



GEN-06-10

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- _____

June 20, 2006

SUBJECT: Implementing Provisions of the HERA for the 2006-2007 Award Year

SUMMARY: This letter and its attachment provide guidance on changes made to the Higher Education Act by the Higher Education Reconciliation Act of 2005, related to estimated financial assistance, cost of attendance, expected family contribution calculations, and student eligibility for the 2006-2007 award year.

Dear Colleague:

In Dear Colleague Letter GEN-06-05, published on April 27, 2006, we provided general information on some of the changes made to the Higher Education Act of 1965, as amended (HEA) by the Higher Education Reconciliation Act of 2005 (HERA). The HERA, which was enacted on February 8, 2006, made several changes to the HEA that impact the 2006-2007 award year. Because processing of the 2006-2007 Free Application for Federal Student Aid (FAFSA) began in January 2006, most forms, systems, and processes, at the Department and at institutions, do not account for the 2006-2007 changes made by the HERA. Therefore, to help ensure that the provisions of the HERA are included in determining a student's eligibility for Title IV aid for 2006-2007, we are providing implementation guidance in the attachment to this letter.

The HERA changes that are effective with the 2006-2007 award year and for which implementation guidance is provided in the attachment to this letter are –

- The definition of estimated financial assistance (EFA);
- The construction of a student's cost of attendance (COA);
- The treatment of qualified education benefits, such as IRS 529 pre-paid tuition and savings plans;
- The items in and formulas used to calculate an applicant's expected family contribution (EFC);
- The treatment of certain assets and resources;
- Including active duty military members in the definition of an independent student; and
- The student eligibility provision related to drug convictions.

Implementing Provisions of the HERA for the 2006-2007 Award Year

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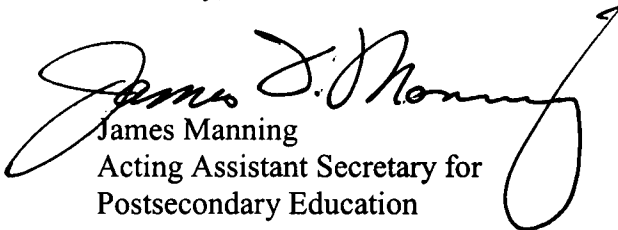
As the attachment shows, for two of the new provisions (whose tax return is considered for auto-zero EFC and simplified needs test (SNT) EFC determinations and the income maximum for auto-zero EFC eligibility) we have modified the Central Processing System (CPS) and have reprocessed previously submitted transactions that now are eligible for the special EFC treatments. It is critically important that institutional systems, whether locally built and maintained, or obtained and serviced by a third party, do not recalculate these EFCs using the pre-HERA rules. To that end, we have been communicating on a regular basis with many of the student aid software vendors, keeping them informed of these changes.


You will also note that in some instances we are simply providing guidance on how an institution should implement a new or changed provision if the institution becomes aware that an applicant is affected by a change made by the HERA. While we encourage institutions to seek out affected applicants whose eligibility may have been determined using pre-HERA rules, we are not requiring institutions to do so. However, if an institution becomes aware of such a situation, it must take the steps necessary to ensure compliance with the post-HERA requirements of the HEA.

We thank you for your cooperation in helping to ensure that Title IV student aid applicants for the 2006-2007 award year are treated in accordance with the provisions of the HEA as revised by the HERA. Of course, for the 2007-2008 processing cycle, we will include the HERA changes in the form(s), in our web and software products, and in our various systems. We also are committed to working with institutions, states, third-party software developers, and third-party servicers to ensure that 2007-2008 processing is completed in full compliance with the HEA as amended by the HERA.

If you have questions on the information included in this letter or in the attachment, please contact our Federal Student Aid Research and Customer Care Center. Center staff is available Monday through Friday between 9:00 am and 5:00 pm (Eastern Time) at 1-800-433-7327. After hours calls are accepted by an automated voice response system. Callers leaving their name and phone number will receive a return call the next business day. You may also send an inquiry by FAX to the Research and Customer Care Center at 202-275-5532, or by e-mail to fsa.customer.support@ed.gov.

Sincerely,


James Manning
Acting Assistant Secretary for
Postsecondary Education


Theresa S. Shaw
Chief Operating Officer
Federal Student Aid

Implementation Guidance for Certain 2006-2007 HEA Changes
June 2006

SUBJECT – Assistance Excluded from Cost of Attendance (COA) and Estimated Financial Assistance (EFA)

HERA Change – An institution may exclude from both COA and EFA any assistance provided by a State and designated by the State to offset a specific component of the COA. [See page 3 of GEN-06-05]

Additional Information – An institution may choose to exclude such assistance on a student-by-student basis. If the assistance is excluded it must be excluded from both COA and EFA. If the amount of the designated assistance is less than the allowance provided in the student's COA, the institution excludes the lesser amount.

Department Action for 2006-2007– None. Construction of COA and determination of EFA is an institutional responsibility.

Institutional Responsibility – An institution determines whether to exclude the specific amount of State assistance from the COA and EFA.

SUBJECT – Room and Board in Cost of Attendance (COA) for Less Than Half-Time Students

HERA Change – An institution may choose to include a room and board component in the COA for a student who will be enrolled on a less than half-time basis. Such an allowance can be provided by an institution for up to three semesters (or equivalent) with no more than two of those semesters being consecutive. [See page 3 of GEN-06-05]

Additional Information – The provision that limits the inclusion of room and board as part of the cost of attendance for a less than half time student to three semesters with no more than two being consecutive applies on an institution by institution basis. Therefore, institutions are not required to monitor COA components from other institutions attended by the student.

Department Action for 2006-2007 – None. Construction of COA is the responsibility of the institution.

Institutional Responsibility – If an institution chooses to include room and board in the COA for a student enrolled less than half-time, it must ensure that the student's COA does not include this allowance for more than three semesters (or equivalent) at the institution and that no more than two be consecutive. Including a room and board component is not considered a use of professional judgment.

SUBJECT – Costs for Professional Licensure or Certification in Cost of Attendance (COA)

HERA Change – Provides that an institution, at its option, may include in a student's COA the one-time cost to the student of obtaining a first professional license or certificate. [See page 3 of GEN-06-05]

Additional Information – The allowance may only be provided one time per student for any eligible academic program and must apply only to the direct costs for obtaining the student’s first license or certification. Allowable direct costs include fees charged by a state or other licensing authority to take a licensing exam and/or the costs of applying for and obtaining the license. This allowance does not include costs associated with preparing for an exam or evaluation unless that preparation is part of the student’s eligible program of study. Costs may be included only if they are incurred while the student is enrolled in his or her eligible program of study, although the actual activity (e.g., administration of the exam) could occur after the end of the student’s enrollment.

An institution is not required to monitor COA components from other institutions attended by the student. However, if an institution becomes aware that the student previously obtained the same license or certification or previously had an allowance included in his or her COA for that same program, it may not include this allowance.

Department Action for 2006-2007– None. Construction of COA is the responsibility of the institution.

Institutional Responsibility – If an institution chooses to include in a student’s COA the direct costs for obtaining the student’s first professional license or certification, it must ensure that those costs are actually incurred while the student is enrolled and that they are related to only the first credential. Inclusion of these costs is not considered a use of professional judgment.

SUBJECT – Treatment of Qualified Education Benefits

HERA Change – The term “qualified education benefit” now includes Coverdell education savings accounts, prepaid tuition plans offered by a State, and qualified tuition programs (known as 529 prepaid tuition plans and 529 savings plans) and makes consistent the treatment of these benefits in need analysis. None of these plans are used as an adjustment to the student’s COA, nor are they treated as estimated financial assistance (EFA) or as a resource in packaging Federal student aid. Instead, they are treated as assets of the owner of the plan (regardless of the beneficiary of the plan) in the calculation of the student’s EFC, unless the plan is owned by a dependent student. If the dependent student owns the plan, it is still not included on the FAFSA nor is it included as an adjustment to the COA or considered as a resource or estimated financial assistance. [See page 4 of GEN-06-05]

Additional Information – In addition to not including the value of a plan that is owned by a dependent student, if someone whose information is not included on the FAFSA, such as a grandparent or a non-custodial parent, owns a plan, its value is also not reported. An institution may use professional judgment to include in the calculation of the student’s EFC, the value of plans held by others, but not the value of a plan held by the dependent student. As usual, the use of professional judgment must be done on a case-by-case basis where the institution has determined that there is something special about the case. It cannot be used anytime the institution discovers that there is a plan owned by someone other than the parent or the student.

The value of the asset that must be reported on the FAFSA is, for savings plans or saving accounts, the balance of the account at the time the FAFSA is completed. For prepaid tuition plans, the value to be reported is the “refund” value of any tuition credits or certificates purchased under the qualified education benefit. The refund value of a prepaid tuition plan account is the amount the owner of the plan would receive if the account were liquidated as of the date the asset is reported. This information should be available from the plan’s administrator.

Note that the value of all plans owned by the parent of a dependent applicant must be reported as an asset of the parent. The value of all plans owned by the independent student applicant (or spouse) must be reported as an asset of the student. These include accounts with a designated beneficiary other than the student for whom the FAFSA is being completed, such as a sibling of the dependent applicant or a child of the independent applicant.

Department Action for 2006-2007 – None. We have no way of knowing which applicants have these plans. Therefore, we cannot identify applications that may need to be corrected. Of course, we will reprocess applications with asset change transactions submitted by either the applicant or by an institution.

Institutional Responsibility – If an institution is aware that an independent student (or spouse) or the parents of a dependent student own a qualified education benefit, it must ensure that the value of the plan is correctly included as an asset in the calculation of the student’s EFC. In addition, institutions that have treated prepaid tuition plans as adjustments to COA or as a resource or EFA in packaging student financial aid for the 2006-2007 award year must reverse those amounts and modify the student’s financial aid package, as appropriate.

SUBJECT – Means-Tested Federal Benefit Program as Alternative to Tax Return Requirement for Eligibility for Automatic Zero (Auto-Zero) EFC and Simplified Needs Test (SNT) EFC.

HERA Change – A student may qualify for either an auto-zero EFC or an SNT EFC if, in addition to meeting the relevant income criteria, the student (or spouse), or the dependent student’s parent(s), received benefits from a means-tested Federal benefit program. [See page 5 of GEN-06-05]

Additional Information – The receipt of a designated benefit does not make a student automatically eligible for a special EFC treatment. The receipt of a designated benefit is an alternative to the tax return filing standard for both auto-zero and SNT. The relevant income criteria must still be met.

The only designated means-tested Federal benefit programs approved for 2006-2007 are –

- The supplemental security income (SSI) program under Title XVI of the Social Security Act;
- The food stamp program under the Food Stamp Act of 1977;
- The free and reduced price school lunch program established under the Richard B. Russell National School Lunch Act;

- The program of block grants for States for temporary assistance for needy families (TANF) established under Part A of title IV of the Social Security Act; and
- The special supplemental nutrition program for women, infants, and children (WIC) established by section 17 of the Child Nutrition Act of 1966.

Receipt by any member of the family of a benefit, including a benefit under the Free or Reduced Cost Lunch Program, is considered to be a benefit received by the parent(s) of a dependent applicant or by the independent student (or spouse) if eligibility for the benefit was based on the income of the parent or independent student.

The student or parent must have received benefits from one of the Federal benefit programs at during the “base year” (i.e. calendar year 2005 for the 2006-2007 award year). However, an institution may use professional judgment to consider the receipt of benefits received after the end of the base year in determining an applicant’s eligibility for an auto-zero or SNT calculation.

Institutions may determine the appropriate documentation that must be provided by the student or parent. Such documentation may be a signed self-certification statement.

Department Action for 2006-2007 – None. We have no way of knowing which applicants had received benefits from one of the designated programs. Therefore, we cannot identify applications or take other actions except to reprocess the student’s application if an institution submits a “work-around correction”, as discussed below.

Institutional Responsibility – The 2006-2007 FAFSA (including FAFSA on the Web) does not include a question about means-tested Federal benefit programs. If an institution becomes aware that a dependent student’s parent or an independent student (or spouse) received benefits from one of the designated means-tested Federal benefit programs, but the applicant did not get an auto-zero or SNT EFC calculation solely because the parent(s) or independent student was required to file an IRS 1040 form, the institution must submit a FAFSA “work-around correction” as discussed in the next paragraph. An institution need not submit a “correction” if the student’s EFC is already zero.

The “work-around correction” noted above is for the institution to “correct” to ‘Yes’ the FAFSA question related to whether the independent student or, for a dependent student, the student’s parent(s) was eligible to file a 1040A or 1040EZ (FAFSA Questions #34 and #72). This “correction” is not considered a use of professional judgment, however the institution must document the reason why the “correction” was made. When the institution receives an Institutional Student Information Record (ISIR) with a new EFC it must revise the student’s awards as appropriate.

SUBJECT – Type of Tax Return for Eligibility for Auto-Zero and Simplified Needs Test.

HERA Change – The HERA deleted the requirement that both the student and the dependent student’s parent(s) must have filed a qualifying tax form (or were not required to file a tax return) in order to receive consideration for an auto-zero EFC or SNT EFC calculation. Now, only the parent’s tax return is considered for auto-zero EFC and SNT EFC determinations. [See page 5 of GEN-06-05]

Additional Information – Just as only the income of a dependent student’s parent(s) and not the student’s income is considered in the determination of eligibility for an auto-zero EFC or SNT, the type of tax return of only the parent(s) is considered.

Department Action for 2006-2007 – As of May 24, 2006, we have modified our systems so that only the tax return of the parent(s) of a dependent student is considered in determining whether the student is eligible for an auto-zero or SNT EFC calculation. All CPS transactions with a processed date of May 24, 2006 or later will have used the revised criteria.

Also, on May 24, 2006, we queried the CPS to identify applicants that had previously met the income criteria but did not get an auto-zero or SNT EFC calculation because of the type of tax return filed by the dependent student. These records were reprocessed, ignoring the type of tax return filed by the dependent student, resulting in a new CPS transaction with new Student Aid Reports (SARs) sent to students and ISIRs sent to institutions. The ISIRs were marked as having been system-generated. Note that the CPS did not reprocess if the latest transaction for the student already had a zero EFC.

Institutional Responsibility – As always, when an institution receives a new SAR or ISIR, it must determine whether a change to the EFC impacts the student’s eligibility for Title IV, HEA program assistance and make any necessary adjustments to the student’s award.

SUBJECT – Maximum Income Amount for Automatic-Zero EFC Treatment.

HERA Change – The maximum Adjusted Gross Income (AGI) was raised from approximately \$16,000 to \$20,000 for an applicant to be eligible for an auto-zero EFC. For a dependent student, the AGI of the parents is used and for an independent student with dependents other than a spouse, the AGI of the student (and spouse) is used in making this determination. [See page 5 of GEN-06-05]

Additional Information – As a reminder, the auto-zero EFC calculation is not available to an independent student unless the student has dependents other than a spouse.

Department Action for 2006-2007 – As of May 24, 2006, the CPS began using the new income level when determining whether a student is eligible for an auto-zero EFC.

Also, the CPS was queried to identify instances where an applicant was not eligible for an auto-zero calculation, but with the increased AGI threshold is now eligible. These records were reprocessed on May 24, 2006 using the revised AGI threshold, resulting in a new CPS transaction, and new SARs being sent to students and new ISIRs sent to institutions. The ISIRs were marked as having been system-generated. Note that the CPS did not reprocess if the latest transaction for the student already had a zero EFC. Also, this reprocessing and the reprocessing discussed above for changes related to whose tax return was considered occurred at the same time, so in the event a student benefited from both modifications, only one new transaction with a corresponding SAR and ISIR was produced.

Institutional Responsibility – As always, when an institution receives a new SAR or ISIR, it must determine whether a change to the student’s EFC impacts eligibility for Title IV, HEA program assistance and make any necessary adjustments to the student’s award.

SUBJECT – Treatment of Small Business Assets

HERA Change – Excludes as an asset the net worth of a family-owned and controlled small business. [See page 7 of GEN-06-05]

Additional Information – A family-owned small business is one that has 100 or fewer full-time (or full-time equivalent) employees and is owned and controlled by the student or the dependent student’s parent(s).

Department Action for 2006-2007 – None. We cannot identify applicants who may have included a small business as an asset on the FAFSA. Of course, we will reprocess an application if changes are made to reported assets.

Institutional Responsibility – If an institution becomes aware that a student or a dependent student’s parent(s) reported the net worth of a family-owned and controlled small business as an asset on the FAFSA, the institution should assist the student in correcting the net worth of investments fields (FAFSA Questions #45 and #83). When deciding whether to make an adjustment, an institution may determine what documentation is needed from the family. Such documentation may be a signed self-certification statement. .

SUBJECT – Definition of Independent Student

HERA Change – Serving on active duty in the U.S. Armed Forces for other than training purposes is added to the conditions under which an applicant for Title IV aid is considered to be an independent student. [See page 8 of GEN-06-05]

Additional Information – This provision applies not only to current active duty members of the armed forces, but also to applicants who have been called to federal active duty for purposes other than training from the National Guard or Ready Reserves.

Department Action for 2006-2007 – We have no way of knowing which dependent applicants may be currently serving on active duty for other than training purposes. However, we will reprocess applications to reflect a student’s new independent status as requested by an institution.

Institutional Responsibility – If an institution becomes aware that an otherwise dependent student is serving on active duty, as described in GEN-06-05, it must submit a “dependency override” transaction to the CPS. The CPS will then recalculate the EFC using the independent student formula, and a SAR will be sent to the student and an ISIR will be sent to the institution. Institutions may determine the appropriate documentation that must be provided by the student or parent. Such documentation may be a signed self-certification statement.

SUBJECT – Drug Offenses

HERA Change – The student eligibility provision related to convictions for drug-related offenses is modified so that a student is subject to loss of eligibility for Title IV aid only if the offense for which the student was convicted occurred during a period of enrollment for which the student was receiving Title IV aid. [See page 9 of GEN-06-05]

Additional Information – The new provision limits the timeframe for when the offense for which an applicant was convicted to periods of enrollment for which the student was receiving Title IV aid. It does not change the period of ineligibility, which begins on the day the student was convicted and continues for one year, two years, or indefinitely depending upon the nature of the drug-related offense and the number of convictions.

Department Action for 2006-2007 – Beginning June 30, 2006, FAFSA on the Web will present to the applicant a revised drug conviction question and instructions. Also, on or about June 30, 2006, we will send a special notice to each 2006-2007 applicant whose latest CPS transaction shows total or limited ineligibility (value of blank, '2' or '3' in SAR field #31) because of the drug conviction question, directing them to a revised worksheet where they can determine if their response to the drug conviction question should be changed. If the applicant makes a change to the drug conviction question, a new CPS transaction with a new SAR and ISIR will be created.

Institutional Responsibility – Institutions may, but are not required to, identify applicants whose eligibility may have been restricted because of their response to the drug conviction eligibility question and direct them to the revised FAFSA worksheet. As always, when an institution receives a new SAR or ISIR, it must determine whether there is a change that affects the student's eligibility for Title IV, HEA program assistance and revise the student's aid package, as appropriate.

In closing, we want to thank you for your cooperation as we work together to ensure that all applicants for Title IV aid for the 2006-2007 award year are treated in accordance with the revised provisions of the HEA. Of course, for 2007-2008 we will include the HERA changes on the FAFSA and associated form(s), in our web products, and in our various systems. We also are committed to working with institutions, states, and third party software developers to ensure that 2007-2008 processing is completed in full compliance with the HEA as amended by the HERA.

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