Volume 1
Elements of Institutional Eligibility
Table of Contents

Chapter 1–School Eligibility 1-1

Type & Control 1-1
- *The three types of eligible institutions* 1-1
- *Institutional control* 1-1

Basic Criteria for Eligible Institutions 1-3

Accreditation 1-3
- *Alternatives to regular accreditation* 1-3
- *Primary accreditor* 1-3
- *Dual accreditation* 1-4

Admissions Standards 1-4
- *High school diploma* 1-4
- *Recognized equivalent of a high school diploma* 1-4
- *Homeschooled students & compulsory school attendance* 1-5
- *Preparatory programs for students without a high school diploma or equivalent* 1-5

Factors Leading to Loss of Eligibility 1-6
- *Limitations* 1-6
- *Bankruptcy or crimes involving FSA programs* 1-6

Criteria to Participate in TEACH Grant Program 1-7

Withdrawal Rates 1-7

The Program Participation Agreement 1-8
- *Purpose and scope of the PPA* 1-8
- *Expiration or termination of the agreement* 1-8

Chapter 2–Program Eligibility 1-11

Determining Program Eligibility 1-11

Basic Types of Eligible Programs 1-12
- *Eligible programs at an institution of higher education* 1-12
- *Eligible programs at a proprietary or postsecondary vocational institution* 1-12

Programs Leading to Gainful Employment 1-13

Additional Eligibility Requirements 1-13

Written Arrangements Between Schools 1-14
Consortium agreement 1-15
Contractual agreement 1-15
Study-abroad programs 1-16
Types of study-abroad programs 1-17
Distance Education & Correspondence Study 1-17

Chapter 3–School Participation Requirements 1-19
Administrative Requirements for the Financial Aid Office 1-19
Consistency of information & conflicting information 1-19
OIG referrals 1-21
Coordinating official 1-22
Counseling 1-22
Adequate staffing 1-22
System of checks and balances 1-22
Code of conduct 1-23
Contracts with Third-Party Servicers 1-24
Excluded functions 1-24
Excluded entities 1-25
Requirements of a third-party servicer contract 1-25
Incentive Compensation Prohibition 1-26
Required Electronic Processes 1-27
Information for Financial Aid Professionals (IFAP) 1-27
Minimum systems requirements 1-28
Sharing Information with NSLDS, Federal Loan Servicers, & Guarantors 1-28
Reporting student enrollment data to NSLDS 1-28
Updating borrower information at separation 1-29
Sharing information about delinquent/defaulted borrowers 1-29
Financial aid history & transfer monitoring 1-30
Satisfactory Academic Progress (SAP) 1-30
Basic elements of an SAP policy 1-31
Provisions for U.S. Armed Forces Members & Families 1-31
In-state tuition rates for active-duty service members and family attending public institutions 1-31
Readmission of service members 1-32

Chapter 4–Consumer Information 1-35
Availability of Information 1-35
Notice to enrolled students 1-35
Web dissemination 1-35
Availability of employees for information dissemination purposes 1-36
Disclosures 1-36

Textbook Information 1-38
Loan Counseling 1-38
Entrance counseling 1-38
Direct Loan counseling on the Web 1-39
Providing borrower information at separation 1-39
Exit counseling follow up 1-39
TEACH exit counseling 1-40
Counseling for correspondence & study-abroad students 1-40
Misrepresentation 1-40
Information about Private Loans 1-42
Disclosures required for private education loans 1-42
Self-certification form for private education loans 1-43
Schools as private lenders 1-43
Preferred lender lists 1-44
Preferred lender disclosures 1-44
Use of institution & lender name 1-45

Chapter 5–Recordkeeping and Privacy 1-49

Required Records 1-49
Records related to school eligibility 1-49
Records relating to student eligibility 1-50
Fiscal records 1-50
Loan program records 1-52
Record Retention Periods 1-53
Record Maintenance 1-54
Acceptable formats 1-54
Special requirements for SARs and ISIRs 1-54
Examination of records 1-55
Location 1-55
Cooperation with agency representatives 1-55
Privacy of Student Information (FERPA) 1-56
Students' & parents' rights to review educational records 1-56
Prior written consent to disclose the student's records 1-57
Disclosures to school officials 1-58
Disclosures to government agencies 1-58
Disclosures in response to subpoenas or court orders 1-58
Documenting the disclosure of information 1-59
The E-Sign Act & Information Security 1-60
Obtaining voluntary consent for electronic transactions 1-60
Safeguarding confidential information in electronic processes 1-60
Establishing & maintaining an information security program 1-61

Chapter 6–Other Administrative Requirements 1-63
Safety Requirements 1-63
Reporting crimes 1-63
Fire safety 1-64
Missing persons procedures 1-64
Emergency response & evacuation 1-65
Timely warning & emergency notification 1-66
Reporting Information on Foreign Sources & Gifts 1-66
Anti-Lobbying Provisions 1-67
Prohibition on use of FSA funds 1-67
Campus-based disclosure 1-67
Voter Registration 1-67

School Eligibility

CHAPTER 1

This chapter discusses the three types of institutions that are eligible to participate in the Federal Student Aid (FSA) programs. If circumstances change and a participating school no longer qualifies as an eligible institution, it must notify the Department of Education (the Department) and carry out the closeout procedures described in Volume 4, Chapter 2.

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

TYPE & CONTROL

The three types of eligible institutions

The law defines three kinds of eligible institutions: *institutions of higher education*, *proprietary institutions of higher education*, and *postsecondary vocational institutions*. Each type of school is eligible to participate in all the FSA programs, provided it offers the appropriate type of program (see the chart on the 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, it is possible for some programs at an institution of higher education to meet the requirements for a postsecondary vocational institution.

Institutional control

The control of an institution distinguishes whether it is public or private, nonprofit or for-profit. By definition, an institution of higher education or a postsecondary vocational institution can be either public or private but is always nonprofit. A proprietary institution of higher education is always a private, for-profit institution.

CHAPTER 1 HIGHLIGHTS

- Type and control
- Basic criteria for eligible institutions
- Accreditation
- Admissions standards
- Factors leading to loss of eligibility
- Criteria to participate in TEACH Grant program
- Withdrawal rates
- The Program Participation Agreement

Related information

➔ Eligible program—*Chapter 2*
➔ Closeout procedures—*Volume 4, Chapter 2*
➔ Applying to participate, *New School Guide*
➔ Eligibility of homeschooled and correspondence students—*FSA Handbook 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:
http://ifap.ed.gov/qahome/qaassessments/institutionalelig.html

Type and Control of Eligible Institutions

Institution of Higher Education A public or private nonprofit educational institution located in a state	*Proprietary Institution of Higher Education* A private, for-profit educational institution located in a state	*Postsecondary Vocational Institution* A public or private nonprofit educational institution located in a state
The institution offers (1) associate, bachelor's, graduate, or professional degree programs; (2) a program of at least two years that is acceptable for full credit toward a bachelor's degree; or (3) a training program of at least one academic year that leads to a certificate or other nondegree recognized credential and prepares students for gainful employment in a recognized occupation.	The institution must (1) provide training for gainful employment in a recognized occupation or (2) have provided a program leading to a baccalaureate degree in liberal arts continuously since Jan. 1, 2009 (with continuous regional accreditation since Oct. 1, 2007, or earlier). Programs offered must meet the criteria of at least one category below: (1) They are at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. They may admit students without an associate degree or equivalent. (2) They are at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. They must be a graduate/professional program or must admit only students with an associate degree or equivalent. (3) They are at least a 10-week (instructional time) undergraduate program of 300–599 clock hours. They must admit at least some students who do not have an associate degree or equivalent and must meet specific qualitative standards. Note: These programs are eligible only for Direct Loan participation.	The institution must provide training for gainful employment in a recognized occupation. Programs offered must meet the criteria of at least one category below: (1) They are at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. They may admit students without an associate degree or equivalent. (2) They are at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. Must be a graduate/professional program or must admit only students with an associate degree or equivalent. (3) They are at least a 10-week (instructional time) undergraduate program of 300–599 clock hours. Must admit at least some students who do not have an associate degree or equivalent and must meet specific qualitative standards. Note: These programs are eligible only for Direct Loan participation.

All three institutional types may also provide a comprehensive transition and postsecondary program for individuals with intellectual disabilities.

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

BASIC CRITERIA FOR ELIGIBLE INSTITUTIONS

To be eligible an institution must

- be legally authorized by a state to provide a postsecondary education program in that state (see *Volume 2*, *Chapter 1*, of the *FSA Handbook*),
- be accredited by a nationally recognized accrediting agency or have met the alternative requirements, if applicable, and
- 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.

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.

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

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

If a school is seeking to change primary accreditors, it must first provide the Department and the agencies all materials documenting the reasons for the change.

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 FSA eligibility. If a school

Definitions of eligible institutions
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 defined
"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.
Authorization by a state 34 CFR 600.4(a)(1)

Foreign schools eligible for Direct Loan Program
In general, by law, a foreign school can participate in the Direct Loan Program if the foreign school is comparable to an institution of higher education and has been approved by the Department.

The regulations set out specific requirements for foreign schools.

You can find additional information about foreign school eligibility on the Foreign School Information page on the IFAP website (**http://ifap.ed.gov/ForeignSchoolInfo/ForeignSchoolInfo.html**).

State authorization & alternatives
The criteria for a school to be considered legally authorized by a state were publshed in the Federal Register, October 29, 2010, as new section 34 CFR 600.9, effective July 1, 2011. GEN-11-05 (March 17, 2011) provided further guidance on state authorization.

Definition of religious institution

An institution that

- is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and
- awards only religious degrees or certificates, including but not limited to a certificate of Talmudic studies, an associate of biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

34 CFR 600.9(b)(2)

Nationally recognized accrediting agency or association

An accrediting agency or association that 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 state approval agencies is in section 10.

Preaccredited:

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

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

Alternatives to accreditation

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

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 electronic application or E-App. Further, the school must provide to the Department and to both agencies all materials documenting the reasons for dual accreditation before the school adds the additional accreditation. See *Volume 2, Chapter 5*, of the *FSA Handbook* 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, are beyond the age of compulsory school attendance in the state in which the school is located, or are dually enrolled in the college and a secondary school. Admissions standards also play a role in student eligibility, as discussed in *Volume 1, Chapter 1,* of the *FSA Handbook*.

High school diploma

A high school diploma is a document recognized by the state in which the high school is located. Unless required by its accrediting or state licensing agency, the college is not required to keep a copy of a student's high school diploma or General Educational Development (GED) certificate. Rather, the college may rely on the student's certification (including that on the FAFSA) that she has received the credential, and a copy of the certification must be kept on file. This certification need not be a separate document. It may be collected on the college's admissions application. The college may also require the student to provide supporting documentation.

Recognized equivalent of a high school diploma

The following are the equivalent of a high school diploma:

- A GED certificate.
- A state certificate awarded after passing an authorized test and that the state recognizes as equivalent to a high school diploma.
- An academic transcript showing that the student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree.
- For a student seeking enrollment in a program of at least the associate degree level, documentation showing that he excelled academically in high school and has met the formalized written admissions policies of the college.

Homeschooled students & compulsory school attendance

The Department considers that a homeschooled student is beyond the age of compulsory school attendance if the state in which the eligible institution is located does not consider him truant once he has completed the homeschool program.

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

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

Preparatory programs for students without a high school diploma or equivalent

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

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

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

The law does not require a school to verify that a student is enrolled in a preparatory program or to monitor his progress in it. A student who does not have a high school diploma or its recognized equivalent is not required by law to enroll in such a program, but the school may make this an admission requirement.

A student may not receive FSA funds for the program.

Admissions standards

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

Checking validity of high school diplomas

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

Regular student

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

Dual enrollment in high school

20 USC 1001(b)(2)(B), 1002(b)(2)(B) and (c)(2)(B)

Admissions standards as a student eligibility issue

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

Related requirements

A school may not deny readmission to a service member of the uniformed services for reasons relating to that service. See *Chapter 3* for more information.

Students admitted without a high school diploma or equivalent

A school that admits students who do not have a high school diploma nor its recognized equivalent has additional considerations. A waiver of this limitation is possible for some schools. See the discussion under *Limitation on students without HS diploma or equivalent* in *Volume 4, Chapter 1*.

Notifying ED of changes to school's E-App information

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted E-App, which deal with enrollment thresholds for the limitations below, 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 limitation on students without a high school diploma or equivalent.

34 CFR 600.7(h)

Conditions of institutional ineligibility

34 CFR 600.7

Prohibition on employment of individuals who have misused government funds

A school may not have as principals or employ or contract with other organizations that employ individuals who have engaged in the misuse of government funds.

TEACH Grant Program

34 CFR Part 686

FACTORS LEADING TO LOSS OF ELIGIBILITY

Limitations

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

- the 50% limit on students without a high school diploma or equivalent (for schools that don't offer a four-year bachelor's degree program or a two-year associate degree program),
- the incarcerated student limitation (25%), or
- the correspondence course limitation (50%) or correspondence student limitation (50%).

The school must demonstrate compliance with these limitations, and its calculations must be attested to by the independent auditor. *Volume 4, Chapter 2*, which describes FSA audit requirements, discusses the calculations in more detail and how the school must notify the Department of a failure to meet any of these requirements.

Bankruptcy or crimes involving FSA programs

A school is not eligible if it files for relief in bankruptcy or has entered against it an order for bankruptcy. The school is also ineligible if either of these circumstances apply to an affiliate of the school that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the school.

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

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

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

CRITERIA TO PARTICIPATE IN TEACH GRANT PROGRAM

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

- be accredited by a specialized accrediting agency recognized by the Department for the accreditation of professional teacher education programs, or
- be approved by a state and provide extensive pre-service clinical experience.

If a school does not have a teacher preparation program, it can qualify for TEACH grants if it

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

TEACH Grant eligibility

Recognized agencies for the accreditation of professional teacher education programs include the Teacher Education Accreditation Council (TEAC) and National Council for Accreditation of Teacher Education (NCATE). Note: On Oct. 22, 2010, TEAC and NCATE agreed to merge as the Council for the Accreditation of Educator Preparation (CAEP).
GEN-08-07
34 CFR 686.2
34 CFR 686.4

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% during the school's latest completed award year.

When calculating the withdrawal rate, the school must include all regular, enrolled students. 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

"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).

Program Participation Agreement

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

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
- Iraq and Afghanistan Service Grant*
- TEACH Grant
- Federal Supplemental Educational Opportunity Grant (FSEOG)
- Federal Work-Study (FWS)
- Federal Perkins Loan
- Federal Direct Loan Program (DL)

* A school that is certified for Pell Grant purposes is considered to be certified for the Iraq and Afghanistan Service Grant program.

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).

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: 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. See *Volume 2* of the *FSA Handbook* for more information.

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

- the school changes ownership that results in a change in control,
- 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,
- the school's period of participation expires, or
- the school's provisional certification is revoked.

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

Selected provisions of the Program Participation Agreement

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

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

General Terms & Conditions

- The school certifies that it 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;
  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).
- The school acknowledges that the Department, states, and accrediting agencies may share information about the school without limitation.
- The school 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.

General Provisions

- The school will use funds received under any FSA program, as well as any interest and other earnings thereon, solely for the purposes specified for that program.
- If the school is permitted to request FSA program funds under an advance payment method, the school will time its requests for funds to meet only the school's immediate FSA program needs.
- The school will not charge for processing or handling any application, form, or data used to determine a student's FSA eligibility.
- 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.
- 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.
- 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.
- 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.

Selected provisions of the Program Participation Agreement, continued

- The school must comply with the program integrity requirements established by the Department, state authorizing bodies, and accrediting agencies.
- 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.
- 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.

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.

Direct Loans

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

Additional requirements

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

* FEDERAL PELL GRANT PROGRAM, 20 USC 1070a et seq; 34 CFR Part 690.
* FEDERAL DIRECT STUDENT LOAN PROGRAM, 20 USC 1087a et seq; 34 CFR Part 685.
* FEDERAL PERKINS LOAN PROGRAM, 20 USC 1087aa et seq; 34 CFR Part 674.
* FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM, 20 USC 1070b et seq; 34 CFR Part 676.
* FEDERAL WORK-STUDY PROGRAM, 42 USC 2751 et seq; 34 CFR Part 675.

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

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 changes to the Department.

DETERMINING PROGRAM ELIGIBILITY

A school's eligibility does not necessarily extend to all its programs, so the school is responsible for ensuring that a program is eligible before awarding FSA funds to students in that program.

In addition to determining that the program meets the eligible program criteria given in this chapter, the school should make certain that the program is included under the notice of accreditation from a nationally recognized accrediting agency (unless the agency does not require that particular 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). In some instances a school or program may need a general authorization as well as licensure for a specific program approval. (See the chart on eligible institutions 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, which 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 *Distance Education & Correspondence Study* in this chapter).

CHAPTER 2 HIGHLIGHTS

- Determinating program eligibility
- Basic types of eligible programs
- Programs leading to gainful employment
- Additional eligibility requirements
- Written arrangements between schools
- Distance education & correspondence study

Related topics

➔ Eligibility requirements for specific educational programs—*Volume 1, Chapter 1* of the *FSA Handbook*

➔ Types of educational programs defined for eligible institutions—*Chapter 1*

➔ Updating the E-App for changes to programs and locations—*Volume 2, Chapter 5* of the *FSA Handbook*

Program eligibility

34 CFR 668.8
34 CFR 691.2(b)

School, program, and 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* of the *FSA Handbook*).

Recognized occupation

All nondegree 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:

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

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

Credit & clock hours

Later in this chapter is a discussion of how program length is measured in credit and clock hours.

Other eligible programs

There are additional types of eligible programs:

- a direct assessment program approved by the Department,
- a comprehensive transition and postsecondary program approved by the Department, and
- a program leading to a baccalaureate degree in liberal arts [as defined in 34 CFR 600.5(e)] at a proprietary school that is accredited by a recognized regional accrediting agency or association. (The school must have been continuously accredited by a regional accrediting agency since at least Oct. 1, 2007, and have provided the program continuously since Jan. 1, 2009.)

34 CFR 668.8

BASIC TYPES OF ELIGIBLE PROGRAMS

Eligible programs at an institution of higher education

At a school that qualifies as a public or private nonprofit 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 two academic years in duration that is acceptable for full credit toward a bachelor's degree,
- a program of at least one academic year in duration that leads to a certificate or other nondegree recognized credential and prepares students for gainful employment in a recognized occupation, or
- a certificate or diploma training program that is less than one year (if the school also meets the definition of a postsecondary vocational institution).

Note that a nondegree program at a public or private nonprofit institution is subject to the rules for a "gainful employment program" (unless the program is at least a two-year transfer program). Gainful employment programs are explained later.

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.

1. The program provides at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of undergraduate instruction offered during a minimum of 15 weeks of instruction. The program may admit as regular students persons who have not completed the equivalent of an associate degree.
2. The program provides at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction during a minimum of 10 weeks of instruction. The program must be a graduate or professional program or must admit as regular students only persons who have completed the equivalent of an associate degree.
3. The program is known as a short-term program, which qualifies for the Direct Loan Program only. This type of program must provide at least 300 but less than 600 clock hours of instruction offered during a minimum of 10 weeks of instruction.

The program must admit as regular students some persons who have not completed the equivalent of an associate degree.

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 below),
- 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.

All degree and nondegree programs at a proprietary institution are subject to the rules for a "gainful employment program," except for the liberal arts programs described in the sidebar note on page 12.

Court decision regarding GE

The gainful employment regulations related to reporting requirements, calculation of the metrics, and the requirement to provide notices of intent for new GE Programs were vacated in a court decision. The Department will issue electronic announcements and Dear Colleague Letters to keep schools up-to-date on the topic of gainful employment.

Gainful employment guidance

Gainful Employment Electronic Announcements #11 and #12 provide a series of questions that can be used to help determine if an educational program is a gainful employment program. See also Announcement #34 and Question G-Q9 on the FAQ page. Continuing updates on this topic will be posted on the Gainful Employment Information Page on the Information for Financial Aid Professionals (IFAP) website.

PROGRAMS LEADING TO GAINFUL EMPLOYMENT

To be eligible for FSA program funding, an educational program at an institution of higher education must lead to a degree (associate, bachelor's, graduate, or professional) or prepare students for "gainful employment in a recognized occupation." In addition, virtually all programs—degree and nondegree—offered by proprietary institutions of higher education must prepare students for gainful employment in a recognized occupation.

Collectively we refer to these programs—all nondegree educational programs offered by public and nonprofit institutions and virtually all academic programs offered by proprietary institutions—as "gainful employment programs" (or "GE programs"). See *Volume 2*, *Chapter 2*, of the FSA Handbook for more information on GE programs.

ADDITIONAL ELIGIBILITY REQUIREMENTS

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

See *Volume 2*, *Chapter 2*, of the FSA Handbook about the eligibility of the following types of programs:

- Transition programs for students with intellectual disabilities,
- Educational programs eligible for Teacher Education Assistance for College and Higher education (TEACH) grants,
- English as a Second Language (ESL) programs,

Arrangements
34 CFR 668.5

- Direct assessment programs,
- Study-abroad programs, and
- Flight school programs.

WRITTEN ARRANGEMENTS BETWEEN SCHOOLS

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

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 equivalent to its own and the instruction an acceptable substitute for its own.

A home school may decline to give credit for courses in which a student earns a grade that is not acceptable at the home school even though the host school has a policy of accepting that grade for its resident students. 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.

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

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

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

Consortium agreement

A consortium agreement can apply to all FSA programs. Under a consortium agreement, students may take courses at a school other than the home school and have them 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.

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. (See sidebar for required contents of an agreement.)

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 Pell Grant calculations, see *Volume 3*, *Chapter 3*, of the *FSA Handbook*.

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.

Contents of a consortium agreement

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.

Written arrangements between schools under same ownership or control

If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Department considers the educational program to be an eligible program if

- the educational program offered by the school that grants the degree or certificate otherwise satisfies the requirements of an eligible program (described in this chapter), and
- the school that grants the degree or certificate provides more than 50% of the educational program.

Study-abroad references
Arrangements with a study-abroad organization
34 CFR 668.5
Student eligibility in study-abroad programs
34 CFR 668.39

Eligible study-abroad students entitled to FSA
Some eligible students have had problems receiving FSA funds for study-abroad 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.

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

An eligible school is prohibited from entering into a contract with an ineligible school or organization whose

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

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

Under a contractual agreement the eligible school is always the home school. The home school does 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 5*).

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.

Study-abroad programs

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

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 school that is calculating and disbursing the aid.

If a study-abroad program has higher costs than the home school, those should be reflected in the student's cost of attendance. This may result in the student being eligible for additional FSA funds.

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 has, instead of a separate agreement with each foreign school, a written arrangement with a study-abroad organization that represents one or more foreign schools. The arrangement must adequately describe the duties and responsibilities of each entity and meet the regulatory requirements.
- A variant of the study-abroad program occurs when a home school sends faculty and students to a foreign site. This is not a consortium or contractual study-abroad program. Rather, the foreign site is considered an additional location under 34 CFR 600.32.

DISTANCE EDUCATION & CORRESPONDENCE STUDY

Schools use distance education and correspondence courses to give students alternatives to the course schedules and locations that have been offered. Both distance education and correspondence programs at domestic schools are considered eligible FSA programs if they have been accredited by an agency recognized by the Department for accreditation of distance education or correspondence education respectively. See the *FSA Handbook*, *Volume 2*, *Chapter 2*.

Distance education uses certain technologies to deliver instruction to students who are separated from the instructor and to support regular, substantive interaction between them. The technologies may include the Internet, audio conferencing, or one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices.

A correspondence course is a home-study course for which the school provides instructional materials, including examinations, to students who are not physically attending classes at the school. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Learning is typically self-paced. When a student completes a portion of the instruction, he takes the relevant examination and returns it to the school for grading.

School Participation Requirements

CHAPTER 3

Many of the requirements a school must meet to participate in the Federal Student Aid programs demand coordination with other school offices. For instance, the requirement for adequate staffing, the incentive compensation prohibition, and hiring restrictions related to the misuse of government funds might apply to your school's human resources office. Similarly, your school's academic divisions and business office will need to be aware of the standards for satisfactory progress policies, readmission of service members, and in-state tuition rates for service members and their families.

ADMINISTRATIVE REQUIREMENTS FOR 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, multiple reporting records or MRRs, potential overawards (POPs) from the Common Origination and Disbursement (COD) System, statements of educational purpose, statements of registration status, and eligibility notification documents presented by or on behalf of each applicant.
- The SAR/ISIR for a student. Even if a school has already verified the information on a student's SAR/ISIR, it must review all information on subsequent SARs/ISIRs.
- Any documents, including copies of federal tax return and tax account transcripts, that are normally collected by the school to verify information received from the student or other sources.
- Any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, or Social Security number (SSN) or other factors relating to the student's eligibility for FSA funds.

CHAPTER 3 HIGHLIGHTS

- Administrative requirements for the financial aid office
- Ownership, employees, and contractors
- Contracts with third-party servicers
- Incentive compensation prohibition
- Required electronic processes
- Sharing information with the National Student Loan Data System or NSLDS, federal loan servicers, and guarantors
- Satisfactory academic progress
- Taking attendance
- Provisions for U.S. armed forces members and families

Related information

→ Financial Standards, *Volume 4, Chapter 1*
→ Consumer Information, *Chapter 4*
→ Recordkeeping and Privacy, *Chapter 5*
→ Other Administrative Requirements, *Chapter 6*

FSA assessments

To assess your school's compliance with these requirements, see the FSA Assessment modules on "Automation" and "Satisfactory Academic Progress" at **http://ifap.ed.gov/qahome/fsaassessment.html**.

Administrative capability

To participate in the FSA programs, a school must demonstrate that it is administratively capable of providing the education it promises and of properly managing the FSA programs. 34 CFR 668.16

Death of a student

If a student dies during the award year, the school isn't required to resolve conflicting information.

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.

For instance, if a student receives an academic scholarship through one school office, that office must notify the aid administrator of these benefits to ensure that the amounts are correctly reported on the student's aid application and are counted as estimated financial assistance for the Campus-based and Direct Loan programs.

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 in summer classes immediately preceding a fall term of enrollment.
- 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 a school needs to be alert for conflicting information and how long it must resolve a conflict. Even if the processing year has ended, the school must continue to resolve conflicting information unless

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

A school may not ignore a document in its files unless a student is no longer enrolled. If there is conflicting information, it must be resolved as expeditiously as possible. If a school becomes aware of conflicting information for a student who is no longer enrolled and there is aid to be disbursed, the school 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 re-enroll, that aid must be treated as estimated financial assistance for either the period of enrollment just completed or for the subsequent period of enrollment. See the discussion of estimated financial assistance and packaging in *Volume 3* of the *FSA Handbook*.

Remember, if any office at the 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 person must forward it to the financial aid office, where procedures must be in place to ensure that any conflicting information is resolved and documented before the student receives any (or any additional) FSA funds.

Conflicting information

Sources of conflicting information

- Tax returns or schedules
- Federal tax transcripts
- Other information provided by the student to the financial aid office
- Supplemental financial aid applications
- Other offices within the school
- Offices at other educational institutions (not just aid offices)
- Department of Education (ED)
- Scholarships and information from outside sources
- State agencies such as scholarship and vocational rehabilitation agencies, etc.
- Tips from outside sources
- Transcripts from other colleges
- SARs or ISIRs
- Verification
- C flags
- Reject codes
- Comment codes

Examples of conflicting information

Conflicting 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),
- cost of attendance (COA) elements,
- other student financial assistance or resources, and
- inconsistent information used in calculating the student's Expected Family Contribution or EFC.

Conflicting information does not include such things as

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

OIG referrals

A school must refer to the Department's Office of Inspector General (OIG) any credible information indicating that an applicant for Federal Student Aid may have engaged in fraud or other criminal misconduct in connection with his or her application.

Common misconduct includes false claims of independent student status, false claims of citizenship, use of false identities, forgery of signatures 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. Referrals to the IG are also mentioned in the *Application and Verification Guide.*

OIG referrals
34 CFR 668.16(g)

Separation of function

For more on the separation of functions, contact the appropriate School Participation Team (see **www.eligcert.ed.gov/**).

Family defined

A member of an individual's family is a parent, sibling, spouse, child, spouse's parent or siblings, or child's spouse.

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, to ensure that a student's aid does not exceed his need, an aid administrator must include aid he is receiving from external sources as well as institutional aid and FSA funds. 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 the financial aid office.

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 and Direct Loan programs. For a discussion of loan counseling requirements, see *Chapter 4* in this volume and *Volume 6: Campus-Based Programs* of the Handbook (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 single person or office exercises both functions for any student receiving FSA funds.

Small schools are not exempt from this requirement even though they may have limited staff. Individuals working in either authorization or disbursement may perform other functions as well but not both authorization and disbursement. These two functions must be performed

by individuals who are not members of the same family and who do not together exercise substantial control over the school. If a school performs any aspect of these functions via computer, no one person may have the ability to change data that affect both authorization and disbursement.

While electronic processes enhance accuracy and efficiency, they also can blur separation of functions so the awarding and disbursement 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, the school's 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, the 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.

Third-party servicer definition

An individual or a state or a private, for-profit, or nonprofit organization that enters into a contract with an eligible school to administer, through manual or automated processing, any aspect of the school's participation in any Title IV program.
34 CFR 668.2

CODE OF CONDUCT

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

- 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.

Third-party servicer

34 CFR sections 668.1, 2, 11, 14–16, 23, 25, 81–84, 86–89, and Subpart H.

See also DCL GEN-12-08, in particular for information on disbursing Title IV funds through a contractor.

Institutional liability

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

Notifying ED of third-party servicer contracts

Schools must notify the Department of new third-party servicer contracts and changes to existing 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.

Referring information to OIG

The regulations provide the following examples of criminal misconduct:

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

Annual compliance audit

A third-party servicer must submit a compliance audit each year. If the servicer contracts with several schools, a single audit can be submitted that covers its administrative services for all those schools. For more information, see **www2.ed.gov/about/offices/list/oig/nonfed/sfa.html**.
34 CFR 668.23

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.

A third-party servicer administers any aspect of the school's FSA participation. Examples of functions that third-party servicers perform are:

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

Excluded functions

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

- performing lockbox processing of loan payments;
- performing normal electronic fund transfers (EFTs) after being initiated by the school;
- acting as a Multiple Data Entry processor (MDE);
- financial and compliance auditing;
- mailing documents prepared by a school or warehousing school records;
- participating in a written arrangement with other eligible schools to make eligibility determinations and FSA awards for certain students (see *Chapter 2*); and
- providing computer services or software.

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

Excluded entities

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

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

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

Requirements of a third-party servicer contract

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

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

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

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

Incentive compensation in the law & regulations

The prohibition of incentive compensation appears in Section 487(a)(20) of the HEA and in the Student Assistance General Provisions regulations at 34 CFR 668.14(b)(22).

Electronic processes

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: **http://ifap.ed.gov**.

INCENTIVE COMPENSATION PROHIBITION

Schools may not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions about awarding FSA program funds. No other activities are subject to the ban.

The incentive compensation prohibition applies to all individuals with responsibility for recruitment or admission of students, or making decisions about awarding FSA funds. See *Volume 2*, *Chapter 3*, in the *FSA Handbook* for more information.

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: **https://faaaccess.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, TEACH 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, and Gainful Employment program records (if applicable): **https://www.nsldsfap.ed.gov/secure/logon.asp**
- electronically submit the school's annual compliance and financial statement audits and any other required audits: **https://ezaudit.ed.gov**
- use the Default Management website to receive its draft and official cohort default rate data electronically: **http://ifap.ed.gov/DefaultManagement**
- use the Information for Financial Aid Professionals (IFAP) website to review Dear Colleague Letters, announcements, or Federal Registers: **http://ifap.ed.gov**

REQUIRED ELECTRONIC PROCESSES

Schools must be able to use the FSA electronic processes to be considered administratively capable of participating in the FSA programs.

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. (Doing this and other tasks related to electronic processing is the most frequent duty for third-party servicers.) Most schools prepare student data records in a software package such as EDExpress and transmit the records as batch files to the SAIG mailbox. The Department's systems send edited records back to 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, TEACH 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, develop its own software, or rely on a third-party software vendor. If you are not using EDExpress software to prepare your records, it is your responsibility to ensure that the software you use is capable of generating COD records in XML format.

As an alternative, you can now create and edit student records directly on many of our websites, such as COD, CPS, and NSLDS. When creating and editing records on the Web, you do not use PC software, and you do not have to transmit the changes through your SAIG mailbox.

Information for Financial Aid Professionals (IFAP)

Program information is communicated through our IFAP website (**http://ifap.ed.gov**) in the form of electronic announcements, Dear Colleague letters, and Federal Registers. One of the most useful features of this website is its notification service, which sends you daily or weekly e-mails that summarize recent postings to IFAP. (Go to "My IFAP" on the website and select "New User Registration.")

Even if your school uses a third-party servicer to manage student aid activities, your school is responsible for knowing about all new statutory, regulatory, and procedural requirements. The IFAP website is a convenient and comprehensive place for that information.

The IFAP site also has links to all major FSA websites and services and a "Help" link that includes contact information for FSA call centers and customer service offices.

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 the SAIG Enrollment site: **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 Professional Access site:

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

Privacy: Sharing student records with lenders

A student authorizes his 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. See *Chapter 5* for more information about recordkeeping and privacy.

Minimum system requirements

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

SHARING INFORMATION WITH NSLDS, FEDERAL LOAN SERVICERS, AND GUARANTORS

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 a roster file 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) loan borrowers or the beneficiaries of a PLUS loan. The file is not necessarily connected to loans made at your school—it may also report information for students who received some or all of their FSA loans at other schools but are currently attending your school.

Your school or servicer must certify the information and return the roster file within 30 days of receiving it. They may also go to **www.nsldsfap.ed.gov** and update information for students online. Changes in the student's enrollment status, the effective date of the status, and an anticipated completion date must be reported, and 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 being returned contains records that don't pass the NSLDS Enrollment Reporting edits, your school will receive a response file with the records that didn't pass. Within 10 days the necessary corrections need to be made to these records and resubmitted. If your

school is using a servicer, it 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 enrollment reporting rosters received directly from guaranty agencies. (Receiving an enrollment reporting roster 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 servicer (or the guaranty agency for FFEL) 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, schools are encouraged to notify the appropriate Direct Loan servicer with new information about a delinquent borrower's location or employment and to work with defaulted borrowers to bring their loans out of default.

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

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

Former FFEL schools may ask a guaranty agency to provide information about 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

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

34 CFR 668.19
DCL GEN-00-12
DCL GEN-01-09, July 2001 (including July 16, 2001, update)

Transfer student monitoring

You must verify the eligibility of transfer students for FSA funds. You may either check the student's financial aid history on the NSLDS Professional Access site or wait seven days after you've submitted the student's information for monitoring to receive a response from NSLDS.

To begin using the "inform" feature, you must designate a contact on the "School Transfer Profile" page at:

www.nsldsfap.ed.gov

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

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 her loan(s).

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

Financial aid history & transfer monitoring

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

To receive a student's financial aid history, your school must register for the Transfer Student Monitoring Process**.** Through this process, NSLDS will monitor a transfer student's financial aid history and send an alert about any relevant changes—other than the default and overpayment information reported in the postscreening process—that may affect the student's current award(s).

Your school must send NSLDS identifying information (or enter it online) for students transferring to your school so NSLDS can use transfer monitoring to send notification of changes to their financial aid history. Your school may send information for students who have expressed an interest in attending 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*, of the *FSA Handbook*.

Definitions for tuition rates for military families
Armed Forces—the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.
Active duty—full-time duty in the active military service of the United States. 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—active duty under a call or order that does not specify a period of 30 days or less.
20 USC 1015d

SATISFACTORY ACADEMIC PROGRESS (SAP)

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

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

Basic elements of an SAP policy

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

In addition, your school's policy must explain:

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

PROVISIONS FOR U.S. ARMED FORCES MEMBERS & FAMILY

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

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

Definitions for readmission

For purposes of this discussion—

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

Service member—someone who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

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

Termination for bad conduct

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

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

Readmission of service members

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

Reasonable efforts to help prepare student

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

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

- that there are no reasonable efforts it can take to prepare her to resume the program at the point where she left off or to enable her to complete the program, or
- that after it makes reasonable efforts (those that do not place an undue hardship on the institution), the student is not prepared to resume or complete the program.
- "Undue hardship" means an action requiring significant difficulty or expense when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

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

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

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

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

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

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

- to the same program to which the student was last admitted or, if that exact program is no longer offered, the program that is most similar to that program, unless she chooses a different program;
- at the same enrollment status, unless the student wants to enroll at a different enrollment status;
- with the same number of credit hours or clock hours previously completed, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable, and
- with the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had.

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

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

The cumulative length of the absence and of all previous absences from the school for military service may not exceed five years. Only the time the student spends actually performing service is counted. See the end of *Chapter 3* in *Volume 2* of the *FSA Handbook* for additional rules pertaining to cumulative length of absence.

Consumer Information

CHAPTER 4

This chapter describes information that a school must provide about financial aid and about its campus. The chapter also discusses counseling for students receiving FSA loans and disclosures that must be made for private education loans. See the Federal Student Aid Handbook Volume 2, Chapter 6, for a fuller treatment of some of these topics.

AVAILABILITY OF INFORMATION

Notice to enrolled students

Each year a school must distribute to all enrolled students a notice of the availability of the information it must provide in the following general categories:

1. general disclosures for enrolled or prospective students,
2. annual security report and annual fire safety report,
3. report on athletic program participation rates and financial support data, and
4. FERPA (the Family Educational Rights and Privacy Act of 1974) information.

The notice must list and briefly describe the information and tell the student how to obtain the information.

The notice must be provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an intranet website does not constitute a notice, though the notice can direct the person to information online.

Web dissemination

A school may satisfy the requirements for the above disclosures and reports by posting the information on the Web.

- *Enrolled students or current employees*—the school may post the information on an Internet website or an intranet website that is reasonably accessible to the individuals to whom the information must be disclosed.
- *Prospective students or prospective employees*—the school may post the information on an Internet website.

CHAPTER 4 HIGHLIGHTS

- Availability of information
- Disclosures
- Textbook information
- Loan counseling
- Drug and alcohol abuse prevention
- Misrepresentation
- Information about private loans

Consumer information

HEA Sec. 485(f); 20 USC 1092
Regulations: 34 CFR 668.41–48
Notice to enrolled students: 34 CFR 668.41(c)
Web dissemination: 34 CFR 668.41(b), (c)(2), (e)(2) through (4), and (g)(1)(ii)
Availability of school staff: 34 CFR 668.44

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 advertising about enrolling at the institution.

Sample notice of FERPA rights

You can find a sample notification at ED's FERPA website: **www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html**.

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 Sec. 487(c)(3)(B) of the HEA

Disclosures
General disclosures: 34 CFR 668.41(d)
Financial assistance: 34 CFR 668.42
Institutional information: 34 CFR 668.43
Completion/graduation rates: 34 CFR 668.45
Retention, placement, postgraduate study: 34 CFR 668.41(d)(4), (5), and (6)
Definitions: 34 CFR 668.41(a) and 668.47(b)

Consumer information from the Department
The Department is required to make available to schools, lenders, and secondary schools descriptions of the FSA programs to assist students in gaining information through school sources, and to assist schools in carrying out the FSA program requirements.

We provide comprehensive student aid information to students and their families through the *Student Aid on the Web* site (**http:// studentaid.ed.gov**).

Colleges and high schools may order bulk quantities of student/borrower publications such as the *College Preparation Checklist* from the FSA Pubs website (**www.fsapubs.gov**).

Statutory requirement:
HEA Sec. 485

EADA data on the Web
The Department posts the EADA reports for participating schools on the Web at:
http://ope.ed.gov/athletics/

A school that uses Internet or intranet disclosure for this purpose must include in its annual notice to enrolled students—

- The exact electronic address at which the information is posted, and
- A statement that the school will provide a paper copy of the information on request.

In the case of Internet or intranet distribution of the security and fire safety reports to current employees, the school must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the school will provide a paper copy of the report upon request.

The same information must be included in a notice to prospective students and employees if a school that decides to use the Web to provide annual security or fire safety reports to them. The only difference is that there is no annual date for distribution of this notice. In the case of Web distribution to prospective students and employees, note that the school must use an Internet, rather than an intranet, site.

Availability of employees for information dissemination purposes

A school must designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information on financial assistance, the school, graduation and completion rates, and security policies and crime statistics, as described in the following sections.

If the school designates one person, that person shall be available upon reasonable notice to any enrolled or prospective student throughout the normal administrative working hours of that school. If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that school.

The Department may waive this requirement if the school's total enrollment or the portion of the enrollment participating in the FSA programs is too small to necessitate an employee or group of employees being available on a full-time basis. The school must request this waiver from the Department.

DISCLOSURES

A school must make certain information available to any enrolled student or prospective student through appropriate publications, mailings, or electronic media. See *Volume 2*, *Chapter 6*, of the *FSA Handbook* for more information about disclosures.

At a minimum, a school must publish and make readily available to current and prospective students a description of all the federal, state, local, private, and institutional student financial assistance programs available to its students, including both need-based and non-need-based programs.

A school must also describe the rights and responsibilities of students receiving financial assistance and, specifically, Federal Student Aid funds.

A school must provide to enrolled and prospective students information about its academic programs, school costs, withdrawal procedures, refunds, return of aid, accreditation and licensure, services available to disabled students, FSA eligibility for study abroad, policies on transferring credits from another school, contact information, and policies and penalties related to copyright infringement.

A school must report its completion or graduation rates (and, if required, the transfer-out rate) to the Department through the Integrated Postsecondary Education Data System (IPEDS) website. The school must also provide information on its retention rate as reported to IPEDS; the placement of, and types of employment obtained by, graduates of the school's degree or certificate programs; and, for any four-year program at the school, the types of graduate and professional education in which its graduates enroll.

A school must disclose certain information about each of its gainful employment programs to prospective students, such as the length of the program and the occupations it prepares students to enter, the on-time graduation rate, tuition and fees and other costs, job placement rate, and median loan debt. The school must include the required information in promotional materials it makes available to prospective students and post the information on its websites.

A school must distribute campus security report to its students and employees on an annual basis. If the school maintains on-campus student housing, it must also disseminate an annual fire safety report. Note that these reports must include the campus security and fire safety statistics reported to the Department each year.

The Equity in Athletics Disclosure Act (EADA) requires a school that has an intercollegiate athletic program to make prospective students aware of its commitment to providing equitable athletic opportunities for men and women. When a school offers a prospective student athlete athletically related student aid, it must provide the report on completion or graduation rates for student athletes to the prospective student and the student's parents, high school coach, and guidance counselor.

A school that participates in the FSA programs must provide information to its students, faculty, and employees to prevent drug and alcohol abuse; it is also required to have a drug and alcohol prevention program. In addition, a school that participates in the Campus-based

College affordability website

The Department's College Affordability and Transparency Center (**http://collegecost.ed.gov/catc/Default.aspx**) includes information for students, parents, and policymakers about college costs at America's colleges and universities. The Center includes several lists of institutions based on the tuition and fees and net prices (the price of attendance after considering all grant and scholarship aid) charged to students. These lists meet requirements outlined in the HEOA and will be updated annually and posted on the College Navigator website (**http://nces.ed.gov/collegenavigator/**) by July 1.

Crime & fire data on the Web

The Department posts the campus crime statistics and fire safety statistics for participating schools on the Web at: **http://ope.ed.gov/security/**.
Crime statistics are also posted on the Department's College Navigator site: **http://nces.ed.gov/collegenavigator/**.

Net Price Calculator

A school with undergraduate students that participates in the FSA programs must have posted a net price calculator on its website by Oct. 29, 2011.

The net price calculator uses institutional data to provide estimated net price information to current and prospective students and their families based on a student's individual circumstances.

ED's National Center for Education Statistics has designed and developed a fully functional net price calculator available to all schools. A school may use the Department's net price calculator template or develop its own. Institutionally developed calculators must include "at a minimum the same data elements" found in the Department's net price calculator template.

To use or review the template, go to **http://nces.ed.gov/ipeds/netpricecalculator/**.

More information about the calculator and the template is available at: **http://nces.ed.gov/ipeds/resource/net_price_calculator.asp**.

See GEN–08–12 (pages 33ff) for a description of the requirements for the calculator.
Higher Education Opportunity Act of 2008
20 USC 1015a

Textbook information
The statutory requirement regarding textbook disclosures was described in DCL GEN-08-12. Further guidance was given in GEN-10-09. Also note that the law requires textbook publishers to provide information to faculty about pricing, copyright dates of previous editions, content revisions, alternate formats, etc.
HEA section 133

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.

TEXTBOOK INFORMATION

To the maximum extent practicable, a school must post verified textbook pricing information for both required and recommended materials for each class on the schedule of classes that the school has posted online.

This pricing information must include the International Standard Book Number (ISBN) and retail price for all required and recommended textbooks and supplemental materials for each course listed in the institution's course schedule. If the ISBN is not available, the pricing information must include the publisher and copyright date, as well as the title and author. If the school determines that disclosure of this pricing information is not practicable, it may substitute the designation "To Be Determined (TBD)" in lieu of the required pricing information.

If applicable, the school must include on its written course schedule a reference to the textbook information available on its Internet schedule and the Internet address for that schedule.

Schools are encouraged to provide information on renting textbooks, purchasing used textbooks, textbook buy-back programs, and alternative content delivery programs.

Loan counseling in regulations
DL: 34 CFR 685.304
Perkins: 34 CFR 674.16(a)

A school must provide the following information to its bookstore, if the college bookstore requests it:

- the school's course schedule for the subsequent academic period; and
- for each course or class offered, the information it must include on its Internet course schedule for required and recommended textbooks and supplemental material, the number of students enrolled, and the maximum student enrollment.

DL online counseling
Students can take entrance and exit counseling online—

Entrance counseling
www.StudentLoans.gov

Exit Counseling
www.nslds.ed.gov

Your school can sign up to receive regular reports with the names of students who have completed online counseling.
If your school documents that the student completed ED's online counseling session, it has satisfied its responsibilities for electronic counseling.

LOAN COUNSELING

Entrance counseling

Before making the first disbursement of a loan to a Direct Subsidized or Unsubsidized Loan borrower, a school must ensure that the student has received entrance counseling or document that he has received a prior Direct Subsidized or Unsubsidized Loan or Federal Stafford or SLS Loan. Similarly, a school must ensure that a graduate or professional student who is borrowing a Direct PLUS Loan has received entrance counseling, unless he received a prior graduate/professional Direct or Federal PLUS

Loan. There are similar counseling and disclosure requirements for Perkins loans (see *Volume 6* of the *FSA Handbook*). Loan counseling is not required for parent PLUS borrowers.

Direct Loan counseling on the Web

The Direct Loan Program offers both entrance and exit counseling on the Web (see sidebar). Your school may also elect to provide entrance counseling through an in-person session or by providing a separate written form to the student that she signs and returns to the school.

If your staff are conducting in-person counseling sessions, charts, handouts, audiovisual materials, and question-and-answer sessions can help convey the information in a more dynamic manner. We also recommend the use of written tests or interactive programs to ensure that the student understands the terms and conditions of his loans.

Regardless of the counseling methods your school uses

- It must ensure that an individual with expertise in the FSA programs is reasonably available shortly after the counseling to answer the student's questions.
- It must document that the student received and understood entrance and exit counseling.

Providing borrower information at separation

The personal and contact information collected at the time of exit counseling must be provided to the student's loan servicer within 60 days. A student authorizes her school to release information to lenders in the promissory note she signs when applying for the loan. No further permission is needed. Students who complete exit counseling on the NSLDS Student Access website fulfill this requirement; NSLDS provides the completion information to the loan holders.

Exit counseling follow up

If the student borrower drops out without notifying your school, it must confirm that the student has completed online counseling or mail exit counseling material to the borrower at his or her last known address. It is also acceptable to e-mail the information to the borrower at his or her home (not school) e-mail address, if you have that address. Note that your school may send the print or PDF version of the *Exit Counseling Guide for Federal Student Loan Borrowers* to satisfy the exit counseling requirement. The material must be mailed or e-mailed within 30 days of your learning that a borrower has withdrawn or failed to participate in an exit counseling session.

When mailing exit materials to a student who has left school, your school is not required to use certified mail with a return receipt requested, but it must document in the student's file that the materials were sent. If the student fails to provide the updated contact information, there is no requirement to take any further action.

Direct Loan counseling materials

Schools can order counseling materials, such as the *Entrance Counseling Guide for Direct Loan Borrowers* and the *Exit Counseling Guide for Federal Student Loan Borrowers*, from the FSA PUBS website at **www.fsapubs.gov**.

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)(8).

Student PLUS borrowers

34 CFR 685.304

Providing borrower information

A Direct Loan school should send updated borrower information to the federal loan servicer to whom the loan has been assigned.

TEACH Grant counseling

Initial and subsequent counseling is delivered through the TEACH website before the student receives his or her grant.

Students complete exit counseling on the NSLDS Student Access site (**www.nslds.ed.gov/nslds_SA/**). It is the school's responsibility to see that TEACH recipients receive exit counseling when they are no longer enrolled in the program.

See NSLDS Newsletter #33 on the IFAP website (**http://ifap.ed.gov**) for more details on TEACH exit counseling and for information on related reporting tools on the NSLDS Professionals website (**www.nslds.ed.gov/nslds_FAP/**).

Providing additional information

Your school can take additional steps to counsel its students in developing a budget, estimating their need for loans, and planning for repayment. You can reinforce these messages 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. 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 e-mail 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 and is also available in the collection of "Default Rate Materials" on the IFAP website.

Misrepresentation

34 CFR Subpart F
34 CFR 668.71
Misrepresenting educational program
34 CFR 668.72
Misrepresenting financial charges
34 CFR 668.73
Employability of graduates
34 CFR 668.74
Relationship with the Department of Education
34 CFR 668.75

TEACH exit counseling

Since TEACH Grants convert to loans if the service requirement is not completed, all grant recipients receive entrance counseling and subsequent counseling on the TEACH website before receiving their grant.

All recipients must also receive TEACH Grant exit counseling, which is available on the NSLDS Student Access site (**www.nslds.ed.gov/nslds_SA**). Your school will receive reports from NSLDS on all students who have completed TEACH exit counseling. If the student doesn't complete the exit counseling session on the NSLDS website, your school 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 NSLDS website) to the grant recipient's last known address. In the case of unannounced withdrawals, your school 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

If the student has enrolled in a study-abroad program (approved by a U.S. school for credit) or a correspondence or distance learning program and has not previously received an FFEL or Direct Loan at that school, the school must document that the student has completed online entrance counseling that meets FSA requirements or provide entrance counseling information by mail before releasing loan proceeds.

In the case of exit counseling for correspondence programs or study-abroad programs, the school may mail or e-mail 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.

MISREPRESENTATION

Misrepresentation is defined as a false, erroneous, or misleading statement made directly or indirectly to a student, prospective student, member of the public, an accrediting agency, a state agency, or the Department.

A *misleading statement* includes any statement that has the likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means.

Misrepresentation regulations

34 CFR 668.72 Nature of educational program

Misrepresentation concerning the nature of an eligible institution's educational program includes but is not limited to false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) Whether a student may transfer course credits earned at the institution to any other institution;

(2) Conditions under which the institution will accept transfer credits earned at another institution;

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance to a labor union or similar organization; or

(2) To receive, to apply to take, or to take the examination required to receive, a local, state, or federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the states in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, or equipment;

(g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(j) The availability of part-time employment or other forms of financial assistance;

(k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(l) The nature or extent of any prerequisites established for enrollment in any course;

(m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate state educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate state educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or

(o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)

34 CFR 668.73 Nature of financial charges

Misrepresentation concerning the nature of an eligible institution's financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or

(e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

34 CFR 668.74 Employability of graduates

Misrepresentation regarding the employability of an eligible institution's graduates includes but is not limited to false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including but not limited to the use of phrases such as "Men/women wanted to train for * * *," "Help Wanted," "Employment," or "Business Opportunities";

(e) Government job market statistics in relation to the potential placement of its graduates; or

(f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

(Authority: 20 U.S.C. 1094)

34 CFR 668.75 Relationship with Department of Education

An eligible institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement may not describe the eligible institution's participation in the Title IV, HEA programs in a manner that suggests approval or endorsement by the U.S. Department of Education of the quality of its educational programs.

(Authority: 20 U.S.C. 1094)

Sanctions

If the Department determines that an eligible institution has engaged in substantial misrepresentation, it may—

- revoke the eligible institution's program participation agreement;
- impose limitations on the institution's participation in the FSA programs;
- deny participation applications made on behalf of the institution; or
- initiate a proceeding against the eligible institution under subpart G of 34 CFR 668.

This definition applies to statements made by

- an eligible school
- one of its representatives, or
- any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services.

Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the school required the student to make such an endorsement or testimonial to participate in a program.

Substantial misrepresentation is defined as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

A school is deemed to have engaged in substantial misrepresentation when the school itself, one of its representatives, or other related parties, makes a substantial misrepresentation regarding the school, including about the nature of its educational program, its financial charges, or the employability of its graduates.

Substantial misrepresentations are prohibited in all forms, including those made in any advertising or promotional materials or in the marketing or sale of courses or programs of instruction offered by the institution.

Private education loans

34 CFR 668.14(b)(28) and (29)
Requirements for preferred lender list:
34 CFR 682.212(h)
34 CFR 601.10
Self-certification form
34 CFR 601.11(d)
Information required to complete the self-certification form
34 CFR 668.14(b)(29)

Truth in Lending Act

Truth in Lending Act section 128(e)(1)
15 USC 1638(e)(1)
Federal Reserve System Truth in Lending regulations (as published on August 14, 2009)
12 CFR 226.47 and 226.48.

INFORMATION ABOUT PRIVATE LOANS

A private education loan is a non-FSA loan that is made to a borrower expressly for postsecondary education expenses, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. (See sidebar definition for exclusions.)

Private education loan definition

The definition of a private education loan given at the beginning of this section is based on the definition given in the Federal Reserve System regulations, which excludes some forms of credit, including:

(1) An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or

(2) An extension of credit in which the educational institution is the lender if—

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

12 CFR 226.46(b)(5)
Authority: 20 USC 1019

Private education loans made by schools include Public Health Service Loans, such as Health Professions Student Loans. However, Federal Perkins Loans are not considered to be private educational loans.

If a private education loan is part of a preferred lender arrangement, it is also subject to the rules for those arrangements (as described later in this section).

Disclosures required for private education loans

A school or affiliated organization that provides information regarding a private education loan from a lender to a prospective borrower must provide the following disclosures, even if it does not participate in a preferred lender arrangement.

The private education loan disclosures must

- provide the prospective borrower with the information required by 15 U.S.C. 1638(e)(1) [12 CFR 226.47(a) in the the Federal Reserve System regulations], and
- inform the prospective borrower that she may qualify for FSA loans or other assistance from the FSA programs, and that the terms and conditions of an FSA loan may be more favorable than the provisions of private education loans.

The school or affiliate must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding FSA loans.

The school must, upon the request of the applicant, discuss with her the availability of federal, state, and institutional student financial aid.

Self-certification form for private education loans

A lender must obtain a signed, completed self-certification form from the loan applicant before initiating a private education loan.

The applicant may obtain a copy of the self-certification form from the private lender and submit it to your school for completion or confirmation. Your school may also, at its option, provide the information needed to complete the form directly to the lender.

If the loan applicant (the student or parent) requests a copy of the self-certification form from your school, it must provide the copy. He may also request, if the student has been enrolled or admitted to your school, that Section 2 be completed before providing him the form. Your school must do that to the extent that it has the information. Section 2 of the form collects the student's cost of attendance, the estimated financial assistance (EFA), and the difference between them. The EFA includes, for students who have completed the FAFSA, the amounts of aid that replace the EFC; it does not include the private education loan(s) that the self-certification form is for. See *Volume 3* of the *FSA Handbook* for more information.

Schools as private lenders

Note that if a school solicits, makes, or extends private education loans, it is considered to be a private educational lender that is subject to the Federal Reserve's regulations on private educational lenders.

When the school is the private education lender, it must complete and provide the self-certification form to the loan applicant and subsequently obtain the signed form from the applicant before consummating the private education loan.

In some cases, a school may be making more than one private education loan to an applicant. For example, a school may be providing a

Self-certification form for private education loans

Schools must provide the Private Education Loan Applicant Self-certification form upon request from the loan applicant. A school may post an exact copy (pdf) of the self-certification form on its website for applicants to download, or it may provide a paper copy directly to an applicant. A copy of the self-certification form is included as an attachment to GEN 10-01.

The self-certification form must be printed by the school (or lender) with black ink on white paper. The typeface, point size, and general presentation of the form may not be changed from the version approved by the Office of Management and Budget.

The only changes that may be made to the self-certification form are:

- Bold type in section headings may be removed, and bold or italic type may be added to the instructions.
- Schools and lenders may use any blank spaces at the top, bottom, or sides of the form for bar coding or other school/lender-specific information. (However, such space may not be used to include the student's or parent's Social Security number.)

GEN-10-01

Public health service loans

Loans made under Titles VII and VIII of the Public Health Service Act are considered to be private education loans, including—

- Health Professions Student Loan (HPSL)
- Primary Care Loan (PCL)
- Loans for Disadvantaged Students (LDS)
- Nursing Student Loan (NSL)

These loans are administered by the Health Resources and Services Administration (**www.hrsa.gov**).

Preferred lenders

34 CFR 601.10
12 CFR 226.47
20 USC 1019a(a)(1)(A) and 1019b(c)
15 USC 1638(e)(11)

As enacted in—
HEA section 153(a)(2)(A)
Truth in Lending Act, section 128(e)(11)

Preferred lender lists
The school is required to
- exercise a duty of care and a duty of loyalty to compile the preferred lender list, without prejudice and for the sole benefit of the school's students and their families and
- not deny or otherwise impede the borrower's choice of a lender for those borrowers who choose a lender that is not included on the preferred lender list. (This requirement is also included in the school's code of conduct; see *Chapter 3*).

Use of school or lender name
34 CFR 612
20 USC 1019a(a)(2)–(a)(3)

Preferred lenders & code of conduct
Note that the code of conduct discussed in *Chapter 3* prohibits school staff from steering borrowers to particular lenders or delaying loan certifications.

Institution-affiliated organization definition
34 CFR 601.2
(1) Any organization that—
(i) Is directly or indirectly related to a covered institution; and
(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.
(2) An institution-affiliated organization—
(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and
(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

loan funded by the school (or from donor-directed contributions) and a Public Health Service loan. In such cases, the school can provide one self-certification form to the applicant.

Preferred lender lists

For any year in which the school has a preferred lender arrangement, it will at least annually compile, maintain, and make available for students attending the school and the families of such students a list in print or other medium of the specific lenders for private education loans that the school recommends, promotes, or endorses in accordance with such preferred lender arrangement.

The school's preferred lender list must fully disclose

- why it participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower, and
- that the students attending the school (or their families), do not have to borrow from a lender on the preferred lender list, and
- when available, the information identified on a model disclosure form (to be developed by the Department), for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

The preferred lender list must also prominently disclose the method and criteria used by the school in selecting lenders to ensure that such lenders are selected on the basis of the best interests of the borrowers, including

- payment of origination or other fees on behalf of the borrower,
- highly competitive interest rates, or other terms and conditions or provisions of FSA loans or private education loans,
- high-quality servicing for such loans, or
- additional benefits beyond the standard terms and conditions or provisions for such loans.

The preferred lender list must indicate, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list. If a lender is an affiliate of another lender on the preferred lender list, the listing must describe the details of this affiliation.

Preferred lender disclosures

For each type of private education loan offered under a preferred lender arrangement, a school (or school-affiliated organization) must disclose

- the maximum amount of FSA grant and loan aid available to students, in an easy-to-understand format,

- the Truth in Lending information [15 USC 1638(e)(11)], for each type of private education loan offered through a preferred lender arrangement to the school's students and their families, and
- when available, the information identified on a model disclosure form (to be developed by the Department) for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

The school must disseminate this information on its website and in all informational materials such as publications, mailings, or electronic messages or materials, that

- are distributed to prospective or current students and their families, and
- describe financial aid that is available at an institution of higher education.

Use of institution & lender name

A school or school-affiliated organization that participates in a preferred lender arrangement regarding private education loans must not agree to the lender's use of its name, emblem, mascot, or logo in the marketing of private education loans to students attending the school in any way that implies that the loan is offered or made by the school or its affiliate instead of the lender. This prohibition also applies to other words, pictures, or symbols readily identified with the school or affiliate.

The school or its affiliate must also ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

Preferred lender arrangement definition

34 CFR 601.2(b)

(1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution—

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include—

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

(3) For purpose of this definition, an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution or by an institution-affiliated organization of the covered institution, and the private education loan is—

(i) Funded by the covered institution's or institution-affiliated organization's own funds;

(ii) Funded by donor-directed contributions;

(iii) Made under Title VII or Title VIII of the Public Service Health Act; or

(iv) Made under a state-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

Private educational lender definition

12 USC 1650

(A) a financial institution, as defined in section 1813 of Title 12 that solicits, makes, or extends private education loans;

(B) a federal credit union, as defined in section 1752 of Title 12 that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

DL Entrance Counseling—Required Elements

Entrance counseling for Direct Subsidized and Unsubsidized Loans
34 CFR 685.304(a)(6)

Entrance counseling for Direct Subsidized and Unsubsidized loan borrowers must:

(i) Explain the use of a master promissory note (MPN);

(ii Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—
(A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained; or
(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

Entrance counseling for graduate or professional students (Direct PLUS Loan borrowers)
34 CFR 685.304(a)(7)

Entrance counseling for graduate or professional student Direct PLUS loan borrowers must:

(i) Inform the student borrower of sample monthly repayment amounts based on—
(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or
(B) The average indebtedness of other borrowers in the same program at the same school;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in §685.301(a)(3)(i)(A) through §685.301(a)(3)(i)(C);* and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section. [See the entrance counseling requirements i-xii beginning in the first column of this page.]

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* §685.301(a)(3)(i) requires that the counseling provide the borrower with a comparison of—

(A The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan and periods when interest accrues on a Direct PLUS Loan; and

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment…

DL Exit Counseling—Required Elements

34 CFR 685.304(b)(4)

Exit counseling must:

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options, including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt management strategies that are designed to facilitate repayment;

(vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section [see entrance counseling requirements (i), (ii), and (iv) in the first column of the previous page];

(viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a Title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;*

(x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of Title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;

(xii) A general description of the types of tax benefits that may be available to borrowers; and

(xiii) Require the student borrower to provide current information concerning name, address, Social Security number, references, and driver's license number and state of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

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* Section 485 requires the Secretary (i.e., the Department) to provide "descriptions of federal student assistance programs, including the rights and responsibilities of student and institutional participants," including "information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations" for their loans.

Section 485(d) also refers to information

- to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, finance charges, and samples of loan consolidation profiles.
- concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service.
- on the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization.
- on state and other prepaid tuition programs and savings programs and the dissemination of such information to states, eligible institutions, students, and parents in departmental publications.

Recordkeeping and Privacy

CHAPTER 5

Schools must maintain detailed records to show that FSA funds are disbursed in the correct amounts to eligible students. These records must be made available to authorized parties in the course of audits, program reviews, or investigations. Personally identifiable information in these records may only be released to other parties under 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. Maintaining complete, accurate records is very important. 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, and

CHAPTER 5 HIGHLIGHTS

- Required records
- Record retention periods
- Record maintenance
- Examination of records
- Privacy of student information (FERPA)
- E-Sign Act and information security

FSA Assessment module

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

Recordkeeping

34 CFR 668.24

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. A school that formerly participated in the FFEL Program 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 should maintain its loan records beyond the end of the three-year record retention requirement to respond to the Department or to refute borrower claims of eligibility for discharge.

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

Records relating to student eligibility

A school must keep records that substantiate the eligibility of students for FSA funds, such as:

- cost of attendance information
- documentation of a student's satisfactory academic progress (SAP)
- documentation of student's program of study and the courses in which the student was enrolled
- data used to establish student's admission, enrollment status, and period of enrollment
- required student certification statements and supporting documentation
- documents used to verify applicant data and resolve conflicting information
- documentation of all professional judgment decisions
- 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, and
- fiscal operations report portion of the FISAP.

A school must also maintain records that support data appearing on required reports, such as:

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.

Records for FSA recipients

A school must maintain records for each FSA recipient that include but are not limited to:

- The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine a student's eligibility for FSA program funds.
- Application data submitted to the Department, lender, or guaranty agency by the school on behalf of the student or parent.
- Documentation of each student's or parent borrower's eligibility for FSA program funds (e.g., records that demonstrate that the student has a high school diploma, GED, or the ability to benefit).
- Documentation relating to each student's or parent borrower's receipt of FSA program funds, including but not limited to:
    - the amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of grant, loan, or FWS award;
    - the date and amount of each disbursement of grant or loan funds, and the date and amount of each payment of FWS wages;
    - the amount, date, and basis of the school's calculation of any refunds/returns or overpayments due to or on behalf of the student; and
    - the payment of any refund/return or overpayment to the FSA program fund, a lender, or the Department, as appropriate.
- Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations.
- Reports and forms used by the school in its participation in an FSA program, and any records needed to verify data that appear in those reports and forms.
- Documentation supporting the school's calculation of its completion or graduation rates, and transfer-out rates.

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

- Pell Grant statements of accounts,
- cash requests and quarterly or monthly reports from the G5 payment system,
- FSA program reconciliation reports,
- audit reports and school responses,
- state grant and scholarship award rosters and reports,
- accrediting and licensing agency reports, and
- records used to prepare the income grid on the FISAP.

Perkins & FWS records
In addition,
• participants in the Perkins Loan Program must follow procedures in 34 CFR 674.19 for documenting the repayment history for each borrower for that program; and
• participants in the FWS Program must follow procedures established in Section 675.19 for documentation of work, earnings, and payroll transactions for the program.
(See the *FSA Handbook*, *Volume 6: Campus-Based Programs*).

Loan program records

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

- A copy of the paper or electronic loan certification or origination record, including the amount of the loan and the period of enrollment.
- The cost of attendance, estimated financial assistance, and expected family contribution used to calculate the loan amount (and any other information that may be required to determine the borrower's eligibility, such as the student's Federal Pell Grant eligibility or ineligibility).
- The date(s) the school disbursed the loan funds to the student (or to the parent borrower), and the amount(s) disbursed. (For loans delivered to the school by check, the date the school endorsed each loan check, if required.)
- Documentation of the confirmation process for each academic year in which the school uses the multi-year feature of the Master Promissory Note. This may be part of the borrower's file, but acceptable documentation can also include a statement of the confirmation process that was printed in a student handbook or other financial aid publication for that school year. The documentation may be kept in paper or electronic form. There is no retention limit for this documentation; you must keep it indefinitely because it may affect the enforceability of loans.

A school must keep records relating to a student or parent borrower's eligibility and participation in the Direct Loan or FFEL program for three years after the end of the award year in which the student last attended the school. A school must keep all other records relating to the school's participation in the Direct Loan or FFEL program for at least three years after the end of the award year in which the records are submitted.

RECORD RETENTION PERIODS

Schools must retain all required records for a minimum of three years from the end of the award year. However, the starting point for the three-year period is not the same for all records. For example, FFEL/DL reports must be kept for three years after the end of the award year in which they were submitted, while borrower records must be kept for three years from the end of the award year in which the student last attended.

Different retention periods are necessary to ensure enforcement and repayment of Perkins loans, which are normally held by the school. Perkins Loan repayment records, including cancellation and deferment records, must be kept for three years from the date that the loan was assigned to the Department, cancelled, or repaid. Perkins original promissory notes and original repayment schedules must be kept until the loan is satisfied or needed to enforce the obligation (for more information, see the *FSA Handbook 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 *Volume 4, Chapter 2*, for information on program reviews and audits). If the three-year retention period expires before the issue in question is resolved, the school must continue to retain all records until resolution is reached.

Records

34 CFR 668.24 and 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 three years from the end of the award year in which the FISAP is submitted.

For instance, records for a FISAP submitted during the 2012–2013 award year must be kept until at least June 30, 2016, three years from the last day of the award year.

Minimum record retention periods

Pell and 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

Direct Loans & FFEL

- Records related to borrower's eligibility and participation ..... 3 years from the end of the award year in which the student last attended
- All other records, including any other reports or forms ..... 3 years from the end of the award year in which the report was submitted

* after December 1987, includes original repayment schedule, though manner of retention remains same as promissory note

** before December 1987, 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)

There are also additional record retention requirements that apply to schools granted waivers of the audit submission requirements.

RECORD MAINTENANCE

Acceptable formats

A school must maintain all required records in a systematically organized manner. Unless a specific format is required, a school may keep required records in:

- hard copy
- microform
- computer file
- optical disk
- CD-ROM
- other media formats

Record retention requirements for the Institutional Student Information Record (ISIR) are discussed here. All other record information, regardless of the format used, must be retrievable in a coherent hard copy format (for example, an easily understandable printout of a computer file) or in a media format acceptable to the Department.

Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format. This includes tax returns, verification statements, and Student Aid Reports (SARs) used to determine eligibility, and any other document when a signature, seal, etc., contained on it is necessary for the document to be used for the purposes for which it is being retained.

A school may maintain a record in an imaged media format only if the format is capable of reproducing an accurate, legible, and complete copy of the original document. When printed, the copy must be approximately the same size as the original document.

Please note that promissory notes that are signed electronically must be stored electronically and the promissory note must be retrievable in a coherent format. Because MPNs are stored in COD, this requirement can be satisfied through COD.

Special requirements for SARs and ISIRs

Special maintenance and availability requirements apply for SARs and ISIRs used to determine eligibility. It is essential that these basic eligibility records be available in a consistent, comprehensive, and verifiable format for program review and audit purposes.

Hard copies of SARs that students submit to schools must be maintained and available in their original format or in an imaged media format. The ISIR, an electronic record, must be maintained and available in its original format (e.g., as it was archived using EDExpress software

supplied to the school). A school that uses EDExpress has the ability to preserve the ISIR data that it has maintained during the applicable award year by archiving the data to a disk or other computer format.

EXAMINATION OF RECORDS

Location

A school must make its records available to the Department at a location of the school 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).

A school must cooperate by providing

- timely access to requested records, pertinent books, documents, papers, or computer programs for examination and copying by any of the agents listed above. The records to which timely access must be provided include but are not limited to computerized records and records reflecting transactions with any financial institution with which the school or servicer deposits or has deposited any FSA program funds.
- reasonable access to all personnel associated with 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).

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

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.

See *Volume 4*, *Chapter 2*, for more information on independent audits and program reviews.

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

FERPA scope

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.
20 USC 1232g

Resources for developing a FERPA policy

The Department has posted a model notification on the Family Policy Compliance Office website at **http://www2.ed.gov/policy/gen/guid/fpco/index.html**.

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

Additional FERPA disclosures to parents

A school may disclose information from a student's education records to parents in the case of a health or safety emergency that involves the student.

A school may let parents of students under the age of 21 know when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

A school official may share with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record.

information, upon request, to a lender or guaranty agency in the case of a borrower under the FFEL Program.

PRIVACY OF STUDENT INFORMATION (FERPA)

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, amend inaccurate information in them, and provide consent for the disclosure of those 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.

Students' & 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

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
✔ consent to disclosure of personally identifiable information from education records, except when FERPA permits disclosure without consent.

a failure to do so would effectively prevent the student from obtaining access to the records. While the school may not charge a fee for retrieving the records, it may charge a reasonable fee for providing copies of the records, provided that the fee would not prevent access to the records.

While the rights under FERPA have transferred from a student's parents to the student when the student attends a postsecondary institution, FERPA does permit a school to disclose a student's education records to his or her parents if the student is a dependent student under IRS rules.

Note that the IRS definition of a dependent is quite different from that of a dependent student for FSA purposes. For IRS purposes, students are dependent if they are listed as dependents on their parent's income tax returns. (If the student is a dependent as defined by the IRS, disclosure may be made to either parent, regardless of which parent claims the student as a dependent.)

There are several other situations in which a school official may disclose information about the student to the student's parents, as noted in the sidebar.

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.

Sole possession records

Sole possession records are not included in the term "education record" and thus are not subject to FERPA. Sole possession records are kept in the sole possession of the maker of the record and are

- used as a memory or reference tool,
- not accessible or revealed to any other person except a temporary substitute for the maker of the record, and
- 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.

Campus security records

Records created and maintained by a school's campus security unit for law enforcement purposes are exempt from the privacy restrictions of FERPA and can be shared with anyone.

A school may disclose information from "law enforcement unit records" to anyone—including parents or federal, state, or local law enforcement authorities—without the consent of the eligible student.

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)).

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 citations

34 CFR 99.30 When prior consent is required to disclose information
34 CFR 99.31 When prior consent is 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

Subpoena citations

20 USC 1232g(b)(1)(J)(i) and (ii), (b)(2)(B)
20 USC 1232g(b)(4)
34 CFR 99.31(a)(9)
34 CFR 99.32

Ex-parte orders & terrorism

"Terrorism" and "crimes of terrorism" are defined in 18 USC 2331 and 2332b(g)(5)(B).

Patriot Act changes

A Dear Colleague Letter, issued April 12, 2002, on changes made to FERPA by the 2001 Patriot Act is posted in PDF at **www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf**.

ED's Family Policy Compliance Office Website: **http://www2.ed.gov/policy/gen/guid/fpco/index.html**
E-mail: FERPA@ED.Gov

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.

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 the student 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 or 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 program without violating FERPA.

Disclosures in response to subpoenas or court orders

FERPA permits schools to disclose education records, without the student's consent, to comply with a lawfully issued subpoena or court order.

In most cases, the school must make a reasonable effort to notify the student who is the subject of the subpoena or court order before complying, so that 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 in the sidebar, a school must keep a record of each request for access and each disclosure of personally identifiable student information to other parties. The record must identify the parties who requested the information and their legitimate interest in it. The record must be kept in the student's file as long as the educational records are.

For instance, if Department officials request student records in the course of a program review, the school must document in each student's file that 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, School Participation Team, Region __, on (Month/Day/Year) to determine compliance with financial aid requirements, under 34 CFR Part 99.31(a)(4).

Documentation of request not required

A school does not have to record instances where the request for access 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.

HIPPA (privacy of health records) and FERPA

The Health Insurance Portability and Accountability Act of 1996 (HIPPA) sets standards to protect the confidentiality of health information.

However, the HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described here.

Your school's Disability Services office normally obtains and maintains health records for each student who applies for services or waivers, so the receipt and maintenance of health records by student services units is well established.

Note: In 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, it may be more practical to have the disability services office maintain the record and reference that record in the file in the financial aid office. (Of course, your school 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

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 website

Subject to certain conditions, disclosure may be made through Internet or intranet 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 5* 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 website that contains the required notifications and disclosures.

For additional information on electronic transactions involving student loans, see Section 2 of *Standards for Electronic Signatures in Electronic Student Loan Transactions*, in GEN-01-06, May 2001.

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.

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 your school sends financial information by e-mail, it could send a request for consent to the recipient via e-mail, 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 your school uses an electronic process to provide notices, make disclosures, and direct students to a secure website, it must provide direct notice of this each year to each student, whether via e-mail, campus mail, or the traditional mail of the U.S. Postal Service.

The annual individual notice must

- identify the information required to be disclosed that year,
- provide the exact Internet 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 (FTC) has ruled that most colleges are subject to the provisions of the Financial Services Act's Security Provisions (also known as the Financial Services Modernization Act). In the regulation, the commission created a definition of financial institutions that includes most colleges on the basis of the financial relationships they have with students, donors, and others. Consequently, colleges must 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 under the FTC rule. For specific requirements, see "FTC Standards for Safeguarding Customer Information" on the following page.

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)
➔ 15 USC 6801(b), 6805(b)(2)

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.

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 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 its operations or business arrangements or any other circumstances that it has reason to know may have a material impact on its 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 your school must require its 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 USC 6801(b), 6805(b)(2)

Other Administrative Requirements

CHAPTER 6

This chapter discusses school requirements that are not directly related to student aid or academics, such as required policies and procedures for campus security and fire safety.

SAFETY REQUIREMENTS

Reporting crimes

Schools must have policies that encourage complete timely reporting of all crimes to the campus police and appropriate law enforcement agencies. Also, schools that participate in the FSA programs and have a campus police or security department must maintain a written, easily understood, daily crime log. The log must list any crime, by the date it was reported to the campus police or security department, that occurred on campus, on a noncampus building or property, on public property, or within the police or security department's patrol jurisdiction. The log must also include the nature, date, time, and general location of each crime and the disposition of the complaint, if known.

The school must make an entry or an addition to an entry to the log within two business days (Monday–Friday, except days when the school is closed) of the report of the information to the campus police or security department unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

A school may withhold one or more of the required pieces of information if there is clear and convincing evidence that the release of the information would

- jeopardize an ongoing criminal investigation or the safety of an individual,
- cause a suspect to flee or evade detection, or
- result in the destruction of evidence.

However, the school must disclose any information withheld for any of these reasons once the adverse effect is no longer likely to occur.

The school must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The school must make any portion of the log older than 60 days available within two business days of a request for public inspection.

CHAPTER 8 HIGHLIGHTS

- Safety requirements
- Reporting foreign sources and gifts
- Anti-lobbying provisions
- Voter registration

Citations

34 CFR 668.46(f)
Fire safety log
34 CFR 668.49
Missing persons
34 CFR 668.46(h)
Emergency response & evacuation
34 CFR 668.46(g)

Reporting campus security and fire safety data to ED

Security and fire safety survey data is collected through the Department's Campus Crime and Security website (requires password and user ID): **https://surveys.ope.ed.gov/security**.

Fire safety
Fire safety requirements were added by the Higher Education Opportunity Act (HEOA) of 2008
HEA 485(i)
34 CFR 668.49

Definitions
On-campus student housing facility—a dormitory or other residential facility for students that is located on a school's campus.

Campus—any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls.

Missing persons procedures—private right of action
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

Fire safety

A school that has any on-campus student housing facility must maintain a written, easily understood log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

The school must

- make an entry or an addition to an entry to the log within two business days of the receipt of the information,
- make the fire log for the most recent 60-day period open to public inspection during normal business hours, and
- make any portion of the log older than 60 days available within two business days of a request for public inspection.

A school must annually submit a copy of the fire safety statistics to the Department and include the fire safety statistics in its annual report to the campus community.

Missing persons procedures

A school that provides on-campus student housing facility must establish a missing student notification policy and include a description of its policy in its annual security report to the campus community. The notification policy must

- include a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- require that any missing student report be referred immediately to the school's police or campus security department (if the school doesn't have such a department, it must refer the report to the local law enforcement agency that has jurisdiction in the area); and
- include an option for each student to identify a contact person or persons whom the school shall notify within 24 hours of a determination (by the school's police or campus security department or the local law enforcement agency) that the student is missing.

Students must be advised that

- their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

- if they are under 18 years of age and not emancipated, the school must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and
- the school will notify the local law enforcement agency within 24 hours of the determination that the student is missing unless the local law enforcement agency was the entity that made the determination that the student is missing.

When a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours, the school must within 24 hours notify

- the contact person if the student has designated one, and
- the student's custodial parent or guardian if the student is less than 18 years old and is not emancipated.

In all cases the school must inform the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

Emergency response & evacuation

A school must develop emergency response and evacuation procedures and include a description of its procedures in its annual security report to the campus community.

A school must develop procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

At a minimum, schools must have procedures to

- confirm that a significant emergency or dangerous situation (as described above) exists;
- determine the appropriate segment or segments of the campus community to receive a notification, the content of the notification; and to initiate the notification system;
- disseminate emergency information to the larger community; and
- test the emergency response and evacuation procedures on at least an annual basis, including announced or unannounced tests.

The school must compile a list of the titles of those persons or organizations responsible for determining whether an emergency or dangerous situation exists and who are authorized to initiate the notification process and include this information in the annual report.

Publicizing procedures

The school must publicize its emergency response and evacuation procedures in conjunction with at least one test per calendar year. The school must document each test with a description of the exercise, stating the date and time, and indicating whether it was announced or unannounced.

Definition of "test"

Regularly scheduled drills, exercises, and appropriate followthrough activities designed for assessment and evaluation of emergency plans and capabilities.

Crimes to be reported to campus community

34 CFR 688.46(c)(1)
(i) Criminal homicide:
(A) Murder and nonnegligent manslaughter.
(B) Negligent manslaughter.
(ii) Sex offenses:
(A) Forcible sex offenses.
(B) Nonforcible sex offenses.
(iii) Robbery.
(iv) Aggravated assault.
(v) Burglary.
(vi) Motor vehicle theft.
(vii) Arson.
(viii) (A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.
(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

34 CFR 688.46(c)(3)
An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:
(i) Any crime it reports pursuant to paragraph (c)(1)(i) through (vii) of this section.
(ii) The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.
(iii) Any other crime involving bodily injury.

Definitions

Undergraduate students—For purposes of §668.45 and 668.48 [completion and graduation rates for students and student athletes] only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.
34 CFR 668.41(a)
Certificate or degree-seeking student—a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

In the event of an emergency or dangerous situation, a school must, without delay and taking into account the safety of the community, determine the content of the notification and initiate the notification system unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

Timely warning & emergency notification

A school must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are

- included in campus crime statistics, such as arson, robbery, burglary, motor vehicle theft, aggravated assault, criminal homicides, and sex offenses (see full listing in the sidebar on the previous page), or
- reported to local police agencies or to campus security authorities (as identified under the school's statement of current campus policies), and
- considered by the school to represent a threat to students and employees.

A school is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

If there is an immediate threat to the health or safety of students or employees occurring on campus, a school must follow its emergency notification procedures. A school that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the school must provide adequate follow-up information to the community as needed.

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**.

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 most two-year and four-year postsecondary schools (whether or not the school is eligible to participate in the FSA programs) to report ownership or control by foreign sources as well as 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. See *Volume 2*, *Chapter 8*, of the *FSA Handbook* for more information.

Prohibition on use of FSA funds

HEOA 2008 section 119
(no corresponding HEA section)
Effective date: Aug. 14, 2008

ANTI-LOBBYING PROVISIONS

Prohibition on use of FSA funds

FSA funds may not be used to pay any person for trying 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 *non-federal* funds to pay any person for lobbying activities in connection with the Campus-based programs, the school must submit a disclosure form (Standard Form LLL) to the Department. The school must update this disclosure at least 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.

The school must require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

VOTER REGISTRATION

Schools in most states and the District of Columbia must make a good faith effort to distribute voter registration forms to their students. (Schools in Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming are exempt from this requirement.) 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.

Anti-lobbying certification & disclosure

Section 319 of Pub. L. 101-121, enacted Oct. 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 Feb. 26, 1990, for implementing and complying with the law. See 34 CFR Part 82.

ACA may not be used for association membership

A school may not use its administrative cost allowance (ACA) 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.

Applicability of voter registration requirement

The voter registration requirement was included in the National Voter Registration Act of 1993. In essence, if a participating school is located in a state that requires voter registration prior to election day and/or does not allow the ability to register at the time of voting, then the school must make a good faith effort to distribute voter registration forms to its students.

The Department of Justice identified the states that meet these criteria—the requirements of the National Voter Registration Act of 1993 (also known as the "NVRA" or "motor voter law") apply to 44 States and the District of Columbia.
Six States (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt from the NVRA.
Likewise, the territories are not covered by the NVRA (Puerto Rico, Guam, Virgin Islands, American Samoa).

—From U.S. Department of Justice, "Questions and Answers" on "The Voter Registration Requirements of Sections 5, 6, 7, and 8 of the National Voter Registration Act."

The school can mail paper copies, or, alternatively, it may distribute voter registration forms by 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.

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.