CFR

668.165—Notices and Authorizations. See Volume 4 for more information on notices and authorizations for disbursements.

The consent must be obtained in a manner that reasonably demonstrates that the person can access the information to be provided in an electronic form. For example, if you are going to send financial information by email, you could send a request for consent to the recipient via email, require the recipient to respond in a like manner, and maintain a record of that response.

Safeguarding confidential information in electronic processes

Any time a school uses an electronic process to record or transmit confidential information or obtain a student's confirmation, acknowledgment, or approval, the school must adopt reasonable safeguards against possible fraud and abuse. Reasonable safeguards a school might take include password protection, password changes at set intervals, access revocation for unsuccessful logins, user identification and entry-point tracking, random audit surveys, and security tests of the code access.

If your school uses an electronic process to provide notices, make disclosures, and direct students to a secure website, it must provide notice of this each year to each student, whether via email, campus mail, or the traditional mail of the U.S. Postal Service.

The annual individual notice must

- identify the information required to be disclosed that year,
- provide the exact Web address for the information,
- state that persons are entitled to a paper copy upon request, and
- inform students how to request a paper copy.

Establishing and maintaining an information security program

The Federal Trade Commission (FTC) has ruled that most colleges are subject to the provisions of the Financial Services Act's Security Provisions (also known as the Financial Services Modernization Act). In the regulation, the commission created a definition of financial institutions that includes most colleges on the basis of the financial relationships they have with students, donors, and others. Consequently, colleges must adopt an information security program and draft detailed policies for handling financial data covered by the law, such as parents' annual income, and take steps to protect the data from falling into the wrong hands. For specific requirements, see the discussion under *FTC Standards for Safeguarding Customer Information* later in this chapter.

While colleges have flexibility in choosing a system that provides for electronic requests for release of personally identifiable information, they must ensure that their systems provide adequate safeguards. Also, the

FTC requirements apply to Title IV third-party servicers, so colleges must use servicers that are capable of maintaining such safeguards and must require servicers by contract to implement and maintain those safeguards.

Protecting student information

Under their Program Participation Agreement (PPA) and the Gramm-Leach-Bliley Act (Public Law 106-102), schools must protect student financial aid information, with particular attention to information provided to institutions by the Department or otherwise obtained in support of the administration of the federal student financial aid programs.

The GLBA requires institutions to, among other things,

- Develop, implement, and maintain a written information security program;
- Designate the employee(s) responsible for coordinating the information security program;
- Identify and assess risks to customer information;
- Design and implement an information safeguards program;
- Select appropriate service providers that are capable of maintaining appropriate safeguards; and
- Periodically evaluate and update their security program.

Presidents and chief information officers of institutions should have, at a minimum, evaluated and documented their current security posture against the requirements of GLBA and have taken immediate action to remediate any identified deficiencies.

The Department is incorporating the GLBA security controls into the Annual Audit Guide in order to assess and confirm schools' compliance with the GLBA. The Department will require the examination of evidence of GLBA compliance as part of schools' annual student aid compliance audit.

See DCL GEN-15-18 on protecting student information. It gives suggestions and resources for following industry standards and best practices on managing information systems. GEN-16-12 offers more information.

In August 2018 the Department issued a warning about a malicious phishing campaign that sought access to student accounts via student portals. That announcement identified single-factor authentication as a weakness exploited in these cyberattacks and recommended that colleges use two- or multi-factor authentication to reduce the likelihood of such security breaches. To report incidents or get answers to questions about cybersecurity, send an email to FSA_IHECyberCompliance@ed.gov.

Reporting Security Breaches to Students and the Department

The Department considers any breach in the security of student records and information to be a demonstration of a potential lack of administrative capability.

Schools' SAIG Agreements include a provision that schools must immediately notify the Department at CPSSAIG@ed.gov when there is breach of security of student records and information, and ED strongly encourages schools to notify their students of the breach at the same time.

In their reports to the Department, schools should include the following:

- Date of breach (suspected or known)
- Impact of breach (# of records, etc.)
- Method of breach (hack, accidental disclosure, etc.)
- Information Security Program Point of Contact - Email and phone details
- Remediation Status (complete, in process - with detail)
- Next steps (as needed)

Federal Student Aid has consolidated its cybersecurity compliance information and resources on its FSA Cybersecurity Compliance site.

NIST Special Publication 800-171 Rev. 2

As data breaches increase, it is vital that schools protect controlled unclassified information (CUI) used in the administration of the federal student aid programs. Since 2018 many schools have adopted some or all of the recommended requirements of National Institute of Standards and Technology (NIST) Special Publication 800–171. We further encourage use of NIST 800–171 Rev. 2, *Controlled Unclassified Information in Non-federal Systems*, to help mitigate risks related to CUI.

In 2021 the Department plans for a self-assessment to determine schools' readiness to comply with NIST 800–171 Rev. 2 and other cybersecurity requirements. We intend to collaborate with schools and other organizations to establish a cybersecurity baseline, share information, and ensure this compliance. We will provide further guidance in 2021, including information about the cybersecurity self-assessment. In the meantime, we strongly encourage schools to learn more about NIST 800–171 Rev. 2 and to share that with their IT teams to reduce risk surrounding CUI. See the December 18, 2020, announcement for more, including links to NIST documents.

FTC Standards for Safeguarding Customer Information

Colleges participating in the FSA programs are subject to the information security requirements established by the FTC for-financial institutions.

Customer information that must be safeguarded

These requirements apply to all customer information your school has, regardless of whether it pertains to students, parents, or others your school has a customer relationship with or pertains to the customers of other financial institutions that have given such information to you.

Customer information is any record containing nonpublic personal information[1] about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

Establishing and maintaining an information security program

As a financial institution covered under these information security requirements, your school must develop, implement, and maintain a comprehensive information security program.[2]

The information security program must be written in one or more readily accessible parts and contain administrative, technical, and physical safeguards that are appropriate to the size and complexity of the school, the nature and scope of its activities, and the sensitivity of any customer information at issue.
The safeguards shall be reasonably designed to achieve the following objectives:

- insure the security and confidentiality of customer information,
- protect against any anticipated threats or hazards to the security or integrity of such information, and
- protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

[1] Personally identifiable financial information; and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

[2] The administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

Required elements of an information security program

Designated coordinators. Your school must designate an employee or employees to coordinate its information security program.

Risk assessment. Your school must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information and assess the sufficiency of any safeguards in place to control these risks.

At a minimum, the school's risk assessment should include consideration of risks in each relevant area of your operations, including

- employee training and management,
- information systems, including network and software design, as well as information processing, storage, transmission, and disposal, and
- detecting, preventing, and responding to attacks, intrusions, or other system failures.

Safeguards and testing/monitoring. Your school must design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

Evaluation and adjustment. Your school must evaluate and adjust its information security program in light of the results of the required testing and monitoring, as well as for any material changes to your operations or business arrangements or any other circumstances that it has reason to know may have a material impact on your school's information security program.

Overseeing service providers. A service provider is any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information by providing services directly to your school. Your school must take reasonable steps to have service providers that are capable of maintaining appropriate safeguards for customer information, and you must require your service providers by contract to implement and maintain such safeguards.

FTC regulations: 16 CFR 313.3(n) and 16 CFR 314.1–5
Gramm-Leach-Bliley Act: Sections 501 and 505(b)(2)
U.S. Code: 15 USC 6801(b), 6805(b)(2)

PREVENTING COPYRIGHT VIOLATIONS

Copyright requirements
34 CFR 668.14(b)(30)

A school must implement written plans to effectively combat the unauthorized distribution of copyrighted material by users of the school's network without unduly interfering with educational and research use of the network.

These plans must include the use of one or more technology-based deterrents and procedures for handling unauthorized distribution of copyrighted material (including disciplinary procedures). Technology-based deterrents include bandwidth shaping, traffic monitoring, accepting and responding to Digital Millennium Copyright Act (DMCA) notices, and commercial products designed to reduce or block illegal file sharing. See GEN-10-08. No particular technology measures are favored or required for inclusion in the school's plans, and each school has the authority to determine its own plans, including those that prohibit content monitoring.

The school's plans must also include measures to educate its community about appropriate versus inappropriate use of copyrighted material, including the information described under the student consumer information rules in *Chapter 6*. These mechanisms may include any additional information and approaches that the school determines will contribute to the effectiveness of the plans. For instance, the school might include pertinent information in student handbooks, honor codes, and codes of conduct in addition to email and/or paper disclosures.

The school must have a written plan for the periodic review of the effectiveness of these measures, using relevant assessment criteria.

The school must, in consultation with its chief technology officer (or other designated officer), periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material (and disseminate the results, as described in *Chapter 6*) and offer legal alternatives for downloading or otherwise acquiring copyrighted material (to the extent practicable and as determined by the school).

The Department anticipates that individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists that may be referenced for compliance with this provision.

Program Reviews, Sanctions, & Closeout

CHAPTER 8

In this chapter we discuss program reviews conducted at schools, sanctions and corrective actions, and procedures for schools that are ending their participation in one or more of the FSA programs.

PROGRAM REVIEWS BY THE DEPARTMENT

The Department of Education oversees the FSA programs to ensure they are administered properly. One way we do this is by conducting program reviews to confirm that schools meet FSA requirements for institutional eligibility, financial responsibility, and administrative capability. Program reviews identify compliance problems and suggest corrective actions. To assess your school's compliance with the provisions of this chapter, see the institutional eligibility module on the FSA Assessments website.

If a school is cited in a program review for improperly disbursing FSA program funds or other serious violations, it must restore the funds as appropriate. In addition to having to restore the funds it dispersed in error, a school may also be subject to correction actions and sanctions such as fines, emergency action, limitation, suspension, or termination, as discussed later in this chapter.

A program review covers many of the same areas as an audit (see *Chapter 4*), including fiscal operations and accounting procedures as well as compliance with the specific program requirements for student eligibility and awards. However, program reviews are not conducted annually at every school; priority is according to criteria specified in the law and given to schools that

Program review priority
20 USC 1099c-1(a)(2)

- have a high cohort default rate or dollar volume of default,
- have a significant fluctuation in Pell Grant awards or FSA loan volume that is not accounted for by changes in the programs,
- are reported to have deficiencies or financial aid problems by the appropriate state agency or accrediting agency,
- have high annual dropout rates, or
- the Department determines may pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.

Department program reviewers will

- analyze school records and identify weaknesses in the school's procedures for administering FSA funds;
- determine how those weaknesses may subject FSA funds to potential or actual fraud, waste, and abuse;
- identify corrective actions that will strengthen the school's future compliance with FSA rules and regulations;
- quantify the harm from any failings of the school and identify liabilities where noncompliance has lead to loss, misuse, or unnecessary spending of federal funds; and
- when necessary, refer schools for administrative action to protect the interests of students and taxpayers.

Scope of the review

A program review may be either a general assessment review, a focused review, or a compliance assurance review. A general assessment review is the most common type of review and is normally conducted to evaluate the school's overall performance in meeting FSA administrative and financial requirements. A focused review is normally conducted to determine if the school has problems with specific areas of FSA program compliance. A compliance assurance review is a tool that is used to help validate the Department's risk assessment system.

For general assessment, compliance assurance, and some focused reviews, the review team will randomly select student files. In general, a sample consists of 15 students from each award year under review. The review team will analyze the academic file, student account ledger, student financial aid file, and admissions file for each student in the sample.

Reviewers will also examine school records that are not specific to individual students. These records include required policies and procedures, fiscal records, and consumer information (i.e., the school's website, school catalog[s], pamphlets, etc.).

It may be necessary for the reviewer to conduct interviews with school officials, including academic or education personnel or the registrar, admissions personnel, financial aid personnel, fiscal office personnel, placement officers, and/or campus security personnel. In addition, the reviewer may interview students.

Location of the review

Program reviews are typically conducted at the institution. However, in some circumstances institutions are asked to submit copies of selected records to the Department for review at its offices, and interviews are conducted via telephone rather than in person.

School Participation Division

The School Participation Divisions conduct program reviews and review compliance audits, financial statements, and initial eligibility and recertification applications to get a picture of a school's overall compliance. FSA's School Eligibility Service Group (SESG) coordinates the School Participation Divisions, which are staffed by personnel in the regions and in Washington, DC. Each division is assigned a portfolio of schools and is responsible for the oversight functions mentioned above for those schools.

The entire division will evaluate information on the school from a variety of sources to identify any compliance issues at the school. The division can then assess potential risk to the FSA programs and determine appropriate action. Once appropriate actions are decided upon, the person assigned to the school ensures that the recommended actions are taken.

School Participation Divisions will collect and review information on a school from many sources, including but not limited to:

- applications for recertification,
- financial and compliance audits,
- state agencies,
- accrediting agencies and licensing boards,
- student complaints, and
- Department databases.

A School Participation Division may decide to take actions that include but are not limited to

- renewing full recertification or awarding only provisional certification;
- initiating a program review;
- establishing liabilities;
- developing a strategy for providing technical assistance;
- transferring the school to the cash monitoring or reimbursement payment method (see *Volume 4: Processing Aid and Managing FSA Funds*);
- requiring a letter of credit; and
- referring the school for an enforcement action.

Actions do not always have to be negative. For example, the School Participation Division can recommend a school for participation in the Experimental Sites Program.

Such oversight provides the additional benefit of permitting a school to contact one team that will have all information on the school available in one place. For a list of phone numbers for the regional School Participation Divisions, go to the IFAP website (**https://ifap.ed.gov**) and click on Help > Contact Information > Federal Student Aid Offices.

Notification of the review

Most reviews are announced up to 30 days before by a telephone call to the president and financial aid administrator. The school also receives written notice of the review and is asked to provide relevant materials (e.g., policies and procedures, consumer publications, a list of FSA recipients) prior to it. The school will also be expected to make other records available on-site at the start of the review. In some cases, notice is given the day before (via overnight delivery or fax), the morning of the review (via fax), or at the time the review team arrives at the school.

Examination of records
34 CFR 668.24(f)

Schools are required to cooperate with the Department in a program review and provide unrestricted access to any and all information requested to conduct the review. Access includes the right to copy records (including computer records), examine computer programs and data, and interview employees without the presence of management or the presence of the school's or a servicer's tape recorder. Failure to provide this access to the program review team may lead to an adverse administrative action.

Administrative subpoena authority
HEA Sec. 490A

Also, the Department has the authority to issue administrative subpoenas to assist in conducting investigations of possible violations of the provisions of FSA programs. The law authorizes the Department to request the Attorney General to invoke the assistance of any court of the United States for purposes of enforcing a subpoena if necessary.

Department obligations

For its part in program reviews, the Department is required to

- establish guidelines designed to ensure uniformity of practice in the conduct of program reviews;
- make copies of all review guidelines and procedures available to all participating schools;
- permit schools to correct administrative, accounting, or record keeping errors if the errors are not part of a pattern and there is no evidence of fraud or misconduct;
- base any civil penalty assessed against a school resulting from a program review or audit on the gravity of the violation, failure, or misrepresentation;
- inform the appropriate state and accrediting agency whenever it takes action against a school (this is a reciprocal relationship—see below);
- provide schools an adequate opportunity to review and respond to any program review report and related materials before a final report is issued; and
- consider a school's response in any final program review report or audit determination and include in that (1) a written statement addressing the school's response, (2) a written statement of the basis for the report or determination; and (3) a copy of the school's response. [20 USC 1099c-1(b)]

State responsibilities
HEA Sec. 495

The HEA requires that each state, through at least one state agency, must

- furnish the Department, upon request, with information regarding licensing and other authorization for a school to operate in that state;
- promptly notify the Department of revocations of licensure or authorization; and
- promptly notify the Department of credible evidence that a school has committed fraud in the administration of the FSA programs or has substantially violated a provision of the HEA.

Entrance and exit/status conference

The review team will hold an entrance conference with school officials at the beginning of the review. The purpose of the entrance conference is to provide school officials with information about the review and the program review process and for reviewers to learn how federal student aid is processed at the school.

The review team will hold an exit or status conference at the end of a program review. The purpose of the exit conference is to inform school officials about the next steps in the process, summarize preliminary findings, advise school officials of any immediate changes that must be made, and/or provide details of any remaining outstanding items. If the fieldwork is not complete or the data has not been fully analyzed, a status meeting is conducted. A return visit may be necessary or an exit conference may be conducted via telephone after further analysis is completed.

Written report

The program review team prepares a preliminary written report after completion of the review. In most instances, this report will be sent to the school within 75 days of the review. The school may respond to this report if it wishes to offer additional information to support its position or if it disagrees with any of the report's findings. When the Department has fully considered the school's response and any additional documentation provided by the school, the Department will send a Final Program Review Determination (FPRD) letter to the school.

Final program review determinations (FPRD) and appeals

An FPRD is a report that includes each finding identified in the program review report, the school's response, and the Department's final determination. The FPRD may require the school to take further action to resolve one or more of the findings. This action may include making student level adjustments in COD and the G5 payment system, and paying liabilities to the Department, student, or lenders on behalf of the student.

Accrediting Agency Role

The goal of accreditation is to ensure that the education provided by postsecondary educational institutions meets an acceptable level of quality. The Department recognizes agencies that meet established criteria, and such recognition is a sign that an agency has been determined to be a reliable authority on the quality of the institutions or programs the agency accredits.

An accrediting agency can be recognized by the Department for institutional or programmatic accreditation. An institutional accreditation agency accredits an entire institution. A programmatic accrediting agency accredits specific educational programs, departments, or schools within an institution.

An agency must have standards that effectively address the quality of a school or program in the following areas

- Success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, state licensing examination, and job placement rates
- Curricula
- Faculty
- Facilities, equipment, and supplies
- Fiscal and administrative capacity as appropriate to the specific scale of operations
- Student support services
- Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising
- Measures of program length and the objectives of the degrees or credentials offered
- Record of student complaints received by, or available to, the agency
- Record of compliance with the school's FSA program responsibilities, based on items such as default rate data and the results of compliance audits and program reviews and any other information that the department may provide to the agency
- Any additional accreditation standards the accrediting agency deems appropriate

There are many additional statutory requirements a national accrediting agency must meet to qualify for recognition. For example, an accreditation agency must

- consistently apply and enforce standards for accreditation that ensure that the education or training offered by an institution or program, including any offered through correspondence or distance education, is of sufficient quality to achieve its stated objectives for the duration of the school's accreditation period;
- perform, at regularly established intervals, on-site inspections and reviews of institutions of higher education (that may include unannounced site visits), with particular focus on educational quality and program effectiveness;
- agree that all adverse actions taken under 34 CFR Part 602 Subpart B are subject to the arbitration requirements in 20 U.S.C. 1099b(e); and
- if it is an institutional accrediting agency, maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after an agency has accredited or preaccredited the institution do not adversely affect the capacity of the institution to continue meeting the agency's standards.

There is more information as well as lists of agencies recognized by the Department on its website.

Department's recognition of accrediting agencies
Sec. 496 of the HEA
20 USC 1099b
34 CFR 602

Any funds the school owes as a result of the FPRD must be repaid within 45 days of the school's receipt of the FPRD unless the school submits an appeal to the Department or enters into a payment plan with the Department's Financial Management Group. The cover letter of the FPRD provides instructions on how to file an appeal. If payment or an appeal is not received within 45 days, the Department may elect to use administrative offset to collect the funds owed.

Appealing audits and program reviews
34 CFR Part 668 Subpart H

Only *final* audit or program review determinations may be appealed. The letter conveying a final determination is clearly identified as a Final Audit (or Program Review) Determination Letter and explains the appeals procedures.

CORRECTIVE ACTIONS AND SANCTIONS

Corrective actions and sanctions
34 CFR 600.41, Part 668 Subpart G

If a school has violated the FSA program regulations, the Department may, at its sole discretion, allow the school to respond to the problem and indicate how it will correct it. However, if the school has repeatedly violated the law or regulations or the Department has determined that the violations are egregious, it may sanction the school.

Sanctions

Sanctions include emergency actions, fines, limitations, suspensions, and terminations (see the following descriptions under "Corrective Actions and Sanctions"). The Department may initiate actions against any school that

- violates the law or regulations governing the FSA programs, its Program Participation Agreement, or any agreement made under the law or regulations; or
- substantially misrepresents the nature of its educational programs, its financial charges, or its graduates' employability. For details on misrepresentation, see *Chapter 6*.

In addition, the Department has the authority to terminate a school or program that no longer meets the eligibility criteria given in *Chapter 1*.

Similarly, the Department may also sanction a third-party servicer that performs functions related to the FSA programs. Further, the Department has the authority to sanction a group of schools or servicers if it finds that a person or entity with substantial control over all schools or servicers within the group has violated any of the FSA program requirements or has been suspended or debarred from program participation. See *Chapters 1* and *4*.

Corrective Actions and Sanctions

Emergency action

The Department may take an emergency action to withhold FSA program funds from a school or its students if the Department receives information, determined by a Department official to be reliable, that the school is violating applicable laws, regulations, special arrangements, agreements, or limitations. To take an emergency action, the Department official must determine that

- the school is misusing federal funds.
- immediate action is necessary to stop this misuse.
- the potential loss outweighs the importance of using established procedures for limitation, suspension, and termination.

The school is notified by registered mail (or other expeditious means) of the emergency action and the reasons for it. The action becomes effective on the date the notice is mailed.

An emergency action suspends the school's participation in all FSA programs and prohibits the school from disbursing FSA program funds. The action may not last more than 30 days unless a limitation, suspension, or termination proceeding is initiated during that period. In that case, the emergency action is extended until the proceeding, including any appeal, is concluded. The school is given an opportunity to show cause that the action is unwarranted.

Fine

The Department may fine a school up to $57,317 for each statutory or regulatory violation. In determining the amount of the fine, the Department considers the gravity of the offense, the nature of the violation, and the school's size. The school is notified by certified mail of the fine action, the amount of the fine, and the basis for the action. A school has 20 days from the date of mailing to submit a written request for a hearing or to submit written material indicating why the fine should not be imposed.

Limitation

Under a limitation, which lasts for at least 12 months, the Department imposes specific conditions or restrictions upon a school and its administration of the FSA programs. As a result, the school is allowed to continue participating in those programs. If the school fails to abide by the limitation's conditions, a termination proceeding may be initiated.

Suspension

A suspension removes a school from participation in the FSA programs for a period not to exceed 60 days (unless a limitation or termination proceeding has been initiated or the Department and the school agree to an extension). A suspension action is used when a school can be expected to correct an FSA program violation in a short time.

Corrective action

As part of any fine, limitation, or suspension proceeding, the Department may require a school to take corrective action. This may include making payments to eligible students from its own funds or repaying illegally used funds to the Department. In addition, the Department may offset any funds to be repaid against any benefits or claims due the school.

Termination

A termination ends a school's participation in the FSA programs. A school that has violated the law or regulations governing the FSA programs, its PPA, or any other agreement made under FSA regulations and was terminated from participating in the FSA programs generally may not apply to be reinstated for at least 18 months.

Possibility of reinstatement

A school requesting reinstatement in the FSA programs must submit a fully completed E-App to the Department and demonstrate that it meets the standards in 34 CFR Part 668. As part of the reinstatement process, the school must show that it has corrected the violation(s) on which its termination was based, including repaying all funds (to the Department or to the eligible recipients) that were improperly received, disbursed, caused to be disbursed, or withheld. The Department may approve the request, deny the request, or approve the request subject to limitations (such as granting the school provisional certification). If the Department approves the reinstatement request, the school will receive a new ECAR and enter into a new PPA.

Criminal penalties

Criminal penalties
HEA Sec. 490

The law provides that any person who knowingly and willfully embezzles; misapplies; steals; obtains by fraud, false statement, or forgery; or fails to refund any funds, assets, or property provided or insured under Title IV of the Higher Education Act; or attempts to commit any of these crimes will be fined up to $20,000 or imprisoned for up to five years, or both. If the amount of funds involved in the crime is $200 or less, the penalties are fines up to $5,000 or imprisonment up to one year, or both.

Any person who knowingly and willfully makes false statements, furnishes false information, or conceals material information in connection with the assignment of an FSA program loan or attempts to do so, will, upon conviction, be fined up to $10,000 or imprisoned for up to one year, or both. This penalty also applies to any person who knowingly and willfully

- makes, or attempts to make, an unlawful payment to an eligible lender of loans as an inducement to make, or to acquire by assignment, a loan insured under such part.
- destroys or conceals, or attempts to destroy or conceal, any record relating to the provision of FSA program assistance with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part.

CLOSEOUT PROCEDURES (WHEN FSA PARTICIPATION ENDS)

End of a school's participation in the Title IV programs
34 CFR 668.26

A school may stop participating in the FSA programs voluntarily or may be required to leave involuntarily, as described below. In either situation, it must follow the closeout procedures specified in the FSA regulations.

Involuntary withdrawal from FSA participation

A school's participation ends in the following circumstances:

- The school closes or stops providing instruction for a reason other than normal vacation periods or as a result of a natural disaster that directly affects the school or its students
- The school loses its accreditation
- The school loses its state licensure
- The school loses its eligibility
- The school's PPA expires
- The school's participation is terminated under 34 CFR 668 subpart G
- The school's provisional certification is revoked by the Department

- The school's cohort default rate exceeds allowable limits
- The school files a petition for bankruptcy or the school, its owner, or its CEO is responsible for a crime involving FSA funds

Notification requirement
34 CFR 600.40(d)

Closeout procedures

In general, when a school ceases to be eligible due to failing to meet statutory or regulatory requirements, it must notify its School Participation Division within 30 days of its loss of eligibility to participate in the FSA programs. The school must also do the following:

- Within 45 days of the effective ending date of participation, submit to the Department all financial reports, performance reports, and other reports, as well as a dated letter of engagement for an audit by an independent certified public accountant of all FSA program funds received. The completed audit report must be submitted to the Department within 45 days after the date of the letter of engagement.
- Report to the Department on the arrangements for retaining and storing (for the remainder of the appropriate retention period described in *Chapter 7*) all records concerning the school's management of the appropriate FSA programs.
- Tell the Department how the school will provide for collecting any outstanding federal loans held by the school.
- Refund students' unearned FSA student assistance. (See *Volume 5, Chapter 2*.)
- Liquidate its Perkins Loan portfolio and fund if it participated in the Perkins Loan program. (See *Volume 6, Chapter 5*.)

In addition, a school that closes must refund to the federal government or, following written instructions from the Department, otherwise distribute any unexpended FSA funds it has received (minus its administrative cost allowance, if applicable).

Unpaid commitments and loss of program eligibility

If a school's participation ends during a payment period or if a program loses its eligibility, but the school continues to provide education in the formerly eligible program until the end of the payment or enrollment period, the school may use FSA funds it possesses to

- satisfy unpaid Pell Grant or Campus-Based Program commitments made to students for that payment period or for previously completed payment periods before the school's participation ended;
- use the FSA funds in its possession to satisfy unpaid Direct Loan commitments made to students for that period of enrollment before participation ended by delivering subsequent Di-

rect Loan disbursements to the students or by crediting them to their accounts (if the first disbursement already was delivered or credited to the students' accounts before the school's participation ended).

Note: The school may request additional funds from the Department to meet these commitments.

A commitment under the Pell and TEACH grant programs occurs when an enrolled student is attending a school and has submitted a valid student aid report to it or when the school has received a valid institutional student information report. A commitment under the Campus-Based Programs occurs when a student is enrolled and attending the school and has received a notice from the school of the amount that he or she can expect to receive and how and when that amount will be paid.

Transitional operation for up to 120 days

Transitional operation
34 CFR 668.26(e)

The Department may permit a school to continue to originate, award, or disburse Title IV funds for no more than 120 days following the date of a final, non-appealable decision by a state authorizing agency to remove its authorization; by an accrediting agency to withdraw, suspend, or terminate accreditation; or by the Department to end the school's participation in the FSA programs. The school's accrediting agency and state must agree with the transitional operation, and the school must

- have notified the Department of its plans to conduct an orderly closure according to any requirements of its accrediting agency;
- perform a teach-out approved by its accrediting agency;
- agree to abide by the conditions of the PPA that was in effect on the date of the above decision, except that it will originate, award, or disburse funds only to enrolled students who can complete the program within 120 days of the decision or who can transfer to a new school; and
- give the Department acceptable written assurances that (1) the health and safety of its students are not at risk, (2) it has adequate financial resources to ensure that instructional services remain available to students during the teach-out, and (3) it is not subject to probation or its equivalent or to adverse action by its state authorizing body or accrediting agency (except as provided in the decision above).

Teach-out plan

Teach-out plan
34 CFR 668.14(b)(31)
Definition
34 CFR 600.2
Eligibility of additional locations for teach-out purposes
34 CFR 600.32(d)

A school must submit a teach-out plan to its accrediting agency if

- the Department initiates an emergency action or initiates the limitation, suspension, or termination of the school's participation in any FSA program;
- the school's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation;

- the school's state licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program;
- the school intends to close a location that provides 100% of at least one program; or
- the school otherwise intends to cease operations.

Closure of a branch or location

A separate closeout audit is not required if a school closes an additional location or a branch campus because the next due compliance audit for the school must report on the use of FSA program funds at the closed location. However, the school must notify the Department of the additional location or branch closure. See *Chapter 5* for information on reporting information to the Department.

Recovery of loan discharges when branch/location closes
20 USC 1087(c)(1)

When an additional location or branch closes and borrowers who attended the school obtain loan discharges by reason of the closure of the location or branch (or improper ATB or loan certifications), the Department will pursue recovery against the larger institution, its affiliates, and its principals.

Loss of eligibility or withdrawal from the Direct Loan Program

If a school is notified that it has lost its eligibility to participate in the Direct Loan Program and the school does not intend to appeal the decision, it must immediately inform all current and prospective students of its loss of eligibility. The school must also explain that it can no longer originate Direct Loans for students or parents. If the school appeals its loss of eligibility within the required timeframe, the school may continue originating Direct Loans during the appeal process. Once a final decision on the appeal is made, the school must take the actions described in the Department's final appeal determination letter.

If a school plans to withdraw from participation in the Direct Loan Program, it must notify the Department of its decision in writing. Once the effective date of withdrawal has been established, the school is prohibited from disbursing loan funds to students. However, if the school made a first disbursement to some students before its loss of eligibility, it may still be able to make a subsequent disbursement to those students. See the conditions in 34 CFR 668.26(d).

Students enrolled at a school that loses eligibility or discontinues participation in the Direct Loan program can continue to receive interest subsidies if they enroll and remain enrolled at an eligible school.

End of FSA Participation

School closes or stops providing instruction

If the school closes its main campus or stops providing instruction on its main campus, its loss of eligibility includes all its locations and programs.

If a school ceases to provide educational instruction in all FSA-eligible programs, the school should make arrangements for its students to complete their academic programs. If the school chooses to enter into a formal teach-out arrangement, it should contact its school participation division for guidance.

School loses eligibility

A school loses its eligibility to participate in the FSA programs when it no longer meets the requirements of 34 CFR Part 600, certain requirements of Part 668, or when the Department terminates the school under Subpart G of the General Provisions.

Voluntary withdrawal from FSA participation

For many reasons a school may voluntarily withdraw from participating in one or all of the FSA programs. For instance, a school might wish to withdraw from the Direct Loan Program to work on lowering high student loan cohort default rates. To withdraw from one or all of the FSA programs, the school must notify the Department via the electronic application. The school participation division has more information about this procedure.

A school that withdrew voluntarily (for instance, to lower its default rate) can request to participate again without the waiting period required for a school that was terminated from a program involuntarily or withdrew voluntarily while under a show cause or suspension order.

Withdrawing from the FSA programs while under a termination order or other sanction—or to avoid being placed under them—is not considered a voluntary withdrawal.

School loses primary accreditation

When a school loses its institution-wide accreditation, the Department generally may not certify or recertify that school to participate in any FSA program for two years after the school has had its accreditation withdrawn, revoked, or otherwise terminated for cause or after a school has voluntarily withdrawn under a show cause or suspension order. If a school wishes to be reinstated, it must submit a fully completed E-App to the Department.

The Department will not recertify a school that has lost its institution-wide accreditation in the previous two years unless the original accrediting agency rescinds its termination of the school's accreditation. Also, if a school voluntarily withdrew from accreditation during the last two years under a show cause or suspension order, the Department will not recertify the school unless the accrediting agency rescinds the original order. Finally, a school may not be recertified on the basis of accreditation granted by a different accrediting agency during the two-year period.

There are two exceptions to the two-year rule:

1. If the Department determines that loss of institution-wide accreditation was due to the school's religious mission or affiliation, the school can remain certified for up to 18 months while it obtains alternative accreditation.
2. If a school's institution-wide accrediting agency loses its Department recognition, the school has up to 18 months to obtain new accreditation.

Note: It is possible for accreditation to be withdrawn from one of the programs at a school without affecting the accreditation (and eligibility) of other programs at the school.