



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- \_\_\_\_\_

GEN-06-05

April 27, 2006

**SUBJECT:** Changes made by the Higher Education Reconciliation Act of 2005 (HERA) to Student and Institutional Eligibility, and Student Assistance General Provisions, under the Federal Student Aid Programs.

**SUMMARY:** This letter contains information on changes made by HERA to certain provisions of Title IV of the Higher Education Act of 1965, as amended.

Dear Colleague:

On February 8, 2006, President Bush signed the Higher Education Reconciliation Act of 2005 (HERA), Pub. L. 109-171. The enclosure to this Dear Colleague Letter discusses the changes made by the HERA to the Higher Education Act of 1965, as amended (HEA) that affect the general provisions for the federal student financial aid programs authorized by Title IV of the HEA, as well as provisions on student and institutional eligibility. Two other Dear Colleague Letters have been issued addressing additional changes made by the HERA. Dear Colleague Letter GEN-06-02 discusses changes to the provisions of the Title IV loan programs specifically, and Dear Colleague Letter GEN-06-04 discusses the two new grant programs, Academic Competitiveness Grants and National SMART Grants.

Topics discussed in this letter are arranged alphabetically under six general categories:

- (1) Academic Year,
- (2) Distance Education,
- (3) Need Analysis and Cost of Attendance,
- (4) Program Eligibility,
- (5) Return of Title IV Funds, and
- (6) Student Eligibility.

All section citations in the enclosure are references to the sections of the HEA modified by the HERA. Unless otherwise noted, the changes to the provisions discussed in this letter are effective for the 2006-2007 award year for the Title IV, HEA grant and campus-based programs, and for loan periods beginning on or after July 1, 2006 for the Federal Family Education Loan and Federal Direct Loan programs.

We appreciate your assistance and cooperation as we work to implement these statutory changes. In the coming weeks, we will provide further guidance on implementing the changes made by the HERA, including operational guidance and the promulgation of regulations. If you have any questions on the matters discussed in this letter please contact Anthony Jones at (202) 502-7652.

Sincerely,



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Office of  
Postsecondary Education



Theresa S. Shaw  
Chief Operating Officer  
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Enclosure

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*Unless otherwise noted, the changes to the provisions discussed in this letter are effective for the 2006-07 award year for the Title IV, HEA grant and campus-based programs, and for loan periods beginning on or after July 1, 2006 for the Federal Family Education Loan and Federal Direct Loan programs.*

## **ACADEMIC YEAR**

### ***Length of an Academic Year***

**§481(a)**

The HERA amends the definition of an academic year for a program to require:

- A minimum of 30 weeks of instructional time for a program that measures its length in credit hours or a minimum of 26 weeks of instructional time for a program that measures its length in clock hours; and
- For an undergraduate program, at least:
  - Twenty-four semester or trimester hours, or 36 quarter hours for a course of study that measures its program length in credit hours; or
  - Nine-hundred clock hours for a course of study that measures its program length in clock hours.

The statute continues to authorize the Secretary to allow a reduction in the minimum of 30 weeks of instructional time to not less than 26 weeks for good cause as determined on a case-by-case basis for 2-year or 4-year programs of instruction for which an institution awards an associate or baccalaureate degree.

## **DISTANCE EDUCATION**

### ***Modification of the 50 Percent Rules***

**§102(a)(3), §484(l)(1)**

The HERA modifies the current statutory institutional and student eligibility requirements that made schools offering over 50 percent of their courses via correspondence (or through a combination of correspondence and telecommunications) or enrolling 50 percent or more of their students in correspondence courses ineligible for participation in the Title IV, HEA programs. Under the HERA, courses offered by telecommunications are no longer considered correspondence courses, and students enrolled in telecommunications courses are no longer considered to be correspondence students. As a result, otherwise eligible institutions that offer over 50 percent of their courses by telecommunications, or have 50 percent or more of their regular students enrolled in telecommunications courses, are now eligible for participation in the Title IV, HEA programs. The 50 percent limitations continue to apply to correspondence courses and students.

### ***Programs Offered in Whole or in Part via Telecommunications***

**§481(b), §484(l)(1)**

Under changes made by the HERA, students enrolled in certificate and degree programs offered wholly or in part by telecommunications are eligible for Title IV, HEA financial assistance, if: (1) the programs are otherwise eligible; (2) the programs are offered by an institution, other than a foreign institution, that is accredited by an agency that is recognized by the Secretary; and (3) the institution has been evaluated by the accrediting agency and determined to have the capability to effectively deliver distance education programs. Students enrolled in short-term certificate programs of less than one year offered by telecommunications are now eligible for Title IV, HEA financial assistance, and those programs are not considered correspondence programs.

## **NEED ANALYSIS AND COST OF ATTENDANCE**

### ***Assistance Excluded from Cost of Attendance and Estimated Financial Assistance***

**§480(j)**

The HERA modified the statutory definition of “Other Financial Assistance” to clarify that assistance may be excluded from both cost of attendance and estimated financial assistance if that assistance is provided by a State and is designated by the State to offset a specific component of the cost of attendance. If that assistance is excluded from either estimated financial assistance or cost of attendance, then the amount of that assistance shall be excluded from both.

### ***Cost of Attendance Components***

**§472(4) and (11)**

Prior to changes made by the HERA, the cost of attendance for a less-than-half-time student did not include an allowance for room and board costs. The HERA specifies that institutions now have the option of including a room and board component in the cost of attendance for a less-than-half-time student for up to three semesters or the equivalent at the institution, but no more than two of those semesters or the equivalent may be consecutive.

In addition, the HERA amends the cost of attendance provisions to provide institutions the option of including in the cost of attendance the one-time cost of obtaining a first professional license or certificate for a student who is enrolled in a program that requires such professional licensure or certification. The licensure or certification must be required by a State or commonly accepted as required in order to practice or be employed in the profession. In order to be included in the cost of attendance, the cost for such licensure or certification must be incurred while the student is enrolled at the institution. This provision does not include costs associated with preparing the student for the test or examination required for licensure or certification unless such preparation is part of the eligible program.

### ***Employment Expense Allowance***

**§478(h)**

The HERA made a technical change to definitions used in determining the employment expense allowance. The change aligns the terms used in the HEA with terms used by the Bureau of Labor Statistics and has no effect on the calculation of the expected family contribution.

### ***Expected Family Contribution (EFC)***

(The changes under this heading are effective July 1, 2007, which coincides with the beginning of the 2007-08 award year.)

- ***Dependent Students***

**§475(g)(2)(D) and (h)**

**Income Protection Allowance:** The statutory income protection allowance (IPA) for dependent students is changed from \$2,200 (which was the base year 1999 amount used in the 2000-01 EFC calculation) to \$3,000. Because the base year amount is indexed annually for inflation, the IPA would have been \$2,640 for 2007-08 absent this increase to \$3,000.

The new base year for the annual inflationary update is 2006. The \$3,000 IPA will be indexed for inflation annually beginning with the 2008-09 award year.

Contribution from Assets: The assessment rate for the contribution from assets is reduced from 35 percent to 20 percent.

***Independent Students without dependents other than spouse*** §476(b)(1)(A)(iv)

Income Protection Allowance: The statutory IPA for a single student, and for a married student whose spouse is also enrolled in postsecondary education, is changed from \$5,000 to \$6,050. Because the base year amount is indexed annually for inflation, the IPA would have been \$6,010 for 2007-08 absent this increase to \$6,050.

The new base year for the annual inflationary update is 2006. The \$6,050 IPA will be indexed for inflation annually beginning with the 2008-09 award year.

For a married student whose spouse is not enrolled in postsecondary education, the IPA is changed from \$8,000 to \$9,700. Because the base year amount is indexed annually for inflation, the IPA would have been \$9,620 for 2007-08 absent this increase to \$9,700.

The new base year for the annual inflationary update is 2006. The \$9,700 IPA will be indexed for inflation annually beginning with the 2008-09 award year.

Contribution from Assets: The assessment rate for the contribution from assets is reduced from 35 percent to 20 percent.

- ***Independent Students with dependents other than spouse*** §477(c)(4)  
Contribution from Assets: The assessment rate for the contribution from assets is reduced from 12 percent to 7 percent.

***Qualified Education Benefits***

§480(f) and (j)

The term “qualified education benefit” is revised to encompass 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).

When determining the value of assets in the EFC calculation, the value of a qualified education benefit shall be:

- for prepaid tuition programs, the refund value of any tuition credits or certificates purchased under the qualified education benefit; and
- for savings plans or savings accounts, the current balance of the account.

For dependent students, a qualified education benefit shall not be considered as an asset of the student; rather, a qualified education benefit would only be reported as an asset of the parent if the parent (including a step-parent) is the owner of the account or plan.

Due to these changes made by the HERA, proceeds from 529 prepaid tuition plans are no longer a dollar-for-dollar offset against tuition; 529 prepaid tuition plans and 529 savings plans are both treated as an asset of the owner (as long as the owner is not a dependent student).

### ***Simplified Needs Test and Automatic Zero EFC***

### **§479**

Under the HERA, a student may now qualify for the simplified needs test (SNT) and automatic zero EFC if the student (and spouse, if any), or the student's parents (if a dependent student) received benefits under a means-tested Federal benefit program during the previous 12-month period. The "previous 12-month period" is the "base year" used for reporting income information. The base year is the calendar year prior to the award year (e.g., calendar year 2005 would be the base year for the 2006-07 award year; therefore, a student applying for Title IV, HEA financial assistance on the 2006-07 FAFSA who had any of the qualifying members of the family receiving benefits between January 1 and December 31, 2005 from a means-tested Federal program would be eligible to qualify for the SNT or automatic zero EFC depending upon other qualifying factors)

A "means-tested Federal benefit program" is defined as "a mandatory spending program of the Federal Government, other than a program under Title IV, in which eligibility for the program's benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit." Programs providing such benefits include:

- the supplemental security income 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;
- the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966; and
- other programs identified by the Secretary.

At this time, the Secretary has not identified any other programs that meet the definition of a "means-tested Federal benefit program."

Qualification for the SNT or automatic zero EFC is revised to require that only the parents of a dependent student must have filed one of the qualifying tax forms referenced in HEA sections 479(b)(3) and (c) or was not required to file a tax return. The qualifying tax forms listed in the referenced HEA sections are: IRS Forms 1040 (for someone who would have been eligible to file a 1040A or 1040EZ, except that the taxpayer was seeking a specified tax credit), 1040A, and 1040EZ, and an income tax return from the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau.

The HERA increases the adjusted gross income threshold in the base year to \$20,000 or less for the student to qualify for an automatic zero EFC. Previously, the threshold was indexed to the maximum amount of adjusted gross income used to qualify for the Federal earned income credit. The qualifying threshold in the base year for the SNT remains an adjusted gross income of less than \$50,000.

The following chart summarizes the qualifications for the SNT or automatic zero EFC as a result of changes made by the HERA.

| <b>Applicant Type</b>                                   | <b>Automatic Zero EFC</b> ( <i>applicant qualifies if the following conditions apply</i> )  | <b>Simplified Needs Test</b> ( <i>applicant qualifies if the following conditions apply</i> )   |
|---|---|---|
| Dependent student                                       | <ul style="list-style-type: none"> <li>• Parent(s) had adjusted gross income of \$20,000 or less; and</li> <li>• Either:               <ul style="list-style-type: none"> <li>○ Parent(s) not required to file tax return or filed (or eligible to file) 1040A or EZ, or</li> <li>○ Parent or dependent student received means-tested benefits in previous 12-month period.</li> </ul> </li> </ul>                                    | <ul style="list-style-type: none"> <li>• Parent(s) had adjusted gross income of less than \$50,000; and</li> <li>• Either:               <ul style="list-style-type: none"> <li>○ Parent(s) not required to file tax return or filed (or eligible to file) 1040A or EZ, or</li> <li>○ Parent or dependent student received means-tested benefits in previous 12-month period.</li> </ul> </li> </ul>                                    |
| Independent student with no spouse and no dependents    | Not applicable  | <ul style="list-style-type: none"> <li>• Student had adjusted gross income of less than \$50,000; and</li> <li>• Either:               <ul style="list-style-type: none"> <li>○ Student not required to file tax return or filed (or eligible to file) 1040A or EZ, or</li> <li>○ Student received means-tested benefits in previous 12-month period.</li> </ul> </li> </ul>  |
| Independent student with spouse and no other dependents | Not applicable  | <ul style="list-style-type: none"> <li>• Student and spouse had adjusted gross income of less than \$50,000; and</li> <li>• Either:               <ul style="list-style-type: none"> <li>○ Student and spouse not required to file tax return or filed (or eligible to file) 1040A or EZ, or</li> <li>○ Student or spouse received means-tested benefits in previous 12-month period.</li> </ul> </li> </ul>                            |
| Independent student with dependents other than a spouse | <ul style="list-style-type: none"> <li>• Student and spouse, if any, had adjusted gross income of \$20,000 or less; and</li> <li>• Either:               <ul style="list-style-type: none"> <li>○ Student and spouse, if any, not required to file tax return or filed (or eligible to file) 1040A or EZ, or</li> <li>○ Student or spouse, if any, received means-tested benefits in previous 12-month period.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Student and spouse, if any, had adjusted gross income of less than \$50,000; and</li> <li>• Either:               <ul style="list-style-type: none"> <li>○ Student and spouse, if any, not required to file tax return or filed (or eligible to file) 1040A or EZ, or</li> <li>○ Student or spouse, if any, received means-tested benefits in previous 12-month period.</li> </ul> </li> </ul> |

***Treatment of Family Ownership in Small Business***

**§480(f)(2)**

The HERA excludes the net value of a family-owned and controlled small business (or any part of such a small business) with not more than 100 full-time or full-time equivalent employees from the definition of assets used in the need analysis formulas.

***Updated Tables***

**§478(b)**

The values for the income protection allowances are increased each year in consideration of general price inflation, and this practice will continue. The Secretary's estimate for inflation for the 2007-08 award year is 2.8 percent. However, under the HERA, for the 2007-08 award year only, and only for independent students with dependents other than a spouse, the values for the income protection allowances will be increased by 5 percent.

***Verification of Income Data***

**§484(q)**

This section of the HEA was modified by the HERA to clarify that the data the Secretary may verify with the Internal Revenue Service (IRS) is limited to the taxpayer identification number, adjusted gross income, and tax filing status reported by individuals, including parents, on applications for Title IV, HEA financial assistance. This authority will not be implemented at this time. This authority may be implemented only when a match with the IRS is authorized under the Internal Revenue Code.

**PROGRAM ELIGIBILITY**

***Direct Assessment of Student Learning***

**§481(a)**

The HERA adds a new type of eligible program -- an instructional program that uses direct assessment of student learning, or recognizes the direct assessment of student learning by others, in lieu of measuring student learning in credit hours or clock hours. The assessment must be consistent with the institution's or program's accreditation. The Secretary will determine initially whether each program for which an institution proposes to use direct assessment is an eligible program. Note that direct assessment programs are not programs that offer credit for "life experience."

**RETURN OF TITLE IV FUNDS**

The HERA modified or added several provisions relating to the return of Title IV funds in section 484B of the HEA. These provisions are effective for withdrawals that occur on or after July 1, 2006.

***Completion of 60 Percent of the Period***

**§484B(a)(3)(B)(ii)**

Due to changes made by the HERA, only scheduled hours, not completed hours, will be used to determine the percentage of the period completed by a student withdrawing from a clock hour program. Therefore, a student withdrawing from a clock hour program earns 100 percent of his or her aid if the student's withdrawal date occurs after the point when he or she was scheduled to complete 60 percent of the scheduled hours in the payment period or period of enrollment.

***Grant Overpayment Requirements***

**§484B(b)(2)**

Under the HERA, the amount of a grant overpayment due from a student is limited to the amount by which the original grant overpayment amount exceeds half of the total Title IV grant funds received by the student. A student does not have to repay a grant overpayment of \$50 or less.

***Leaves of Absence***

**§484B(a)(2)(A)**

The HERA clarifies that an institution may grant more than one leave of absence to a student.

***Post-Withdrawal Disbursement Counseling***

**§484B(a)(4)**

Under the HERA, an institution will be required to contact a withdrawn student prior to making a post-withdrawal disbursement of loan funds and explain to the student his or her obligation to repay the funds if the funds are disbursed, and to confirm that any loan funds are still required by the student. An institution must document in the student's file the result of the contact and the final determination made concerning the disbursement.

***Program Applicability***

**§484B(a)(3)(C)(i)**

As a result of changes made by the HERA, the return of Title IV funds requirements will be limited to funds from the Federal Pell Grant, FSEOG, FFEL, Federal Direct Loan, and Federal Perkins Loan programs, and the new Academic Competitiveness Grant and National SMART Grant programs. These requirements will no longer apply to Leveraging Educational Assistance Partnership (LEAP), Special Leveraging Educational Assistance Partnership (SLEAP), Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), and Student Support Services (SSS) funds.

***Return of Funds within 45 Days***

**§484B(b)(1)**

Under the HERA, an institution must return unearned funds for which it is responsible no later than 45 days after the date that it determines that the student has withdrawn. Prior to the changes made by the HERA, the institution was required to return the funds within 30 days after the date it determined the student had withdrawn.

***Scheduled Clock Hours***

**§484B(d)(2)**

Under the HERA, only scheduled hours, not completed hours, will be used to determine the percentage of the period completed by a student withdrawing from a clock hour program. So, the "percentage of the payment period or period of enrollment completed" is determined for a student withdrawing from a clock hour program by dividing the total number of clock hours comprising the period into the number of clock hours scheduled to be completed as of the day the student withdrew.

**STUDENT ELIGIBILITY**

***Active Duty Military Members as Independent Students***

**§480(d)**

Under the HERA, individuals who are currently serving on active duty in the U.S. Armed Forces for purposes other than training have been added to the list of individuals who are considered to be independent students.

When a student is engaged in active duty in the U.S. Armed Forces, or is a National Guard or Reserves enlistee, and is called into active duty for other than training purposes, that student qualifies as an independent student for Title IV eligibility purposes based on his or her active duty in the U.S. Armed Forces. However, “active duty” for the purposes of determining eligibility for Title IV, HEA financial assistance does not include a call into active duty for State purposes. For example, if a student is a member of the National Guard and is called to perform disaster relief by a state’s governor, that student would not be considered an independent student for Title IV purposes as a result of being called into active duty.

Institutions are not required to obtain a copy of military orders or a letter from a base or unit commander attesting to the student’s claim that he or she is on active duty for other than training purposes, unless there is conflicting information or the institution has reason to believe the student’s information is inaccurate.

***Drug Offenses***

***§484(r)(1)***

The HERA modifies the student eligibility requirement regarding the suspension of eligibility for drug-related offenses. The HEA now provides that a student is ineligible for Title IV, HEA financial assistance only if the conviction for a Federal or State offense involving the possession or sale of a controlled substance is for conduct that occurred during a period of enrollment for which the student was receiving Title IV, HEA financial assistance. The period of ineligibility and provisions for regaining eligibility are unchanged by the HERA.

***Repayment of Fraudulently Obtained Title IV Funds***

***§484(a)***

The HERA adds an additional student eligibility requirement. A student who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining Title IV, HEA financial assistance must have completely repaid the fraudulently obtained funds to the Secretary, or to the holder of the loan in the case of a Title IV, HEA loan, before regaining eligibility for Title IV, HEA financial assistance.