

Fiscal Standards



The regulations establish standards of financial responsibility a school must meet in order to participate in the FSA programs. In this chapter we discuss those financial standards that relate to a school's fiscal operations.

In order to participate in the FSA programs a school must demonstrate that it is financially responsible. To provide the Department with the information necessary to evaluate a school's financial responsibility, schools are required to submit financial information to the Department every year. A school must provide this financial information in the form of an audited financial statement as part of a combined submission that also includes the school's compliance audit. For-profit schools have six months from the end of the schools' fiscal year to provide the combined submission; other schools have nine months.

The Department determines whether a school is financially responsible based on the school's ability to:

- provide the services described in its official publications and statements;
- properly administer the FSA programs in which the school participates; and
- meet all of its financial obligations.

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.

For complete information about the financial responsibility standards schools should refer to Subpart L of the Student Assistance General Provisions and *the Federal Student aid Handbook, Volume 2 – School Eligibility and Operations*, chapter 11. Here we will discuss only the those standards that are related to the functions of the business office.

Financial responsibility cites

Sec. 498(c)
34 CFR 668 Subpart L



School Participation Teams

For information regarding accounting and compliance issues, a school should contact its School Participation Team (see chart at the end of chapter 8 or on the Web at



<http://ifap.ed.gov/iposguidance/attachments/ipos-org.pdf>

Use of eZ-AUDIT required

Since June 16, 2003 schools have been required to submit their compliance audits, audited financial statements, and letters confirming their status as public schools through the Department's eZ-AUDIT Electronic Financial Reporting System. See the "Federal Student Aid Handbook, Volume 2 – School Eligibility and Operations," chapter 12 for more information on required audit submissions.

The FSA Assessment modules

that can assist you in understanding and assessing your compliance with the provisions of this chapter are at

<http://ifap.ed.gov/qamodule/FiscalManagement/FiscalManagementModulepage2.html>



Refund reserve standard cite

34 CFR 668.173



Returning funds cite

34 CFR 668.172(c).



For withdrawn students, returns funds in a timely manner cite

34 CFR 668.22



Federal bank account cite

34 CFR 668.163(a)



Making new awards with returned funds

After a school has returned unearned funds to its federal account, provided those funds were originally received from the Department or from an FFEL lender 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.

REFUND RESERVE STANDARDS

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

- satisfies the requirements of a public school (see the discussion of public schools under *General Standards*); or
- is located in a state that has a tuition recovery fund approved by the Department and the school contributes to that fund; or
- for a student who withdrew, returns unearned Title IV funds in a timely manner.

The Department considers that a school has sufficient cash reserves if, for its two most recently completed fiscal years, the school made all required returns in a timely manner. (See *Appendix G*, for more information on returns, including timely payment.)

Returning funds in a timely manner

Unearned funds must be returned no later than 30 days after the date of the school's determination that the student withdrew. ED considers the school to have returned funds, depending upon the method it uses to return them.

Specifically, the regulations provide that a school has returned funds when it has:

1. deposited or transferred the funds into the bank account it maintains for federal funds no later than 30 days after the date it determines that the student withdrew;

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 30-day timeframe permitted in the regulations.

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.

2. initiated an electronic funds transfer (EFT) no later than 30 days after the date it determines that the student withdrew;
3. initiated an electronic transaction, no later than 30 days after the date it determines that the student withdrew, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or
4. issued a check no later than 30 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 the bank used by the Department or FFEL Program lender no later than 45 days after the school's determination that a student withdrew in order to be considered a timely return.

Compliance thresholds

The Department provides for 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 conducted under 34 CFR 668.23, 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 program funds, the Department considers the school to have not paid Returns in a timely manner.

Letters of credit are submitted to:

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

Letter of credit

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. (Public schools and schools covered by a state tuition recovery fund are not subject to the letter of credit requirements.) 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.

Public institutions and institutions covered by state tuition recovery funds are not subject to the letter of credit requirements. 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:

1. the school is required to submit its compliance audit;
2. the OIG issues a final audit report;
3. the designated department official issues a final program review determination;
4. 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
5. 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.

If the finding in the preliminary report is that the school did not return unearned funds in a timely manner for 10% or fewer of the sampled students, a school 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 students for whom returns were required. 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 Title IV program funds in a timely manner. A school may request that the Department reconsider its finding if the school submits documents showing that:

1. the unearned Title IV program 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
2. 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.

Tuition Recovery Funds

When a state submits a tuition recovery fund for evaluation by the Department, the Department will consider the extent to which the recovery fund:

- provides returns to both in-state and out-of-state students;
- complies with Title IV program requirements for the order of return of funds to sources of assistance; and
- will be replenished if any claims arise that deplete the fund.

CURRENT IN DEBT PAYMENTS

A school is not current in its debt payments if

- it is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or
- fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations.

PAST PERFORMANCE AND AFFILIATION STANDARDS

In addition to meeting the numeric standards of financial responsibility and fulfilling all its financial obligations, a school must demonstrate that it properly administers the FSA programs in which it participates. 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

A school is not financially responsible if the school:

- 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

A school is not financially responsible if any person who exercises substantial control over the school (or any members of the person's family alone or together) owes a liability for an FSA program violation or has ever exercised substantial control over another school (or a third-party servicer) that owes a liability for an FSA program violation, 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 the Department that the individual repaid to the Department an acceptable portion of the liability, in accordance with the regulations;
- notifies the Department that the liability is currently being repaid in accordance with a written agreement with the Department; or
- demonstrates to the satisfaction of the Department: (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.

In the past, schools were required to maintain fidelity bond coverage for their employees. This is no longer a federal requirement for schools that participate in the FSA programs. However, by state law some schools are still required to maintain fidelity bond coverage. Even if a school is not required to do so, it may choose to maintain fidelity bond coverage to protect itself when losses occur because of a lack of integrity, on the part of the school's employees or officers.

A school must report any changes of control under which a person acquires the ability to affect substantially the actions of the school. Such changes in control trigger a review to determine if the school is financially responsible (*the Federal Student Aid Handbook, Volume 2 – School Eligibility and Operations*, chapter 5.).

