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CHAPTER 1

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 and carry out the closeout procedures described in Chapter 12 of this Volume.

A school that wishes to participate in the FSA programs must demonstrate that it is eligible to participate before it can be certified for participation. A school must apply to and receive approval from the Department of its eligibility to participate. Some schools apply only for a designation as an eligible institution (they do not seek to participate) so that students attending the school may receive deferments on FSA program loans, or be eligible for the HOPE/Lifetime Learning Scholarship tax credits or other non-FSA programs that require that the school be FSA-eligible. The same application is used to apply for both eligibility and certification for participation (see Chapter 2).

THE THREE DEFINITIONS OF ELIGIBLE INSTITUTIONS

The regulations governing institutional eligibility define three types of eligible institutions—institutions of higher education, proprietary institutions of higher education, and postsecondary vocational institutions. Under the three definitions, a school is eligible to participate in all the FSA programs provided the school offers the appropriate type of eligible program (see chart on next page). 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 somewhat, the definitions are not mutually exclusive. That is, a public or private nonprofit institution may meet the definition of more than one type of eligible institution.

INSTITUTIONAL CONTROL

The *control* of an institution distinguishes whether the institution is public or private, nonprofit or for-profit. Under the institutional definitions, 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.

CHAPTER 1 HIGHLIGHTS

Three definitions of eligible institutions
- → institution of higher education
- → proprietary institution of higher education
- → postsecondary vocational institution

Basic requirements
- → Legal authorization by a state
- → Accreditation (and alternatives)
- → Admissions standards (high school diploma, recognized equivalent, homeschooling)

Additional institutional eligibility factors
- → 90/10 Rule
- → Correspondence courses/students limitation
- → Incarcerated students limitation
- → Limitation on students admitted without HS diploma or equivalent
- → Bankruptcy
- → Crimes involving FSA funds

Foreign schools eligible for FFEL programs

Related information
- → Applying to participate, *New School Guide*
- → Closeout procedures, Volume 2, Chapter 12
- → Eligible program—Volume 2, Chapter 2
- → Eligibility of ability-to-benefit students, home-school students, and correspondence students—Volume 1, Chapter 1.

Assessing your school's compliance

To assess your school's compliance with the provisions of this chapter see the FSA Assessment module for "Institutional Eligibility," at: **ifap.ed.gov/qahome/qaassessments/institutionalelig.html**

Type and Control of Eligible Institutions

Institution of Higher Education	*Proprietary Institution of Higher Education*	*Postsecondary Vocational Institution*
A public or private nonprofit educational institution located in a state	A private, for-profit educational institution located in a state	A public or private nonprofit educational institution located in a state

Program offered:

(1) Associate, bachelor's, graduate, or professional degree, or

(2) At least a two-year program that is acceptable for full credit toward a bachelor's degree, or

(3) At least a one-year training program that leads to a degree or certificate (or other recognized educational credential) and prepares students for gainful employment in a recognized occupation.

Program offered: must provide training for gainful employment in a recognized occupation, and must meet the criteria of at least one category below.

(1) Provides at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. May admit students without an associate degree or equivalent.

(2) Provides 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) Provides 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 FFEL and Direct Loan participation.

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

Special rule (applicable to proprietary institutions) — Derives no more than 90% of its revenues from FSA funds.

HEOA Changes NEW

Changes to institutional eligibility

The Higher Education Opportunity Act makes several changes to the definitions of an eligible institution.
The HEOA amends the definition of "institution of higher education"—

- to allow institutions to enroll homeschooled students who do not have a high school diploma or GED as regular students,
- to permit eligible institutions to dually enroll secondary students as regular students, and
- to allow the Department to approve the eligibility of institutions that offer a degree that is acceptable to a graduate or professional degree program (but do not offer a bachelor's degree or a two-year degree).

The definition of "proprietary institution" has been amended to include institutions that provide a program leading to a baccalaureate degree in liberal arts. (The program must have been provided since January 1, 2009 and the institution must have been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier.) See DCL 08-12 for interim guidance on the definition of "liberal arts," pending negotiated rulemaking.

HEOA section 101(a)(1) and 102(d)(1) HEA section 102(a) and 102(b)
Effective date: July 1, 2010

ELIGIBLE INSTITUTION

To be eligible, an institution must adhere to the following requirements:

- It must be *legally authorized* by the state where the institution offers postsecondary education to provide a postsecondary education program,
- It must be *accredited* by a nationally recognized accrediting agency or have met the alternative requirements, if applicable, and
- It must *admit as a regular student* 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.

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

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
"State" includes not only the 50 states, but also American Samoa, Puerto Rico, the District of Columbia, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. A "state" also includes the Freely Associated States, which include the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

LEGAL AUTHORIZATION BY A STATE

With the exception of foreign schools, an eligible institution under any of the three definitions must be located in a state. Generally, the determining factor is the physical location of the main campus or place of instruction.

To qualify as an eligible institution under any of the three institutional definitions, a school must be legally authorized by the state in which it offers an educational program to provide the program. The state's legal authorization is the legal status granted to a school through a charter, license, or other written document issued by an appropriate agency or official of the state in which the school is located. It may be provided by a licensing board or educational agency. In some cases, the school's charter is its legal authorization.

A school must have evidence that it has the authority to operate in a state at the time of the school's certification to participate in the FSA programs. For more information on applying for participation in the FSA programs, see the *New School Guide* (to be available in Spring 2009).

Authorization by a state cite
34 CFR 600.4(a)(1)

ACCREDITATION

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. The procedures and criteria for recognizing accrediting agencies are found in Chapter 12.

Except as provided below, 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.

Nationally recognized accrediting agency or association

An accrediting agency or association which the Department has recognized to accredit or preaccredit a particular category of institution, school, or educational program in accordance with the provisions in 34 CFR Parts 602 and 603.

Obtaining a list of recognized accrediting agencies

The Department periodically publishes a list of nationally recognized accrediting bodies in the Federal Register, based on criteria given in 34 CFR Part 602. The list of accrediting agencies recognized for FSA purposes can be found on the Department's Website at: **www.ed.gov/admins/finaid/accred/index.html**

The list of accrediting agencies recognized for their preaccreditation categories is in section 7. Information about national recognition of states approval agencies is in Section 10.

School required to be licensed and accredited cites

34 CFR 600.4(a)(3) & (5)
34 CFR 600.5(a)(4) & (6)
34 CFR 600.6(a)(3) & (5)

Preaccredited:
A status granted by a nationally recognized accrediting agency or association to a public or private nonprofit institution that is progressing towards accreditation within a reasonable period of time.

Institutions of Higher Education (IHE)
34 CFR 600.4(a)(5)(i)
Postsecondary Vocational Institutions (PVI)
34 CFR 600.6(a)(5)(i)

Alternatives to accreditation cites

Institutions of Higher Education (IHE)
34 CFR 600.4(a)(5)(i)
Postsecondary Vocational Institutions (PVI)
34 CFR 600.6(a)(5)(ii)

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 and causes for making the change. (Information on changes in accreditation can be found 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 advise the Department which accrediting agency it wants to serve as its primary accrediting agency for the purpose of 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 and causes for dual accreditation before the school adds the additional accreditation. See Chapter 5 for more on changes in accreditation and loss of eligibility.

ADMISSIONS STANDARDS

An eligible institution may admit as regular students only persons who have a high school diploma or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the state in which the school is located. (Admissions standards also play a role in student eligibility, as discussed in *Volume 1, Chapter 1.)*

High school diploma

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

Recognized equivalent of a high school diploma

Generally, a recognized equivalent of a high school diploma is either a GED or a state certificate (received after the student has passed a state-authorized test) that the state recognizes as being equivalent to a high school diploma. However, the Department recognizes that there are special cases:

- If a student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree, the student's academic transcript is considered equivalent to a high school diploma.
- A student without a high school diploma who is seeking enrollment in a program of at least the associate degree level, and who has excelled academically in high school and met formalized written admissions policies of the school, is also considered to have the equivalent of a high school diploma.

Criteria for ability-to-benefit and homeschool students

To be eligible for FSA funds, students who are beyond the age of compulsory attendance but who do not have a high school diploma or its recognized equivalent must meet ability-to-benefit criteria or meet the student eligibility requirements for a student who is home-schooled. (For more information on this student eligibility requirement, see *Volume 1, Chapter 1.*)

For purposes of student eligibility, a student who does not have a high school diploma or equivalent is eligible to receive FSA funds if the student completes a secondary school education in a homeschool setting that is treated as a home school or private school under state law (see *Volume 1, Chapter 1* for *student* eligibility rules). However, a student must be enrolled in an eligible institution to receive FSA funds, and an eligible institution may admit as regular students only

Admissions standards cite

34 CFR 600.4(a)(2)
34 CFR 600.5(a)(2)
34 CFR 600.6(a)(2)

Ability-to-benefit limitation
- 34 CFR 600.7(a)(1)(iv)

Approval of ATB tests
- 34 CFR 668, Subpart J

Homeschooling cites
- HEA 484(d)(3)
- 34 CFR 668.32(e), and
- DCL: GEN-02-11 and GEN 08-12

Regular student

A person who is enrolled (or is accepted for enrollment) in an eligible program for the purpose of obtaining a degree, certificate, or other recognized educational credential. Note that if an individual is not yet beyond the age of compulsory school attendance in the state in which the institution is physically located, the institution may only enroll the individual as a "regular student" if he or she has a high school diploma or its equivalent. 34 CFR 600.2

Admissions standards as a student eligibility issue

To be eligible for FSA funds, a student who does not have a high school diploma or its recognized equivalent must not only be beyond the age of compulsory attendance, but must also meet the criteria for home-schooled students or demonstrate "ability-to-benefit." See *Volume 1, Chapter 1.*

High school diploma

By high school diploma we mean one recognized by the state in which the high school is located. See *Volume 1, Chapter 1* for more information.

Readmission Requirements for Servicemembers NEW

A school may not deny readmission to a service member of the uniformed services for reasons relating to that service.

HEOA section 487 HEA section 484C
Effective date: August 14, 2008

students with a high school diplomas or equivalent, or students who are beyond the age of compulsory school attendance in the state in which the institution is located.

The Department considers that a home-schooled student is beyond the age of compulsory school attendance if the state in which the eligible institution is located does not consider the student truant once he or she has completed a homeschool program. You may rely on a homeschooled student's self-certification that he or she completed secondary school in a homeschool setting, as discussed in *Volume 1, Chapter 1*, under "Academic Qualifications."

Homeschooling example

If your state requires children to attend school until age 17, you may admit as a regular student a homeschooled student who completes the secondary curriculum at age 16 if your state would not consider the student truant and would not require that student to go back to high school, or continue a home-school education until age 17.

Limitation on students admitted without HS diploma or equivalent

A school that admits students who do not have a high school diploma nor its recognized equivalent has some additional considerations. A waiver of this limitation is possible for some schools. See the discussion under *Limitation on students without HS diploma or equivalent.*

"TWO-YEAR" RULE

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.

Branch campus

A branch campus is a location of a school that is geographically apart and independent of the main campus of the school. A location is considered to be independent of the main campus if the location:

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

Branch campus cite
34 CFR 600.2 and 600.8

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

Additional location cite

34 CFR 600.32

An additional location must obtain approval from the Department to become a branch campus. A branch campus then must operate as a branch campus for two years (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-year rule.

ADDITIONAL INSTITUTIONAL ELIGIBILITY FACTORS

An otherwise eligible institution becomes an ineligible institution if the school violates, among other requirements—

- the correspondence course limitation or the correspondence student limitation,
- the incarcerated student limitation, or
- the 50% limit on students without a high school diploma or equivalent.

In addition, 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. A school that becomes ineligible because of one of these factors must immediately stop awarding FSA program funds and must comply with the requirements in 34 CFR 668.26 for a school that has lost its FSA participation. For more information on requirements when a school's FSA participation ends, see Chapter 12.

Demonstrations of compliance

All of the *limitation* requirements and the 90/10 Rule involve certain percentage calculations that are performed by the school either to demonstrate compliance with a requirement or to demonstrate eligibility for a limitation waiver. For each of the tests enumerated above, a 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 (for more information on audits, see Chapter 12). 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. Requirements for demonstrating compliance with the 90/10 Rule are discussed below.

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 school's notification must occur by July 31 following the end of an award year. 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.

Notification cite

34 CFR 600.7(h)

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted Electronic Application (E-App) (which deal with enrollment thresholds in these areas), the school must notify the Department via the E-App. The Department will advise the school of its options, including whether the school might be eligible for a waiver. (Waivers are available for the correspondence student limitation, the incarcerated student limitation, and the ATB limitation.)

Conditions of institutional ineligibility

34 CFR 600.7

Disqualified individuals and the PPA

In its PPA, a school agrees to not knowingly employ in a capacity involving the administration of FSA funds, anyone who has pled *nolo contendre* or guilty or has been administratively or judicially determined to have committed fraud or any other material violation of the law involving federal, state, or local government funds.
(34 CFR 668.14(b) (18)(i)).

90/10 Rule NEW

The 90/10 Rule was formerly discussed as as a part of the definition of an eligible school. The HEOA of 2008 moved the 90/10 Rule to the Program Participation Agreement from Title I of the HEA..
See Chapter 3 for further discussion of the 90/10 rule.

90/10 cite
Sec. 102 of the HEA
34 CFR 600.5

For schools using a calendar year
as their fiscal year, their most recently completed fiscal year is the one that ended on December 31, 2004. For those schools using the award year as their fiscal year, their most recently completed fiscal year will be the one that ends on June 30, 2005.

Financial statement notification
A school must send notice of its failure to satisfy the 90/10 Rule to the Department by U.S. Mail to the following address:

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

Phone: (to confirm receipt only)
(202) 377-3161 or (202) 377-3155.

Correspondence limitations cite
Sec. 481(a)(3)(A) and (B) of the HEA
34 CFR 600.7(a)(1)(i) and (ii)

Correspondence student eligibility
For information about a student's eligibility for FSA funds while enrolled in a correspondence course and cost of attendance information for correspondence courses, see *Volume 1, Chapter 1 and Volume 3, Chapter 2*.

If a school becomes ineligible because it files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving FSA program funds, the school must notify the Department of the change within 10 days. The loss of eligibility is effective as of the date of the bankruptcy, or the date the school or individual pleads to or is found responsible for the crime, as applicable. A loss of eligibility for these two reasons is permanent. The institution's eligibility cannot be reinstated.

Correspondence course and correspondence student limitation

In general, a school does not qualify as eligible to participate in the FSA programs if, for the latest complete award year—

- more than 50% of the school's courses were correspondence courses (correspondence course limitation).

  (This limitation does not apply to a school that mainly provides vocational adult education or job training (as defined under Sec. 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act).)

- 50% or more of the school's regular enrolled students were enrolled in correspondence courses (correspondence student limitation).

  This limitation may be waived for a school that offers a two-year associate degree or four-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 in the award year.

For additional information on the effects of correspondence courses and students on institutional eligibility, see chapter 8.

Incarcerated student limitation

A school is not eligible for FSA program participation if, in its latest complete award year, more than 25% of its regular students are incarcerated. A public or private nonprofit school can ask the Department to waive this limitation (see sidebar for details). If granted, the waiver is effective as long as the public or private nonprofit school continues to meet the waiver requirements each award year. For information on the eligibility of incarcerated students for FSA assistance, see *Volume 1, Chapter 1*.

Limitation on students admitted without HS diploma or equivalent

Unless a school provides a four-year bachelor's degree program, or a two-year associate degree program, the school will not qualify as an

eligible institution 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 public or private nonprofit regular students not served through contracts with federal, state, or local government agencies to provide job training 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.

Bankruptcy

A school is not an eligible institution if the school, or 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, files for relief in bankruptcy or has entered against it an order for relief in bankruptcy.

Crimes involving FSA program funds

In order to safeguard FSA funds, schools are prohibited from having as principals or employing or contracting with other organizations that employ individuals who have engaged in the misuse of government funds. Specifically, a school must not knowingly—

1. 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;
2. contract with a school or third-party servicer that has been 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; or
3. contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been:

Incarcerated student defined

An "incarcerated student" is 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 (does not include detention in a halfway house, home detention, or weekend-only sentences).

Waiver of incarcerated student limitation

➔ For a public or private nonprofit school offering only two-year or four-year programs that lead to associate or bachelor's degrees, the waiver applies to all programs offered at the school.

➔ However, if the public or private nonprofit school offers other types of programs, the waiver would apply to any of the school's two-year associate degree programs or four-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 Section 600.7(e)(2) of the Institutional Eligibility regulations and must be attested to by an independent auditor.)

➔ A nonprofit school may request the waiver using the E-App, by answering the questions in "Section G" and explaining in "question 69."

(see **http://www.eligcert.ed.gov**).

Incarcerated student limitation cite

34 CFR 600.7(a)(1)(iii) and 600.7(c)

Foreign School Information

You can find additional information about foreign school eligibility in "The Student Financial Aid Handbook for Foreign Schools" on the IFAP Web site located at **http://ifap.ed.gov**

a. 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

b. administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

FOREIGN SCHOOLS ELIGIBLE FOR FFEL PROGRAMS

In general, by law, a foreign school can participate in the FFEL programs if the foreign school is comparable to an institution of higher education (as defined earlier in this section) and has been approved by the Department. Additionally, the regulations set out specific requirements for foreign medical schools and foreign veterinary schools.

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 apply to participate in non-FSA programs, such as the HOPE and Lifetime Learning Tax Credit. In addition, only students attending eligible institutions qualify for in-school deferments of payments on their federal education loans

A nonparticipating eligible institution 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.

Following submission of an application, the Department will contact the school if it has additional questions about the application. Generally, this will be within 90 days of the Department receiving an application. After completing its review, if a school's application has been approved, the Department will send an electronic notice to the president and financial aid officer notifying them that the school is eligible and that its approval letter and ECAR must be printed and maintained. If the school's application has not been approved, the Department will notify the school and explain why.

Program Eligibility

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 any changes to the Department (see Chapter 5).

DETERMINING PROGRAM ELIGIBILITY

Because a school's eligibility does not necessarily extend to all its programs, the school must ensure that a program is eligible before awarding FSA ~~program~~ funds to students in that program. The school is responsible for determining that a program is eligible.

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 programs 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). (Please 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 that were identified on the school's E-App, unless the School Participation Team (SPT) determines that certain programs or locations did not meet the eligibility requirements or it has not approved the expansion for purposes of FSA eligibility. In general, 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 SPT has approved the program/location, it will notify the school and you can print out the updated ECAR.

If a program offered through telecommunications 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 program offered through correspondence meets the definition of an eligible program, students enrolled in that program will be considered eligible (*see Chapter 8*).

CHAPTER 2 HIGHLIGHTS

- Program eligibility requirements
  - → Determination of program eligibility
  - → Eligible programs at public or private nonprofit institutions of higher education
  - → Eligible programs at proprietary or postsecondary vocational institutions
- Additional eligibility requirements
  - → ACG/National SMART programs
  - → ESL programs
  - → Study-abroad programs
  - → Direct assessment programs
  - → Flight school programs
- Clock-hour/credit-hour conversions

- Related information
  - → Student eligibility for specific educational programs—Volume 1, Chapter 1
  - → Types of educational programs defined for eligible institutions—Volume 2, Chapter 1
  - → Updating the E-APP for changes to programs and locations—Volume 2, Chapter 5

Program eligibility cite

34 CFR 668.8
34 CFR 691.2(b)

Program eligibility and school & student eligibility

To qualify as an eligible institution, a school must offer at least one eligible program. Not all programs at an eligible institution must be eligible, but at least one of the programs at the school must meet the eligible program requirements. Except for students enrolled in certain preparatory or teacher certification courses, a student must be enrolled in an eligible program to receive FSA funds (for more information, see ***Volume 1, Chapter 1***).

Recognized occupation

All non-degree programs must prepare students in that program for gainful employment in a specific recognized occupation. (This requirement also applies to degree programs at proprietary schools.)

A "recognized occupation" is one that is listed in the "occupational division" of the most recent edition of the Dictionary of Occupational Titles (DOT) (published by the U.S. Department of Labor) or one that is considered by ED, in consultation with the Department of Labor, to be a recognized occupation.

The Department of Labor last updated the DOT in 1991. You can find the DOT at

http://www.oalj.dol.gov/libdot.htm

The Department of Labor has replaced the DOT with the Occupational Information Network (O*NET OnLine) available at

http://online.onetcenter.org/

Please note that if the title of your program does not clearly indicate the specific occupation that the program prepares the student for, you must provide that information on the school's E-App.

BASIC TYPES OF ELIGIBLE PROGRAMS

Eligible programs at an institution of higher education

At a school that qualifies as an institution of higher education, the following types of programs are eligible for FSA purposes:

- a program that leads to an associate, bachelor's, professional, or graduate degree.
- a program of at least 2 academic years in duration that is acceptable for full credit toward a bachelor's degree,
- a program of at least 1 academic year in duration that leads to a certificate, degree, or other recognized credential and prepares students for gainful employment in a recognized occupation,
- a certificate or diploma training program that is less than 1 year (if the school also meets the definition of a postsecondary vocational institutions).

Eligible programs at a proprietary or postsecondary vocational institution

There are three types of eligible programs at a proprietary institution or a postsecondary vocational institution. All of 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 first type of eligible program must provide 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.
- The second type of eligible program must provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered 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 third type of program is known as the short-term program. A short-term program qualifies for the FFEL and Direct Loan programs 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.

There are several additional requirements that a short-term program must meet. The program must—

- have verified completion and placement rates of at least 70% (see chart),
- 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, and
- have been in existence for at least one year.

Completion & placement rates for short-term programs

For the purpose of demonstrating compliance with the standards for short-term (300-600 clock- hour) programs, 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.

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

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

**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.

Additional ESL considerations

➔ A school must define the effect of any noncredit remedial courses (including ESL courses) on a student's academic progress. See Chapter 10 in this Volume.

➔ Awarding FSA loans to a student over a series of semesters for ESL or remedial coursework could potentially exhaust the student's eligibility under the aggregate loan limits before the student completes his/her educational program. *See Volume 1, Chapter 1.*

Grant programs

The Higher Education Reconciliation Act of 2005 (HERA) created two new grant programs: Academic Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent (National SMART) Grant.
34 CFR 691

Direct Assessment programs

HERA also extended FSA eligibility to educational programs that use Direct Assessment to measure student learning.
34 CFR 668.10

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.

ACG and National SMART Grant Programs

To qualify as an eligible program for the ACG and National SMART Grant programs, an educational program must also meet the following requirements:

- For ACGs, the program must lead to an associate's degree or a bachelor's degree; be a two-academic-year program acceptable for full credit toward a bachelor's degree; or be a graduate degree program that includes at least 3 academic years of undergraduate education.
- For National SMART Grants, the program must lead to a bachelor's degree in an eligible major or be a graduate degree program in an eligible major that includes at least 3 academic years of undergraduate education. (See *Volume 1, Chapter 6* for more information on National SMART Grant eligible majors.)

ESL Programs

Students enrolled in a program that consists solely of English as a Second Language (ESL) instruction are eligible *for FSA funds only from the Pell Grant program.* An ESL program must meet the general requirements for an eligible program (for example, it must lead to a degree or other credential). Moreover, *an ESL 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.

A school that wishes to award FSA assistance to students enrolled in an ESL program must request an eligibility determination for the program from the Department.

Direct assessment programs

Instead of using credit hours or clock hours as a measure of student learning, some instructional programs use direct assessment of student learning, or recognize the direct assessment of student learning by others. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios. The assessment must be consistent with the accreditation of the institution or program using the results of the assessment.

A school that wishes to award FSA funds in a program using direct assessment must apply to the the Department for approval of the program, using the E-App. The application must specify the equivalent number of credit or clock hours for a direct assessment program (or portion of the program, as applicable). (The clock or credit hours will be used as the basis for the FSA award calculations described in Volume 3.) As a part of its application, the school must explain how it determined the equivalent number of credit or clock hours for the 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 Chapter 8*).

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.

Direct assessment as a measure of learning

Direct assessment of student learning means a measure by the institution of what a student knows and can do in terms of the body of knowledge making up the educational program. These measures provide evidence that a student has command of a specific subject, content area, or skill or that the student demonstrates a specific quality such as creativity, analysis or synthesis associated with the subject matter of the program.

Academic year & weeks

An academic year in a direct assessment program is a period of instructional time that consists of a minimum of 30 weeks of instructional time. A week of instructional time in a direct assessment program is any 7-day period in which at least 1 day of educational activity occurs.

Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the school, or, in combination with any of the assessments.

Applying for eligibility for a program using direct assessment

The school's application must include an attachment that explains the following—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;
(2) A description of how the assessment of student learning is done;
(3) A description of how the direct assessment program is structured, including information about how and when the school determines on an individual basis what each student enrolled in the program needs to learn;
(4) A description of how the institution assists students in gaining the knowledge needed to pass the assessments;
(5) The number of semester or quarter credit hours, or clock hours, that are equivalent to the amount of student learning being directly assessed for the certificate or degree;
(6) The methodology the school uses to determine the number of credit or clock hours to which the program is equivalent;
(7) The methodology the institution uses to determine the number of credit or clock hours to which the portion of a program an individual student will need to complete is equivalent;
(8) Documentation from the school's accrediting agency indicating that the agency has evaluated the school's offering of direct assessment program(s) and has included the program(s) in the school's grant of accreditation;
(9) Documentation from the accrediting agency or relevant state licensing body indicating agreement with the school's claim of the direct assessment program's equivalence in terms of credit or clock hours; and
(10) Any other information the Department may require to determine whether to approve the school's application.

Independent study
For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.

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 of secondary school teaching credential or certificate (*see Volume 1, Chapter 6*).
- Remedial coursework measured through direct assessment.

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

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

Study abroad programs

A participating institution may establish programs of study abroad for which its students are eligible to receive assistance through the FSA programs. A study abroad program is an eligible program if—

- students studying abroad concurrently remain enrolled at their eligible home school; and
- the eligible home school awards academic credit for the program of study abroad.

While the study abroad program must be considered part of the student's eligible program, it does not have to be a **required** part of the student's eligible degree program in order to be an eligible study abroad program. However, a school must have a written agreement with the institution offering the study abroad program, or with an entity representing that institution (*see Chapter 7*). Moreover, in the information it provides to students about a study abroad program, a school must inform students about the availability of FSA program assistance.

Flight school programs

Under the FFEL programs, a flight school program must maintain current valid certification by the Federal Aviation Administration to be eligible.

CLOCK-HOUR/CREDIT-HOUR CONVERSIONS IN DETERMINING PROGRAM ELIGIBILITY

The clock-hour/credit-hour requirements *both* 1) determine program eligibility and 2) affect the amount of FSA program funds a student enrolled in the program may receive. Here, we discuss the effect of clock-hour/credit-hour conversions on program eligibility. (For a discussion of the effects of clock-hour/credit-conversions on enrollment level and eligibility for FSA program assistance, see *Volume 3 – Chapter 1.*)

The clock-hour/credit-hour conversion formulas determine, for FSA purposes, the number of credit hours in a program. A school must determine if an undergraduate program measured in credit hours qualifies as an eligible program after using the required formulas unless the school offers an undergraduate program in credit hours, *and*—

- the program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree; or
- each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, and the degree offered by the school requires at least two academic years of study.

The school must use the clock-hour/credit-hour conversion formula to determine whether the undergraduate program qualifies as an eligible credit-hour program for FSA purposes. In addition to schools that meet the aforementioned criteria, public and private nonprofit hospital-based diploma schools of nursing are exempt from using the clock-to-credit hour conversion formula to calculate awards for the FSA programs.

Formulas for clock-hour/credit-hour conversion

To determine the number of credit hours in a program for FSA purposes, schools must use one of the following formulas.

For a semester or trimester hour program

$$\frac{\text{Number of clock hours in the credit-hour program}}{30}$$

For a quarter hour program

$$\frac{\text{Number of clock hours in the credit-hour program}}{20}$$

In order to meet the minimum program eligibility standards, the conversion formula must yield one of the following results:

- a program offered in semesters or trimesters must provide at least 16 semester or trimester credit hours over 15 weeks of

Conversion cite
34 CFR 668.8(k) & (l)

Measuring attendance
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.

The result would be that seven hours of consecutive instruction would count as 8.4 clock hours (420 minutes ÷ 50 minutes = 8.4 hours).

Seven 60-minute periods of instruction may not count for more than seven clock hours.

Acceptable doesn't mean accepted
Consider a student who completes a two-year program in plumbing and then wants to reenroll in the school's Bachelor's program in construction technology.

Any of the five plumbing courses taken by the student in the two-year plumbing program may be used to satisfy the plumbing requirement in construction technology. However, the construction technology program requires only two plumbing electives, and only two plumbing courses are accepted toward the student's degree in construction technology.

Since all of the plumbing courses that are part of the two-year program are acceptable in the construction technology program, the fact that only two plumbing courses are accepted does not disqualify the plumbing program for the exception.

Rounding prohibited
Because the results of these formulas determine the eligibility of a program, the resulting number of credit hours may not be rounded..

CLOCK-HOUR/CREDIT-HOUR PROGRAM CONVERSION EXAMPLE

Sternberg University (SU) offers a two-year nondegree program measured in semester credit hours. Courses within the program are not creditable toward a degree at SU. Students in the program earn 16 credit hours per semester.

SU determines that there are 1,440 clock hours of instruction in the program. There are 330 clock hours of instruction in the first and second semesters (660 first-year total), and 390 clock hours of instruction in the third and fourth semesters (780 second-year total).

By applying the conversion formula the school determines there are 48 credit hours in the program (1,440 ÷ 30 = 48).

Because the program is at least 15 weeks in length and (through the conversion formula) has been determined to offer at least 24 credit hours of instruction, it is an eligible program provided it is otherwise eligible (see the chart on Eligible Programs and the discussion under Program Eligibility Requirements in chapter 1)

Exemption if ED determines that the program offers "equivalent degree"

The regulations also stipulate that the school is exempted from using the clock-hour/credit-hour formulas if the Department determines that the program provides a degree equivalent to an associate degree, a bachelor's degree, or a professional degree. This does not permit a school to ask for a determination that a nondegree program is equivalent to a degree program.

instructional time (16 semester or trimester credit hours per year is 3/4 time; 24 per year is full time);

- a program offered in quarter hours must provide at least 24 quarter credit hours over 15 weeks of instructional time (24 quarter credit hours per year is 3/4-time; 36 per year is full-time);
- a 10-week program that admits as regular students only persons who have completed the equivalent of an associate degree must provide at least 8 semester or trimester credit hours, or 12 quarter credit hours.

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.*

Credits approved by state and accrediting agencies

When some states and accrediting agencies approve programs, they also approve the number of credits in the programs. The credits approved by states and accrediting agencies are *not* necessarily the credits for FSA purposes. For FSA purposes, the number of credits in the program will be those determined by the conversion formula, and they will never be more than those approved by a state or accrediting agency.

CHAPTER 3

General FSA Participation Requirements

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

CONTRACTS WITH THIRD-PARTY SERVICERS

Schools are permitted to contract with consultants for assistance in administering the FSA programs. However, the school ultimately is responsible for the use of FSA funds and will be held accountable if the consultant mismanages the programs or program funds.

The General Provisions regulations contain requirements for all participating institutions that contract with third-party servicers. As defined by regulation, a third-party servicer is an individual or organization that enters into a contract (written or otherwise) with a school to administer any aspect of the school's FSA participation.

Examples of functions that are covered by this definition are:

- processing student financial aid applications, performing need analysis, and determining student eligibility or related activities;
- certifying loans, servicing loans, or collecting loans;
- processing output documents for payment to students, and receiving, disbursing, or delivering FSA funds;
- conducting required student consumer information services;
- preparing and certifying requests for advance cash monitoring or reimbursement funding, preparing and submitting notices and applications required of eligible and participating schools, or preparing the Fiscal Operations Report and Application to Participate (FISAP); and
- processing enrollment verification for deferment forms or Student Status Confirmation Reports.

CHAPTER 3 HIGHLIGHTS

- Contracts with 3rd-party servicers
  - ➔ Excluded functions/individuals
  - ➔ Requirements for contracting
  - ➔ Notifying the Department of contracts
- Incentive compensation
  - ➔ 12 "safe harbors"
- FFEL School/Lender Relationships & Activities
  - ➔ Preferred lender lists
  - ➔ Prohibited activities in loan programs
  - ➔ Code of Conductr
- 90/10 rule
- School lender in FFEL program
- Tuition rates for military families at public institutions
- Program Participation Agreement

Related information

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

Assessing your school's compliance

To assess your school's compliance with the provisions of this chapter see the FSA Assessment module for "Institutional Eligibility" at:
ifap.ed.gov/qahome/fsaassessment.html

Third-party servicer cite

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

Institutional liability

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

Excluded functions

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

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

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

Excluded individuals

An employee of a school is not a third-party servicer. For this purpose, an employee is one who:

- works on a full-time, part-time, or temporary basis,
- performs all duties on site at the school under the supervision of the school,
- is paid directly by the school,
- is not employed by or associated with a third-party servicer, and
- is not a third-party servicer for any other school.

Requirements for contracting with a third-party servicer

For purposes of administering FSA programs, a school may only contract with an eligible third-party servicer as specified by the regulatory criteria. Under such a contract, the servicer agrees to comply with all applicable requirements, to refer any suspicion of fraudulent or criminal conduct in relation to FSA program administration to the Department's Inspector General, and, if the servicer disburses funds, to confirm student eligibility and make the required Returns to Title IV funds when a student withdraws.

If the contract is terminated, or the servicer ceases to perform any functions prescribed under the contract, the servicer must return to the school all unexpended FSA funds and records related to the servicer's administration of the school's participation in the FSA programs.

Notifying the Department of contracts

Schools are required to notify the Department of all existing third-party servicer contracts. If a school has submitted information regarding its third-party servicers as part of applying for certification or recertification, no additional submission is required.

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

A school is required to notify the Department if:

- the school enters into a contract with a new third-party servicer,
- the school significantly modifies a contract with an existing third-party servicer,
- the school or one of its third-party servicers terminates a contract, or
- a third-party servicer ceases to provide contracted services, goes out of business, or files for bankruptcy.

Notification to the Department (which must include the name and address of the servicer and the nature of the change or action) must be made within 10 days of the date of the change or action.

A school must provide a copy of its contract with a third-party servicer only upon request. A school is not required to submit the contract as part of the recertification process.

Incentive compensation in the law & regulations

The prohibition of incentive compensation appears in Section 487(a)(20) of the HEA and in FSA regulations at 34 CFR 668.14(b)(2). In response to numerous requests from schools, and after engaging in negotiations with the financial aid community, the Department amended the regulations on November 1, 2002. ED developed the 12 permissible payment arrangements found in 34 CFR 668.14(b)(22)(ii) to provide an illustrative framework a school may use to make its own determination about compliance with the HEA. The list is not exhaustive, and schools that have additional questions should consult with their legal counsel when making this determination. The Department does not review or approve an individual school's payment arrangements.

INCENTIVE COMPENSATION

Schools may not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions regarding the award of FSA program funds.

However, ED has identified 12 types of payment and compensation plans that do not violate this statutory prohibition. If an incentive payment arrangement falls within any one of these "safe harbors," that payment arrangement is permissible.

Adjustments to employee compensation based on merit

Under this safe harbor, a school may make up to two adjustments (upward or downward) to a covered employee's annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. One cost-of-living increase that is paid to all or substantially all of the school's full-time employees will not be considered an adjustment under this safe harbor. In addition, with regard to overtime, if the basic compensation of an employee is not an incentive payment, neither is overtime pay required under the Federal Fair Labor Standards Act.

The 12 "safe harbors"

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

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

Enrollments in programs that are not eligible for FSA funds

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

Contracts with employers to provide training

In general, the business-to-business marketing of employer-provided education is not prohibited by the incentive compensation rules. Therefore, in some cases, a school may make payments to recruiters who arrange contracts between the school and an employer, where the employer pays the tuition and fees for its employees (either directly to the school or by reimbursement to the employee).

As long as there is no direct contact by the school's representative with prospective students, and as long as the employer is paying at least 50% of the training costs, incentive payments to recruiters who arrange for such contracts are not covered by the incentive payment prohibition, provided that the incentive payments are not based on the number of employees who enroll, or the amount of revenue generated by those employees.

Profit-sharing or bonus payments

Profit-sharing and bonus payments to all or substantially all of a school's full-time employees are not incentive payments based on success in securing enrollments or awarding financial aid. As long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the school's full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition. In addition, such payments can be limited to all or substantially all of the full-time employees at one or more organizational levels at the school, except that an organizational level may not consist predominantly of recruiters, the admissions staff, or the financial aid staff.

Compensation based upon completion of program or academic year

Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter, does not violate the incentive compensation prohibition. This safe harbor recognizes that completing a program or the first academic year of a program is a reliable indicator that the students were qualified to enroll in the program.

Successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the school. Completion of 26/30 weeks of instructional time is not required in this case, and time may not be substituted for credits earned. Therefore, this safe harbor applies when a student earns, for example, 24 semester credits, no matter how short or long a time that takes.

Covered employee

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

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

For this purpose, a school may not count transfer credits, credits awarded through successful completion of testing, credits for life experience, and any other credits not earned through attendance at that school toward the successful completion of an academic year.

Buying third-party leads

Although buying leads from third parties for a flat fee is not a clerical pre-enrollment activity under this safe harbor, the activity is not covered under the incentive compensation prohibition.

Pre-enrollment activities

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

However, soliciting students for interviews is a recruitment activity, not a pre-enrollment activity, and individuals may not receive incentive compensation based on their success in soliciting students for interviews. In addition, since a recruiter's job description is to recruit, it would be very difficult for a school to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities.

Managerial and supervisory employees

The incentive payment prohibition, does not extend to positions above the level of first-line supervisors or managers. The incentive payment prohibition applies only to individuals who perform activities related to recruitment, admissions, enrollment, or the financial aid awarding process and their immediate supervisors. Direct supervisors are included in the prohibition because their actions generally have a direct and immediate impact on the individuals who carry out these covered activities.

Token gifts

The maximum cost of a token, noncash gift that may be provided to an alumnus or student is $100, provided that:

- the gifts are not in the form of money, and
- no more than one gift is provided annually to an individual.

The cost basis of a token noncash gift is what the school paid for it. The value is the fair market value of the item. The fair market value of an item might be considerably greater than its cost. A high value item for which the school paid a minimal cost would not be considered a token gift.

Profit distributions

Profit distributions to owners are not payments based on success in securing enrollments or awarding financial aid. Therefore any owner, whether an employee or not, is entitled to a share of the organization's profits to the extent they represent a proportionate share of the profits based upon the employee's ownership interest.

Internet-based activities

A school may award incentive compensation for Internet-based recruitment and admission activities that—

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

Payments to third parties for non-recruitment activities

The incentive payment prohibition applies only to activities dealing with recruiting, admissions, enrollment, and financial aid. Therefore, a school may make incentive payments to third parties for other types of services, including tuition-sharing arrangements, marketing, and advertising that are not related to recruitment, admissions, enrollement, and financial aid activities.

Payments to third parties for recruitment activities

If a school uses an outside entity to perform activities for it, including covered activities, the school may make incentive payments to the third party as long as the individuals performing the covered activities are not compensated in a way that is prohibited by the incentive payment compensation rule.

For example, if a school established a group of employees who provided the school with a series of services, and one of those services was recruiting, the incentive compensation prohibition would preclude only the individuals doing the recruiting from being paid on an incentive basis. If the same school hired a contractor to provide these services, the same rules would apply. The outside entity could not pay the individuals performing the recruiting services on an incentive basis, but it could pay the other employees performing non-recruiting activities on an incentive basis.

Prohibited & permissible activities

Schools 34 CFR 682.212
Detailed lists of prohibited activities for lenders and guarantors were published as part of the Loan Programs final regulations dated November 1, 2007. See 72 FR 62003

Preferred lender lists

Regulatory cite:
34 CFR 682.212 and 682.401
See DCL 08-06 for subsequent guidance and DCL 08-12 for new statutory provisions from the Higher Education Opportunity Act.

FFEL SCHOOL/LENDER RELATIONSHIPS & ACTIVITIES

Preferred lender lists NEW

If a school chooses to provide prospective borrowers with a list of preferred lenders, the list must include at least three lenders that are not affiliated with each other. *Affiliation,* for purposes of a preferred lender list, is limited to affiliates that are under common ownership and control.

- The preferred list may not include lenders that have offered, or have offered in response to a solicitation by the school, financial and other benefits to the school in exchange for inclusion on the school's preferred lender list.
- However, a school may include lenders on its preferred list who offer lower costs and benefits to students at the school, provided the lenders do not discriminate on any legally prohibited basis.

The preferred lender list must include—

- the method and criteria the school used to select any lender that it recommends or suggests.
- comparative information about interest rates and other benefits offered by the lenders.

In any information related to its list of lenders, the school must include a prominent statement advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders.

A school must update its preferred lender list and any accompanying information at least annually.

A school may not, through award packaging or other methods, assign a first-time borrower's loan to a particular lender, and may not delay certification of any borrower's loan because the lender is not on the school's preferred lender list.

Prohibited activities in the loan programs

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

Lenders may not offer, directly or indirectly, points, premiums, payments, or other inducements, to a school or any other party to secure applicants for FFEL loans. In addition, lenders may not conduct unsolicited mailings of FFEL loan applications to students or parents who have not previously received an FFEL from that lender. Nor may a lender offer an FFEL loan to induce the borrower or other person to purchase other products or services. Similar restrictions apply to guaranty agencies. (See detailed list on next page.)

Preferred lender arrangements—new requirements NEW

In May of 2008, the Department provided additional guidance for schools that have been unable to find at least three lenders who are willing to make loans to its students AND meet the regulatory requirements. In addition, this letter clarified that a school's preferred lender list could include lenders that were affiliated, as long as at least three of the lenders on the list were unaffiliated. While not a requirement, schools are encouraged to identify, as part of its preferred lender list disclosures, any affiliations among the lenders on the institution's preferred lender list.
See DCL 08-12

The Higher Education Opportunity Act added several requirements relating to preferred lender lists:
• If a school enters into a preferred lender arrangement, it must annually compile a list of the specific lenders for FSA loans and for private education loans that the school recommends in accordance with its lender arrangement.
• The school must make the list available in print or other medium to students and their families.
• The school must compile the list with care and without prejudice for the sole benefit of students and their families and not deny or impede the borrower's choice of a lender or unnecessarily delay certifying an FSA loan for a borrower who chooses a lender not on the list.

The HEOA requires that the preferred lender list:
• disclose detailed information about the terms and conditions of the loans offered by preferred lenders, as required under section 153(a)(2)(a) of the HEA;
• disclose why the school entered into an arrangement with each lender, particularly with respect to terms and conditions or provisions favorable to the borrower;
• ensure that the list contains at least three unaffiliated lenders for FSA loans and at least two unaffiliated lenders for private education loans;
• specifically indicate whether a lender is or is not an affiliate of each other lender on the list. If a lender is an affiliate of another lender, the institution must describe that affiliation;
• prominently disclose the method and criteria used in selecting the lenders.

In addition, a school or school-affiliated organization that participates in a preferred lender arrangement must disclose on the school's or organization's website and in all other informational materials that describe or discuss educational loans:
• the information required above (for preferred lender lists);
• the maximum amount of federal grant and FSA loan assistance available to students who attend the school, in an easily understood format;
• for each type of FFEL loan, a statement that the school must certify an FFEL loan from any eligible FFEL lender the student or parent selects;
• for each type of private education loan by the school (or school-affiliated organization) to the school's students and their families, the information required to be disclosed under section 128(e)(11) of the The Truth in Lending Act; and
• for prospective borrowers of private education loans, in a manner that is distinct from information provided on FSA loans, a prominent statement that the prospective borrower may qualify for FSA grants and loans, and that the terms and conditions of FSA loans may be more favorable than the terms and conditions of private education loans, and
• for FFEL loans, any additional information identified by the Department as the "minimum information" that must be made available to prospective FFEL borrowers and their families.

HEOA section 493 HEA section 487
HEOA section 120
See DCL 08-12

Note that the Department will be developing a model disclosure form that may be used by schools, school-affiliated organizations, and lenders in FFEL preferred-lender arrangements to enable students and families to compare private education loans and FFEL loans.

Lender & guarantor: prohibited activities NEW

A guaranty agency or lender in the FFEL program may not offer, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or any other inducement to a school or its employees in order to secure applicants for FFEL loans. (There is a similar prohibition against guarantor inducements to a lender, or to the agent, employee, or independent contractor of any lender or guaranty agency.) In addition, a lender may not provide information technology equipment at below-market value, additional financial aid funds, or other inducements to any school or employee of a school.

Guaranty agencies and lenders may not:
• conduct unsolicited mailings, by either postal or electronic means, of FFEL application forms to students in secondary or postsecondary schools, or the family members of such students, unless the agency has previously guaranteed (or the lender has made) an FFEL loan for the student or the student's parent;
• perform, or pay another individual to perform, any school-required function for a school participating in the FFEL Program, except student loan exit counseling; or
• engage in fraudulent or misleading advertisement.

A lender is not eligible if it:
• enters into a consulting arrangement or other contract with an employee who is employed in an school's student financial aid office or who otherwise has responsibility for student loans to provide services to a lender;
• compensates a school employee who is employed in the student financial aid office or who otherwise has responsibility for student loans for serving on an advisory board, commission, or group established by a lender or a group of lenders, except that the lender may reimburse the school employee for reasonable expenses incurred by the employee in performing such service;
• provides payments or other benefits to a student at a school to act as the lender's representative to secure FFEL loan applications, unless the student is employed by the lender for other purposes and makes all the appropriate disclosures regarding his or her employment with the lender;
• offers, directly or indirectly, a FFEL loan as an inducement to a prospective borrower to purchase an insurance policy or other product.

Citation: HEOA sections 422 & 436 HEA sections 428(b)(3) and 435(d)(5)

Lender & guarantor: permissible activities

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

However, lenders, guaranty agencies, and other participants in the FFEL Program may assist schools in the same way that the Department assists schools under the Direct Loan Program. For example, a lender can also provide loan counseling for a school's students through the Web or other electronic media, and it can help a school develop, print, and distribute counseling materials.

Code of Conduct NEW

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

- 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.

When developing its code of conduct, the school should refer to DCL GEN-08-12 for further details.

Compensation for serving on an advisory board NEW

A person employed in a financial aid office who serves on an advisory board 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 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 the activity for which the expenses were paid or provided.

Advisory board compensation

HEOA Section 1011 Section 140 of the Truth in Lending Act
Disclosures of Reimbursements for Service on Advisory Boards
HEOA section 1011 HEA section 485(m)

Change to 90/10 rule NEW

The HEOA moves the 90/10 Rule to the Program Participation Agreement from Title I of the HEA.

As a result, a school that now violates the 90/10 Rule for one year would no longer lose its eligibility, but is placed in a "provisional" participation status.

The cash basis of accounting

A proprietary institution of higher education must use the cash basis of accounting in determining whether it satisfies the 90/10 Rule. Under the cash basis of accounting, revenue is recognized when received rather than when it is earned.

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.

THE 90/10 RULE

To be eligible for FSA participation, a proprietary institution may derive no more than 90% of its revenues from the FSA programs. A school must determine and certify its revenue percentages using the formula described in the chart on the following pages for its latest complete fiscal year.

A proprietary school is required to disclose the percentage of its revenues derived from the FSA programs (that the school received during the fiscal year covered by the audit) as a footnote to its audited financial statement. For information on audited financial statements, see Chapter 12.

Proprietary institutions have 90 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. A school changing from for profit to nonprofit must continue to file this report for the first year of its nonprofit status.

If a school fails to satisfy the 90/10 Rule for one year, its participation status becomes provisional for two fiscal years. However, if the school does not satisfy the 90/10 Rule for 2 consecutive fiscal years, it loses its eligibility to participate in the FSA programs for at least 2 fiscal years. If the school loses eligibility, it must immediately stop awarding FSA funds and follow the closeout procedures described in Chapter 12. Schools have 90 days after their most recently completed fiscal year has ended to report to the Department if they did not satisfy the 90/10 Rule for the fiscal period.

Calculating revenues for the 90/10 rule

To be eligible for FSA participation, a proprietary institution may derive no more than 90% of its revenues from the FSA programs. A school must determine and certify its revenue percentages using the following regulatory formula for its latest complete fiscal year (34 CFR 600.5(d)).

$$\frac{\textit{FSA funds used for school charges to students}}{\begin{array}{c}\textit{Total revenues generated by the school from:}\\ \textit{(1) school charges for students enrolled in eligible programs;}\\ \textit{(2) required educational activities conducted by the school (see below) .}\end{array}}$$

Counting FSA funds used for school charges NEW

Any FSA funds that are disbursed or delivered to or on behalf of a student are presumed to pay the student's tuition, fees, or other school charges, unless the tuition, fees, or other charges are satisfied by

- grant funds from non-Federal public agencies or private sources independent of the institution;
- 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 in need of that training;
- unds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code; and
- institutional scholarships that count toward the 10% revenue requirement.

Other sources counted in "total revenues" NEW

Other sources that a school may count as part of its "total revenues" (after applying the presumption that FSA funds are used to pay the student's tuition, fees, and other institutional charges) include

- institutional aid to students (see discussion of treatment of school loans on next page)
- revenue earned from a non-FSA program of study, as long as the program is approved by the state, accredited, or provides an industry-recognized credential or certificate,
- scholarships that are provided by the school in the form of monetary aid or tuition discounts based on the academic achievements or financial need of students, as long as the scholarships are disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or income earned on those funds; and
- the proceeds of Unsubsidized Stafford Loans that exceed the loan limits which were in effect on May 6, 2008 (pre-ECASLA). This provision applies to any Unsubsidized Stafford Loan received by a student on or after July 1, 2008, but before July 1, 2011.

Exclusions from fraction NEW

The following types or amounts of funds are excluded from both the numerator and denominator of the fraction under the 90/10 calculation:

- the amount of funds the school received under the FWS Program, unless it used those funds to pay for a student's institutional charges;
- the amount of funds the school received under LEAP (see below for additional guidance);
- the amount of funds provided by the school as matching funds under the FSA programs;
- the amount of funds provided by the school for an FSA program that are required to be refunded or returned; and
- the amount charged for books, supplies, and equipment, unless the school includes that amount as tuition, fees, or other institutional charges.

Revenues from required educational activities (including a clinic or service)

In figuring revenues generated by school activities, a school may include only revenue generated by the school from activities it conducts, that are necessary for its students' education or training. The activities must be

- conducted on campus or at a facility under the control of the institution,
- performed under the supervision of a member of the institution's faculty, and
- required to be performed by all students in a specific educational program at the institution.

Revenues from auxiliary enterprises and activities that are not a necessary part of the students' education, such as revenues from the sale of equipment and supplies to students and revenues from vending machines, may not be included in the denominator of the 90/10 calculation.

If a clinic or service is operated by the school, offered at the school, performed by students under direct faculty supervision, and required of all students as part of their educational program, then revenues from the clinic or service may be included in the denominator of the 90/10 calculation.

Counting LEAP funds

If a state agency specifies the exact amount or percentage of LEAP funds included in an individual student's state grant, only the specified amount or percentage of the student's state grant up to $5,000 (the statutory maximum LEAP award) is considered LEAP funds.

If the state agency identifies a specific student's state grant as containing LEAP funds but does not provide an exact amount or percentage, the entire amount of the grant up to $5,000 is considered LEAP funds. State grant funds that are not LEAP/SLEAP are included in the denominator.

If the state agency does not specify the amount of LEAP funds included in a student's individual grant but does specify the percentage of LEAP funds in the entire amount of state grant funds provided to the school and the student meets the FSA student eligibility requirements, the school must apply this percentage to the individual student's total state grant to determine the amount of the grant up to $5,000 to be considered LEAP funds.

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 do not represent an inflow of cash to the institution. Institutional scholarships are not revenues generated by the school (unless they are donated by an unrelated or outside third 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 an institution's 90/10 calculation for the fiscal year in which the revenues were received, provided that the institution'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.

NEW

The HEOA of 2008 includes a subsequent provision that permits the inclusion of the following amounts for purposes of the 10% requirement: *For loans made to students by the institution from July 1, 2008, but before July 1, 2012*, the net present value of the loans made during a fiscal year, if the loans are evidenced by promissory notes, issued at intervals related to the institution's enrollment periods, and are subject to regular loan repayments and collections. *For loans made on or after July 1, 2012,* only the amount of loan repayments the institution receives during a fiscal year, excluding repayment on any loans for which the institution previously used the net present value in its 90/10 calculation.

See DCL 08-12 for HEOA changes (section 493, amending HEA section 487) Effective date: August 14, 2008
Earlier guidance on 90/10 and institutional loans and scholarships can be found in Dear Partner Letter GEN-99-33 and Dear CPA Letters CPA-99-01 and CPA-99-02.

SCHOOL LENDER IN THE FFEL PROGRAM

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

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

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

Audit requirements for school lenders

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

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

School lender requirements on or before April 1, 2006

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

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

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

HEA §435(d)(2)
20 U.S.C. 1085
34 CFR 682.601
(Interim Final Regulations Aug. 9, 2006;
Final Regulations: Nov. 1, 2006)

Eligible Lender Trustee

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

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

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

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

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

Eligible lender trustee

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

TUITION RATES FOR MILITARY FAMILIES AT PUBLIC INSTITUTIONS NEW

A public institution of higher education may not charge a member of the armed forces who is on active duty for a period of more than 30 days, and whose domicile or permanent duty station is in a state that receives assistance under the Higher Education Act, his or her spouse, or his or her dependent children, tuition at a rate higher than the institution's in-state tuition rate for residents of the state.

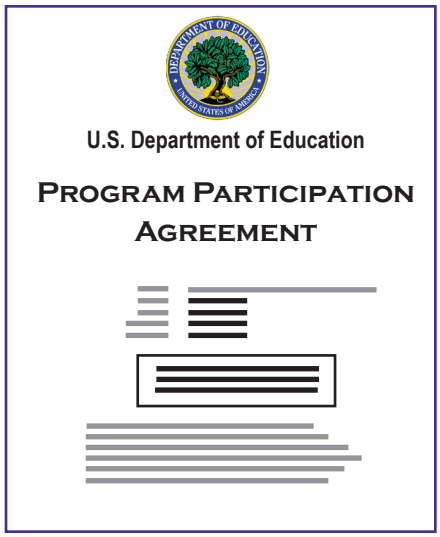
In addition, if a member of the armed forces who is on active duty, his or her spouse, or his or her dependent child pays such an in-state tuition rate, the public institution must allow the individual to continue to pay such a rate as long as the individual is continuously enrolled, even if there is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

For the purpose of this provision—

- "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.
- "active duty" means full-time duty in the active military service of the United States. Such term 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. Such term does not include full-time National Guard duty.
- "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

Program Participation Agreement cites

Sec. 487 of the HEA
34 CFR 668.14



Programs covered by the PPA

An eligible school must enter into a PPA with the Department to participate in the following programs:

- Federal Pell Grant, ACG,* National SMART*
- Federal Supplemental Educational Opportunity Grant (FSEOG)
- Federal Work-Study (FWS)
- Federal Perkins Loan (Perkins)
- Federal Direct Loan Program (DL)
- Federal Family Education Loan (FFEL)

*A school that is certified for Pell Grant purposes is considered to be certified for the ACG and National SMART Grant programs, if it has at least one academic program that is ACG/SMART-eligible.

THE PROGRAM PARTICIPATION AGREEMENT

To participate in the FSA programs, a school must have a current Program Participation Agreement (PPA), signed by the school's President or Chief Executive Officer and an authorized representative of the Secretary of Education.

Purpose and scope of the PPA

Under 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 about a school's participation in the FSA programs. In addition to the effective date of a school's approval, the date by which the school must reapply for participation, and the date on which the approval expires, the PPA lists the FSA programs in which the school is eligible to participate.

Expiration or termination of the Agreement

Either the school or the Department may terminate the Program Participation Agreement. The Agreement automatically terminates if the school loses eligibility.

A school's Program Participation Agreement expires on the date that—

- the school changes ownership that results in a change in control (*see* Chapter 5),
- the school closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the school or its students,
- the school ceases to meet the eligibility requirements (*see* Chapter 1),
- the school's period of participation expires, or
- the school's provisional certification is revoked.

In the case of a location of the school, the school's program participation agreement no longer covers a location as of the date on which that location ceases to be a part of the participating institution.

Contents of the Program Participation Agreement

General Terms & Conditions

After enumerating the FSA programs in which a school is authorized to participate, a Program Participation Agreement states the General Terms and Conditions for institutional participation. By signing the Agreement a school certifies that it—

1. will comply with the program statutes, regulations, and policies governing the FSA programs;
2. has established a drug abuse prevention policy accessible to any officer, employee, or student at the school (see *Chapter 3*) and is in compliance with the disclosure requirements for Campus Security Policy and Crime Statistics (see *Chapter 6*).
3. will comply with
   a. Title VI of the Civil Rights Act of 1964, as amended, barring discrimination on the basis of race, color, or national origin;
   b. Title IX of the Education Amendments of 1972, barring discrimination on the basis of sex;
   c.. the Family Rights and Privacy Act of 1974 (see *Chapter 9*)
   d. Section 504 of the Rehabilitation Act of 1973, barring discrimination on the basis of physical handicap (34 CFR Part 104); and
   e. The Age Discrimination Act of 1975 (34 CFR Part 110);
4. acknowledges that the Department, states, and accrediting agencies may share information about the school without limitation; and
5. acknowledges that the school must, prior to any other legal action, submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration.

Selected provisions from the General Provisions

In addition to the general statement that a school will comply with the program statutes, regulations, and policies governing the FSA programs, the Program Participation Agreement contains references to selected important provisions of the General Provisions Regulations (34 CFR Part 668). The Program Participation Agreement specifies that—

1. 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.***
2. 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 3*).
3. ***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***).
4. 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 *Chapters 10 and 11*).

5-6. The school will comply with the standards of ***financial responsibility and administrative capability*** (*see Chapters 10 and 11*).
7. The school will submit timely reports to the Department and to loan holders, as required.
8. A school must not certify or originate an FFEL or Direct Loan for an amount that exceeds the annual or aggregate loan limits. (see *Volume 3, Chapter 4 and Volume 4, Chapter 1)*.
9. The school will provide information concerning ***institutional and financial assistance information*** as required to students and prospective students (see *Chapter 6*).
10. If the school advertises ***job placement rates*** to attract students, it must make available to prospective students the most recent available data concerning employment statistics, graduation statistics, and other information to substantiate the truthfulness of the advertisements, as well as the state licensing requirements for the jobs for which the training will prepare the student (see *Chapter 6*).
11. If the school participates in the FFEL program, the school will provide borrowers with information about ***state grant assistance*** from the state in which the school is located, and will inform borrowers from other states of the sources of information about state grant assistance from those states (see *Chapter 6*).
12. The school will provide required certifications (see the certifications listed at the end of this numbered list).
13. If the school provides financial assistance to students under the ***ability to benefit*** provisions, the school will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma (see *Chapter 3*).

The law does not require a school to verify that a student is enrolled in a GED program or to monitor the student's progress in the program. A student admitted based on his or her ability to benefit who does not have a high school diploma or its recognized equivalent is not required by law to enroll in a GED program, but the school may choose to make this an admission requirement

14. The school cannot deny FSA funds on the grounds that a student is ***studying abroad*** if the student is studying in an approved-for-credit program (see *Chapters 1 and 7*).
15-16. To begin participation in the FFEL programs (or if a school ***changes ownership*** or changes its status as a parent or subordinate institution), the school must develop a ***default management plan*** for approval by the Department and must implement the plan for at least two years. (see discussion & exceptions in *Chapter 10*)
17. 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 12*).
18. The school ***may not knowingly employ or contract*** with any individual, agency, or organization that has been convicted of or pled guilty or nolo contendere to a crime or was judicially determined to have committed fraud 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 involving federal, state, or local government funds (see *Chapter 1*).
19. 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 (IPEDS).
20. In the case of a school that offers athletically related student aid, it will ***disclose the completion***

and graduation rates of student athletes and the athletic program participation and financial support pursuant to 34 CFR 668.47 and 34 CFR 668.48 in conformance with the Student Right-to-Know Act (see *Chapter 6*).

21. 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.
22. The school cannot pay or contract with any entity that pays commissions or other incentives based directly or indirectly on securing enrollment or financial aid (except when recruiting foreign students ineligible for FSA program funds) to persons engaged in recruiting, enrolling, admitting, or financial aid administration (see *Chapter 3*).
23. The school must comply with the program integrity requirements established by the Department, state authorizing bodies, and accrediting agencies (see *Chapter 12*).
24. The school must comply with the requirements for the ***Return of Title IV funds*** when a student withdraws (see *Volume 5, Chapter 2*).
25. 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*).
26. If the stated objectives of an educational program offered by the school are preparing students for ***gainful employment in a recognized occupation the school*** will
    a. demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation, and
    b. establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.

The PPA also contains an unnumbered provision concerning the reporting requirements for schools that offer athletically-related student aid. See Chapter 6 for a discussion of this requirement.

Certifications

Three certifications are included in the PPA:

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

Additional provisions for Direct Loan schools

The school and its representatives shall comply with the statute, guidelines, and regulations governing the Title IV, Part D, William D. Ford Federal Direct Loan Program as required by Section 454 of Public Law 103-66.

The school will:

- Identify eligible FSA applicants and estimate their need, based on the law.
- Provide a certification statement of eligibility for students to receive loans that will not exceed the annual or aggregate limits
- Establish a schedule for disbursement of loan proceeds to meet the requirements of Section 428G of the HEA.
- Provide timely and accurate information to the Department on enrollment status and the status of student borrowers (if known) after the student leaves the institution, and the utilization of FSA funds.
- Comply with student loan information requirements for the Direct Loan Program.

- Provide that student and parents will be eligible to receive FFEL loans, at the discretion of the Department, except that a student or parent may not receive FFEL and Direct Loans for the same period of enrollment.
- Implement a quality assurance system
- 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 school will originate loans to eligible students and parents in accordance with the requirements of Part D of the HEA and use funds advanced to it solely for that purpose (Option 2 only).
- The note or evidence of obligation of the loan shall be the property of the Secretary (Options 2 and 1 only).
- Implement such other provisions as the Secretary determines are necessary to protect the interest of the United States and to promote the purposes of Part D of the HEA.
- Accept responsibility and financial liability stemming from its failure to perform its functions under this Program Participation Agreement.

The Institution's continued approval to participate in the Direct Loan Program will be based on the Department of Education's review and approval of the Institution's future applications for recertification to continue participating in the federal student aid programs.
Note that the PPA may list additional requirements that are school-specific; schools must carefully review *all* of the requirements listed on their PPA.
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 U.S.C. 1070a et seq; 34 CFR Part 690.
* FEDERAL FAMILY EDUCATION LOAN PROGRAM, 20 U.S.C. 1071 et seq; 34 CFR Part 682.
* FEDERAL DIRECT STUDENT LOAN PROGRAM, 20 U.S.C. 1087a et seq; 34 CFR Part 685.
* FEDERAL PERKINS LOAN PROGRAM, 20 U.S.C. 1087aa et seq; 34 CFR Part 674.
* FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM, 20 U.S.C. 1070b et seq; 34 CFR Part 676.
* FEDERAL WORK-STUDY PROGRAM, 42 U.S.C. 2751 et seq; 34 CFR Part 675.
* ACADEMIC COMPETITIVENESS GRANT, 1070a-1; 34 CFR Part 691
* NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT GRANT, 1070a-1; 34 CFR Part 691

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

NEW

PROVISIONS ADDED TO THE PPA BY THE HIGHER EDUCATION OPPORTUNITY ACT

Preferred lender list
Schools with preferred lender arrangements must compile and make available a list of the lenders that it promotes and recommends. See *Chapter 3* for specific requirements.

Code of conduct
Schools that participate in the FSA loan programs must develop and enforce a code of conduct. See further discussion in *Chapter 3*.

Copyright protection
The school must certify that it has developed plans to effectively combat the unauthorized distribution of copyrighted material and will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property.

Private education loan certification
Upon request from a student or parent who is applying for a private education loan, a school must provide the disclosure form required under The Truth in Lending Act and the information needed to complete the form (to the extent the school has that information). See *Chapter 6*.

Disciplinary proceedings
Schools are required to disclose, upon request, the results of disciplinary hearings to the victims of crimes of violence or sex offenses. See *Chapter 6*.

90/10 Rule
The 90/10 rule for proprietary schools has been moved to the PPA. See *Chapter 9* for discussion of the 90/10 calculation.

Effective date for Report on Results of Disciplinary Proceeding:
August 14, 2009
All other provisions are effective August 14, 2008

See GEN 08-12 for additional information on these new requirements

Other School Requirements

CHAPTER 4

In this chapter, we will discuss school requirements that are not directly related to student aid, such as fire safety, missing persons procedures, etc. Note that several of these requirements are also linked to the consumer information requirements in Chapter 6.

SAFETY REQUIREMENTS [NEW]

Fire safety log NEW

FSA-eligible schools must maintain a log that records all fires in on-campus student housing facilities, regardless of whether the school has a police or security department of any kind. The fire log needs to include the nature, date, time and general location of each fire. A school must make annual reports to the campus community on these fires (see Chapter 6, "Providing Consumer Information"), and must annually submit a copy of the fire safety statistics to the Department.

Missing persons procedures NEW

A school that provides on-campus housing must establish a missing student notification policy for students who reside in on-campus housing that—

- informs each student that they have the option to identify an individual that the school can contact no later than 24 hours after the time the student is determined missing according to the school's official notification procedures described below;
- provides each student a way to register confidential contact information in the event the student is determined to be missing for more than 24 hours;
- advises each student under 18 years of age (who is not emancipated) that the school must notify a custodial parent or guardian no later than 24 hours after the time the student is determined to be missing according to the institution's official notification procedures; and
- requires the school to initiate the emergency contact procedures that the student designates if campus security or law enforcement personnel have been notified and determine that the student has been missing for more than 24 hours and has not returned to campus.

CHAPTER 4 HIGHLIGHTS

- Safety Requirements
  - → Fire safety
  - → Missing persons
  - → Other
- Programs to prevent drug & alcohol abuse
  - → Drug & alcohol abuse prevention programs
  - → Drug-Free Workplace requirements
- Anti-lobbying certification & disclosure
- Reporting information on foreign sources & gifts
- General requirements
  - → Voter registration (in certain states)
  - → GED preparatory program

Missing persons [New]

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.

HEOA section 488(g) HEA section 485(j)

Effective date: August 14, 2008

Schools must also establish official notification procedures for a missing student who resides in on-campus housing that

- include procedures for official notification of appropriate individuals at the school that such student has been missing for more than 24 hours; and
- require that any official missing person report relating to such student be referred immediately to the school's police or campus security department.

In instances where, upon investigation of the official report, the police or campus security department determines that the missing student has been missing for more than 24 hours, the department must contact the individual identified by the student as a contact. If the missing student is under 18 years of age and not emancipated the school must immediately contact the custodial parent or legal guardian of the student and, in cases where the preceding two scenarios do not apply to a student determined to be a missing person, the school will inform the appropriate law enforcement agency that the student is missing.

Other safety requirements NEW

Schools must have policies that encourage complete timely reporting of all crimes to the campus police and appropriate law enforcement agencies. A school must test emergency response and evacuation procedures annually.

PROGRAMS TO PREVENT DRUG & ALCOHOL ABUSE

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

Drug & alcohol abuse prevention program

Every participating school must certify that it has adopted and implemented a program to prevent drug and alcohol abuse by its students. Unlike the annual drug-free workplace certification discussed later in this section, a school certifies that on the date it signs the Program Participation Agreement, it has a drug 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. **NEW** 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 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.

A school that does not certify that it has a drug prevention program, or that fails to carry out a drug prevention program, may lose its approval to participate in the FSA programs.

Drug-Free Workplace requirements for Campus-Based schools

A school that participates in the Campus-Based programs must must take certain steps to provide a drug-free workplace, including—

- establishing a drug-free awareness program to provide information to employees,
- distributing a notice to its employees of prohibited unlawful activities and the school's planned actions against an employee who violates these prohibitions, and
- notifying the Department and taking appropriate action when it learns of an employee's conviction under any criminal drug statute.

Drug-Free Schools and Communities Act

The FSA requirements are derived from the 1989 Amendments to the Drug-Free Schools and Communities Acts of 1986 and 1988
See: Public Law 101-226

Drug-Free Workplace

Because a school applies for and receives its Campus-Based allocation directly from the Department, the school is considered to be a federal grant recipient., and as such is required to make a good faith effort, on a continuing basis, to maintain a drug-free workplace.
34 CFR Part 84
Also see the Drug-Free Workplace Act of 1988 (Public Law 101-690)

Developing a drug prevention program

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

Measuring the effectiveness of a drug prevention program

The effectiveness of a school's drug prevention program may be measured by tracking:

- the number of drug- and alcohol-related disciplinary actions;
- the number of drug- and alcohol-related treatment referrals;
- the number of drug- and alcohol-related incidents recorded by campus police or other law enforcement officials;
- the number of drug- and alcohol-related incidents of vandalism;
- the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse; and
- student, faculty, and employee attitudes and perceptions about the drug and alcohol problem on campus.

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

The drug-free workplace requirements apply to all offices and departments of a school that receives Campus-Based funds. Organizations that contract with the school are considered subgrantees not subject to the requirements of the Drug-Free Workplace Act.

Additional Sources of Information

The following resources are available for schools that are developing drug prevention programs.

- ***The Center for Substance Abuse Treatment and Referral Hotline.***
  Information and referral line that directs callers to treatment centers in the local community (1-800-662-HELP).

- ***The Drug Free Workplace Helpline.***
  A line that provides information only to private entities about workplace programs and drug testing. Proprietary and private nonprofit but not public postsecondary schools may use this line (1-800-967-5752).

- ***The National Clearinghouse for Alcohol and Drug Information.***
  Information and referral line that distributes U.S. Department of Education publications about drug and alcohol prevention programs as well as material from other federal agencies (1-301-468-2600).

ANTI-LOBBYING PROVISIONS

Prohibition on use of FSA funds NEW

FSA funds may not be used to pay any person for attempting to influence

- a Member of Congress or 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.

In addition, FSA funds may not be used to hire a registered lobbyist or to pay any person or entity for securing an earmark. Schools receiving FSA funds will have to certify their compliance with these requirements annually.

Campus-based disclosure

If a school that receives more than $100,000 in Campus-Based funds has used nonfederal funds to pay a nonschool employee for lobbying activities, the school must submit a Disclosure Form (Standard Form LLL) to the Department. The school must update this disclosure at least quarterly and when changes occur.

The disclosure form must be signed by the Chief Executive Officer (CEO) or other individual who has the authority to sign on behalf of the entire school. A school is advised to retain a copy in its files.

Prohibition on use of FSA funds
HEOA section 119
Effective date: August 14, 2008

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

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

ACA may not be used for association membership
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.

Where to report foreign gift information

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

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

Foreign gifts references

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

Definitions

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

A *gift* is any gift of money or property.

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

REPORTING INFORMATION ON FOREIGN SOURCES & GIFTS

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

Who must report

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

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

Timing of submission

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

Information to be reported

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

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

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

Any conditions or restrictions on the foreign gift must be reported in question 69.

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

Alternative reporting

In lieu of the reporting requirements listed above:

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

Restricted or conditional gift or contract

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

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

Penalties

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

For additional information & alternative reporting

Contact the School Participation Team for your state. Contact information for these Teams is posted on the IFAP Web site, under "Help–Contact Information":
ifap.ed.gov

Voter Registration NEW

A school may satisfy the requirement to distribute mail voter registration forms electronically transmitting to each student a message containing an acceptable voter registration form or an Internet address where that form can be downloaded. The electronic message must be devoted exclusively to voter registration.

Schools must request voter forms at least 120 days in advance

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

Students without high school diploma or equivalent: related topics

➔ Volume 1, Chapter 1: remedial coursework, ability to benefit tests as alternative.
➔ Volume 2, Chapter 1: Eligibility of schools enrolling students without high school diploma or equivalent.

GENERAL REQUIREMENTS

Voter registration

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

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

Preparatory programs for students without high school diploma or equivalent

A school that admits students without a high school diploma or its recognized equivalent (except homeschooled students) must make available to its students a program that has proven successful in assisting students in obtaining the recognized equivalent of a high school diploma. For example such a program might assist a student in obtaining a General Educational Development (GED) test or a State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma. Such programs include preparatory programs that are conducted by state and local secondary school authorities, as well as programs for which the school has documentation that statistically demonstrates success. The school must provide information about the availability of the preparatory program to affected students.

The program does not have to be provided by the school itself, and the school is not required to pay the costs of the program. The program must be offered at a place that is convenient for the students and the school must take reasonable steps to ensure that its students have access to the program, such as coordinating the timing of its program offerings with that of the preparatory program.

The law does not require a school to verify that a student is enrolled in a preparatory program or to monitor the student's progress in the program. A student admitted based on his or her ability to benefit who does not have a high school diploma or its recognized equivalent is not required by law to enroll in a program, but the school may choose to make this an admission requirement.

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

Updating Application Information

CHAPTER 5

In this chapter, we will describe 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

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 the school's PPA. The school must submit a materially complete application before the expiration date listed 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, 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.

Following submission of an application, the School Participation Team will contact the school if it has questions about the application. Generally, this will be within 90 days of the Department receiving an application. If a school's application has been approved, the Department will send an electronic notice to the president and financial aid officer notifying them that the school's PPA is available to print, review, sign, and return. If the school's application is not approved, ED will notify the school and explain why.

CHAPTER 5 HIGHLIGHTS

- Recertification
- Changes in ownership that require notification or reapplication
  - → Changes at public institutions
  - → Change of control, structure, or governance
  - → Changes for closely-held corporation
  - → Changes for publicly-traded corporation
  - → Changes at other types of corporations
  - → Changes for corporations not closely held or registered with SEC
- Changes in ownership interest and 25% threshold
- Steps to be taken during change in ownership
- Temporary approval for continued participation
- Substantive changes & how to report them
- Adding locations
- Adding programs
- Changing status of program or branch
- Changes in accreditation

FSA Assessment modules

To assess your compliance with the provisions of this chapter see "Recertification," at ifap.ed.gov/qahome/qaassessments/institutionalelig.html

Recertification cites

Sec 498(g) and (h) of the HEA
34 CFR 600.20(b) and (f)

Eligible nonparticipating school

Nonparticipating eligible schools are only required to renew their eligibility when the Department requests it. Their eligibility status continues indefinitely as long as the school continues to meet the institutional eligibility requirements. If the school wishes to be certified to participate in the FSA programs, it must submit an application and other supporting documentation (see *Chapter 2*).
34 CFR 600.20(b)(1)

Electronic submission required
Changes to previous applications, changes in ownership, reporting, expanding eligibility and certification, and applications for initial certification, recertification, and reinstatement must be submitted to the Department electronically through the Internet (see *Chapters 2 and 10*).

Changes in ownership cites
Sec. 498(i) of the HEA
34 CFR 600.31

Training requirement after a change in ownership or control
If a school undergoes a change in ownership, the school's chief financial aid administrator and its chief administrator (or a high-level school official designated by the chief administrator) must attend *Fundamentals of Title IV Training*.

If the financial aid administrator and/or the chief administrator have not changed, the school may request a waiver of the training requirement from its School Participation Team. The Department may grant or deny the waiver for the required individual, require another official to take the training, or require alternative training.

Default management plan after change in ownership or status
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%.

CHANGE IN OWNERSHIP OF FOR-PROFIT & NONPROFIT INSTITUTIONS

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 institution 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 program participation agreement.

Within 10 days of undergoing a change in governance, however, a public institution must **report** that change to the Department. The institution must also explicitly acknowledge its continued responsibilities under its Program Participation Agreement (PPA). If the documentation transferring control of a public institution to another instate entity does not specifically acknowledge the aforementioned responsibilities, the institution must acknowledge them in a separate letter or notice.

Change in ownership that results in a change of control, structure, or governance

A change in ownership and control occurs when a person or corporation obtains new authority to control a school's actions, whether the school is a proprietorship, partnership, or corporation. A change in ownership that results in a change in control includes any change through which a person or corporation

- acquires an ownership interest in the entity that owns the school or the parent corporation of that entity, or
- who owns or acquires an ownership interest attains or loses the ability to control the school.

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 conversion of the school from a for profit to a nonprofit school or a nonprofit to a for-profit.

Change in ownership for closely-held corporation

A closely-held corporation (including the term close corporation) is—

- A corporation that qualifies under the law of the State of its incorporation as a closely-held corporation; or

- If the State of incorporation has no definition of closely-held corporation, a corporation the stock of which 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 such ownership and control of the corporation such that the corporation is required to file a Form 8K with the Securities and Exchange Commission 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).

Family defined
34 CFR 600.21(f)

Excluded Transactions
34 CFR 600.31(e)(1) and (2)

Change in ownership for a publicly traded corporation cite
34 CFR 600.31(c)(2)

Excluded transactions—transfers to family members
Changes of ownership do not include a transfer of ownership and control to a member of the owner's family (whether or not the family member works at the school) that includes:
- parent, stepparent, sibling, step-sibling, spouse, child or stepchild, grandchild or step-grandchild;
- spouse's parent or stepparent, sibling, step-sibling, child or stepchild, or grandchild or step-grandchild;
- child's spouse; and
- sibling's spouse.

Nor does it include a transfer of ownership and control, upon the retirement or death of the owner, to a person (who is not a family member) with an ownership interest in the school who has been involved in management of the school for at least two years preceding the transfer, and who has established and retained the ownership interest for at least two years prior to the transfer.

These are known as excluded transactions, and they apply only to the transfer of the entire portion of the owner's interest.
34 CFR 600.21(f)
34 CFR 600.31(e)

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 in this section.

Parent corporation
An institution that is a wholly-owned subsidiary changes ownership and control when the parent corporation changes ownership and control as described in this section.

Ownership interest
Ownership or ownership interest does not include an ownership interest held by:
1. a mutual fund that is regularly and publicly traded;
2. a U.S. institutional investor as defined by the Securities and Exchange Commission;
3. 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); or
4. an Employee Stock Ownership Plan (ESOP).

25% Threshold cite
34 CFR 600.31(c)(2)(ii)(A)

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 a change in ownership that experiences another change of ownership. 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 for corporations that are not closely held or registered with SEC

A change in ownership and control of a corporation that is neither closely held nor required to be registered with the Securities Exchange Commission (SEC) occurs when a person who has or acquires an ownership interest acquires both control of at least 25% of the total outstanding voting stock of the corporation and managing control of the corporation.

CHANGES IN OWNERSHIP INTEREST AND 25% THRESHOLD

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 his or her interest but remains the holder of at least a 25% ownership interest.

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, she, 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 if it wishes to participate in the FSA programs.

Preacquisition review

Schools may submit an E-App marked "preacquisition review" before a change in ownership takes place. The purpose of this review is to determine whether the school has answered all the questions completely and accurately. A preacquisition review application must be submitted at least 45 days prior to the expected date of the transaction.

The SPT will notify the school of the results of the review. However, the school will not be given a decision whether or not its application would be approved as a result of this preacquisition review. Please note that a preacquisition review is not required; it is an option.

If the potential owner decides not to purchase the school, he or she must notify the School Participation Team of the decision to withdraw the application.

If the potential owner considering the change in ownership decides to go through with the purchase, and wants to participate in the FSA programs, he or she must:
• notify the Department within 10 days of the date the change in ownership actually took place (If this date falls on a weekend or a federal holiday, the notification may be no later than the next business day.); and
• submit the supporting documents required for a materially complete application. (Refer to section "M" of the E-App for the list of specific forms to submit.)

Audits and closeout procedures

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 Team (see the "Contacts" listing on IFAPI: **ifap.ed.gov**

STEPS TO BE TAKEN DURING 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 request that the former owner provide copies of the school's existing ECAR, school 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 *Chapters 11 and 12*).

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.

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 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 a student 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 an FFEL or Direct Loan to satisfy any unpaid commitment made to the student under the FFEL or 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.

The school may not award the FSA program funds beginning on the date that the change becomes effective. 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 (described in the previous section) and temporary provisional approval after the change in ownership (described in the next section).

Mailing address for supporting documents

U.S. Department of Education
School Participation Management
School Eligibility Channel
Integrated Partner Management Division
830 First Street, NE
Washington, DC 20002-5402

Phone (to verify receipt only) (202) 377-3161

Temporary approval cite

Sec. 498(i)(4) of the HEA

Audit cite

34 CFR 668.23

TEMPORARY APPROVAL FOR CONTINUED PARTICIPATION

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 eZ-Audit at **https://ezaudit.ed.gov**);
- 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 eZ-Audit at **https://ezaudit.ed.gov**); and
- a completed signature page, Section L.

If the application is approved, the School Participation Team 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 earlier 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 below.

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 ED's plan or is exempt from providing a plan (see exceptions under *Change in Ownership for For-Profit and Nonprofit Institutions*).

Electronic submission required

Changes to previous applications, changes in ownership, reporting, expanding eligibility and certification, and applications for initial certification, recertification, and reinstatement must be submitted to the Department electronically through the Internet (see *Chapters 2 and 10*).

E-App used to report changes

The required notification must be made online through the electronic application found at

http://www.eligcert.ed.gov

For a description of the E-App see Chapter 2.

SUBSTANTIVE CHANGES AND HOW TO REPORT THEM

A school is required to report changes to certain information on its approved application, as listed in the chart on the following pages. 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 change occurs in an E-App item not listed on the following pages, 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 the appropriate School Participation Team.

After receiving the required materials (and depending on the circumstances), the Department will evaluate the changes, approve or deny them, and notify the school.

Approval required from accreditor & 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.

Changes requiring prior written approval from ED

All schools must report and wait for written approval before disbursing funds when the following occur (the number in parentheses refers to the number of the question on the E-App):

1. a change in accrediting agency (notify the Department, when you **begin** making any change that deals with your school's institution-wide accreditation) (#15);
2. a change in state authorizing agency (#17);
3. a change in institutional structure (#18);
4. an increase in the level of educational programs beyond the scope of current approval (#26);
5. the addition of accredited and licensed nondegree programs beyond the current approval (#27);
6. the addition of short-term (300–599 clock-hour) programs (#27);
7. changes to the FSA programs for which the school is approved.* (Approvals from your accrediting agency and state authorizing agency are **not** required for this change.) (#37);
8. a change in the type of ownership (#22-24);
9. a change in ownership (#24); and
10. the addition of an accredited and licensed location (#30) (see *Adding Locations* later in this chapter), and when 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. would be subject to a loss of eligibility under the cohort default rate regulations (34 CFR 668.188) if it adds that location; or
    e. has been advised by the Department that the Department must approve any new location **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 electronic application within 10 calendar days of the change. 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 ED'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)
2. change to the name of a CEO, president, or chancellor (#10)
3. change to the name of the chief fiscal officer or chief financial officer (#11)
4. change in the individual designated as the lead program administrator (financial aid administrator) for the FSA programs (#12)
5. change in governance of a public institution (#24)
6. a decrease in the level of program offering (e.g., the school drops all its graduate programs) (#26)
7. change from or to clock hours or credit hours (#27)
8. address change for a principal location* (#29)
9. name or address change for other locations* (#30)
10. the closure of a branch campus or additional location that the school was required to report (#30)
11. the addition of an accredited and licensed location unless the school meets the conditions specified on the previous page (34 CFR 600.20(c)(1)) (#30)
12. change to the school's third-party servicers that deal with the FSA program funds (#58)

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 send to the address below

- any required supporting documentation, and
- Section L of the E-App containing the original signature of the appropriate person.

Foreign school reporting on the E-App

A **foreign school** must report changes to its postsecondary authorization (#42), degree authorization (#43), program equivalence (#44), program criteria (#45), or to its U.S. administrative or recruiting office (#46).

A **foreign medical school** must report changes to the facility at which it provides instruction (#47), its authorizing entity (#46), the approval of its authorizing entity (#46), the length of its program (#46), or the clinical or medical instruction that it provides in the U.S.

Other changes reported on the E-App

- Change to address for FSA mailings to an address different than the legal street address (#13)
- Change to address for FSA mailings to an additional location that is different than the legal street address (#30)
- Change of Taxpayer Identification Number (TIN) (#6a)
- Change of DUNS number (#6b)
- Change in board members (#20)
- Reporting foreign gifts (see Chapter 12) (#71)
- Change to institution's Web site address (#9)
- Change of phone/fax/e-mail of CEO, president, or chancellor (#10)
- Change of phone/fax/e-mail of CFO (#11)
- Change of phone/fax/e-mail of financial aid administrator (#12)

* As soon as it has received approvals for the change from its accrediting agency and state authorization agency, a school must send the Department copies of the approvals for change.

ADDING LOCATIONS

The Eligibility and Certification Approval Report (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 the school's 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 in accordance with an agreement to repay a liability for a violation of FSA program requirements.

An additional location that falls into one of the aforementioned categories is not required to satisfy the two-year requirement if the applicant school agrees:

- to be liable for all improperly expended or unspent FSA funds received 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, and
- to abide by the policy of the school that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

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 state legal authorization from the state in which the additional site is physically located.

Mailing address for supporting documents:

U.S. Department of Education
School Participation Management
School Eligibility Channel
Integrated Partner Management Division
830 First Street, NE
Washington, DC 20002-5402

Phone (to verify receipt only)
(202) 377-3161

Reporting cite

34 CFR 600.21

Disbursing prohibited cite

34 CFR 600.20(f)(3)
34 CFR 600.21(d)

Approval required cite

34 CFR 600.20(c)(1)

Teach-outs at closed school locations NEW

A location of a closed school is eligible as an additional location of another school for the purpose of conducting a teach-out if the teach-out is approved by the school's accrediting agency. The school that conducts the teachout may establish a permanent additional location at the closed school without having to satisfy the requirements for additional locations (that a proprietary institution or a postsecondary vocational institution must have been in existence for two years to be eligible) and without assuming the liabilities of the closed institution.

HEOA section 496 HEA section 498
Effective date: August 14, 2008

Effects of closure of branch or additional location

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 ATB or loan certifications), the Department will pursue recovery against the larger institution, its affiliates, and its principals. (Sec.437(c)(1) of the HEA.)

Reporting a new location

All schools are required to report (using the E-App) to the Department adding an additional accredited and licensed location where they will be offering 50% or more of an eligible program if the school wants to disburse FSA program 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.

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, or
- 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.

ADDING PROGRAMS

Adding a program—when a school may make eligibility determinations

If a school adds an educational program after receiving its ECAR, there are two cases in which the school itself may determine the program's eligibility, unless the Department has provisionally certified the school or has notified the school that its growth has been restricted. The two cases are when

- the added program leads to an associate, bachelor's, professional, or graduate degree (and the school has already been approved to offer programs at that level), or
- the added program provides at least a 10-week (of instructional time) program of 8 semester hours, 12 quarter hours, or 600 clock hours, and prepares students for gainful employment in the same or related recognized occupation as an educational program that the Department already has designated as an eligible program at the school.

Before the school may determine these programs to be eligible and disburse funds to enrolled students, the school 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.

ED must approve all other added programs

In all other cases, the eligibility of an added educational program must be determined by the Department before FSA program funds can be awarded. The school must submit an E-App with the appropriate sections completed, and copies of the approval of the new program from its accrediting agency and state authorizing agency. The Department will evaluate the new program and the school. If the Department approves the additional program, a revised ECAR and Approval Letter is issued for the school, and the school is eligible as of the date of the Department's determination. Only after receiving an Approval Letter may the school begin disbursing FSA funds to students enrolled in the program. For more on program eligibility, see *Chapters 2 and 8*.

Maximum percentages of correspondence courses, students admitted without HS diploma or equivalent, and incarcerated students

The law establishes maximum percentages of correspondence courses, students who are enrolled without a high school diploma or equivalent, and incarcerated students at a participating school. If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted application (which deal with enrollment thresholds in these areas), the school must notify the Department via the E-App. The Department will advise the school of its options, including whether the school might be eligible for a waiver. (See *Chapters 1 and 8* for additional information.)

Self-determination of program eligibility

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.

If you have added programs that you did not need to report to the Department, when you next apply for recertification, you must add those programs to your E-App.

ED approval needed for programs under 600 hours

If the school wishes to add a program that is at least 300 clock hours but less than 600 clock hours, the school must apply for and wait for written approval from the Department before awarding FSA funds to students in the program.

Limitations for schools subject to "2-year rule"

For schools subject to the 2-year rule, 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 had been 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.

Branch campus defined

A location of an institution that is geographically apart and independent of the main campus of the institution.

ED considers a location of an institution to be independent of the main campus if the location
1) is permanent in nature;
2) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
3) has its own faculty and administrative or supervisory organization; and
4) has its own budgetary and hiring authority.
34 CFR 600.2

CHANGING THE STATUS OF A CAMPUS OR BRANCH

Changing from a non-main campus to a branch campus

If a school wishes to seek approval for a branch campus, the school must submit a completed application with the required supplemental documentation (see list below) on (1) the main campus and (2) the proposed branch campus.

Changing from a branch campus to a freestanding main 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.

Documentation required for approval of a branch campus

The following required supplemental documentation must be submitted for the School Participation Team 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 Team.

CHANGES IN ACCREDITATION

If a school decides to change its accrediting agency, it must notify the School Participation Team (SPT) when it begins the process of obtaining accreditation from the second agency. As part of this notice, the school must submit materials relating to its current accreditation and materials demonstrating a reasonable cause for changing its accrediting agency. If a school fails to properly notify the Department, the Department will no longer recognize the school's existing accreditation.

If a school decides to become accredited by more than one accrediting agency, it must submit to the SPT (and to its current and prospective agency) the reasons for accreditation by more than one agency. This submission must be made when the school begins the process of obtaining the additional accreditation. If a school obtains additional accreditation and fails to properly submit to the Department its reasons for the additional accreditation, the Department will not recognize the school's accredited status with either agency.

If the Department ceases to recognize a school's accreditation, the school is no longer eligible to award FSA program funds or take part in other programs under the Higher Education Act of 1965, as amended.

If a school becomes accredited by more than one agency, it must notify SPT which agency's accreditation the school will use for the purpose of determining the school's institutional eligibility for the FSA programs.

Loss of accreditation

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. (For any dispute involving the termination of accreditation, an accredited or preaccredited school must agree to submit to binding arbitration before initiating any other legal action.) 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.

Change in institution-wide accreditation

If the school decides to change its institution-wide accreditation, 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,

Liability for disbursements if change not approved

If an institution fails to apply for approval or fails to obtain approval of a new location, branch, program, or increase in program offering, and the Department does not approve the new location, branch, program, or increase in program offering, the institution is liable for all FSA program funds it disburses to students enrolled at that location or branch or in that program.

Changing accrediting agencies cite

34 CFR 600.11

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 federal student financial aid or take part in other FSA programs.

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 by more than one institution-wide accrediting agency, it must notify the Department when it begins the process of obtaining additional accreditation. 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 federal student financial aid or take part in other FSA programs.

Providing Consumer Information

CHAPTER 6

This chapter describes the requirements for the consumer information that a school must provide to students, the Department, and others as well as a summary of the effects of misrepresentation of school information on a school's Federal Student Aid (FSA) participation.

Each year a school must provide to enrolled students a notice containing a list of the consumer information it must disseminate, and the procedures for obtaining this consumer information. *Schools must provide this notice through a one-on-one distribution.*

Schools must also provide a notice (though not an individual notice) of student rights under the Family Educational Rights and Privacy Act (FERPA). (See Chapter 9 for more information about FERPA; see sidebar note for sample notice on the Web.)

The student consumer information requirements are described in Subpart D of the General Provisions (668.41–48).

Those requirements include—

- Financial assistance information and information about the school's academic programs and policies,
- Information on graduation or completion rates, and
- Information about the school's security policies and crime statistics report.

Coeducational schools that have intercollegiate athletic programs are also required to provide information on athletic program participation rates and financial support for those programs. If a school offers athletically-related aid, it must also provide information on graduation or completion rates for its student athletes.

In addition to the information required under the consumer information regulations, schools must distribute drug and alcohol abuse prevention materials, and ensure that students who are borrowing under the FSA loan programs have received appropriate counseling regarding their loan obligation and repayment options.

These requirements are discussed in more detail in the remainder of this chapter. In some cases, a school is only required to make information available upon request, while in others the school must directly distribute the required information. You can find a chart summarizing the consumer information requirements at the end of this chapter.

CHAPTER 6 HIGHLIGHTS

- Basic consumer information requirements
  - → financial aid information
  - → general information about the school
  - → consumer information from ED
- Graduation & completion rates on IPEDS (Student Right-to-Know)
- Athletic participation data (Equity in Athletics)
- Loan counseling
- Drug & alcohol abuse prevention
- Misrepresentation
- Campus security (Clery Act)

Consumer information cites

HEA Sec. 485(f)
20 U.S.C. 1092
34 CFR 668.41-48

Assessing your school's compliance

To assess or school's compliance with the provisions of this chapter, see the FSA Assessment module for "Consumer Information," at

www.ifap.ed.gov/qahome/qaassessments/consumerinformation.html

Sample notice of FERPA rights

You can find a sample notification at ED's FERPA Web site

www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html

Definitions for basic consumer information
34 CFR 668.41(a)
34 CFR 668.47(b)

Basic information includes
Financial assistance information pursuant to 34 CFR 668.42, and
Institutional information pursuant to 34 CFR 668.43
Individual Notice Required

Civil penalty
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 $27,500 for each violation.
Civil penalty cite
Sec. 487(c)(3)(B) of the HEA

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 information to students and their families through the *Student Aid on the Web* site and publications such as ***Funding Education Beyond High School.***

Student Aid on the Web
studentaid.ed.gov

Colleges and high schools may order bulk quantities of student/borrower publications such as *Funding Education Beyond High School* from the FSA Pubs Web site.
www.FSAPubs.org

Statutory requirement:
Sec. 485 of the HEA

BASIC CONSUMER INFORMATION REQUIREMENTS

The regulations list basic information about the school and about financial aid that must be available to enrolled and prospective students. If necessary, the information listed below must be provided by your school. However, much of the required information may already be available in brochures and handouts routinely disseminated by the school or in federal publications such as *Funding Education Beyond High School.*

The school must have someone available during normal operating hours to help persons obtain consumer information. One full-time employee or several persons may be assigned so that someone is always available (with reasonable notice) to assist enrolled or prospective students and their families. Existing personnel may satisfy this requirement. A school may request a waiver of this requirement if it can demonstrate that a waiver is appropriate. A school should contact their School Participation Team for more information.

Financial aid information

At a minimum, the following information must be provided about financial assistance available at a school:

- the costs of attending the school (tuition and fees, books and supplies, room and board, and applicable transportation costs, such as commuting) and any additional costs of the program in which the student is enrolled or has expressed an interest,
- the need-based and non-need-based federal financial aid that is available to students,
- the terms and conditions under which students receive FFEL, Direct Loans and Perkins Loans,
- the need-based and non-need-based state and local aid programs, school aid programs, and other private aid programs that are available,
- how students apply for aid and how eligibility is determined,
- how the school distributes aid among students,
- the rights and responsibilities of students receiving aid,
- how and when financial aid will be disbursed,
- the terms and conditions of any employment that is part of the financial aid package,
- the terms of, the schedules for, and the necessity of loan repayment and required loan exit counseling,
- the criteria for measuring satisfactory academic progress, and how a student who has failed to maintain satisfactory progress may reestablish eligibility for federal financial aid,
- a statement of the requirements for the return of FSA funds when a student withdraws from school, information about any refund policy with which the school must comply, and

the requirements for officially withdrawing from the school (For more information about the Return of Federal Student Aid, see *Volume 5, Chapter 2.*), and

- whom to contact for information on student financial assistance and who for general school issues.

Information about the school's academic programs and student attainment

The school must provide the following minimum information about itself:

- the names of associations, agencies, and/or governmental bodies that accredit, approve, or license the school and its programs, and the procedures by which a student may receive a copy for review of the school's accreditation, licensure, or approval,
- the special facilities and services available to disabled students,
- the degree programs, training, and other education offered, and any plans the school has for improving the academic programs,
- the availability of a GED program, if the school admits students who do not have a high school diploma or equivalent,
- the instructional, laboratory, and other physical plant facilities associated with the academic programs,
- a list of the faculty and other instructional personnel,
- the terms and conditions under which students receiving federal education loans may obtain deferments,
- information regarding the availability of FSA funds for study abroad programs,
- NEW school policies on transfer of credit, including the criteria it uses regarding the transfer of credit earned at another school, and a list of any schools with which it has established an articulation agreement,
- NEW information on student body diversity in the categories of gender and ethnicity of enrolled, full-time students who receive Federal Pell Grants,
- NEW information on placement of and types of employment obtained by graduates of the school's degree or certificate programs,
- NEW information on the types of graduate and professional education in which graduates of the school's 4-year degree programs enrolled,
- NEW retention rates of certificate- or degree-seeking first-time full-time undergraduate students.

Explaining verification requirements

A school must give applicants selected for verification a written statement explaining
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.

cite 34 CFR 668.53

Use of surveys

A school may use sources such as alumni surveys, student satisfactions surveys, the *National Survey of Student Engagement*, and the *Community College Survey of Student Engagement State* data systems to gather information about placement or graduate/professional program enrollment of graduates from its programs.

Transfer of Credit Policies NEW

The requirement to disclose transfer of credit policies does not create a legally enforceable right for a student to require a school to accept a transfer of credit from another school.

HEOA section 488(g) HEA section 485(h)
Effective date: August 14, 2008

Information to be provided to bookstore NEW

A school must provide the following information, if requested by its college bookstore:

• 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.

Information about the school's facilities, services, & campus policies

The school must provide information about its facilities, services, and policies with regard to:

- prevention of drug and alcohol abuse (discussed in more detail later in this chapter),
- campus security statistics and campus security policies (discussed in more detail later in this chapter),
- NEW the school's missing persons procedures and the student's option to designate a contact person (see *Chapter 3*),
- NEW emergency response and evacuation procedures to reach students and staff,
- NEW the school's fire safety report (discussed in more detail later in this chapter),
- NEW school policies regarding all vaccinations, and
- NEW policies and sanctions related to copyright infringement and liabilities students may face for unauthorized distribution of copyrighted materials.

Textbook information NEW

A school must include, on its Internet course schedule, the International Standard Book Number (ISBN) and retail price for required and recommended textbooks and supplemental material. If the ISBN is not available, the author, title, publisher, and copyright date, or, if such disclosure is not practicable, the designation "To Be Determined."

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.

GRADUATION & COMPLETION RATES (STUDENT RIGHT-TO-KNOW DISCLOSURES)

Student Right-to-Know disclosures must be made by July 1 of each year (see chart at the end of this chapter).

The Student Right-to-Know Act requires schools to disclose:

- Completion or graduation rates and, if applicable, transfer-out rates for a specific cohort of the general student body. This cohort is of certificate- or degree-seeking, full-time, first-time undergraduate students.
- For schools that offer athletically related student aid, completion or graduation rates and, if applicable, transfer-out rates of students receiving athletically related student aid, if the school offers athletic aid.

The school must provide student athlete graduation rate information to potential student athletes, their parents, and their high school coaches and guidance counselors upon making an offer of athletic aid.

Schools must make available, to prospective students, no later than July 1, 2009, the rates for the cohort for which the 150% of the normal time for completion elapsed between September 1, 2007 and August 31, 2008.

A school such as a community college is required to calculate and disclose its transfer-out rates only if it determines that its mission includes providing substantial preparation for its students to enroll in another eligible school (such as an eligible four-year school).

In addition to calculating the completion or graduation rates described above, a school *may, but is not required* to calculate:

- A completion or graduation rate for students who transfer into the school;
- A completion or graduation rate and transfer-out rate for the students described as exclusions to the requirements in this section.
- A transfer-out rate (required only if preparing students for transfer is part of the school's stated or implied mission).

However, note that the rates produced by these optional calculations cannot be reported to the IPEDS survey site.

Student Right-to-Know cite

Sec. 485(a) of the HEA
34 CFR 668.45

Student information vs. reporting to ED

Schools should not confuse the requirements and methodologies for providing information to students and other consumers with the requirement for reporting similar information to the Department.

Disseminating completion/ graduation rates

Schools must disseminate the information on completion or graduation and, if applicable, transfer-out rates to enrolled and prospective students upon request, through appropriate publications, mailings, or electronic media (for example, school catalogs or admissions literature). Schools are strongly encouraged to provide this information to other interested parties, such as guidance counselors, upon request

Note that your school's graduation rates are also displayed on the IPEDS College Navigator site:

http://nces.ed.gov/ipeds/collegenavigator.

Reporting rates to IPEDS

The graduation and completion rates are reported through the Web survey site for the Department's Integrated Postsecondary Education Data System (IPEDS).

Survey forms, instructions, FAQs, worksheets, and other infomation are posted at:

nces.ed.gov/ipeds/web2000/springdataitems.asp

Information can only be reported to this system by the school's designated "keyholder." Schools may change keyholders at any time during the year by contacting

Jan Plotczuk
202-502-7459
IPEDS Universe Coordinator
Rm. 8122 1990
K Street NW
Washington DC 20006

NCES, IPEDS,

Though in some cases the dates by which schools must make consumer and safety information available to students, parents, and high school counselors and coaches are based on the dates by which schools must report that information to the Department, the regulatory requirements are separate.

The disclosure requirements arise from the Student-Right-to-Know and Campus Security/ Clery Act and the Equity in Athletics Disclosure Act. Schools report similar information to the Department when they fulfill the requirement that they participate in the annual Integrated Postsecondary Education Data System (IPEDS) Survey conducted by the National Center for Education Statistics (NCES).

The NCES survey program at the postsecondary education level provides statistical information used by planners, policy makers, and educators in addressing multiple issues. One major source of this information is the annual Integrated Postsecondary Education Data System (IPEDS) Survey.

The IPEDS system, established as the core postsecondary education data collection program for NCES, is a system of surveys designed to collect data from all primary providers of postsecondary education. The IPEDS system is built around a series of interrelated surveys that collect school-level data in such areas as school characteristics, enrollments, program completions, staffing patterns, faculty salaries, finances, and financial aid.

Information on NCES and IPEDS is available at http://www.nces.ed.gov/IPEDS

IPEDS/GRS Deadline

The deadline for the Graduation Rate Survey on the IPEDS site also applies to schools that don't offer athletically related student aid.

Reporting completion or graduation and transfer-out rates to the Department

To calculate completion or graduation and transfer-out rates, a school must identify a group of students each year (a cohort) and review the performance of that cohort over time to determine the percentage of those students who complete their programs or transfer out of the school. The same snapshot approach is used to determine rates for both the general student body cohort and those rates related to students receiving athletically related student aid.

Your school must report its completion or graduation rates every spring to the Department through the IPEDS Web site (see sidebar).

Disclosing and reporting information on completion or graduation rates for the general student body cohort

The information on completion, graduation rates and, if applicable, transfer-out rates must be made available by the July 1 immediately following the 12-month period ending August 31 during which the expiration of 150% of normal time took place for the group of students on which the school bases its completion and transfer-out rate calculation.

Schools must disseminate the information on completion or graduation and, if applicable, transfer-out rates to enrolled and prospective students upon request, through appropriate publications, mailings, or electronic media (for example, school catalogs or admissions literature). Schools are strongly encouraged to provide this information to other interested parties, such as guidance counselors, upon request.

Reporting completion/graduation rates for student athletes

Schools that participate in an FSA program and offer athletically related student aid must use the IPEDS Web survey to provide information on completion or graduation rates, transfer-out rates, if applicable, and other statistics for students who receive athletically related student aid to potential student athletes, and to their parents, high school coaches, and guidance counselors.

The definition of athletically related student aid used here and discussed earlier in this chapter is the same definition that is also used for the Equity in Athletics Disclosure Act (EADA) disclosure requirements (as discussed in the next section). 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 (also discussed above).

In addition to the completion rates and transfer-out rates, schools must report

- the number of students, categorized by race and gender, who attended the school during the year prior to the submission of the report, and
- within each sport—the number of those attendees who received athletically related student aid, categorized by race and gender.

Disclosing the rates for student athletes

A school must also provide the report to each prospective student athlete and his or her parents, coaches, and counselor when an offer of athletically related student aid is made to the prospective student athlete.

Schools are not required to provide completion rate information for students who entered before the 1996–1997 academic year. However, if a school has data on students entering prior to the 1996–1997 academic year (as the result of NCAA requirements, for example), the school should report these data in the four-year averages.

Schools that are not yet reporting completion or graduation rates or, if applicable, transfer-out rates because they do not have the necessary data must still disclose the additional data regarding the number of students who attended the previous year, categorized by race and gender, and the number who attended the previous year and who received athletically related student aid, categorized by race and gender within each sport.

There is a *de minimus* exception to the disclosure requirements for the completion or graduation rates or, if applicable, the transfer-out rates of student athletes. Schools with five or fewer student athletes need not disclose their rates.

Reporting the rates for student athletes

The rates for student athletes must be completed and submitted to the Department together with other Student-Right-to-Know data by the Graduation Rate Survey (GRS) deadline.

Supplemental information

Schools may provide additional information to place their completion or transfer-out rates for both the general student body and those related to athletically related student aid in context. For example, a small school's completion rate may vary greatly from year to year because the school's calculations use a very small cohort. The school may wish to provide prior year's data and an explanation of factors affecting the completion rate.

Waivers

The regulations provide for waiving the disclosure of completion or graduation rate and transfer-out rate calculations (to coaches and guidance counselors only) for the general student body cohort and for athletic data for any school that is a member of an athletic association or conference that has voluntarily published (or will publish) completion or graduation-rate data that the Department determines are substantially comparable to the data required by the regulations.

The NCAA may distribute graduation rate information to all secondary schools in the United States to satisfy the distribution requirements for prospective student athletes' guidance counselors and coaches. This does not relieve the school of its obligation to provide the information to the prospective student athletes and their parents.

The Department will continue to work with interested agencies to help them develop standards that meet these requirements. If in the future the Department determines that another agency's requirements meet the standards of the Student Right-to-Know Act, the Department will inform schools that those rates may be used to satisfy the Student Right-to-Know disclosure requirements.

34 CFR 668.45(e)(1)

Reporting to parents

In cases of separation or divorce, if it is difficult to locate both parents, it is acceptable to provide the required information solely to the parent who acts as the student's guardian.

Equity in Athletics Disclosure Act (EADA)

Equity in Athletics Disclosure Act (EADA) of 1994
Section 485(e) and (g) of the Higher Education Act of 1965
20 U.S.C. 1092
34 CFR 668.47

EADA on the Web

Schools report their EADA data on the Web at the Athletic Disclosure Web site:

http://surveys.ope.ed.gov/athletics

Note that a password and user ID are required for use of this Web site. They are sent by the Department to the chief administrator at the school. For help with this site, contact: **eadahelp@westat.com**

Prospective students, their families, and the public can view the EADA reports for participating schools on the Web at:

http://ope.ed.gov/athletics/

USED's responsibilities

The Department has to ensure that the individual school reports are made available to the public within a reasonable period of time.

EQUITY IN ATHLETICS (PARTICIPATION RATES & SUPPORT FOR ATHLETIC PROGRAMS)

The Equity in Athletics Disclosure Act (EADA) is intended to make prospective students aware of a school's commitment to providing equitable athletic opportunities for its men and women students.

Any coeducational institution of higher education that participates in an FSA program and has an intercollegiate athletic program must prepare an annual EADA report. The report contains participation rates, financial support, and other information on men's and women's intercollegiate athletic programs. Officially, it is *The Report on Athletic Program Participation Rates and Financial Support Data*. It is commonly referred to as the EADA Report.

Disclosure of the report

The EADA requires schools to publish this report by October 15 and make it available upon request to students, prospective students, and the public in easily accessible places. For example, a school may make copies of the report physically available in intercollegiate athletic offices, admissions offices, or libraries, or by providing a copy to every student in his or her electronic mailbox.

The EADA Report must be summarized, and its availability described in the **one-on-one disclosure** to all students and prospective students required of the school.

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.

Schools must submit their Equity in Athletics reports to the Department via the Athletic Disclosure Web site annually within 15 days of making them available to students, prospective students, and the public.

Contents of the Equity in Athletics/EADA Report

A school must first designate its reporting year. A reporting year may be any consecutive 12-month period of time. For its designated reporting year, a school must report:

1. 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);

2. the total amount of money spent on athletically related student aid (including the value of waivers of educational expenses aggregately) for: (a) men's teams and (b) women's teams;

3. the ratio of athletically related student aid awarded to male athletes to athletically related student aid awarded to female athletes (see the definition of athletically related student aid under Definitions);

4. the expenses incurred by the school for—
   - all sports,
   - football,
   - men's basketball,
   - women's basketball,
   - all other men's sports except football and basketball, and
   - all other women's sports except basketball

   Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses for all sports.

   A school also may report those expenses on a per capita basis for each team and may report combined expenditures attributable to closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

5. total recruiting expenses aggregately for (a) all men's teams and (b) all women's teams—

6. total annual revenues for— (a) all sports combined, (b) all men's teams, (c) all women's teams, (d) football, (e) men's basketball, (f) women's basketball, (g) all men's sports other than football and basketball, and (h) all women's sports other than basketball;

7. in its total revenues and men's or women's combined revenues, as applicable – revenues not attributable to a particular sport such as untargeted alumni contributions to athletics, investment income, and student activities fees;

8. individually by team or by average—
   a. the annual school salary of non-volunteer head coaches for all offered sports of (1) men's teams and (2) women's teams—this must include the number of persons and full-time equivalent positions used to calculate each average;
   b. the annual school salary of non-volunteer assistant coaches for all offered sports of (1) men's teams and (2) women's teams. This must include the number of persons and full-time equivalent positions used to calculate each average;

   If a coach had responsibility for more than one team and a school does not allocate that coach's salary by team, the school must divide the salary by the number of teams for which the coach had responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

9. a listing of the varsity teams that competed in intercollegiate athletic competition and for each team, the following data—
   a. total number of participants as of the day of the first scheduled contest of the reporting year for the team, number of those who participated on more than one varsity team, and number of other varsity teams on which they participated;
   b. total operating expenses (expenditures on lodging and meals, transportation, officials, uniforms, and equipment) attributable to the team;
   c. whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the school (The school must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.);
   d. the number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the school (The school must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.); and
   e. an unduplicated head count of the individuals who were listed as participants on at least one varsity team, by gender.

TEACH Grant Counseling

• *Initial and subsequent counseling* is delivered through the TEACH website before the student receives his/her grant.
• It is the school's responsibility to see that TEACH recipients receive *exit counseling* when the student is no longer enrolled in the program.

DL Online Counseling

Students can take online counseling at the Direct Loan Web site at **www.dl.ed.gov**
A DL school can sign up to receive regular reports with the names of students who have completed on-line counseling. (Log in to the COD Web site and then select the Direct Loan Servicing Online School site.)

Counseling student PLUS borrowers

Note that counseling requirements have been added for graduate and professional borrowers who are now eligible for PLUS loans.
These requirements were published November 1, 2007.
34 CFR 682.604
34 CFR 682.304

Providing borrower information

A Direct Loan School should mail updated borrower information to
U.S. Department of Education
PO Box 5609
Greenville, TX 75403-5609

Staying in touch with the Direct Loan Servicer

If they keep their PIN numbers handy, Direct Loan borrowers can manage their loans online by going to: **www.dl.ed.gov** to check account balances, change address, estimate repayments, or print out forms (deferment, forbearance, electronic debit account).

Mailing exit materials

When exit materials to a student who has left school, you're not required to use certified mail with a return receipt requested, but you must document in the student's file that the materials were sent. If the student fails to provide the updated contact information, you are not required to take any further action.

LOAN COUNSELING

Before a first-time Stafford Loan borrower takes out a loan, the school must ensure that entrance counseling is conducted—individually or in a group with other borrowers. Exit counseling must also be provided before a Stafford or Grad/PLUS borrower completes his or her course of study or otherwise leaves the school. There are similar requirements for Perkins loans (see *Volume 6*). (Note that loan counseling is not required for parent PLUS borrowers.)

Loan counseling is particularly important because new students often have little or no experience with repayment and managing debt. Your school must ensure that the student receives comprehensive entrance and exit counseling, even though the counseling may be given by a consultant, servicer, lender, or guarantor (usually on the Web), or online on the Direct Loan Web site.

When providing counseling, schools are encouraged to use interactive programs to test the borrower's understanding of the terms and conditions of their loans. The Direct Loan Program and many FFEL guaranty agencies, lenders, and other organizations offer online counseling through the Web, videos, pamphlets, and other counseling materials. Your school may choose to rely on Web counseling services, if those services provide all of the information required by regulation. If the counseling is given electronically, you'll need to make sure that the student receives written counseling materials for any required information that is not provided in the electronic counseling presentation. Your school is also responsible for making knowledgeable staff available to answer student questions.

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. Moreover, the regulations require (for any form of counseling) that someone with expertise in the FSA programs be available shortly after the counseling to answer borrowers' questions about those programs.

Regardless of the counseling methods your school uses, you must be sure to document that the student received and understood entrance and exit counseling. The borrower must sign an acknowledgement to this effect, and return it either directly to the school or through an online borrower acknowledgement of receipt.

The chart at the end of this section summarizes information to be covered as a part of entrance and exit counseling sessions. The arrows indicate those elements that must be covered in both entrance and exit counseling.

There are many ways to deliver this information and to reinforce it through continuing contacts with your student borrowers. You have an opportunity at each disbursement to remind students about the importance of academic progress, planning for future employment, and staying in touch with the holder of the loan.

Providing borrower information at separation

The personal and contact information collected at the time of exit counseling must be provided to the guaranty agency or Direct Loan Servicing Center within 60 days. A student authorizes his or her school to release information to lenders as part of the promissory note the student signs as part of the loan application process. No further permission is needed.

Exit counseling follow up

If the student borrower drops out without notifying your school, you must confirm that the student has completed online counseling, or mail exit counseling material to the borrower at his or her last known address. The material must be mailed within 30 days of your learning that a borrower has withdrawn or failed to participate in an exit counseling session.

TEACH exit counseling

Since TEACH Grants may be converted to loans if a student cannot complete the service requirement, all TEACH recipients must receive exit counseling. You will receive reports from the DL servicing center on all students who have completed TEACH exit counseling. If the student doesn't complete the exit counseling session on the TEACH website, 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 program on the TEACH website) to the grant recipient's last known address. In the case of unannounced withdrawals, you must provide this counseling within 30 days of learning that a grant recipient has withdrawn from school (or from a TEACH Grant-eligible program).

Counseling for correspondence and study abroad students

As an alternative for correspondence programs, or study abroad programs that are approved by the U.S. school for credit, you may send the borrower written counseling materials within 30 days after the borrower completes the program, with a request that the borrower provide the contact and personal information that would ordinarily have been collected through the counseling process.

Web-based counseling sites can be particularly useful for borrowers who are participating in off-campus programs such as school's year-abroad program, correspondence study, and online programs.

If the borrower has not previously received a Stafford 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 proceeds.

Loan counseling in regulations

FFEL: 34 CFR 682.604(f) and (g)
DL: 34 CFR 685.304
Perkins: 34 CFR 674.16(a)

Availability of grant aid

The General Provisions require that you inform students about the availability of grant aid before awarding loans.
"

Disclosure & counseling for Perkins Loans

The Perkins Loan regulations require that borrowers receive similar information. You can read more about the Perkins requirements in *Volume 6 – Campus-Based Programs*..

Direct Loan counseling materials

Direct Loan schools can order counseling materials, such as the Direct Loan Entrance Counseling Guide and the Direct Loan Exit Counseling Guide from the FSA PUBS Web site at
www.fsapubs.org

Alternative entrance counseling approaches

The Direct Loan regulations describe how a school may adopt alternative approaches as a part of its quality assurance plan—see 34 CFR 685.304(a)(4)

Default Management Plan

Additional ideas for loan counseling are given in the "Sample Default Management and Prevention Plan."

* Financial literacy—schools should provide borrowers with information concerning the income potential of occupations relevant to their course of study, counseling at various stages of enrollment, interactive tools to manage debt, repayment options, and school contact information. Schools can offer this information through a variety of media such as counseling, classes, publications, e-tutorials, electronic newsletters to email accounts, and adding the information to award letters.
* At-Risk Students—schools should identify and provide special counseling for "at-risk" students (such as students who withdraw prematurely from their educational programs, borrowers who do not meet standards of satisfactory academic progress, or both).
The most recent sample default plan was issued as an attachment to GEN-05-14.

See attachment to GEN-05-14, or go to collection of "Default Rate Materials" on the IFAP Web site.

Entrance Counseling

Before a first disbursement may be made to a first-time Stafford (or DL Subsidized/Unsubsidized) borrower, the student must receive entrance counseling that explains the loan obligation. The counseling must be conducted in person, by audiovisual presentation, or by interactive electronic means.

Required elements of entrance counseling

The Direct Loan and FFEL regulations require that certain information be included in entrance counseling. Some of this information is included in the Borrower's Rights and Responsibilities statement that must accompany the MPN, but you should review and elaborate on these points as a part of the counseling presentation.

- **Reinforce the importance of repayment**. The regulations also require that entrance counseling emphasize the seriousness and importance of the repayment obligation. The lender or Direct Loan Servicing Center (DLSC) sends payment coupons or billing statements as a convenience for the borrower. Not receiving them does not relieve the borrower of his or her obligation to make payments. (Direct Loan borrowers are encouraged to set up electronic debiting of a bank account to repay their loans—electronic debiting is also available through many FFEL lenders.)

- **Stress that repayment is required, regardless of educational outcome or subsequent employability.** Entrance counseling information must explain that the student borrower is obligated to repay the full loan even if he or she doesn't finish the educational program within the regular time for completion, can't get a job after graduating, or is dissatisfied with the school's educational program or other services.

- **Describe the likely consequences of default.** These consequences include adverse credit reports, federal offset, litigation, and other delinquent debt procedures under federal law. We recommend that you tell the borrower of the charges that might be imposed for delinquency or default, such as the lender's or guarantor's collection expenses (including attorney's fees). Defaulters often find that repayment schedules for loans that have been accelerated are more stringent than the original repayment schedule. A defaulter is no longer eligible for any deferment provisions, even if he or she would otherwise qualify. Finally, a defaulter's federal and state tax refunds may be seized and wages garnished, and the borrower loses eligibility for any further funding from the FSA programs.

- **Explain the use of the Master Promissory Note.** If relevant at your school, explain the use of the multi-year feature of the MPN, and the borrower confirmation process. You should advise students to carefully read the MPN and the Borrower's Rights and Responsibilities statement before signing the MPN. In addition, you should inform borrowers of their right to sign a new promissory note for each loan and opt out of the multi-year feature of the MPN.

- **Explain interest and capitalization.** The borrower must be provided information on how interest accrues and is capitalized during periods when the interest is not paid by the borrower or the Department. This information should explain the option of the borrower to pay the interest on unsubsidized loans while in school.

- **Provide sample monthly repayment amounts.** These sample amounts must be based on 1) a range of student levels of indebtedness, or 2) on the average indebtedness of other Stafford (or DL Subsidized/Unsubsidized) borrowers at the same school or in the same program of study at the same school.

- **Provide information about NSLDS.** The counseling must include information about the National Student Loan Data System and how the borrower may access his or her records on that system.

- **Provide contact information for questions.** The counseling must include the name and contact information of the individual a borrower can contact with questions regarding the borrower's rights and responsibilities for the terms and conditions of the loan.

- **Stress the importance of notifying the school and lender of withdrawal or other change of status.** The law requires that the counseling stress the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the program of study so the school can provide exit counseling. In addition, the counseling should reinforce the student's obligation to keep the lender (or the Direct Loan Servicing Center) informed about address changes, or changes in enrollment. (Failure to tell the lender about their responsibility to notify the lender or the DLSC is one of the most common reasons why a loan goes into default.) The borrower should always know the most current name and address of the lender, the loan servicer, and the guarantor of the loan.

The student is required to inform the lender when he or she graduates, changes schools, drops below half time, or withdraws from school. The borrower also must tell the DLSC or the lender if his/her address changes (including changes in the permanent address while in school). The student should also be reminded of the importance of notifying the holder of the loan in the event of a name change (including the change of a last name through marriage) or a change in Social Security Number.

Other suggestions for entrance counseling

In addition to the required elements above, counselors often include some of the following information in their sessions. (Some of these items are included in the sample Default Prevention and Management Plan.)

- **Review terms and conditions of the loan.** As a part of entrance counseling, tell the borrower the current interest rate on his/her loan(s), the applicable grace period, and the approximate date the first installment payment will be due.

  Often a student loan is the borrower's first experience in obtaining a loan of any kind, so it helps to clearly explain basic loan terminology to ensure that a borrower understands the process and knows who holds his/her loan. For instance, define terms such as loan servicer, the use of contractors to service the loan, and the process of selling loans to other lenders or to secondary markets. (A loan servicer is a corporation that administers and collects loan payments for the loan holder. A secondary market is a lender or a private or public agency that specializes in buying student loans.)

- **Review repayment options.** Explain that the exact repayment schedule will not be provided until loan repayment begins. Tell the student that certain fees (the origination fee and, for FFEL, an insurance fee) will be subtracted from the loan amount before the loan is disbursed but that repayment of the full loan amount is required. Review the availability of different repayment plans (standard, extended, graduated, income-sensitive/contingent), as well as loan consolidation. Stress that a borrower must make payments on his or her loans even if the borrower does not receive a payment booklet or a billing notice.

- **Discuss how to manage expenses (budgeting).** It would also be helpful to include general information for the student about budgeting of living expenses and personal financial management. Financial planning includes decisions by the borrower about the amount of student aid that he or she can afford to borrow. Budgeting information can be combined with an assessment of the student's earning potential in his or her chosen career, and with required information about anticipated monthly payments and overall indebtedness.

- **Review deferments, forbearance, etc.** The borrower should have a general understanding of the deferment, forbearance, and cancellation options, and how to apply for them. The counseling should stress that the borrower needs to contact the lender or DLSC if he or she is having difficulty in repaying the loan, as the lender or DLSC may be able to suggest options that would keep the loan out of default. Inform borrowers that information about deferments and forbearance is contained in their promissory notes.

- **Review Borrower's Rights and Responsibilities.** The student must receive a statement of Borrower's Rights and Responsibilities with the MPN. This may be provided by the Direct Loan Program or the FFEL lender, but it's a good idea to review the information on the statement with the borrower to make sure that he or she is familiar with that information.

- **Remind borrowers of the refund and other policies affecting withdrawals.** The borrower should be aware of the school's academic progress policy and refund policy, and how the return of FSA funds will affect loan repayment.

- **Reinforce the importance of keeping loan records.** This would be a good time, if your school has the resources, to provide a student with a folder or other aids to encourage him or her to keep all financial aid materials in one place. The student should keep copies of all records relating to the loan, beginning with the Master Promissory Note and notices showing when the student received loan payments or his/her account was credited. The student should keep the loan repayment schedule provided by the lender or DLSC when repayment begins, as well as records of loan payments—including canceled checks and money order receipts. The student should keep copies of any requests for deferment or forbearance, or any other correspondence with the loan holder or DLSC.

- **Reminder about exit counseling.** Because many students leave school before the scheduled end of their academic programs, it's helpful to remind students during entrance counseling that they are obligated to attend exit counseling before they cease to be enrolled at least half-time.

Exit Counseling for all FFEL & DL Student Borrowers

Your school must ensure that students who have borrowed FFEL or Direct Loans (including Graduate/Professional PLUS loans) receive exit counseling before they leave school. Counseling may be provided in person, (individually or in groups), or using audiovisual materials. As with entrance counseling, exit counseling is offered on the Web by many guarantors, lenders, and by the Direct Loan Program.

Student borrowers should be advised to complete online exit counseling or sign up for a counseling session (if offered at your school) shortly before graduating or ceasing at least half-time enrollment. As with entrance counseling, knowledgeable financial aid staff at the school must be reasonably available to answer questions from student borrowers. One of a borrower's obligations is to participate in an exit counseling session.

Direct Loan schools can use the program's Web site to confirm which of their students have completed online exit counseling: **www.dl.ed.gov** Similar online counseling services are provided by guarantors in the FFEL program

Required elements of exit counseling

Some of the material presented at the entrance counseling session will again be presented during exit counseling. The emphasis for exit counseling shifts, however, to more specific information about loan repayment and debt-management strategies. The following information must be provided as a part of exit counseling:

- **Review information from entrance counseling.** Several topics that were covered in entrance counseling must be reviewed during exit counseling: the consequences of default and the importance of the repayment obligation, the use of the Master Promissory Note, and the obligation to repay the loan even if the borrower drops out, doesn't get a job, or is otherwise dissatisfied with the quality of the school's educational programs and services.

- **Review repayment options.** The counseling must provide information on repayment plans (standard, extended, graduated, and income-contingent/income-sensitive plans) that includes a description of the different features of each plan and samples showing average anticipated monthly payments with the difference in interest paid and total payments shown with each plan. The counseling must review the borrower's options to prepay the loan, pay the loan on a compressed schedule, and to change repayment plans.

- **Provide an average anticipated monthly repayment amount.** The student borrower must be given an estimate of the average anticipated monthly payments that is based 1) on his or her indebtedness, or 2) on the average indebtedness of other student borrowers for attendance at the same school or in the same program of study at the same school. If you use an average of other student borrowers, include Graduate/Professional PLUS borrowers in calculating the average only if you are providing the average amount to a student who has also borrowed Graduate/Professional PLUS (see graphic on next page).

  We recommend giving the borrower a sample loan repayment schedule based on his/her total indebtedness. A loan repayment schedule usually will provide more information than just the expected monthly payment. For instance, it would show the varying monthly amounts expected in a graduated repayment plan.

  Note that the lending organization is not required to send the repayment schedule to the borrower until the grace period. Direct Loan borrowers who use the Online Exit Counseling Session (**www.dl.ed.gov**) can view repayment schedules based on their account balances (using their PIN numbers), select a repayment plan, and update demographic data.

  In Direct Loans, a school may request that the Servicing Center send the repayment schedule information to the financial aid office 30, 60, or 90 days before the student completes the program. If the school chooses this option, it accepts the obligation to deliver this repayment information to the borrower either in the exit counseling session or by mailing it to the borrower.

- **Provide information on loan consolidation.** The counseling must discuss the option of consolidating the borrower's FFEL, Direct, and Perkins loans, including the effects of the consolidation on total interest to be paid, fees, and length of repayment; the effect on a borrower's underlying loan benefits (such as grace periods, loan forgiveness, cancellation and deferment); the option the borrower has to prepay the loan or

to change repayment plans; andthat borrower benefit programs may vary depending on the lender. Both the Direct Loan Program and the FFEL Program offer Consolidation Loans. Direct Consolidation Loans are available from the U.S. Department of Education. FFEL Consolidation Loans are available from participating lenders such as banks, credit unions, and savings and loan associations.

- **Discuss debt management strategies and tax benefits.** The counseling must discuss debt management strategies and include a general description of the types of tax benefits that might be available to the borrower. The counseling should stress the importance of developing a realistic budget based on the student's minimum salary requirements. It's helpful to have the student compare these costs with the estimated monthly loan payments, and to emphasize that the loan payment is a fixed cost, like rent or utilities. NEW

- **Review forbearance, deferment, and cancellation options.** The counseling must provide information on cancellation and loan forgiveness provisions, including the conditions under which the borrower may obtain full or partial cancellation of principal and interest; and information on forbearance and deferment provisions, including a general description of terms and conditions under which the borrower may defer repayment of principal or interest or be granted forbearance. The counseling should reinforce the availability of forbearance, deferment, and cancellation for certain situations, and emphasize that in most cases the borrower must start the process by applying to the lender or the DLSC.

- **Tell the student about the availability of loan information on NSLDS and the availability of the FSA Ombudsman's office.** The counseling must explain how borrowers can use the National Student Loan Data System (NSLDS) to get information on the status of their loans. The borrower's loan history can be viewed online at the NSLDS Web site (PIN required for access). However, the borrower should be aware that the information on the NSLDS site is updated by lenders and guarantors and may not be as current as the latest information from those loan holders. (Students without Internet access can identify their loan holder by calling 1-800-4-FED-AID.)

  The Ombudsman's office is a resource for borrowers when other approaches to resolving student loan problems have failed. Borrowers should first attempt to resolve complaints by contacting the school, company, agency, or office involved. If the borrower has made a reasonable effort to resolve the problem through normal processes and has not been successful, he or she should contact the FSA Ombudsman at 877-557-2575 or <www.ombudsman.ed.gov>.

- **Ensure that borrowers understand their rights and responsibilities.** (See the discussion under Entrance counseling earlier in this chapter.)

- **Collect and update personal and contact information.** During exit counseling, an aid officer must obtain the borrower's expected permanent address after leaving school, the address of the borrower's next of kin, and the name and address of the borrower's expected employer (if known). A school must correct its records to reflect any changes in a borrower's name, address, Social Security Number, or references, and it must obtain the borrower's current driver's license number and state of issuance. Within 60 days after the exit interview, the financial aid office must provide this information to the guarantor (indicated in the borrower's student aid records), or the Direct Loan Servicing Center.

Further recommendations for exit counseling

It's a good idea to provide the student with the current name and address of the borrower's lender(s), based on the latest information that your school has. The counseling presentation might also explain to the student how to complete deferment forms and prepare correspondence to the lender. Emphasize that borrowers should always keep copies of all correspondence from and to them about their loans. Stress that a borrower must make payments on his or her loans even if the borrower does not receive a payment booklet or a billing notice

Pros & Cons of Consolidation. A Consolidation Loan can lower the borrower's total monthly repayment and simplify loan repayment. Because the repayment period for the Consolidation Loan is often longer than for most Stafford Loans, the monthly payments may be lower. (On the other hand, the total interest that is paid over the longer repayment period is usually greater.) If the borrower has more than one loan, a Consolidation Loan simplifies repayment because there's only one lender and one monthly payment. Consolidation may also be an option for a borrower in default, if certain conditions are met. The borrower should also be aware that some deferments and other benefits available with his/her current loans (especially Perkins) may be lost through consolidation

Entrance Counseling for Student PLUS Borrowers

A school must ensure that initial counseling is conducted with each graduate or professional student PLUS Loan borrower who has not received a PLUS Loan in the past. The counseling must be take place before the first disbursement of the loan. (Direct Loan schools may use an alternative counseling plan.)

The initial counseling must inform the student borrower of sample monthly repayment amounts based on 1) a range of student levels of indebtedness, or 2) on the average indebtedness of student borrowers at the same school or in the same program of study at the same school. If you are providing an average amount of indebtedness, it must be based on the average indebtedness of borrowers who have received Graduate/Professional PLUS loans at your school.

For a graduate or professional student who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan, you must provide a comparison of—

- The maximum interest rate for a PLUS Loan vs. a Stafford (or Direct Subsidized/Unsubsidized) Loan,
- the periods when interest accrues on a PLUS Loan vs. a Stafford (or Direct Subsidized/Unsubsidized) Loan, and
- The point at which a PLUS Loan enters repayment vs. a Stafford (or Direct Subsidized/Unsubsidized) Loan.

For a graduate or professional student who has not received a prior Federal Stafford, or Direct Subsidized or Direct Unsubsidized Loan, you must—

- **Explain the use of the Master Promissory Note.** If relevant at your school, explain the use of the multi-year feature of the MPN, and the borrower confirmation process. You should advise students to carefully read the MPN and the Borrower's Rights and Responsibilities statement before signing the MPN. In addition, you should inform borrowers of their right to sign a new promissory note for each loan and opt out of the multi-year feature of the MPN.

- **Emphasize the importance of repayment**. The regulations also require that entrance counseling emphasize the seriousness and importance of the repayment obligation. The lender or Direct Loan Servicing Center (DLSC) sends payment coupons or billing statements as a convenience for the borrower. Not receiving them does not relieve the borrower of his or her obligation to make payments. (Direct Loan borrowers are encouraged to set up electronic debiting of a bank account to repay their loans—electronic debiting is also available through many FFEL lenders.)

- **Describe the consequences of default.** The regulations require that entrance counseling describe the likely consequences of default, including adverse credit reports, federal offset, and litigation. See additional recommendations listed under "Entrance Counseling for FFEL & DL Student Borrowers" earlier in this section.

- **Repayment required.** 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, is unable to obtain employment upon completion of the program, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

Average Indebtedness for Student Borrowers

If the student has taken out . . .	*Average should be based on students who have borrowed*
Stafford only	Stafford only
Stafford + Graduate/Professional PLUS	Stafford and PLUS
DL Subsidized/Unsubsidized only	DL Subsidized, Unsubsidized only
DL Subsidized/Unsubsidized + Graduate/Professional PLUS	DL Subsidized, Unsubsidized, and PLUS

DRUG AND ALCOHOL ABUSE PREVENTION INFORMATION

A school that participates in the FSA programs must provide information to its students, faculty, and employees to prevent drug and alcohol abuse.

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 its employees of unlawful activities and the actions the school will take against an employee who violates these prohibitions. The drug-free awareness program for school employees is discussed in more detail in Chapter 3 of this Volume.

Information to be included in drug prevention materials for students

A school must provide the following in its materials:

- information on preventing drug and alcohol abuse;
- 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; and
- 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.

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. (For more information on the requirement to implement an anti-drug abuse program and evaluate it, see *Chapter 3*.)

Drug and alcohol prevention cites

Drug-Free Schools and Communities Act (Public Law 101-226)
Drug-Free Workplace Act of 1988 (Public Law 101-690)
34 CFR 84 Government-Wide Requirements for Drug-Free Workplace
34 Part 86 Drug and Alcohol Abuse Prevention
34 CFR 668.14(c)

Notice of penalties NEW

The HEOA provides that 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 (as described in Volume 1 of this Handbook).
HEOA section 488(g); HEA section 485(k)
Effective date: August 14, 2008

Clery/Campus Security Act

In 1990, Congress enacted the *Crime Awareness and Campus Security Act* (Title II of Public Law 101-542), which amended the Higher Education Act of 1965. The act was amended in 1992, 1998, and 2000. The 1998 amendments renamed the law the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.*

HEA Sec. 485(f)
20 U.S.C. 1092(f)
34 CFR 668.46

Sample notice of availability of Annual Security Report

A copy of [name of institution's] *Annual Security Report.*

This report includes statistics for the previous three years concerning reported crimes that occurred on-campus; in certain off-campus buildings or property owned or controlled by [name of institution]; and on public property within, or immediately adjacent to and accessible from, the campus. The report also includes institutional policies concerning campus security, such as policies concerning sexual assault, and other matters. You can obtain a copy of this report by contacting [name of office] or by accessing the following Web site [address of Web site].

— From *Handbook for Campus Crime Reporting*

Whistleblower Protection NEW

Nothing in the law shall be construed to permit a school to take retaliatory action against anyone with respect to the implementation of the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act."

HEOA section 488(e) HEA section 485(f)
Effective date: August 14, 2008

Disciplinary Proceedings NEW

A school must, upon written request, disclose to the alleged victim of a crime of violence, or a non-forcible sex offense, the results of any disciplinary hearing conducted by the school against the student who is the alleged perpetrator of the crime or offense. If the alleged victim is deceased as a result of the crime or offense, the school must provide the results of the disciplinary hearing to the victim's next of kin, if so requested.

CAMPUS SECURITY

The Department is strongly committed to enforcing the provisions of the Campus Security Act of 1990 requiring a school to compile and distribute an annual campus security report. In its continuing effort to assist schools in fully complying with the Crime Awareness and Security Act of 1990, the Department has developed *The Handbook for Campus Crime Reporting* (see sidebar for links to the Handbook and the Survey Web site). The *Handbook* defines the categories of crime and procedures for reporting them, as well as the requirements for timely warnings and maintenance of a daily crime log.

Compiling & reporting campus security policies and crime statistics

Each year in the late summer, a letter and a certificate from the U.S. Department of Education are sent to the institution's president or chief executive officer. The certificate includes the User ID and password needed to access the Campus Crime and Security Survey Web site.

Distribution of the annual security report

By October 1 of each year, a school must publish and distribute its annual security report. It must be distributed to all **enrolled students and current employees** in one of two ways—directly by publications and mailings, including giving each individual a copy, or direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail, or a combination of these methods.

If the school chooses to fulfill this requirement by posting the annual security report on an Internet or Intranet Web site, an **individual notice must be distributed to each student and current employee** that includes:

- a statement of the report's availability,
- a list and brief description of the information contained in the report,
- the exact electronic address (URL) of the Internet or Intranet Web site at which the report is posted, and
- a statement saying the school will provide a paper copy upon request.

Institutions may use the sample notice from the *Handbook for Campus Crime Reporting* to inform students and employees of the availability of the annual security report:

Upon request, a school must provide its annual campus security report to a prospective student or prospective employee. In order to ensure that a prospective student or employee can request the report, the school must provide them with notice of the report's availability. The notice must include a brief description of the report. If a prospective student or employee requests it, the school must provide a hard copy of the report.

Reporting campus crime data

Schools are required to submit a Web-based statistical report to ED on an annual basis. The survey data is collected through the Department's Campus Crime and Security Web site (requires password and User ID):

surveys.ope.ed.gov/security

Important: Do not send your annual security report to ED

More detailed information on campus crime reporting and the Annual Security Report are provided in the *Handbook for Campus Crime Reporting*, which is available at

www.ed.gov/admins/lead/safety/campus.html

- Campus Crime Help Desk telephone number—(800) 435–5985
- Campus Crime e-mail address—
CampusSecurityHelp@Westat.com

- For questions about the web survey - **CrimeHandbookQuestions@ed.gov**

Contents of annual security report NEW

In addition to campus crime statistics, the security report must include a description of the school's policies concerning campus security and a statement of the enforcement authority of campus security personnel and their relationship with State and local police. The report should explain whether or not the school has agreements with those police agencies (such as written memoranda of understanding) to investigate alleged crimes.

The security report must also describe the school's policies regarding emergency response and evacuation procedures that 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 staff occurring on campus, unless the notification at that time will compromise efforts to contain the emergency. Schools must also publicize their emergency response and evacuation procedures on an annual basis to reach students and staff and must test emergency response and evacuation procedures annually.

Fire Safety

The school requirements regarding fire safety were added by HEOA section 488(g) (HEA 485(i))
Effective date: August 14, 2008

ED is required to make the fire-related statistics available to the public, and to identify and disseminate exemplary fire safety policies. ED also must develop a protocol for schools to review the status of their fire safety systems.

HEOA section 488(a) HEA section 485(a)
Effective date: August 14, 2008
Academic year 2011-2012 (HEA section 485 paragraph (a)(1)(L) or subsection (e) for 2-year institutions)

FIRE SAFETY REPORTS ON STUDENT HOUSING NEW

An FSA-eligible school that maintain on-campus student housing facilities must publish an annual fire safety report that contains information about campus fire safety practices and standards of the school that include—

- a description of each on-campus student housing facility fire safety and sprinkler system;
- the number of regular mandatory supervised fire drills;
- policies or rules on portable electrical appliances, smoking and open flames (such as candles),
- procedures for evacuation,
- policies regarding fire safety education and training programs provided to students, faculty and staff; and
- plans for future improvements in fire safety if determined necessary by the school.

The report must also include statistics for each on-campus student housing facility during the most recent calendar years for which data are available concerning each of the following categories:

- the number of fires and the cause of each fire;
- the number of injuries related to a fire that result in treatment at a medical facility;
- the number of deaths related to a fire; and
- the value of property damage caused by a fire.

MISREPRESENTATION

Under the General Provisions regulations the Department may fine, limit, suspend, or terminate the participation of any school that substantially misrepresents the nature of its educational program, its financial charges, or the employability of its graduates.

Definition of misrepresentation

Misrepresentation is any false, erroneous, or misleading statement made to a student or prospective student, to the family of an enrolled or prospective student, or to the Department. This includes disseminating testimonials and endorsements given under duress.

Substantial Misrepresentation is 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.

Misrepresentation of the educational program includes, among other things, false or misleading statements about the school's accreditation or the school's size, location, facilities, or equipment. Misrepresentation of financial charges includes, among other things, false or misleading statements about scholarships provided for the purpose of paying school charges. To be considered a scholarship, a grant must actually be used to reduce tuition charges made known to the student before the scholarship was offered to the student. (The tuition charges must be charges that are applied to all students whether or not they are receiving a scholarship.) It is also considered misrepresentation if the school gives false or misleading information as to whether a particular charge is a customary charge for that course at the school.

Misrepresentation includes making any false or misleading statements about the employability of the school's graduates.

The regulatory provisions concerning misrepresentation are listed in the chart on the following page.

Misrepresentation cites

34 CFR Subpart F
34 CFR 668.71
Misrepresenting educational program cite
34 CFR 668.72
Misrepresenting financial charges cite
34 CFR 668.73
Employability of graduates cite
34 CFR 668.74

Prospective student

Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Misrepresentation

Nature of educational program

Misrepresentation by a school of the nature of its educational program includes, but is not limited to, false, erroneous, or misleading statements concerning:

- the particular types, specific sources, nature, and extent of its accreditation;
- whether a student may transfer course credits earned at the school to any other school;
- whether successful completion of a course of instruction qualifies a student for acceptance into a labor union or similar organization or receipt of a local, state, or federal license or a nongovernment certification required as a precondition for employment or to perform certain functions;
- whether its courses are recommended by vocational counselors, high schools, or employment agencies, or by governmental officials for government employment;
- its size, location, facilities, or equipment;
- the availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;
- 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;
- the number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- the availability of part-time employment or other forms of financial assistance;
- 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;
- the nature and extent of any prerequisites established for enrollment in any course; or
- any matters required to be disclosed to prospective students under 34 CFR 668.43 (institutional information) and 34 CFR 668.46 (campus security information).

Nature of financial charges

Misrepresentation by a school of the nature of its financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning

- offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges that are applied to all students whether or not receiving a scholarship and are made known to the student in advance; or
- whether a particular charge is the customary charge at the school for a course.

Employability of graduates

Misrepresentation by a school regarding the employability of its graduates includes, but is not limited to, false, erroneous, or misleading statements

- that the school is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment;
- that the school maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or
- concerning government job market statistics in relation to the potential placement of its graduates.

Help prevent financial aid/scholarship fraud

Every year, millions of high school graduates seek creative ways to finance the markedly rising costs of a college education. In the process, they sometimes fall prey to scholarship and financial aid scams. On November 5, 2000, Congress passed the College Scholarship Fraud Prevention Act of 2000 (CSFPA). The CSFPA enhances protection against fraud in student financial assistance by establishing stricter sentencing guidelines for criminal financial aid fraud. It also charged the Department, working in conjunction with the Federal Trade Commission (FTC), with implementing national awareness activities, including a scholarship fraud awareness site on the ED Web site.

You can help prevent financial aid/scholarship fraud by, in your consumer information, alerting students to the existence of financial aid fraud, informing students and their parents of telltale pitch lines used by fraud perpetrators, and by providing appropriate contact information.

According to the FTC, perpetrators of financial aid fraud often use these telltale lines

- The scholarship is guaranteed or your money back.
- You can't get this information anywhere else.
- I just need your credit card or bank account number to hold this scholarship.
- We'll do all the work.
- The scholarship will cost some money.
- You've been selected by a 'national foundation' to receive a scholarship' or 'You're a finalist,' in a contest you never entered.

To file a complaint, or for free information, students or parents should call
1-877-FTC-HELP (1-877-382-4357)
or visit: **http://www.ftc.gov/scholarshipscams**

School Disclosure Requirements

Recipients	What They Receive	How It Must Be Provided	When It Must Be Provided
Currently enrolled students and current employees	The institution's annual campus security report in its entirety (pursuant to 668.46)	Through publications, mailings, or electronic media sent directly to individuals. If a school chooses to post its annual security report to a Web site it must send each individual a notice through U.S. mail, campus mail, or directly-to an e-mail address-that 1. provides a brief summary of the information required to be disclosed; 2. provides the Internet or Intranet Web site address where the information can be found; 3. states that, upon request, the individual is entitled to a paper copy; and 4. informs the individual how to request a paper copy.	The school must prepare and make available its security report annually by October 1.
Currently enrolled students	Notice about the availability of the following 1. information on financial assistance available to students enrolled in the school (pursuant to 34 CFR 668.42); 2. information on the school (pursuant to 34 CFR 668.43); 3. the institution's completion or graduation rate, and, if applicable, its transfer-out rate (pursuant to 34 CFR 668.45); 4. information about students' rights under FERPA (pursuant to 34 CFR 99.7); and 5. information about athletic program participation rates and financial support (EADA) (pursuant to 34 CFR 668.47). The notices must be sufficiently detailed to allow students to understand the nature of the disclosures and make an informed decision whether to request the full reports.	A school must provide direct individual notice to each person. A school may provide the required notice through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronically directly to an e-mail address. The individual notice provided to enrolled students must 1. provide a brief summary of the information required to be disclosed; 2. provide the Internet or Intranet Web site address where the information can be found; 3. state that upon request the student is entitled to a paper copy; and 4. inform the student how to request a paper copy.	Annually, a school must provide notice to each enrolled student. Immediately, upon request, the school must provide the full reports. The school must prepare its completion or graduation rate, and, if applicable, its transfer-out rate report by July 1, immediately following the point in time at which the 150% point for the cohort has elapsed. Institutions must prepare and make available information about athletic program participation rates and financial support (EADA) by October 15. Information on the school and its financial assistance programs must be current.
Everyone who requests information about employment at the school	A notice about the availability of the annual campus security report. The notice must include a list of the information from the institution's annual security report to which employees and prospective employees are entitled. The list must include brief descriptions of the required disclosures. The descriptions should be sufficient to allow employees and potential employees to understand the nature of the disclosures and make an informed decision whether to request the full report.	In response to an inquiry about employment, a school must provide direct individual notice to each prospective employee. A school may provide the required notice through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronically directly to an e-mail address. If the school makes the information available by posting it to its Web site, then the notice provided must 1. identify the information required to be disclosed; 2. provide the Internet or Intranet address where the information can be found; 3. state that, upon request, individuals are entitled to a paper copy; and 4. inform individuals how to request a paper copy.	The school must prepare its report annually by October 1. Immediately, upon request, the school must provide the full report.

Note that new information requirements have been added by the HEOA, as discussed in this chapterr

School Disclosure Requirements (continued)

Recipients	What They Receive	How It Must Be Provided	When It Must Be Provided
Prospective students	1. Information on financial assistance available to students enrolled in the school (pursuant to 34 CFR 668.42); 2. Information on the school (pursuant to 34 CFR 668.43); 3. Information about students' rights under FERPA. 4. Notice about the availability of the institution's annual campus security report (pursuant to 34 CFR 668.46). The notice must include: a. a list of the information in the report; b. brief descriptions of the required disclosures that are sufficient to allow students to understand the nature of the disclosures and make an informed decision whether to request the full report (please see the NPRM of 8/10/99 page 43583 for an example); and c. an opportunity to request a copy. 5. The institution's completion or graduation rate, and, if applicable, its transfer-out rate (pursuant to 34 CFR 668.45). 6. Information about athletic program participation rates and financial support (pursuant to 34 CFR 668.47).	Directly to prospective students through appropriate publications, mailings, or electronic media a school must provide individual notice of the availability of items 1 through 6. Upon request, institutions must provide their complete report on completion, graduation and, if applicable, transfer-out rates. Upon request, a school must provide a copy of its full annual security report to a prospective student. If provided electronically, notices and reports must be sent directly to an e-mail address.	Prior to a prospective student's enrolling or entering into any financial obligation with a school, the school must provide its report on completion, graduation, and transfer-out rates. Notice about the availability of the other reports should be included in the materials a school provides to prospective students. Immediately, upon request, the school must provide its security report on a direct, individual basis.
Prospective student-athletes and their 1. parents, 2. high school coaches, and 3. guidance counselors	A school that is attended by students receiving athletically related student aid must produce a report on the completion and graduation rates of student athletes pursuant to 34 CFR 668.48.	The information must be provided directly to the respective parties. It may be provided in writing (on paper) or through electronic mail but not simply by posting it to a Web site. If the NCAA provides an institution's completion and graduation rates of student athletes to high school coaches and counselors, the school is deemed to be in compliance with that portion of this requirement.	The school must provide the report at the time it makes an offer of athletically related student aid to a prospective student athlete. Annually by July 1, institutions that are attended by students receiving athletically related student aid must produce the report and make it available.
Faculty, students, and employees	Drug and alcohol prevention information pursuant to Public Law 101-226.	Schools must use a method that ensures that the information will reach every student, faculty member, and employee.	The school must ensure that students who enroll and employees who are hired after the initial distribution for the year, also receive the information.
The general public	A school that participates in any FSA program and has an intercollegiate athletic program must provide a report on athletic program participation rates and financial support (EADA) (pursuant to 34 CFR 668.47).	Through appropriate publications, mailings, or electronic media.	Annually, for the preceding year, the school must prepare the report and make it available by October 15.

Note that new information requirements have been added by the HEOA, as discussed in this chapter

Written Agreements Between Schools

CHAPTER 7

Two or more schools may enter into a consortium or contractual agreement so that a student can continue to receive Federal Student Aid (FSA) funds while studying at a school or organization other than his or her "home" school. (The home school is the one that will grant the student's degree or certificate.) This chapter discusses the specific requirements for such agreements.

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 itself. The underlying assumption of such an agreement is that the home school has found the other school's or organization's academic standards to be equivalent to its own, and a completely acceptable substitute for its own instruction.

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. In addition, even though grades received through consortium or contractual agreements do not have to be included in the calculation of the student's grade point average (GPA), they must be included when calculating the quantitative component (the percentage of credits earned vs. attempted) of a student's 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.

CHAPTER 7 HIGHLIGHTS

- Consortium agreement
- Contractual agreement
- Study abroad/domestic exchange

- Related information

➔ Program Eligibility, Volume 2, Chapter 4
➔ "Regular Student in an Eligible Program," Volume 1, Chapter 1

Arrangements between institutions cite

34 CFR 668.5

Assessing your school's compliance

To review your school's compliance with the provisions of this chapter, see Activities 4 and 5 in the FSA Assessment module for "Institutional Eligibility," at

ifap.ed.gov/qahome/qaassessments/institutionalelig.html

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 four-year school that facilitates a student's completing the last two years of the student's four-year degree.

Consortium agreement cite
34 CFR 668.5

CONSORTIUM AGREEMENT

A consortium agreement can apply to all FSA programs. Under a consortium agreement, students may take courses at a school other than the *home* school and have those courses count toward the degree or certificate at the home school. A student can only receive FSA assistance for courses that are applicable to the student's certificate or degree program.

Elements of a consortium agreement

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 costs at each school;
- the student's enrollment status at each school;
- the school that will be responsible for disbursing aid and monitoring student eligibility; and
- the procedures for calculating awards, disbursing aid, monitoring satisfactory progress and other student eligibility requirements, keeping records, and returning funds in the event the student withdraws.

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 the student's eligibility and make payments.

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.

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 details on how agreements affect Federal Pell Grant calculations, see *Volume 3–Calculating Awards and Packaging*.

CONTRACTUAL AGREEMENT

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

Eligible schools are prohibited from entering into contracts with ineligible schools or organizations if the ineligible school or organization

- has had its eligibility to participate in the FSA programs terminated by the Department; or
- has voluntarily withdrawn from participation in the FSA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the school's state licensing agency, accrediting agency, guarantor, or by the Department.

Limitations on contractual agreements

Under a contractual agreement, the eligible school is always the home school. The home school performs all the aid processing and disbursement functions for its students attending the ineligible school or organization. The home school is responsible for maintaining all records necessary to document student eligibility and receipt of aid (see *Chapter 9*).

For schools in a contractual agreement, there is a limit on the portion of the program that can be offered by the ineligible school. If both the home and ineligible schools are owned or controlled by the same individual, partnership, or corporation, no more than 25% of the educational program can be provided by the ineligible school. If the two schools are separately owned or controlled, the ineligible school can provide up to 50% of the educational program. However, in the case of separately owned schools, if the contracted portion is more than 25% of the program, the home school's accrediting agency or state agency (in the case of a public postsecondary vocational institution) must determine and confirm in writing that the agreement meets its standards for contracting out education services.

Arrangements with a study abroad organization cite
34 CFR 668.5

Eligibility of students in a study abroad program cite
34 CFR 668.39

Types of study-abroad programs
Study abroad program configurations include:

A home school sends students to a study abroad program at an eligible or ineligible foreign (host) school.
➔ The home school must have a consortium or contractual agreement with the foreign school.

A home school allows a student to complete a portion of the student's program at an eligible host school in the United States and that host school offers a study abroad program in conjunction with either an eligible or ineligible foreign school.
➔ The home and host schools in the United States must have a consortium agreement.
➔ The host school in the United States must have a consortium or contractual agreement with the foreign school.

A home school has a written arrangement with a study abroad organization that represents one or more foreign schools instead of a separate agreement directly with each foreign school that its students are attending.

For purposes of administering the FSA programs, the written agreement between the eligible institution and the study abroad organization must adequately describe the duties and responsibilities of each entity and meet the requirements of the regulations. A variant of the study abroad program occurs when a home school sends faculty and students to a foreign site. This does not represent a consortium or contractual study abroad program. Rather, the foreign site is considered an additional location under 34 CFR 600.32.

STUDY ABROAD OR DOMESTIC EXCHANGE PROGRAMS

A study abroad program must be part of a written contractual or consortium agreement between two or more schools. The home school must be located in the United States. The study abroad program does not have to be a required part of the eligible program at the home school in order for the student to be eligible to receive FSA funds. However, the credits earned through the study abroad or exchange program must be acceptable toward graduation in the student's program by the home school.

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

Students enrolled in study abroad programs with costs of attendance higher than those of the home school should have those costs reflected in the cost of attendance on which their aid is based. This may result in a student being eligible for additional FSA funds, including a higher Pell award, not to exceed the Pell award maximum.

Students in approved study abroad programs are entitled to FSA

Some eligible students have had problems receiving FSA program funds for study abroad or domestic-exchange programs because neither the student's home school nor the school the student was temporarily attending documented that the student was enrolled in an eligible program of study. These circumstances have caused otherwise eligible students to be denied financial assistance at both schools.

The law states that a student participating in a study abroad program approved by the home school is eligible for FSA funds, regardless of whether the program is required for the student's regular, eligible program of study, as long as

- the student is an eligible regular student enrolled in an eligible program at the home school; and
- the eligible school approves the program of study abroad for academic credit.

The Program Participation Agreement (PPA) requires participating schools to establish procedures that ensure that its students participating in study abroad programs receive the FSA funds to which they are entitled.

Distance Education

CHAPTER 8

In this chapter, we discuss the applicability of the FSA program requirements to programs offered through distance education. Two types of distance education are defined in the regulations: correspondence and telecommunications programs. Telecommunications programs are treated in the same way as traditional residential programs. Correspondence programs are subject to certain restrictions: no more than 50% of a school's programs may be offered through correspondence study, and no more than 50% of a school's regular students may be enrolled in correspondence programs.

Distance Education refers to any mode of instruction in which there is a separation, in time or place, between the instructor and student.

ED's eligibility regulations define two types of distance education:

- correspondence courses (including some courses offered on video cassettes), and
- telecommunications courses offered via television, audio or computer (including the Internet).

Schools use distance education to respond to students' needs for alternatives to the schedules and locations at which courses traditionally have been offered. The availability of new technologies including the Internet have spurred significant growth in the number and types of distance education programs schools offer.

A school may not refuse to provide FSA funds to a student because he or she is enrolled in correspondence or telecommunications courses unless the courses are not part of an eligible program.

CHAPTER 8 HIGHLIGHTS:

Telecommunications Courses
- ➔ Television, audio, or computer transmission through open broadcast, closed circuit, cable, microwave, or satellite
- ➔ Audio and computer conferencing
- ➔ Video cassettes or disc recordings if that course is delivered to students physically attending classes at the school providing the course during the same award year
- ➔ Regular and substantive interaction between students and the instructor

Correspondence Courses
- ➔ Definition of correspondence course
- ➔ School eligibility: limits on correspondence courses and correspondence students

Correspondence & telecommunications course definitions
34 CFR 600.2

Change in treatment of telecommunications courses

Under the Higher Education Reconciliaton Act of 2005 (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, for an otherwise eligible institution, the 50% limitation on telecommunications courses and telecommunications enrollment no longer applies. The 50% limitations continue to apply to correspondence courses and students.

Based on the HERA changes, the definition of "correspondence course" was revised and a new definition of "telecommunications course" was added to 34 CFR 600.2 in the *Federal Register* of August 9, 2006.

Accreditation for distance education

The Department reminded schools in September 2006 that distance education programs must be evaluated by an accrediting agency that is recognized by ED for the purpose of evaluating distance education. This letter included specific instructions on notifying ED if the school intended to seek new accreditation, and updating the E-APP to reflect changes to the school's accreditation. GEN-06-17

Telecommunications & correspondence study at foreign schools

A program offered by a foreign school in whole or in part by telecommunications, by correspondence, or as a direct assessment program is not an eligible program. 34 CFR 600.51(d)

TELECOMMUNICATIONS COURSE

Telecommunications programs at domestic schools are considered eligible FSA programs if they have been accredited by an accrediting agency recognized by the Department for accreditation of distance education. They are not subject to the rules that apply to correspondence coursework, which are discussed in the next section.

A telecommunications course is one that is offered principally through the use of one or more technologies to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between these students and the instructor, whether asynchronously or in "real-time."

These technologies include:

- Television, audio, or computer transmission through open broadcast, closed circuit, cable, microwave, or satellite, and
- audio and computer conferencing.

A course taught through video cassettes or discs is also considered a telecommunications course, but only if the course is delivered to students physically attending classes at the school providing the course during the same award year and if another technology is employed to support interaction between the students and the instructor.

Distance courses that do not qualify as a telecommunications course are considered to be correspondence courses. Programs offered at foreign schools in whole or in part through telecommunications are not eligible programs for FSA purposes.

CORRESPONDENCE COURSES

Unlike telecommunicatons courses, which are now treated in the same way as all other eligible programs, some restrictions apply to correspondence courses.

Definition of "correspondence course"

A correspondence course is a home-study course provided by a school under which the school provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the school. 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.

- If a school adds telecommunications 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 telecommunications), keeping in mind that a telecommunications course must use technology to support regular and substantive interaction between students and the instructor. The school must apply the rules for the predominant method, in administering its participation in the FSA programs.

- A course that is delivered in whole or in part through the use of video cassettes or video discs is a correspondence course unless the school also delivers comparable instruction to students attending resident classes at the school during the same award year.

School eligibility: limits on correspondence courses & correspondence students

If a school offers more than 50% of its courses by correspondence, the school loses its eligibility to participate in the FSA. Similarly, if 50% or more of a school's students are enrolled in its correspondence courses, the school loses its eligibility to participate in the FSA programs.

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.

This limitation may be waived for a 2-year associate or 4-year baccalaureate degree program if the school can demonstrate to the Department that students enrolled in correspondence courses received no more than 5% of the total FSA program funds awarded

Correspondence courses & institutional eligibility
34 CFR 600.7(a)(1))(i) and (ii)
HEA Sec. 102(a)(3)(A) and (B)

Videocassettes and discs example
A school offers an English 101 course via video cassette and computer conferencing. English 101 is also offered to students physically attending classes at the school during the same award year. In this case this course would be considered a telecommunications course.

The school also offers Art History 302 via video cassette. Art History 302 is **not** offered to students physically attending classes at the school during this award year. In this case this course would **not** be considered a telecommunications course for this award year. It is considered a correspondence course.

A combined correspondence and residential program example
A school offers a truck driving program. The first part of the program is offered via correspondence. After completing the correspondence portion of the program the student has to attend a residential site where he or she actually learns how to drive trucks.

This program is considered a correspondence program.

A school is the sum only of its eligible programs

Some postsecondary institutions offer programs that are eligible for FSA as well as programs that are not FSA-eligible. For FSA program purposes, we consider an eligible institution is the sum of its "eligible programs."

In order 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.

Attestation required cite

34 CFR 600.7(g)(2)

to its students in the award year. Also note that the limitations on correspondence courses and correspondence students do not apply to a school that mainly provides vocational adult education or job training (as defined under section 3(3C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995).

The school's correspondence course calculation and correspondence student calculation must be attested to by a independent auditor.

Exceptions and other considerations

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 *Chapter 7.*)

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.

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 enrolled regular students 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:

$$\frac{\text{number of regular students enrolled in the school's correspondence courses}}{\text{number of regular students enrolled in all of the school's courses}} = \text{\% of correspondence students}$$

CHAPTER 9

Recordkeeping, Electronic Processes, & Privacy

Schools must maintain detailed records to show that FSA funds are disbursed according to statutory and regulatory requirements. These records must be made available authorized individuals or organizations in the course of audits, program reviews, or investigations. Personally-identifiable information in these records may only be released to other parties under certain conditions specified in the FERPA regulations. Required information may be collected and stored electronically, subject to appropriate safeguards.

REQUIRED RECORDS

A school must keep comprehensive, accurate program and fiscal records related to its use of FSA program funds. The importance of maintaining complete, accurate records cannot be overemphasized. Program and fiscal records must demonstrate the school is capable of meeting the administrative and fiscal requirements for participating in the FSA programs. In addition, records must demonstrate proper administration of FSA program funds and must 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 in accordance with program regulations.

In addition to the general institutional recordkeeping requirements discussed here, a school must also comply with all program-specific recordkeeping requirements contained in the individual FSA regulations

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, 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
- Other records, as specified in regulation, that pertain to factors of financial responsibility and standards of administrative capability

CHAPTER 9 HIGHLIGHTS

- Required records
  - → program records
  - → fiscal records
  - → loan program records
- Record maintenance
  - → record retention periods
  - → acceptable formats
  - → special requirements for SARs and ISIRs
- Access to records & personnel
  - → location & timely access
  - → reasonable access to personnel
  - → FSA recipient information
- Privacy of student & parent information (FERPA rules)
- Related information
  - → Ability to Benefit, Volume 1 Chapter ?

FSA Assessment module

To assess your compliance with the provisions of this chapter see Activity 2 under "Fiscal Management" at **ifap.ed.gov/qahome/qaassessments/fiscalmanagement.html**

Recordkeeping cite

34 CFR 668.24

Loan program record cite
34 CFR 668.24, 34 CFR 682.610, and 34 CFR 685.309(c)

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
- 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 that a school must maintain include, but are not limited to:

- 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
- FISOP portion of the FISAP

A school must also maintani 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
- Records used to prepare the Income Grid on the FISAP

Record retention requirements

From § 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.

Required records
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).

Perkins & FWS records

In addition, participants in the:

• Perkins Loan Program must follow procedures in Section 674.19 for documenting the repayment history for each borrower for that program; and

• FWS Program must follow procedures established in Section 675.19 for documentation of work, earnings, and payroll transactions for the program.

(See *Volume 6—Campus-Based Programs*).

Closed-school records

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. For a school that participates in the FFEL Program, the school must also provide access for the appropriate guaranty agency.

Retaining records for a branch that closes

If a school has an additional location or branch that closes, the school might want to maintain its loan records beyond the end of the three-year record retention requirement in order to respond to the Department or to refute borrower claims of eligibility for discharge.

Loan program records

There are special record keeping requirements in the Direct and FFEL loan programs. A school must maintain—

- A copy of paper or electronic loan certification or origination record, including the amount of the loan and the period of enrollment.
- The cost of attendance, estimated financial assistance, and estimated 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.

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 3 years after the end of the award year in which they were submitted, while borrower records must be kept for 3 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 (for more information, see *Volume 6—Campus-Based Programs*).

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 12 for information on program reviews and audits). If the 3-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.

Records cite

34 CFR 668.24
34 CFR 668.27

Retaining FISAP records

Schools participating in the Campus-based programs must keep the Fiscal Operations Report and Application to Participate (FISAP) and any records necessary to support their data (e.g., the source data for the income grid) for 3 years from the end of the award year in which the FISAP is submitted.

For instance, records for a FISAP submitted during the 2009-2010 award year must be kept until at least June 30, 2013, three years from the last day of the 2009-2010 award year.

Minimum record retention periods

Pell, ACG/SMART, TEACH grants
Campus-Based Programs ..... 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 needed to enforce the obligation
- Perkins original promissory notes * ..... 3 years from the date the loan is assigned to ED, canceled, or repaid

FFEL and Direct Loans

- 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

* after 12/87, includes original repayment schedule, though manner of retention remains same as promissory note)

** before 12/87, included original repayment schedule

New media formats

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.

Requirements for electronic promissory notes

34 CFR 668.24(d)(3)(i) through (iv).

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 below. 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.

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.

Because the SAR is a hard copy document, it must be maintained and available in its original hard copy 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 available to the Department at a location of the institution designated by the Department. These records must be readily available for review, including any records of transactions between a school and the financial institution where the school deposits any 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 sidebar).

Timely access

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.

FSA recipient information

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.

Reasonable access to personnel

A school must also provide reasonable access to all personnel associated with the school's or 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 allow those personnel 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).

Cooperation with agency representatives

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 also provide this cooperation to any guaranty agency in whose program the school participates, and to the school's accrediting agency.

Resources for developing a FERPA policy

Anyone involved in developing a school's policy or anyone who would like a copy of the Department's model notification for postsecondary schools, may review and download the notification from the Family Policy Compliance Office Web site at **www.ed.gov/policy/gen/guid/fpco/index/html**

"Sole Possession" Records

The term education record does not include records that are kept in the sole possession of the maker of the record (often called sole possession records). Sole possession records 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
- typically maintained by the school official unbeknownst to other individuals.

Records that contain information taken directly from a student or that are used to make decisions about the student are not sole possession records.

PRIVACY OF STUDENT INFORMATION (FERPA RULES)

The Family Educational Rights and Privacy Act (FERPA) sets limits on the disclosure of personally identifiable information from school records, and defines the rights of the student to review the records and request a change to the records.

With exceptions such as those noted in this section, FERPA generally gives postsecondary students the right

- to review their education records,
- to seek to amend inaccurate information in their records, and
- to provide consent for the disclosure of their records.

These rules apply to all education records the school keeps, including admissions records (only if the student was admitted) and academic records as well as any financial aid records pertaining to the student. Therefore, the financial aid office is not usually the office that develops the school's FERPA policy or the notification to students and parents, although it may have some input.

Student's & parents' rights to review educational records

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 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.

FERPA responsibilities & 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
✔ request a hearing (if the request for an amendment is denied) to challenge the contents of the education records, on the grounds that the records are inaccurate, misleading, or violate the rights of the student.

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 laws.

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.)

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 school 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 who have a legitimate interest in the student's records. Typically, these might be admissions records, grades, or financial aid records. Disclosure may be made to:

- other school officials, including teachers, within the school whom the school has determined to have legitimate educational interests.
- to officials of another postsecondary school or school system, where the student receives services or seeks to enroll.

Subpoena cites

20 U.S.C. 1232g(b)(1)(J)(i) and (ii), (b)(2)(B);
20 U.S.C. 1232g(b)(4)
34 CFR. 99.31(a)(9)
34 CFR 99.32

Ex-parte orders & terrorism

"Terrorism" and "drimes of terrorism" are defined in
18 U.S. Code 2331 and 2332b(g)(5)(B)

Patriot Act Changes

A Dear Colleague Letter on changes made to FERPA by the 2001 Patriot Act is posted in PDF format at
www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf

Issued April 12, 2002 by ED's Family Policy Compliance Office
Web site: www.ed.gov/offices/OM/fpco
E-mail: FERPA@ED.Gov

Third-party housing records

Whether the rent is paid to the third party by the school on behalf of the student or directly by the student, a student housing facility owned by a third party that has a contract with a school to provide housing for the school's students is considered "under the control" of the school. Therefore, records (maintained by either the third-party or the school) related to the students living in that housing are subject to FERPA.

FERPA sources

The relevant law is the Family Educational Rights and Privacy Act of 1974. 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.

The Department's Family Policy Compliance Office maintains an online library of FERPA guidance at: www.ed.gov/policy/gen/guid/fpco/ferpa/library/index.html

FERPA also affects the disclosure of records that are created and maintained by campus law enforcement units (for law enforcement purposes). This topic is discussed in the *Handbook for Campus Crime Reporting*, available as a downloadable PDF file from EDPUBS <**www.edpubs.org**>.

FERPA citations

34 CFR 99.10-12 Right of parent/student to review records
34 CFR 99.20-22 Right of parent/student to request amendment to records or hearing
34 CFR 99.30 When prior consent required to disclose information
34 CFR 99.31 When prior consent not required to disclose information
34 CFR 99.32 Recordkeeping requirement
34 CFR 99.33 Limitations on redisclosure
34 CFR 99.34 Disclosure to other agencies/institutions
34 CFR 99.35 Disclosure for federal/state program purposes

If your school routinely discloses information to other schools where the student seeks to enroll, it should include this information in its annual privacy notification to students. If this information is not in the annual notice, the school must make a reasonable attempt to notify the student at the student's last known address.

Disclosures to government agencies

Disclosures may be made to authorized representatives of the U.S. Department of Education for audit, evaluation, and enforcement purposes. "Authorized representatives" includes employees of the Department—such as employees of the Office of Federal Student Aid, the Office of Postsecondary Education, the Office for Civil Rights, and the National Center for Education Statistics—as well as firms that are 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 that the student has received or applied for. Such a disclosure may only be made if the student information is needed to determine the amount of the aid, the conditions for the aid, the student's eligibility for the aid, or to enforce the terms or conditions of the aid.

- A school may release personally identifiable information on an F, J, or M nonimmigrant student to U.S. Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) in compliance with the Student Exchange Visitor Information System (SEVIS) program without violating FERPA.

Disclosures in response to subpoenas or court orders

FERPA permits schools to disclose education records, without the student's consent, in order 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 the student may seek protective action. However, the school does not have to notify the student if the court or issuing agency has prohibited such disclosure.

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.

Documenting the disclosure of information

Except as noted below, school must keep a record of each request for access and each disclosure of personally identifiable student information. The record 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.

Privacy of health records (HIPPA) and FERPA

The Health Insurance Portability and Accountability Act of 1996 (HIPPA) sets standards for the confidentiality of health records applies to health care providers, private benefit health plans, and health care clearinghouses. It does not apply to other types of organizations whose receipt or maintenance of health records is incidental to their normal course of business.

Your schools' 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 students services' units is well established.

Note: In most 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 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.)

For more information on HIPPA, see the U.S. Department of Health & Human Services:
www.hhs.gov/ocr/hipaa/
HIPPA regulations are published as:
45 CFR Parts 160, 162, and 164

For instance, if student records are requested by Department reviewers in the course of a program review, the school must document in each student's file that the student's records were disclosed to representatives of the Department. The easiest 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 review of the FSA programs conducted by a Department regional office.

> These financial aid records were disclosed to representatives of the U.S. Department of Education, 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 Eligibility Channel 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 the program review staff to find out if any redisclosure is anticipated.

There are some exceptions to this requirement. A school does not have to record instances where the request is made by:

- The parent or eligible student.
- A school official who has a legitimate educational interest.
- A party with written consent from the parent or eligible student.
- A party seeking directory information.
- Certain court orders or subpoenas.

FERPA & crime records

There are two different FERPA provisions concerning the release of records relating to a crime of violence. One concerns the release to the victim of any outcome involving an alleged crime of violence (34 CFR 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 rules or policies with respect to such crime or offense (34 CFR 99.31(a)(14)).

E-Sign Act

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) was enacted on June 30, 2000. The 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.

Disclosures via Web site

Subject to certain conditions, disclosure may be made through Internet or Intranet Web sites.
CFR 34 668.41(b) & (c)

Voluntary Consent Required

Voluntary 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..

Using electronic processes for notifications & authorizations

So long as there are no regulations specifically requiring that a notification or authorization be sent via U.S. mail, a school may 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 Web site 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, May 2001.

THE E-SIGN ACT & INFORMATION SECURITY

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.

The E-Sign Act provides specifically for the creation and retention of electronic records. Therefore, unless a statute or regulation specifically requires a school to provide or maintain a record or document on paper, your school may provide and maintain that record electronically. Similarly, unless a statute or regulation specifically requires schools to obtain a pen and paper signature, you may obtain the signature electronically as long as the electronic process complies with the E-Sign Act and all other applicable laws.

Obtaining voluntary consent for electronic transactions

Before conducting electronic transactions to provide to 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.

The consent must be obtained in a manner that reasonably demonstrates that the individual is able to 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 log-ins,
- user identification and entry-point tracking,
- random audit surveys, and
- security tests of the code access.

If you use an electronic process to provide notices, make disclosures and direct students to a secure Web site, you must provide direct individual notice each year to each student that you are going to do so. You may provide the required notice through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronically directly to an email address.

The annual individual notice must —

- identify the information required to be disclosed *that year*,
- provide the exact inter- or intranet address where the information can be found,
- state that, upon request, individuals are entitled to a paper copy, and
- inform students how to request a paper copy.

Establishing & maintaining an information security program

The Federal Trade Commission 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 draft detailed policies for handling financial data covered by the law, such as parents' annual income, and must take steps to protect the data from falling into the wrong hands.

Financial institutions, including postsecondary institutions, are required to have adopted an information security program by May 23, 2003, under the FTC rule. For specific requirements, see the box on "FTC Standards for Safeguarding Customer Information" on the following pages.

Thus, while schools have maximum 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.

Information security requirements

➔ Federal Trade Commission regulations: 16 CFR 313.3(n) and 16 CFR 314.1–5

➔ Financial Services Modernization Act of 1999 (also known as the Gramm-Leach-Bliley Act or GLB Act)
Pub. L. No. 106-102
Sections 501 and 505(b)(2)

➔ U.S. Code: 15 U.S.C. 6801(b), 6805(b)(2).

Effective dates

Your school was required to implement an information security program that meets these requirements no later than May 23, 2003.

The FTC regulations include a "grandfathering" provision for contracts made with nonaffiliated third parties to perform services for your school or functions on your school's behalf; this provision expired on May 24, 2004.

Reporting security breaches to students and ED

Schools are strongly encouraged to inform their students and the Department of any breaches of security of student records and information. The Department considers any breach to the security of student records and information as a demonstration of a potential lack of administrative capability.
(See *Chapter 10, Administrative Capability*)

FTC Standards for Safeguarding Customer Information

Postsecondary educational institutions participating in the FSA programs are subject to the information security requirements established by the Federal Trade Commission (FTC) for financial institutions.

Customer information that must be safeguarded

These requirements apply to all customer information in your school's possession, regardless of whether such information pertains to students, parents, or other individuals with whom your school has a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

Customer information means any record containing nonpublic personal information (see definition *) 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.

** Definition of "nonpublic personal information": 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.*

Establishing & 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.

** Definition of "information security program": the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.*

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.

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 systems failures.

Safeguards & 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 & 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 through its provision of services directly to your school. Your school must take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue and require your service providers by contract to implement and maintain such safeguards.

Sources:
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 U.S.C. 6801(b), 6805(b)(2).

CHAPTER 10

Administrative Capability

To participate in the Federal Student Aid (FSA) programs, a school must demonstrate that it is administratively capable of providing the education it promises and of properly managing the FSA programs. This chapter discusses the requirements a school must meet to demonstrate its administrative capability.

REQUIRED ELECTRONIC PROCESSES

The regulations require that a school be able to use the FSA electronic processes in order to be considered administratively capable of participating in the FSA programs.

In order for a school to exchange data with the FSA Systems, it must have Internet access through its network or through an Internet Service Provider. Your school will also need to enroll in the Student Aid Internet Gateway (SAIG) and establish a data mailbox. In the past, most schools have prepared data records in a software package such as EDExpress and transmitted the records as batch files to the SAIG mailbox. The Department's systems send edited records back to the SAIG mailbox, where 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, ACG/SMART grants, and Direct Loans. This common record format uses Extensible Markup Language (XML).

To create and edit student records, your school may use the Department's EDExpress software, or 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 Web sites, 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.

CHAPTER 10 HIGHLIGHTS

- Required electronic processes
- Administrative requirements for the financial aid office
  - → Coordinating official
  - → Consistency of information
  - → Adequate staffing
  - → Checks & balances, and separation of function
- Reporting to NSLDS, DLSC, & guarantors
  - → Reporting enrollment status to NSLDS
  - → Reporting borrower separation information to guarantor or DLSC
  - → Transfer monitoring through NSLDS
- Satisfactory academic progress
- Cohort default rates
- Withdrawal rates
- Debarment & suspension certification

- Related information
  - → Crimes against FSA programs, Chapter 1
  - → General Participation Requirements, Chapter 3
  - → Financial Standards, Chapter 11

Administrative capability cite

34 CFR 668.16

FSA Assessmentst

To assess your school's compliance with the provisions of this chapter see the FSA Assessment modules on "Automation," "Default Prevention & Management, and "Satisfactory Academic Progress" at: ifap.ed.gov/qahome/fsaassessment.html

Summary of required electronic processes

To be in compliance 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: **www.eligcert.ed.gov**
- enroll in the Student Aid Internet Gateway (SAIG): **www.fsawebenroll.ed.gov**
- use *FAA Access* or its SAIG mailbox to exchange FAFSA or ISIR data with the Department's Central Processing System: **http://www.fafsa.ed.gov/FOTWWebApp/faa/faa.jsp or www.saigportal.ed.gov**
- use the COD Website or its SAIG mailbox to exchange award and disbursement data for Pell Grants, ACG/SMART grants, and Direct Loans: **cod.ed.gov** or **www.saigportal.ed.gov**
- use the eCampus-Based (eCB) System to file the FISAP application and report (see *Volume 6*): **www.cbfisap.ed.gov**
- submit to the National Student Loan Data System (NSLDS) the school's Federal Perkins Loan data, student enrollment records, FSA program overpayments, and NSLDS Transfer Student Monitoring records: **https://www.nsldsfap.ed.gov/secure/logon.asp**
- electronically submit the school's annual compliance and financial statement audits, and any other required audits: **ezaudit.ed.gov**
- use the Default Management Web site to receive its draft and official cohort default rate data electronically: **ifap.ed.gov/DefaultManagement**
- use the Information for Financial Aid Professionals (IFAP) Web site to review Dear Colleague Letters, announcements, or Federal Registers: **ifap.ed.gov**

Electronic processes cite

34 CFR 668.16 (o)
DCL GEN-04-08, September 2004
Federal Register, 09-14-2004, 55418-55420

Systems help

For help with questions about specific systems, such as application processing and software (CPS.SAIG), COD, and NSLDS, see the "Help" link on the Information for Financial Aid Professionals site:
ifap.ed.gov

Information for Financial Aid Professionals (IFAP)

Program information such as Dear Colleague/Partner letters, announcements, and Federal Registers, previously mailed to participating institutions, is now communicated, for the most part, through our IFAP Web site (ifap.ed.gov). One of the most useful features of this Web site is its notification service, which sends you daily or weekly e-mails that summarize recent postings to IFAP. (Go to "Member Services" on IFAP and select Subscription Options after you've registered.)

Even if you use a third-party servicer to manage your student aid activities, you are responsible for knowing about all new requirements posted on IFAP.

The IFAP site also has links to all major FSA Web sites and services, and a "Help" link that includes contact information for FSA call centers and customer service offices.

System Configurations

From time to time ED modifies the minimum system requirements schools must meet in order to participate in the Department's electronic processes. This Technical Specifications Table lists the minimum configurations required beginning in the 2005–2006 award year. When reviewing these specifications, a school 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.

Although all of the designated electronic processes can be performed using the minimum configuration, we strongly recommend the optimal configuration, particularly in cases where a school sends or receives 4,000 or more records in an XML document (batch). This is because the new XML file formats used by EDExpress and COD (and in the future by CPS) are larger and require greater storage and computing power. For the same reason, we would encourage a school to consider moving away from "Dial-up" and instead use a high-speed Internet connection. Doing so will significantly reduce both transmission time and transmission interruptions.

	Minimum Configuration	Optimal Configuration
IBM or Fully IBM-compatible PC	1.2 GHz Processor	2.8 GHz/333 MHz Processor
	512 MB RAM	1 GB RAM
	60 GB Hard Drive	80 GB Hard Drive
	48x CD-ROM Drive (CD-RW recommended)	48x CD-ROM Drive (CD-RW recommended)
	Windows compatible keyboard and mouse	Windows compatible keyboard and mouse
Monitor and Video Card	Capable of Super Video Graphics Adapter (SVGA) resolution (800x600) or higher	Capable of Super Video Graphics Adapter (SVGA) resolution (800x600) or higher
Internet Connection	56 Kbps Modem (meets or is upgradable to V.90 standard)	High speed Internet connection (e.g., DSL, cable)
Printer	Laser printer capable of printing on standard paper (8.5" x 11")	Laser printer capable of printing on standard paper (8.5" x 11")
Operating System	Windows 2000 or Windows XP Professional recommended	Windows 2000 or Windows XP Professional recommended

Coordinating official—definition of capable individual

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.

Death of a student

If a student dies during the award year, the school isn't required to resolve conflicting information.

Discrepant tax data

Because conflicting data often involve tax information, FAAs must have a fundamental understanding of tax issues that can affect need analysis. You should know

- whether an individual is required to file a tax return;
- an individual's correct filing status; and
- only one person can claim another as an exemption.

Publication 17 of the IRS, *Your Federal Income Tax*, is a useful resource for the aid office. You can view it on the Web at

www.irs.gov

or you can order a copy from the IRS at

800-829-3676

For additional information on resolving tax issues, please see: the *Application and Verification Guide*.

ADMINISTRATIVE REQUIREMENTS FOR THE FINANCIAL AID OFFICE

Coordinating official

A participating school must designate a capable individual to administer the FSA programs and to coordinate aid from these programs with all other aid received by students attending the school. To properly package and most effectively use the various types of student assistance (federal, school, state, private, etc.), the coordinating official must be aware of all aid received by students attending the school, regardless of the source. When creating a student's financial aid package, in order to ensure that a student's aid does not exceed his or her need, an aid administrator must include aid the student is receiving from external sources as well as institutional aid and FSA program assistance. Therefore, *a school's operations must be administered in a way that ensures all the information the school receives that might affect a student's FSA eligibility is communicated to the coordinating official and to the financial aid office.*

Consistency of information & conflicting information

A school must have a system of identifying and resolving discrepancies in all FSA-related information received by any school office. *A school must resolve discrepancies for all students, not just those selected for verification.* Resolution includes determining what information is correct, and documenting the school's findings in the student's file.

Such a system must include a review of—

- all student aid applications, need analysis documents, MRRs, POPs 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 previously verified the information on a student's SAR/ISIR, the school must review all information on subsequent SARs/ISIRs, and resolve discrepancies,
- any documents, including any copies of state and federal income tax returns, that are normally collected by the school to verify information received from the student or other sources, and
- any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, documentation of the student's social security number, or other factors relating to the student's eligibility for funds under FSA programs.

For instance, if a student receives veterans benefits 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 a resource for the Campus-Based programs and estimated financial assistance for the Direct Loan and FFEL programs.

Other examples include—

- 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 the student's enrollment in an ineligible program, or enrollment in summer classes immediately preceding a fall term of enrollment; and
- a school's business office must inform the aid office whenever it receives information about a student receiving an outside scholarship.

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 period of enrollment has been disbursed, and
- 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 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 postwithdrawal 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 reenroll, 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, Chapter 7*.)

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. That individual in turn 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.

Examples of conflicting information

Confilicting information may include information related to a student's eligibility such as—

- citizenship status,
- accuracy of SSN,
- default or overpayment status,
- changes in student's academic status (including grade level progression),
- COA elements,
- 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 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 CPS;
- a FAFSA filed using estimated income; and
- a student who has an expired INS document, but secondary confirmation match is successful.

Sources of conflicting information

- unsolicited tax returns or schedules,
- 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),
- ED,
- scholarships and information from outside sources,
- state agencies such as Voc. Rehab., WIA, State Scholarship Agencies, etc.,
- tips from outside sources,
- transcripts from other postsecondary, institutions,
- SARs or ISIRs,
- verification,
- C Flags,
- Reject Codes, and
- Comment Codes.

Separation of function

For further guidance on the separation of functions, contact the appropriate School Participation Team (see "Contacts" on the Financial Aid Professional portal).

Family defined

A member of an individual's family is a parent, sibling, spouse, child, spouse's parent or sibling's, or child's spouse.
Definition of control cite
34 CFR 600.31(b)
Ownership interest cite
34 CFR 668.15(f)

OIG Referrals

Department regulations (34 CFR 668.16(g)) require a school to 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. Commonly falsified items include false claims of independent student status, false claims of citizenship, use of false identities, forgery of signatures of 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. Additional information on IG referrals is available in *Volume 1 — Student Eligibility*.

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 Perkins, FFEL, and Direct Loan programs. For a complete discussion of loan counseling requirements, see *Chapter 6* in this volume, and *Volume 6—Campus-Based Programs* (for Perkins disclosure requirements).

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 one 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 occur 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.

SATISFACTORY ACADEMIC PROGRESS

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

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

Satisfactory progress references

School policy:
34 CFR 668.16(e),
Student eligibility:
34 CFR 668.32(f),
34 CFR 668.34

For a more detailed discussion of applying satisfactory progress standards, please see *Volume 1, Student Eligibility.*

Basic elements of a satisfactory progress policy

As discussed in Volume 1, a school's policy must certain basic elements:

- a **qualitative component** consisting of grades or comparable factors that are measurable against a norm,
- a **quantitative component** that consists of a maximum time-frame in which a student must complete his or her educational program, subdivided into **increments**, and
- measurement of progress at the end of each increment.

In addition, your school's policy must explain:

- the effect of ESL courses 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,
- the procedures for appealing a satisfactory progress determination, and
- the procedures for reestablishing satisfactory progress.

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.

"C" average required after 2 years

In addition to any school-determined standards, federal law requires that a student enrolled in an program of study of more than 2 academic years must, once the student has been enrolled for two academic years, have a "C" average or its equivalent, *or have an academic standing consistent with the school's requirement for graduation.* If your school does not use letter grades, it must define the equivalent of a "C" average.

Enrollment Reporting Requirements

34 CFR 682.610 FFEL
34 CFR 685.309(b) Direct Loans
"Dear Colleague" letter GEN-96-5
"Dear Colleague" letter GEN-96-17
See "NSLDS Reference Materials" on IFAP for NSLDS Newsletters, Updates, and other information

Receiving Roster Files

A school (or its servicer) must sign up to receive Roster Files through www.fsawebenroll.ed.gov/PMEnroll/index.jsp

Updating enrollment information on the Web

You can create or update student enrollment status by using the "Enroll" tab on the NSLDS Web site for aid professionals:

https://www.nsldsfap.ed.gov/

Support: **1-800-999-8219**

Enrollment Reporting/SSCR Technical References

For more information on reporting enrollment information to NSLDS, including record layouts, error codes, etc. , see the **Enrollment Reporting Guide** (formerly the SSCR User's Guide), which is available online on the **ifap.ed.gov** site (see NSLDS Reference Materials > NSLDS User Documentation)

If you will be using the SSCR software package for Enrollment Reporting, see the **SSCR Desk Reference,** which includes record layouts, error codes, etc. and is available at: **www.fsadownload.ed.gov**

Enrollment Status Codes

These codes are listed in the Record Layouts in the SSCR Technical Reference. Data submitted to the Student Loan Clearinghouse uses most of these codes.

A = Approved Leave of Absence
D = Deceased
F = Full-time
G = Graduated
H = Half-time or more, but less than full time
L = Less than half-time
W = Withdrawn (voluntary or involuntary)
X = Never attended
Z = Record not found

SHARING INFORMATION WITH NSLDS, THE DL SERVICING CENTER, AND GUARANTORS

Reporting student enrollment data to NSLDS

All schools participating (or approved to participate) in the FSA programs *must* have some arrangement to report student enrollment data to the National Student Loan Data System (NSLDS) through a Roster file (formerly called the Student Status Confirmation Report or SSCR). Student enrollment information is extremely important, because it 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. 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.

At scheduled times during the year, not less than semiannually, NSLDS sends Roster files electronically to your school (or its designated servicer) through its SAIG mailbox. The file includes all of the school's students who are identified in NSLDS as Stafford (Direct and FFEL) borrowers (or the beneficiaries of a PLUS loan). The file is not necessarily connected to loans made at your school—you also must 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 30 days of receiving it. You may also go to **www.nsldsfap.ed.gov** and update information for your students online. You're required to report changes in the student's enrollment status, the effective date of the status and an anticipated completion date. Changes in enrollment to less than half-time, graduated, or withdrawn must be reported within 30 days. However, if a Roster file is expected within 60 days, you may provide the data on that roster 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.

If your school reports enrollment data to the NSLDS, it does not have to complete SSCRs received directly from guaranty agencies. (Receiving an SSCR report from a guaranty agency may be an indication that your school has not reported to NSLDS within the last six months.) However, you must still respond to requests for borrower information from guaranty agencies, lenders, and loan servicers. You must continue to provide loan holders and loan servicers with a borrower's enrollment status and other information needed to locate the borrower for deferment and other repayment purposes.

Updating borrower information at separation

Within 60 days after the exit counseling session, your school must provide the Direct Loan Servicing Center or the guaranty agency that was listed in the borrower's student aid records any updated information about: the borrower's name; address; references; future permanent address; Social Security Number; the identity and address of the borrower's expected employer, the address of the borrower's next of kin, and the borrower's driver's license number and state of issuance.

Sharing information about delinquent/defaulted borrowers

To promote loan repayment, DL schools are encouraged to notify the Direct Loan Servicing Center if they receive new information about a delinquent borrower's location or employment. The Direct Loan Servicing Center sends participating schools a monthly electronic report of 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. The school may also wish to work with borrowers who have defaulted on their Direct Loans to help these borrowers bring their loans out of default.

An FFEL school may make agreements to provide the holders of delinquent loans with information about the delinquent borrower's location or employment. An FFEL school may also try to contact the borrower and counsel him or her to avoid default.

FFEL schools may ask a guaranty agency to provide information about students who were enrolled at the school who have defaulted on their Stafford loans. The guarantor may not charge for this information. The school may also ask the guarantor to notify the school whenever a lender requests default aversion assistance on a loan made at your school, and provide the borrower's name, address, and Social Security Number. (The guaranty agency may charge a reasonable fee for this service.) Your school may only use the information to remind the borrower to repay his or 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 in repayment, and only if your school was the last school the borrower attended before the loan entered repayment. (For instance, if a student received several Stafford loans while 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 loan is sold.)

Privacy: Sharing student records with Lenders

A student authorizes his or her school to release information to lenders by signing the promissory note as part of the loan application process. This authorization covers information relevant to the student's or parent's eligibility to borrow as well as locating the borrower. Examples of such information are enrollment status, financial assistance, and employment records.

Loan information from the guarantor

Upon request, the guarantor must inform the school of students in default on FFELs.
34 CFR 682.401(b)(24)

If the lender requests preclaims assistance, the guarantor must inform the school of this request, if the school has requested such notification.
34 CFR 682.404(a)(4)
Sec. 428(c)(2)(H) of the HEA

The guarantor must notify the school when a loan made at that school changes hands, if the school requests such information.
Sec. 428(b)(2)(F) of the HEA
34 CFR 682.401(b)(25)

Financial aid history cite

34 CFR 668.19
DCL GEN-00-12
DCL GEN-01-09, July 2001 (including July 16, 2001, update)

Transfer student monitoring process

You must verify the eligibility of transfer students for FSA funds. You may either check the student's financial aid history on the NSLDS Web site for professionals, 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 at:

www.nsldsfap.ed.gov

Financial Aid History & 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.

In order to receive students' financial aid history, *your school must register* for the Transfer Student Monitoring Process**.**

Through the transfer student monitoring 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 must send NSLDS identifying information for students transferring to your school so that NSLDS can use transfer monitoring to notify you of changes to the student's financial aid history. You may send information for students who have expressed an interest in attending your school, even if they have not yet formally applied for admission.

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

COHORT DEFAULT RATES

Generally speaking, a cohort default rate (CDR) is the percentage of a school's student borrowers who enter repayment on Stafford loans during a particular fiscal year and who default before the end of the next fiscal year. (There are other criteria and exceptions — see the complete definition in the *Cohort Default Rate Guide*.) In addition, separate CDRs are calculated for a school's Perkins loans.

Release of draft and official rates for FFEL and DL programs

The Department releases draft default rates in February to allow schools an opportunity to review and correct the data that will be used to calculate their official cohort default rates. In the early fall of each year, the Department issues the official cohort default rates. The rates that will be issued in September 2008, are based on the cohort of students who entered repayment in fiscal year 2006 (the 2006 federal fiscal year runs from October 1, 2005 – September 30, 2006). These rates will be electronically delivered to schools and posted on the Web. If your school is located in the U.S., it is required to be enrolled in the eCDR process for electronic delivery of the rates (see sidebar note for instructions).

Effect of cohort default rates

A school is **not** administratively capable when—

- the cohort default rate for Perkins loans made to students for attendance at the school exceeds 15% (see *Volume 6—Campus-Based Programs* for details), or
- the cohort default rate for Federal Stafford/SLS loans or for Direct Subsidized/Unsubsidized Loans made to students for attendance at the school equals or exceeds 25% for the three most recent fiscal years, or if the most recent cohort default rate is greater than 40%.

When a high default rate demonstrates a lack of administrative capability, the Department may choose to provisionally certify such a school.

In addition to affecting a school's administrative capability and limiting the school's participation in the FSA programs, a high default rate may make a school ineligible to participate in the FFEL, Direct Loan, Pell Grant, or Perkins programs. For detailed information on default requirements refer to the *Cohort Default Rate Guide* (posted on IFAP—see sidebar).

Default prevention & management plan

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 also implement a default management plan.

The eCDR Process

The official default rates are sent electronically to all domestic schools in the fall of each year. You must enroll in the eCDR process to receive your rates.

If your school is not enrolled, go to:
www.fsawebenroll.ed.gov
On this Web page, choose "Enroll" and then select the radio button for "Modify Existing Services for a Destination Point."

We will continue to mail default rates to foreign schools until all foreign schools have enrolled in the eCDR Process.

Default rates on the Web

The official cohort default rates for all schools participating in the FSA programs are posted on the Web at:
www.ed.gov/FSA/defaultmanagement

Default rates and suspension cite

34 CFR 668.16(m)(1)
Consequences of default cite
34 CFR 668.187
Provisional certification
34 CFR 668.16(m)(2)(i)
Exemption from default plan
HEA: Sec. 487(a)(14)(C)
34 CFR 668.14(b)(15)(B)(ii)

Sample Default Plan

A "Sample Default Prevention and Management Plan." was issued as an attachment to GEN-05-14. The sample plan is also posted in the collection of "Default Rate Materials" on the IFAP Web site.

Default Rate changes NEW

The HEOA made several changes to the cohort default rate calculation, standards, and exceptions, which will be phased in over the next few years: In particular:
• Beginning with FY 2009, the default calculation for schools will be based on defaults during a 3-year period (rather than 2-year).
• Beginning FY 2012,the school cohort default rate threshold percentage increases.
For more information, see DCL 08-12.

Cohort Default Rate Guide

For more technical information on default rates, please refer to the **Cohort Default Rate Guide**. The Guide is updated continuously on the IFAP Web site.

ifap.ed.gov/DefaultManagement/finalcdrg.html

Contacting Default Prevention & Management

Default Prevention & Management responds to questions about FFEL/DL cohort default rates, and reviews FFEL/DL cohort default rate challenges, adjustments, and appeals. It also provides technical assistance and outreach to schools to assist them in lowering their default rates.

Web: **ifap.ed.gov/DefaultManagement**
Phone: 202-377-4258
Hotline: 202-377-4259
FAX: 202-275-4511
E-MAIL: fsa.schools.default.management@ed.gov

"Enrolled" for purposes of withdrawal rates

A student enrolls when he or she completes the registration requirements (except payment of tuition and fees) at the school. 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).

Schools applying to participate are 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.

WITHDRAWAL RATES

New schools (schools that seek to participate in an FSA program for the first time) must have an undergraduate withdrawal rate for regular students of no more than 33% for an award year in order to be considered administratively capable.

When calculating the withdrawal rate, all regular, enrolled students must be included. 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 who did not actually begin attending classes. A student is considered to have withdrawn if he or she officially withdraws, unofficially drops out, is expelled from the school, or receives a refund of 100% of his or her tuition and fees. A student who withdraws from one or more courses or programs but does not withdraw entirely from the school, does not meet the definition of withdrawn. Instead, this action is considered a change in enrollment status (e.g., the student reduced his credit hours from 12 to 6).

DEBARMENT AND SUSPENSION CERTIFICATION

Debarment of school or its principals

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

The principals of the school include its owners, directors, officers, partners, employees, and any other persons 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 whether or not employed by the school 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.

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 and in the Web-based FISAP package available to schools participating in the Campus-Based programs—see *Chapter 3*.)

Institutions 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, a school may not enter into a relationship (and must terminate an ongoing relationship) with a lender, third-party servicer, or loan servicer the school determines has been debarred or suspended.

Debarment and suspension cite

Executive Order 12549
Federal Acquisition Regulations
(48 CFR Part 9, Subpart 9.4)
34 CFR Part 85

Similar debarment and suspension limitations apply to lenders, third-party servicers, loan servicers, and any individuals who provides services described in 34 CFR 668.2 or 682.200 to a FSA recipient whether nor not they are employed by the school as described in 34 CFR 600.85.995(b).

Checking debarment/suspension status online

The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is available for review at a Web site maintained by the General Services Administration.

http://epls.arnet.gov/

You should keep a copy of the search results in your records.

Covered transactions

For purposes of the debarment/suspension rules, covered transactions include:
1. disbursement of FSA funds to a student or borrower,
2. certification by an educational institution of eligibility for an FSA loan,
3. guaranteeing a loan made under an FSA program, and
4. acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under an FSA program.

Lower-tier transactions

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.

Sample certification statement from lower-tier organization

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.

Certifying current or prospective employees or contractors

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 organization 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 be 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. 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.

Financial Standards

CHAPTER 11

In this chapter, we discuss the financial standards schools must maintain to participate in the Federal Student Aid (FSA) programs, such as the composite score and refund reserve standards, as well as the criteria for evaluating the past performance of the school and persons affiliated with the school.

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.

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.

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.

CHAPTER 11 HIGHLIGHTS

- Standards for public schools
- Standards for proprietary or private non-profit schools
  - → Composite score
  - → Refund reserve standards
  - → Returning funds in a timely manner
  - → Current in debt payments
- Alternatives to the general standards
  - → Letter of credit
  - → Zone alternative
  - → Provisional certification
- Past performance & affiliation standards
  - → Past performance of a school
  - → Past performance of persons affiliated with a school

Related information

→ General Participation Requirements, Chapter 3
→ Administrative Capability, Chapter 10

Financial responsibility cites

Sec. 498(c) of the Higher Education Act
34 CFR 668 Subpart L

School Participation Teams

For information regarding accounting and compliance issues, a school should contact its School Participation Team (see the "Contacts" listing on the Financial Aid Professional Portal **www.fsa4schools.ed.gov**

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 chapter 12 for more information on required audit submissions.

Change in ownership

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

GENERAL STANDARDS 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 other 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 onetime submission and should be submitted as a separate document.

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

GENERAL STANDARDS FOR PROPRIETARY OR PRIVATE NONPROFIT SCHOOLS

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

- the school has a composite score of at least 1.5;
- the school has sufficient cash reserves to make the required refunds, including the return of Title IV funds (these requirements are known as the refund reserve standards);
- the school is meeting all of its financial obligations, including making required refunds, including the return of Title IV funds and making repayments to cover Title IV program debts and liabilities; and
- the school is current in its debt payments.

These requirements are discussed in more detail below.

Even if a school meets all of the general requirements, the Department does not consider the school to be financially responsible if—

- in the school's audited financial statement the opinion expressed by the auditor was adverse, qualified, or disclaimed, or the auditor expressed doubt about the continued existence of the school as a going concern (unless the Department determines that a qualified or disclaimed opinion does not have a significant bearing on the school's financial condition), or
- the school violated one of the past performance requirements discussed below.

Composite score

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. In addition, this method provides an equitable measure of the financial health of schools of different sizes.

The composite score methodology takes into account the differences between proprietary schools and private nonprofit schools. The variance takes into account the accounting differences between these sectors of postsecondary schools. However, the basic steps used to arrive at the composite score are the same. These steps are described in the chart on the following pages.

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:

- is located in a state that has a tuition recovery fund approved by the Department 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).

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. 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:

- deposited or transferred the funds into the bank account it maintains for federal funds (see sidebar) no later than 45 days after the date it determines that the student withdrew;
- initiated an electronic funds transfer (EFT) no later than 45 days after the date it determines that the student withdrew;
- initiated an electronic transaction, no later than 45 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
- 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 the bank used by the FFEL lender or ED no later than 60 days after the school's determination that a student withdrew in order to be considered a timely return.

Additional information on composite scores

For complete information on the calculation of the composite score, schools should refer to Appendices A and B of Subpart L in the General Provisions regulations.

The Department issued guidance on the treatment of long-term and other debt in calculating these ratios in DCL-GEN-01-02. That guidance was updated in DCL GEN-03-08.

Treatment of long-term debt cite

DCL GEN 03-08, July 2003
34 CFR 668, Subpart L, Appendices A & B

Ratios cite

34 CFR 668.171(b)(3)

Tuition Recovery Funds

When a state submits a tuition recovery fund for approval 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 FSA requirements for the order of return of funds to sources of assistance; and
• is replenished if any claims arise that deplete the fund.

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

Calculating a composite score

The first step in calculating a school's 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 a school's capital resources and its ability to borrow. The Net Income Ratio represents a measure of a school's 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 box below for regulatory list of exclusions.)

All long-term debt obtained for the school's purposes may be included for purposes of the Primary Reserve Ratio calculation. However, it is important to note that the overall level of debt obtained for long-term purposes that can be included in the numerator of the Primary Reserve Ratio is limited under the regulations. It cannot exceed the amount of the school's net property, plant, and equipment.

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 along a common scale from negative 1.0 to positive 3.0 as indicated in the diagram on the next page. This scale reflects the probability a school will be able to continue operations and meet its obligations to students and the Department.

Exclusions

Excluded items. In calculating an institution's ratios, the Secretary—

(1) 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;

(2) May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;

(3) Excludes all unsecured or uncollateralized related-party receivables;

(4) Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and

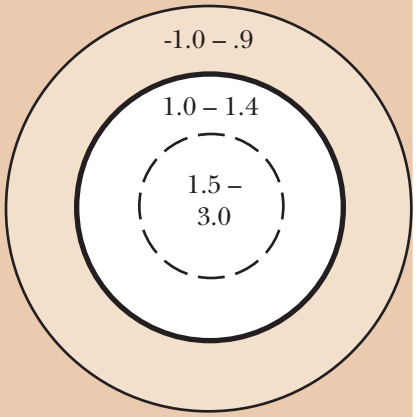
(5) Excludes from the ratio calculations Federal funds provided to an institution by the Secretary under program authorized by the HEA only if—

(i) In the notes to the institution's audited financial statement, or as a separate attestation, the auditor discloses by name and 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

(ii) The institution's composite score, as determined by the Secretary, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the ratio calculations.

34 CFR 172(c)

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

Example: Calculation of a composite score for a proprietary institution*

Calculation of Ratios

Primary Reserve Ratio $= \frac{\text{Adusted equity}}{\text{Total expenses}} = \frac{\$760{,}000}{\$9{,}500{,}000} = 0.080$

Equity Ratio $= \frac{\text{Modified equity}}{\text{Modified expenses}} = \frac{\$810{,}000}{\$2{,}440{,}000} = 0.332$

Net Income Ratio $= \frac{\text{Income before taxes}}{\text{Total revenues}} = \frac{\$510{,}000}{\$10{,}010{,}000} = 0.051$

Calculation of Strength Factor Score

Primary Reserve Strength Factor Score = 20 x Primary Reserve Ratio
20 x 0.080 = 1.600

Equity Strength Factor Score = 6 x Equity Ratio
6 x 0.332 = 1.992

Net Income Strength Factor Score = 1 + (33.3 x Net Income Ratio)
1 + (33.3 x 0.051) = 2.698

Calculation of Weighted Score

Primary Reserve Weighted Score = 30% x Primary Reserve Strength Factor Score
0.30 x 1.600 = 0.480

Equity Weighted Score = 40% x Equity Strength Factor Score
0.40 x 1.992 = 0.797

Net Income Weighted Score = 30% x Net Income Strength Factor Score
0.30 x 2.698 = 0.809

Composite Score

Sum of All Weighted Scores 0.480 + 0.797 + 0.809 = 2.086 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.

Deposit to operating account or separate federal 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 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.

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.

Compliance thresholds for timely return of funds

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.

Letter of credit required when funds are not returned in 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.

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:

- 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
- 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.

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.

Address for Letters of Credit

Letters of credit are submitted to:

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

Alternative standards and requirements cite
34 CFR 668.175

Information to be provided under zone alternative
The school must provide timely information regarding any of the following oversight and financial events:
- Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;
- Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;
- Any violation by the institution of any loan agreement;
- Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or
- Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

The school may also be required to:
- submit its financial statement and compliance audits earlier than the time specified under §668.23(a)(4); and
- provide information about its current operations and future plans.

Cite: 34 CFR 668.175(d)(2)

ALTERNATIVES TO THE GENERAL STANDARDS

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 the school 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 and does not qualify for an alternative, the Department may initiate a limitation, suspension, or termination action against the school (see *Chapter 12* for more information).

Letter of credit alternative for new school

A new school (a school that seeks to participate in the FSA programs for the first time) that does not meet the composite score standard (i.e., has a composite score of less than 1.5) but meets all other standards may demonstrate financial responsibility by submitting an irrevocable letter of credit to the Department. The letter of credit must be acceptable and payable to the Department and equal to at least 50% of the FSA program funds that the Department determines that the school will receive during its initial year of participation.

Letter of credit alternative for participating school

A participating proprietary or private nonprofit school that fails to meet one or more of the general standards or is not financially responsible because it has an adverse audit opinion may demonstrate financial responsibility by submitting an irrevocable letter of credit to the Department. The letter of credit must be acceptable and payable to the Department and equal to at least 50% of the FSA program funds that the school has received during its most recently completed fiscal year. The school is then considered to be financially responsible.

Zone alternative

A participating school that fails to meet the composite score standard (i.e., 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—

- must request and receive funds under the cash monitoring or reimbursement payment methods, as specified by the Department (see *Volume 4, Chapter 3*);
- must provide timely information regarding certain oversight and financial events (see sidebar);
- may be required to submit its financial statement and compliance audit earlier than normally required (see Chapter 12 for more information on audit submission deadlines); and
- may be required to provide information about its current operations and future plans.

The school must also require its auditor to express an opinion, as part of the school's compliance audit, on the school's compliance with the requirements of the zone alternative, including the school's administration of the payment method under which the school received and disbursed FSA program funds.

Provisional certification for school not meeting standards

If a participating proprietary or private nonprofit school fails to meet one or more of the general standards or is not financially responsible because it has an unacceptable audit opinion, the Department may permit the school to participate under provisional certification for up to three years.

The Department may permit a school that is not financially responsible to participate under provisional certification if the school is not financially responsible because it:

- does not satisfy the general standards;
- has an unacceptable audit opinion; or
- has a past performance problem that has been resolved.

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

- to submit to the Department a letter of credit, payable and acceptable to the Department, for a percentage of the FSA program funds received by the school during its most recent fiscal year. (This percentage must be at least 10% and could be as great at 100%.)
- to demonstrate that it has met all of its financial obligations and was current on its debt payments for its two most recent fiscal years.

Moreover, the school must comply with the requirement under the zone alternative that it provide timely information regarding certain oversight and financial events. Finally, a school that is required to post a letter of credit will be placed on heightened cash monitoring or reimbursement.

If a school is still not financially responsible at the end of a period of provisional certification, the Department may again permit provisional certification. However, 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.

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.

Provisional certification for school 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; in lieu of this, the school may assume the liability and repay or enter into an agreement to repay the liability; and
- the school meets all the general standards of financial responsibility (In addition, the school must demonstrate 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. (This amount must be equal to 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 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.

Notifying the Department of change of control

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 (see *Chapter 5*).

Fidelity bond coverage for employees

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.

Program Integrity

CHAPTER 12

In this chapter we discuss the responsibilities of schools, accrediting agencies, states, and the Department for ensuring the integrity of the Federal Student Aid (FSA) programs. We present ED's School Participation Teams, the Quality Assurance Program, the ISIR Analysis Tool, and the Experimental Sites Initiative. We also remind you of a school's responsibilities when its participation in one or more of the FSA programs ends.

THE DEPARTMENT'S ROLE

One of the Department's functions is to oversee the FSA programs to help ensure that they are administered properly. Here we discuss the two major types of oversight activities—audits and program reviews.

Program reviews and audits are conducted to identify compliance problems at the school and identify corrective actions. If a school is cited in a program review or audit for improperly disbursing FSA program funds, the school must restore those funds as appropriate.

If a school is cited in a program review or audit for other serious program violations, the school may be subject to corrective action and sanctions, such as fines, emergency action, or limitation, suspension, or termination discussed later in this chapter.

FSA AUDIT REQUIREMENTS FOR SCHOOLS

A school that participates in any FSA program, including a participating foreign school, generally must have an independent auditor conduct an annual audit of the school's compliance with the laws and regulations that are applicable to the FSA programs in which the school participates (a compliance audit), and an audit of the school's financial statements (a financial statement audit).

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 (see *Chapter 11*).

The type of compliance audit a school or servicer must undergo depends on its type of control: public, for-profit, or nonprofit.

- All for-profit schools must have an FSA compliance audit conducted under the Inspector General's *Audit Guide* (for FSA school audits), which is available on the IFAP Web site.
- Public and nonprofit schools must comply with the Single Audit Act. The Single Audit Act requires these schools to have an audit conducted in accordance with the Office of

CHAPTER 12 HIGHLIGHTS

- The Department's Role
- Audit Requirements
- Access to Records
- Program Reviews
- Case Management
- Corrective actions & sanctions
- Requirements when a school ceases to be an eligible institution
- Requirements when a school's FSA participation ends
- Loss of eligibility or withdrawal from loan programs
- Quality Assurance Program
- Experimental Sites

FSA Assessments

To assess your school's compliance with the provisions of this chapter see the FSA Assessment module for "Institutional Eligibility," at **ifap.ed.gov/qahome/qaassessments/institutionalelig.html**

Statutory & regulatory cites

Part H of the HEA
State role cite
Sec. 495 of the HEA
Accrediting agency cite
Sec. 496 of the HEA
Criteria used by ED for recognition of accrediting agencies cite
34 CFR 602

Audit Guide (for FSA Schools)

The official title of the Inspector General's audit guide for the FSA programs is *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers.*

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

Independent CPA/auditor
An independent certified public accountant or government auditor, except that a government auditor must meet the Government Auditing Standards qualification and independence standard, including standards related to organizational independence.

Audit reference guides
The Audit Guide and the "Blue Book" are available on the IFAP Web site under "Publications":
ifap.ed.gov

The G5 Users Guide is available at
gapsweb.ed.gov

Opportunity to send comments to Small Business 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 annually will evaluate the enforcement activities and rate each agency's 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).

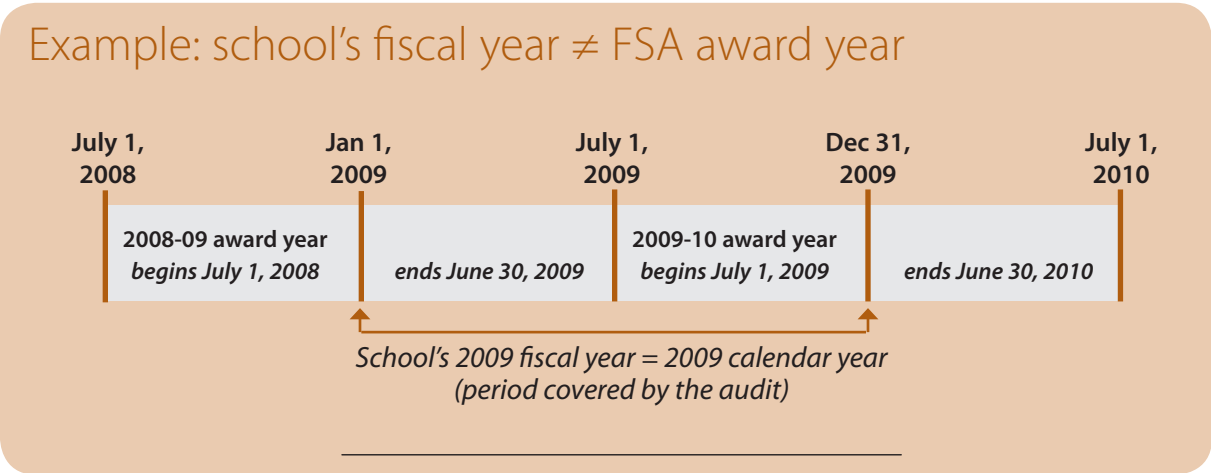
Management and Budget's (OMB) Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations. (Circular A-133 allows an FSA compliance audit under the criteria of the *Audit Guide* under limited circumstances.)

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.

Simultaneous FSA audit submissions

A school that has an audit performed under the *Audit Guide* for FSA schools must submit both the compliance audit and the audited financial statements within six months of the end of the school's fiscal year. Both the compliance audit and the financial statement audit must be performed on a fiscal-year basis. In addition, both audits must be prepared by an independent public accountant in accordance with the Generally Accepted Accounting Principles (GAAP) and audited in accordance with the Generally Accepted Government Auditing Standards (GAGAS). The compliance audit and financial statement audit may be performed by different auditors. However, the audits must be submitted as one package.

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 (see example below).



State and Accrediting Agency Roles

Accrediting agency role & requirements for recognition

The goal of accreditation is to ensure that 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; and
- 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 telecommunications, 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 to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action; 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 does not adversely affect the capacity of the institution to continue meeting the agency's standards

Information and a complete list of agencies recognized by the Department can be found at
www.ed.gov/admins/finaid/accred/index.html
Agency standards cite: Sec 496(a)(5) of the HEA; 34 CFR 602.16.

State role

The Higher Education Amendments of 1998, Public Law 105-244, require 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.

Rescinding the waiver

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 that results 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.

90/10 Disclosure

At the end of the waiver period, *for each individual year in the waiver period* (in accordance with 34 CFR 668.23(d)(4)), the auditor for a proprietary school must disclose whether the school met the 90/10 requirement of 34 CFR 600.5 and the conditions of institutional eligibility in 34 CFR 600.7 and 34 CFR 600.8(e)(2).

The school must also submit a financial statement audit for the last year of the waiver period.

See *Chapter 3* for more information about the 90/10 calculation

Waivers of the FSA audit requirement

A school may request a waiver of the annual audit requirement for up to three years if it disburses less than $200,000 dollars a year in FSA funds (and meets other regulatory conditions in 34 CFR 668.27). If such a waiver is approved, at the end of the waiver period the school must submit a compliance audit covering each individual fiscal year in the waiver period and a financial statement audit for the last year of the waiver period.

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, when the waiver period expires and the school must submit its next compliance audit, that audit must cover the institution's administration of the FSA programs since the end of the period covered by its last submitted compliance audit. In that audit, the auditor must audit, and attest to, the institution's annual 90/10 determination for the waived period.

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 audited financial statement until six months after—

- the end of the third fiscal year following the fiscal year for which the school last submitted a compliance audit and audited financial statement; or
- the end of the second fiscal year following the fiscal year for which the school last submitted compliance and financial statement audits 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.

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.

Qualifying for 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.

Examples of effects of waivers

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), it submits a compliance audit for its fiscal year that ends on June 30, 2004, and then receives a waiver so that its next compliance audit is due six months after the end of its 2006–2007 fiscal year. When it submits that audit, it must cover the 2004–2005, 2005–2006, and 2006–2007, fiscal years.

Example 2: If a school's fiscal year ends June 30, 2007 and the school receives a waiver on May 1, 2007, the next compliance audit is due six months after the end of the school's 2009-2010 fiscal year.

Submission dates cite
34 CFR 668.23(a)(4)

Submission dates for FSA audits

A school's or servicer's annual compliance and financial statements audits performed under the *Audit Guide* must be based upon the fiscal year and submitted to the Department within six months after the end of the school's or servicer's fiscal year. (These requirements do not apply to audits performed under the Single Audit Act that are due as specified in OMB Circular A-133.)

The following chart lists audit due dates and the period the audit must cover for audits due in 2008 and 2009. (The chart provides information for the most common institutional fiscal-year-end dates.)

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.

Audit submission due dates

School's fiscal year end date	*Both audits due*	*Period audited (financial and compliance)*
Sept 30, 2008	March 31, 2009	Oct 1, 2007 through Sept 30, 2008
Dec 31, 2008	June 30, 2009	Jan 1, 2008 through Dec 31, 2008
March 31, 2009	Sept 30, 2009	April 1, 2008 through March 31, 2009
June 30, 2009	Dec 31, 2009	July 1, 2008 through June 30, 2009

School's fiscal year end date	*Both audits due*	*Period audited (financial and compliance)*
Sept 30, 2009	March 31, 2010	Oct 1, 2008 through Sept 30, 2009
Dec 31, 2009	June 30, 2010	Jan 1, 2009 through Dec 31, 2009
March 31, 2010	Sept 30, 2010	April 1, 2009 through March 31, 2010
June 30, 2010	Dec 31, 2010	July 1, 2009 through June 30, 2010

FSA compliance audit submission requirements

Compliance audits must be conducted in accordance with:

- the general standards and the standards for compliance audits contained in the U.S. General Accountability Office's (GAO's) Government Auditing Standards; and
- applicable audit guides from the Department's Office of the Inspector General.

In conducting an audit, a for-profit school or servicer and its auditor should use the latest *Audit Guide* for FSA schools, the accounting and recordkeeping manual for the FSA programs (known as *The Blue Book*), and the *G5 Users Guide*, as applicable.

The independent auditor or auditing firm the school or servicer uses for its required nonfederal audit may be the same one that usually audits the school's or servicer's 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.

Financial statements must use accrual basis & GAAP standards

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 GAGAS and other guidance contained in OMB Circular A-133, or in the Department's ***Audit Guide*** (for FSA school audits).

FSA audited financial statement requirements

A school's audited financial statement must cover the school's most recently completed fiscal year. The Department uses the information in a school's audited financial statement to evaluate the school's status *vis-a-vis* the financial standards (see *Chapter 11*). 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 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 upon the school's total financial health. So that the Department can make this determination, a school must include in its audited financial

90/10 Rule cite
34 CFR 600.5 and
34 CFR 668.23(d)(4)

Circular A-133 & the Single Audit Act
Office of Management and Budget (OMB) Circular A-133 was issued pursuant to the Single Audit Act of 1984. The Single Audit Act was amended in 1996—the current requirements are found in Chapter 75 of title 31, U.S. Code.

Circular A-133 is titled "Audits of States, Local Governments, and Nonprofit Organizations " and is applicable to nonprofit postsecondary schools, states, local governments, and Indian tribal governments. For many schools, this is a combined audit of all the federal programs at that school. OMB circular A-133 is available through the OMB Home Page at

www.whitehouse.gov/omb/circulars/index.html

or by calling OMB's Publication Office at

(202) 395-3080.

Annual financial statement
Section 487(c) of the HEA provides that all schools participating in the federal student aid programs must submit *annual financial statements* to the Department. This applies to all schools, including non-profit schools that are otherwise exempt from submitting annual audited financial statements under the A-133 standards.

Federal Audit Clearinghouse
Nonprofit and public institutions submit their A-133 audits to—
Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, Indiana 47132

statements a detailed description of related entities based on the definition of a related entity in the *Statement of Financial Accounting Standards* (SFAS) 57. In addition, the description must include all related parties and a level of detail that would enable the Department to readily identify the related party. 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 related party and the school, financial or otherwise, regardless of when it occurred.

Required disclosure of 90/10 revenue test

A proprietary school must disclose the percentage of its revenues derived from the FSA programs that the school received during the fiscal year covered by the audit as a footnote to its audited financial statements. The calculation of this percentage and the funds included must be arrived at using the *cash basis of accounting*. A school that converts from a for-profit to a nonprofit status must report its compliance with the 90/10 revenue test for the first year after its conversion. Guidance on footnote disclosures can be found in the *FSA Audit Guide*, in 34 CFR 600.5, and in appropriate accounting references. Information regarding the calculation of this percentage (the 90/10 Rule) is found in *Chapter 3*.

Single Audit Act & A-133 audit guidelines

In lieu of audits performed under the *FSA Audit Guide,* some schools are required to have audits performed under the guidelines of the Single Audit Act (also known as "A-133 Audits" because the guidelines for the audits are provided in OMB Circular A-133). Audits performed under the Single Audit Act satisfy the Department's audit requirements.

Audits performed under the Single Audit Act have distinct auditing and submission requirements and must be submitted to the Federal Audit Clearinghouse. (A copy of the audit must also be submitted to the Department through the eZ-Audit Web site.) A school submitting an audit under the guidelines of the Single Audit Act must use the submission deadlines established by the Single Audit Act.

Under the requirements of Circular A-133, a school that expends less than $500,000 of federal funds during a fiscal year is exempt from submitting an annual A-133 audit. (The former criteria of $300,000 was increased for fiscal years ending after December 31, 2003.) However, a school that spends less than $500,000 in all federal funds is still required to submit a financial statement to the Department within 6 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, the school must submit those audited financial statements to the Department no later than 6 months after the end of the institution's fiscal year.

Circular A-133 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. The FSA program regulations require a financial statement audit. Therefore, *a school may not submit a program-specific audit to satisfy the Department's audit submission requirements.*

Circular A-133 also now allows an independent auditor to use professional judgment to determine whether certain federal programs must be included in the scope of an audit. An independent auditor can exclude certain program components, such as FSA program funds, if they fall below a predetermined dollar and risk threshold.

The independent auditor must make an annual assessment of the dollar and risk conditions, determine whether such exclusions are appropriate, and whether any FSA programs must be included within the scope of the audit. You can find additional information on this topic in the latest Compliance Supplement to Circular A-133.

Third party servicers

Guidance for audits of third-party servicers is found in the January 2000 Department of Education's "Audit Guide, Audits of Federal Student Aid Programs at Participating Institutions and Institution Servicers."

Citations:
34 CFR 668.23(a)(3) and (c)
34 CFR 668.23(d)(5)

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 9*.) 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.

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 GAAP and audited by an independent auditor in accordance with 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 that it contracts with 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.

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.)

eZ-Audit applicability

This requirement applies to any compliance audits or financial statements required under 34 CFR 600.20(a) or (b) to begin or continue participating in the FSA programs, any financial statements required due to a change in ownership resulting in a change in control as provided under 34 CFR 600.20(g), any 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).

Information about eZ-audit

Web site: **http://ezaudit.ed.gov**
E-mail contact: **fsaezaudit@ed.gov**
eZ-Audit Help Desk: **877-263-0780.**

Cooperation with audit & review process

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, the appropriate guaranty agency and accrediting agency.

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, completeness, and to ensure that it complies with the government's auditing standards.

We will use the general information to make an initial determination of whether the audits are materially complete and conducted in accordance with applicable accounting standards. Based on the financial data, we will also make a preliminary determination as to 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 the school satisfies the financial ratio requirements (see *Chapter 11*). Later, the Department will review submissions to determine whether the school must provide additional information or ED 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, the school or servicer must repay any improperly spent funds within 45 days.

Access to records

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.

eZ-Audit

eZ-Audit is a Web-based application launched by the Department on April 1, 2003. It provides a paperless single point of submission for financial statements and audits (i.e., compliance reports). **eZ-Audit** provides automatic error checking as you enter the data and before submission. In addition, it gives you instant acknowledgment of receipt.

Since June 16, 2003, all schools that participate in the Federal Student Aid Programs have been required to submit financial statements and compliance audits to FSA electronically through the eZ-Audit process (including copies of the A-133 reports that nonprofit and public institutions file with the Federal Audit Clearinghouse).

Nonprofit and public institutions are still required to submit their A-133 audits in writing to the Federal Clearinghouse.

The eZ-Audit process

To access the eZ-Audit Web site you must be a registered user. Each school must select an eZ-Audit Institution Administrator who will be responsible for managing your school's access to the eZ-Audit Web site. This Institution Administrator will receive the user name and password necessary for your school's access, and will be responsible for granting access to others you name as additional users.

Each registered user must sign and retain the eZ-Audit Rules of Behavior. (For registration instructions and to download the Rules of Behavior. Please visit **ezaudit.ed.gov**).

Once you have obtained your school ID, you will access the appropriate page on the Audit Web site, and —

1. enter general information about your school's compliance audit and financial statement;
2. enter specific financial data directly from its audited financial statement; and
3. attach authentic electronic copies of the audit originals.

After you have entered the required information, you must attach a copy of the audit prepared and signed by the independent auditor. The copy must be in a PDF, non-editable format created using Adobe Acrobat version 5.0 or higher.

Program Reviews

The Department gives priority in program reviews to schools that meet criteria specified in the law as follows:
- a school has a high cohort default rate or dollar volume of default;
- a school has a significant fluctuation in Pell Grant awards or FSA loan volume, that is not accounted for by changes in the programs
- a school is reported to have deficiencies or financial aid problems by the appropriate state agency or accrediting agency;
- a school has high annual dropout rates; and
- it is determined by the Department that the school may pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.

In addition, 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 recordkeeping errors if the errors are not part of a pattern and there is no evidence of fraud or misconduct; and
- inform the appropriate state and accrediting agency whenever it takes action against a school.

PROGRAM REVIEWS

The Department conducts program reviews to confirm that a school meets FSA requirements for institutional eligibility, financial responsibility, and administrative capablity.

A program review covers many of the same areas as an audit, including fiscal operations and accounting procedures, as well as the school's compliance with the specific program requirements for student eligibility and awards. However, program reviews are not conducted annually at every school. Priority is given to schools that meet certain criteria as specified in the law.

During a program review, Department reviewers evaluate the school's compliance with FSA requirements, assess liabilities for errors in performance, and identify actions the school must take to improve its future administrative capabilities. The reviewers will:

- analyze the school's data and records and identify any weaknesses in the school's procedures for administering FSA funds;
- determine the extent to which any weaknesses in the school's administration of FSA funds may subject students and taxpayers 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 any harm resulting from the school's impaired performance and identify liabilities where noncompliance results in loss, misuse, or unnecessary expenditure of federal funds; and
- refer schools for administrative action to protect the interests of students and taxpayers, when necessary.

Scope of the review

A program review may be either a general assessment review or a focused 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.

For general assessment and some focused reviews, the review team will identify students whose files will be reviewed. In general, a review sample consists of 15 randomly selected students from each award year under review. The academic file, student account ledger, student financial aid file, and the admissions file for each student in the review sample will be analyzed.

Reviewers will also examine institutional 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 Web site, 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 officer, and/or campus security personnel. In addition, the reviewer may interview students.

Notification of the review

Most reviews are announced up to 30 days prior to the review by a telephone call to the President and financial aid administrator. The school is also sent written notice of the review and is asked to provide relevant materials prior to the start of the review (i.e., policies and procedures, consumer publications, a list of FSA recipients, etc.). The school will also be expected to make other records available on-site at the start of the review. In some cases, notice for the review is given the day before the review (via overnight delivery or fax), the morning of the review (via fax), or at the time the review team arrives at the school.

Schools are required to cooperate with the Department in the event of a program review and provide unrestricted access to any and all information requested to conduct the review. Failure to provide this access to the program review team may lead to an adverse administrative action.

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 written report after completion of the review. In most instances, this report will be sent to the school within approximately 60 days of the review. The school may

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.

Administrative subpoena authority

The Amendments of 1998 give the Department the authority to issue administrative subpoenas to assist in conducting investigations of possible violations of the provisions of FSA programs. In addition, 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.

Administrative subpoena authority cite:
Sec. 490A of the HEA

Access to records

Access includes the right to copy records (including computer records), to examine computer programs and data, and to interview employees without the presence of management or the presence of the school's or a servicer's tape recorder.
Access and examination cite
34 CFR 668.24(f)

Case Management

Case management is the Department's approach to oversight of schools that participate in the FSA programs. School Participation Management conducts program reviews, reviews compliance audits and financial statements, reviews recertification applications, and provides the Department with a picture of a school's overall compliance through the use of School Participation Teams.

FSA's School Eligibility Channel (SEC) coordinates the case management approach. School Participation Teams are staffed by personnel in the regions and in Washington, DC, and each is assigned a portfolio of schools. Each team is responsible for oversight functions for the schools in its portfolio. These functions include audit resolution, program reviews, financial statement analysis, recertification, and method of payment.

The entire team will evaluate information on the school from a variety of sources to identify any compliance issues at the school. The team can then assess potential risk to the FSA programs and determine appropriate action. Once appropriate actions are decided upon, the case manager assigned to the school ensures that the recommended actions are taken.

School Participation Teams 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.

Possible actions

A School Participation Team 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 Team can recommend a school for participation in the Quality Assurance Program.

The Department will use a system of risk analysis as well as other tools to identify schools with the greatest need for oversight. The Department will use analysis by various Department data systems to generate a risk score for a school. This will enable the Department to target resources to those schools that present the highest risk to the government.

Case management 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 Teams, see the "Help" link on the IFAP Web site: **ifap.ed.gov**

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.

Appealing audit and program review determinations

The law allows for appeals of final audit or program review determinations. Note that only a final determination may be appealed. The letter conveying a final audit determination is clearly identified as a Final Audit Determination Letter and explains the appeals procedures. For a program review, the final determination letter is identified as a Final Program Review Determination Letter 34 CFR Part 668 Subpart H.

Final Program Review Determination (FPRD)

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.

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. 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.

Reviews conducted by Guaranty Agencies

The FFEL Program regulations require guaranty agencies to conduct program reviews at postsecondary schools. A guaranty agency must conduct biennial (once every two years) on-site reviews of ***at least all schools*** for which it is the principal guaranty agency that have a cohort default rate for either of the two preceding fiscal years that exceeds 20%.

Schools that the Department requires to take specific default reduction measures and schools where the total amount of loans entering repayment in each of those fiscal years does not exceed $100,000 are exempted. Alternatively, a guaranty agency may use its own criteria to select schools for the biennial on-site reviews if the Department approves the agency's proposed alternative selection methodology.

Two copies of the guaranty agency's report are forwarded to the Department, including the school's payment if liabilities were assessed.

A program review conducted by a guaranty agency is similar to a Department program review, consisting of an entrance interview, a review of student records, an exit interview, and a written report. However, the guaranty agency's review will focus on how the school meets FFEL-specific requirements, such as:

- certification of the loan application;
- maintenance of records supporting the student's loan eligibility;
- processing procedures and payment of loan monies; and
- prompt lender notification when the student changes enrollment status, such as complete withdrawal.

Regulations on corrective actions & sanctions

For details on steps that a school should follow in any of these situations, see Subpart G of the General Provisions regulations and Section 600.41 of the Institutional Eligibility regulations.

Actions due to program violations or misrepresentation

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, the Department may take an emergency action, fine the school, or initiate a limitation, suspension, or termination of FSA program participation.

Criminal penalties cite

Sec. 490 of the HEA

CORRECTIVE ACTIONS AND SANCTIONS

Sanctions

Sanctions include emergency actions, fines, limitations, suspensions, and terminations (see descriptions on next page). The Department may initiate actions against any school that:

- violates the law or regulations governing the FSA programs, its PPA, 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 *3*.)

Criminal penalties

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.

Sanctions & Corrective Actions

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 or certifying FFEL applications. 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 $27,500 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 twenty 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, the Department imposes specific conditions or restrictions upon a school as it administers FSA program funds. As a result, the school is allowed to continue participating in the FSA programs. A limitation lasts for at least 12 months. 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.

Notification requirement

34 CFR 600.40

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(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and

(2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

NOTIFYING ED WHEN A SCHOOL'S FSA PARTICIPATION ENDS

A school may stop participating in the FSA programs voluntarily or it may be required to leave involuntarily, as described below. In either situation, there are required closeout procedures to follow (see following section).

In general, a school that ceases to be eligible must notify the School Eligibility Channel within 30 days of its loss of eligibility to participate in the FSA programs. .

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 (see details on next page);
- the school loses its accreditation (see details on next page);
- the school loses its state licensure;
- the school loses its eligibility (see details on next page);
- the school's PPA expires;
- the school's participation is terminated under Subpart G;
- the school's provisional certification is revoked by the Department;
- the school's cohort default rate exceeds allowable limits; or
- the school files a petition for bankruptcy or the school, its owner, or its CEO is responsible for a crime involving FSA funds.

Voluntary withdrawal from FSA participation

For any number of 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 Perkins 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. For more information on these requirements and procedures, contact the appropriate School Participation Team.

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 the 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 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 teachout arrangement, the school should contact the appropriate School Participation Team for guidance.

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 decision to terminate the school's accreditation. In addition, 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 original order is rescinded by the accrediting agency. 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 that 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.

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.

Closeout of 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

If an additional location or branch of an institution 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. (20 USC 1087(c)(1).

CLOSEOUT PROCEDURES

When participation ends

When a school's participation in an FSA program ends—for whatever reason—the school must immediately notify the Department and comply with the following minimum requirements:

- within 45 days of the effective ending date of participation, submit to the Department all financial reports, performance reports, and other reports required by each appropriate FSA program regulation, 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 34 CFR 668.24) all records concerning the school's management of the appropriate FSA programs. (See *Chapter 9*.)
- tell the Department how the school will provide for collecting any outstanding FSA program student loans held by the school.
- refund students' unearned FSA student assistance. (See *Volume 5—Chapter 2*.)

Additional closeout procedures

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). The school must also return to the appropriate lenders any loan proceeds the school received but has not disbursed to students. If the school's participation in the Leveraging Educational Assistance Partnership (LEAP) Program ends, the school must inform the state and follow the state's instructions.

Unpaid commitments

If a school's participation ends during a payment period (or enrollment period for FFEL programs), 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 the FSA program funds in its possession 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;

Note: The school may request additional funds from the Department to meet these commitments.

- satisfy any unpaid FFEL commitments made to students for that period of enrollment by delivering subsequent FFEL disbursements to the students or by crediting them to the students' accounts (only if the first disbursement already was delivered or credited before the school's participation ended);
- use the FSA program funds in its possession to satisfy unpaid Direct Loan commitments made to students for that period of enrollment before participation ended by delivering subsequent Direct 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 fulfill this commitment.

If you need additional information, contact the School Participation Team for your region (see "Contacts" on the Financial Aid Professional portal, **fsa4schools.ed.gov**).

LOSS OF ELIGIBILITY OR WITHDRAWAL FROM LOAN PROGRAMS

If a school is notified that it has lost its eligibility to participate in the Direct Loan or FFEL programs 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 certify Stafford and PLUS loans for students or parents. If the school appeals its loss of eligibility within the required timeframe, the school may continue certifying Stafford and PLUS 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.

A student enrolled at a school that loses eligibility or discontinues participation in the Direct or FFEL programs, can continue to receive interest subsidies if the student enrolls and remains enrolled at an eligible school.

If a school plans to withdraw from participation in the Direct Loan and/or FFEL programs, it must notify the appropriate guaranty agency or agencies (for FFEL schools) and the Department (for schools with either loan program) of its decision in writing. Once the effective date of withdrawal has been established, the school is prohibited from disbursing loan funds to the student. However, if your school made a first disbursement to the student before it lost eligibility, it may still be able to make a subsequent disbursement to that student. (See the conditions in 34 CFR 668.26(d).)

Applying to join the QA Program

Schools that are interested in becoming a QA Program participant should contact the QA staff at the following e-mail address — **quality.assurance@ed.gov**

Experimental Sites contact

For further information on the Experimental Sites Initiative, please write the Experimental Sites Team at **ExperimentalSites@ed.gov**

Statutory authority

Quality Assurance Program
Sec. 487A(a) of the HEA
20 U.S.C. 1094a(a)
Experimental Sites Initiative
Sec. 487A(b) of the HEA
20 U.S.C. 1094a(b)

Approved Areas of Experimentation

Experiments involving the following requirements resulted in legislative change:

- Thirty Day Delay (HERA 2006)
- Multiple Disbursement (HERA 2006)
- Ability-to-Benefit (HEOA 2008)

QUALITY ASSURANCE PROGRAM

Under the Quality Assurance (QA) Program, participating schools design and establish a comprehensive quality improvement program to increase award accuracy and strengthen their administration and delivery of the FSA programs and services. Its mission is to help schools attain, sustain, and advance exceptional student aid delivery and service excellence.

Schools participating in the QA Program are exempt from certain verification requirements. In exchange, they must develop a school-specific verification program based on data gathered and analyzed from QA Program activities. FSA provides a Web-based software application—the ISIR Analysis Tool (which is described in detail on the following pages)—to help schools analyze how well their verification procedures are working. All schools can benefit from using this software tool; however, only schools participating in the QA Program receive the verification flexibility.

EXPERIMENTAL SITES INITIATIVE

If a school believes that it has a better way to administer aspects of the FSA programs than the methods required by statute or regulation, it may apply to be an experimental site. This partnership between ED and schools encourages them to develop and test alternative approaches to streamline procedures and processes, eliminate delays, and remove administrative barriers for students and staff. Schools participating in this initiative are required to report specific performance data to ED annually on the progress of the experiments.

The Higher Education Opportunity Act continues the authority for the Experimental Sites Initiative. The Department plans to publish a Notice in the *Federal Register* inviting ideas for new experiments, and we encourage all schools to consider submitting proposals after the Notice is published. In the Notice, schools will be asked to design and implement rigorous experiments that include, as appropriate, control and experimental groups to test and measure the alternative interventions. These groups may be within a single school or from one or more other schools. We will also strongly encourage schools to establish consortia of different types of schools that would test the impact of an experiment on as wide a cross-section of the community as possible.

FSA Assessments

The FSA Assessments are intended to help all schools examine and improve operations. The assessments can help you:

1. Anticipate and address problems;
2. Spot-check the systems you are using to manage information;
3. Prepare for your audit or other review;
4. Maximize the efficiency of your staff in handling their duties; and
5. Revise your approaches according to your campus needs, and do so continually.

To enhance their effectiveness, the FSA Assessments include activities to test compliance and procedures. They also are linked to the latest regulations, Blue Book, Dear Colleague Letters, Federal Registers, and other related documents. Downloadable Microsoft Word documents include the hyperlinks as well.

The Policies and Procedures assessment is a new addition to the FSA Assessments. It helps schools create new policies and procedures, or cross-reference with documents that include policies and procedures.

FSA Assessments can be found under "Tools for Schools," on the IFAP site (**ifap.ed.gov**). At the end of each assessment you will find links to:
• Management Enhancements (for dealing with areas that need improvement), and
• Policies and Procedures (for developing new or evaluating existing policies and procedures.

The FSA Assessments currently available are

- Student Eligibility
- Satisfactory Academic Progress
- FSA Verification
- Institutional Eligibility
- Default Prevention & Management
- Consumer Information
- Fiscal Management
- Return of Title IV Funds
- Perkins Due Diligence
- Perkins Repayment
- Perkins Cancellation
- Perkins Awarding & Disbursement
- Perkins Forbearance & Deferment
- Federal Work-Study
- FSEOG
- Automation
- Policies and Procedures

ISIR ANALYSIS TOOL

The ISIR Analysis Tool is-a Web-based application that analyzes FAFSA data reported on the ISIR. A school uses the information to fine tune its own institutional verification procedures.

The ISIR Analysis Tool compares initial and paid-on ISIR transactions to determine if changes in student reported information had an impact on EFC and Pell eligibility. Users upload initial and paid-on records from FSA's ISIR Datamart into a database in the ISIR Analysis Tool. Users can construct queries, develop custom formats, and field increments to obtain data from the tool that can help identify problematic areas, zeroing in on specific EFC ranges, data elements, and populations. This data can help a school customize its verification procedures and consumer information provided to students and parents. In addition, the data can identify sections of the FAFSA that may be most confusing to applicants and their families. Such information can help FSA improve verification selection criteria through the Central Processing System
.
The ISIR Analysis Tool provides a full complement of report and analytical capabilities utilizing state-of-the-art Web technology. The reports generated from the ISIR records can help a school identify groups of students for whom CPS edits are missing and develop discretionary verification procedures that focus on students making changes that affect the EFC and Pell eligibility.

To use the ISIR Analysis Tool, your school must enroll in FAA Access to CPS Online. For more information, please refer to:
www.fsawebenroll.ed.gov

For additional guidance about using the ISIR Analysis Tool, a school should use the resources available at:
ifap.ed.gov/qahome/guidance.html.