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Integrated Regulations Incorporating
Program Integrity Final Rules
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and
Gainful Employment Final Rules
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and
Foreign School Final Rules
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Editorial Notes:
1. 600.4(a)(4)(c): The hyphens in the term “one academic year” should not have been stricken because it refers to a one-academic-year training program.
TITLE 34—EDUCATION
CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION
PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Table of Contents

Subpart A—General ........................................................................................................................................................................................ 3
 § 600.1 Scope. 3
 § 600.2 Definitions. 3
 § 600.3 [Reserved] 4
 § 600.4 Institution of higher education. 4
 § 600.5 Proprietary institution of higher education. 4
 § 600.6 Postsecondary vocational institution. 5
 § 600.7 Conditions of institutional ineligibility. 6
 § 600.8 Treatment of a branch campus. 7
 § 600.9 [Reserved—State Authorization]. 7
 § 600.10 Date, extent, duration, and consequence of eligibility. 8
 § 600.11 Special rules regarding institutional accreditation or preaccreditation. 9

Subpart B—Procedures for Establishing Eligibility .............................................................................................................................................. 9
 § 600.20 Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification. 9
 § 600.21 Updating application information. 12

Subpart C—Maintaining Eligibility .................................................................................................................................................................... 12
 § 600.30 [Reserved] 12
 § 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions. 12
 § 600.32 Eligibility of additional locations. 14

Subpart D—Loss of Eligibility ........................................................................................................................................................................... 14
 § 600.40 Loss of eligibility. 14
 § 600.41 Termination and emergency action proceedings. 15

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs ........................................... 16
 § 600.51 Purpose and scope. 16
 § 600.52 Definitions. 16
 § 600.53 Requesting an eligibility determination. 17
 § 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs—Direct Loan Programs 17
 § 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs—Direct Loan Program . 18
 § 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs—Direct Loan Program 20
 § 600.57 Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the Direct Loan Program 20
 § 600.58 Duration of eligibility determination. 21

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.
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TITLE 34—EDUCATION
DEPARTMENT OF EDUCATION
PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Subpart A—General

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an educational institution qualifies in whole or in part as an eligible institution of higher education under the Higher Education Act of 1965, as amended (HEA). An eligible institution of higher education may apply to participate in programs authorized by the HEA (HEA programs).

Authority: 20 U.S.C. 1088, 1094, 1099b, 1099c, and 1141

§ 600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition that a nationally recognized accrediting agency grants to an institution or educational program that meets the agency’s established requirements.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Branch Campus: A location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Clock hour: A period of time consisting of—

(1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;

(2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or

(3) Sixty minutes of preparation in a correspondence course.

Correspondence course: A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.

(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

(3) A correspondence course is not distance education.

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement, that is institutionally established equivalency that reasonably approximates not less than—

(i) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(ii) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

Direct assessment program: A program as described in 34 CFR 668.10.

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separate from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

Educational program: (1) A legally authorized postsecondary program of organized instruction or study that:

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart Q; and

(ii) May, in lieu of credit hours or clock hours as a measure of student learning, utilize direct assessment of student learning, or recognize the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment and with the provisions of § 668.10.

(2) The Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: Instruction provided by other institutions or schools; examinations or direct assessments provided by agencies or organizations; or other accomplishments such as “life experience.”

Eligible institution: An institution that—

(1) Qualifies as—

(i) An institution of higher education, as defined in § 600.4;

(ii) A proprietary institution of higher education, as defined in § 600.5; or

(iii) A postsecondary vocational institution, as defined in § 600.6; and

(2) Meets all the other applicable provisions of this part.

Federal Family Education Loan (FFEL) Programs: The loan programs (formerly called the Guaranteed Student Loan (GSL) programs) authorized by title IV-B of the HEA, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS), and Federal Consolidation Loan programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the students’ attendance at eligible institutions. The Federal Stafford Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in 34 CFR part 668.

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency: An agency or association that the Secretary recognizes as a reliable authority to determine the quality of education or training offered by an institution or a program offered...
by an institution. The Secretary recognizes these agencies and associations under the provisions of 34 CFR part 602 and publishes a list of the recognized agencies in the FEDERAL REGISTER.

Nonprofit institution: An institution that—

(1)(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual; and

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(3)(iii) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or;

(2) For a foreign institution—

(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)(A) If a recognized tax authority of the institution’s home country is recognized by the Secretary for purposes of making determinations of an institution’s nonprofit status for title IV purposes, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no recognized tax authority of the institution’s home country is recognized by the Secretary for purposes of making determinations of an institution’s nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

One-academic-year training program: An educational program that is at least one academic year as defined under 34 CFR 668.2.

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Recognized equivalent of a high school diploma: The following are the equivalent of a high school diploma—

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor’s degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

Recognized occupation: An occupation that is—

(1) 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 http://online.onetcenter.org or its successor site; or Listed in an “occupational division” of the latest edition of the Dictionary of Occupational Titles, published by the U.S. Department of Labor; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution’s accrediting agency, a teach-out agreement between institutions.

Title IV, HEA program: Any of the student financial assistance programs listed in 34 CFR 668.1(c).

(Authority: 20 U.S.C. 1071 et seq., 1078–2, 1088, 1091, 1094, 1099b, 1099c, and 1141 and 26 U.S.C. 501(c).)


§ 600.3 [Reserved]

§ 600.4 Institution of higher education.

(a) An institution of higher education is a public or private nonprofit educational institution that—

(1) Is in a State, or for purposes of the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal TRIO programs may also be located in the Federated States of Micronesia or the Marshall Islands;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with § 600.5;

(4)(i) Provides an educational program—

(A) For which it awards an associate, baccalaureate, graduate, or professional degree;

(B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(C) That is at least a one-academic-year training program that leads to a certificate, degree, or other nondegree recognized educational credential, and prepares students for gainful employment in a recognized occupation; and-

(ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

(5) Is—

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal student assistance programs.

(b) An institution is physically located in a State if it has a campus or other instructional site in that State.

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1091, 1094, 1099b, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58615, Oct. 29, 1999]

§ 600.5 Proprietary institution of higher education.
education.

(a) A proprietary institution of higher education is an educational institution that—

(i) Is not a public or private nonprofit educational institution;

(ii) Is in a State;

(iii) Admits as regular students only persons who—

(A) Have a high school diploma;

(B) Have the recognized equivalent of a high school diploma; or

(C) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(iv) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with § 600.5;

(v) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; or

(B)(1) Has provided a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e)(3) of this section, continuously since January 1, 2009; and

(2) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

(6) Is accredited; and

(7) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if—

(i) The institution has been legally authorized to provide, and has provided, a continuous educational program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The educational program that the institution provides on the date of its eligibility application is substantially the same in length and subject matter as the program that the institution provided during the 24 months preceding the date of its eligibility application.

(ii) The Secretary considers an institution to have provided a continuous educational program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that directly affected the institution or the institution’s students.

(iii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

(ii) Except as provided in paragraph (b)(3)(i) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c) An institution is physically located in a State if it has a campus or other instructional site in that State.

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that the institution’s recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(i) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(ii) An undifferentiated program that includes instruction in the general arts or general science.

(iii) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(iv) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

(5) Is—

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal assistance programs; and

(6) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if—

(i) The institution has been legally authorized to provide, and has provided, a continuous educational program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The educational program that the institution provides on the date of its eligibility application is substantially the same in length and subject matter as the program that the institution provided during the 24 months preceding the date of its eligibility application.

(ii) The Secretary considers an institution to have provided a continuous educational program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that directly affected the institution or the institution’s students.

(iii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

(ii) Except as provided in paragraph (b)(3)(i) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c) An institution is physically located in a State if it has a campus or other instructional site in that State.

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that the institution’s recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(i) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(ii) An undifferentiated program that includes instruction in the general arts or general science.

(iii) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(iv) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

(5) Is—

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal assistance programs; and

(6) Has been in existence for at least two years.
to have provided a continuous education or training program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that affected the institution or the institution's students.

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education;

(iii) Counts any period during which the applicant institution has been certified as a branch campus; and

(iv) Except as provided in paragraph (b)(3)(iii) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education or postsecondary vocational institution.

(c) An institution is physically located in a State or other instructional site if it has a campus or instructional site in that State.

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

Authority: 20 U.S.C. 1088, 1091, 1094(c)(3)
[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58616, Oct. 29, 1999]

§ 600.7 Conditions of institutional ineligibility.

(a) General rule. For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if—

(1) For its latest complete award year—

(i) More than 50 percent of the institution’s courses were correspondence courses as calculated under paragraph (b) of this section;

(ii) Fifty percent or more of the institution’s regular enrolled students were enrolled in correspondence courses;

(iii) More than twenty-five percent of the institution’s regular enrolled students were incarcerated;

(iv) More than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor’s degree or an associate degree, respectively;

(2) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution—

(A) Files for relief in bankruptcy, or

(B) Has entered against it an order for relief in bankruptcy; or

(3) The institution, its owner, or its chief executive officer—

(i) Has pled guilty to, has pled nolo contendere to, or is found guilty of, a crime involving the acquisition, use, or expenditure of title IV, HEA program funds; or

(ii) Has been judicially determined to have committed fraud involving title IV, HEA program funds.

(b) Special provisions regarding correspondence courses and students—

(1) Calculating the number of correspondence courses. For purposes of paragraphs (a)(1)(i) and (ii) of this section—

(i) A correspondence course may be a complete educational program offered by correspondence, or one course provided by correspondence in an on-campus (residential) educational program;

(ii) A course must be considered as being offered once during an award year regardless of the number of times it is offered during that year; and

(iii) A course that is offered both on campus and by correspondence must be considered two courses for the purpose of determining the total number of courses the institution provided during an award year.

(2) Exceptions. (i) The provisions contained in paragraphs (a)(1)(i) and (ii) of this section do not apply to an institution that qualifies as a "technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market" under section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995.

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor’s-degree program if the students enrolled in the institution’s correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

(c) Special provisions regarding incarcerated students—

(1) Exception. The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma.

(ii) Waiver for entire institution. If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) Other waivers. If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—

(i) For the four-year and two-year programs for which it awards a bachelor’s degree, an associate degree or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(d) Special provision for a nonprofit institution if more than 50 percent of its enrollment consists of students who do not have a high school diploma or its equivalent.

(1) Subject to the provisions contained in paragraphs (d)(2) and (d)(3) of this section, the Secretary waives the limitation contained in paragraph (a)(1)(iv) of this section for a nonprofit institution if that institution demonstrates to the Secretary’s satisfaction that it exceeds that limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

(2) Number of critical students. The Secretary grants a waiver under paragraph (d)(1) of this section only if no more than 40 percent of the institution’s enrollment of regular students consists of students who—

(i) Do not have a high school diploma or its equivalent; and

(ii) Are not served through contracts
described in paragraph (d)(3) of this section. (3) Contracts with Federal, State, or local government agencies. For purposes of granting a waiver under paragraph (d)(1) of this section, the contracts referred to must be with Federal, State, or local government agencies for the purpose of providing job training to low-income individuals who are in need of that training. An example of such a contract is a job training contract under the Job Training Partnership Act (JTPA).

(e) Special provisions. (1) For purposes of paragraph (a)(1) of this section, when counting regular students, the institution shall—
(i) Count each regular student without regard to the full-time or part-time nature of the student’s attendance (i.e., “head count” rather than “full-time equivalent”);
(ii) Count a regular student once regardless of the number of times the student enrolls during an award year; and
(iii) Determine the number of regular students who enrolled in the institution during the relevant award year by—
(A) Calculating the number of regular students who enrolled during that award year; and
(B) Excluding from the number of students in paragraph (e)(1)(iii)(A) of this section, the number of regular students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees less any administrative fee that the institution is permitted to keep under its fair and equitable refund policy.

(2) For the purpose of calculating a completion rate under paragraph (c)(3)(ii) of this section, the institution shall—
(i) Determine the number of regular incarcerated students who enrolled in the other programs during the last completed award year;
(ii) Exclude from the number of regular incarcerated students determined in paragraph (e)(2)(i) of this section, the number of those students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees, less any administrative fee the institution is permitted to keep under the institution’s fair and equitable refund policy;
(iii) Exclude from the total obtained in paragraph (e)(2)(i) of this section, the number of those regular incarcerated students who remained enrolled in the programs at the end of the applicable award year;
(iv) From the total obtained in paragraph (e)(2)(ii) of this section, determine the number of regular incarcerated students who received a degree, certificate, or other recognized educational credential awarded for successfully completing the program during the applicable award year; and
(v) Divide the total obtained in paragraph (e)(2)(v) of this section by the total obtained in paragraph (e)(2)(iii) of this section and multiply by 100.

(f) (1) If the Secretary grants a waiver to an institution under this section, the waiver extends indefinitely provided that the institution satisfies the waiver requirements in each award year.

(2) If an institution fails to satisfy the waiver requirements for an award year, the institution becomes ineligible on June 30 of that award year.

(g) (1) For purposes of paragraph (a)(1) of this section, and any applicable waiver or exception under this section, the institution shall substantiate the required calculations by having the certified public accountant who prepares its audited financial statement under 34 CFR 668.15 or its title IV, HEA program compliance audit under 34 CFR 668.23 report on the accuracy of those determinations.

(2) The certified public accountant’s report must be based on performing an “attestation engagement” in accordance with the American Institute of Certified Public Accountants (AICPA’s) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with or as part of the audit report referenced in paragraph (g)(1) of this section.

(3) The certified public accountant’s attestation report must indicate whether the institution’s determinations regarding paragraph (a)(1) of this section and any relevant waiver or exception under paragraphs (b), (c), and (d) of this section are accurate; i.e., fairly presented in all material respects.

(h) Notice to the Secretary. An institution shall notify the Secretary—

(1) By July 31 following the end of an award year if it falls within one of the prohibitions contained in paragraph (a)(1) of this section, or fails to continue to satisfy a waiver or exception granted under this section; or

(2) Within 10 days if it falls within one of the prohibitions contained in paragraphs (a)(2) or (a)(3) of this section.

(i) Regaining eligibility. (1) If an institution loses its eligibility because of one of the prohibitions contained in paragraph (a)(1) of this section, to regain its eligibility, it must demonstrate—

(i) Compliance with all eligibility requirements;

(ii) That it did not fall within any of the prohibitions contained in paragraph (a)(1) of this section for at least one award year; and

(iii) That it changed its administrative policies and practices to ensure that it will not fall within any of the prohibitions contained in paragraph (a)(1) of this section.

(2) If an institution loses its eligibility because of one of the prohibitions contained in paragraphs (a)(2) and (a)(3) of this section, this loss is permanent. The institution’s eligibility cannot be reinstated.

(Authority: 20 U.S.C. 1088)

§ 600.8 Treatment of a branch campus.

A branch campus of an eligible proprietary institution of higher education or a postsecondary vocational institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1091c)

§ 600.9 [Reserved]. State Authorization.

(a) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), (b), (c), and (d) of this section.

(i) (A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution’s accreditation by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), (b), (c), and (d) of this section.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate, and
(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by--

(i) The Federal Government;

(ii) As defined in 25 U.S.C. 1802(2), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that--

(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and

(ii) 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.

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

Authority: 20 U.S.C. 1001 and 1002

§ 600.10 Date, extent, duration, and consequence of eligibility.

(a) Date of eligibility. (1) If the Secretary determines that an applicant institution satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution to be an eligible institution as of the date--

(i) The Secretary signs the institution's program participation agreement described in 34 CFR part 668, subpart B, for purposes of participating in any title IV, HEA program; and

(ii) The Secretary receives all the information necessary to make that determination for purposes other than participating in any title IV, HEA program.

(2) [Reserved]

(b) Extent of eligibility. (1) If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this part, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this part, the Secretary extends eligibility only to those educational programs and locations that meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent to the institution under § 600.21.

(3) Eligibility does not extend to any location that an institution establishes after it receives its eligibility designation if the institution provides at least 50 percent of an educational program at that location, unless--

(i) The Secretary approves that location under § 600.20(e)(4); or

(ii) The location is licensed and accredited, the institution does not have to apply to the Secretary for approval of that location under § 600.20(c), and the institution has reported to the Secretary that location under § 600.21.

(c) Subsequent additions of educational programs. (1) Except as provided in paragraph (c)(2) of this section, if an eligible institution adds an educational program after it has been designated as an eligible institution by the Secretary, the institution must apply to the Secretary to have that additional program designated as an eligible program of that institution. An eligible institution must notify the Secretary at least 90 days before the first day of class when it intends to add an educational program that prepares students for gainful employment in a recognized occupation, as provided under 34 CFR 668.8(c)(3) or (d). The institution may proceed to offer the program described in its notice, unless the Secretary advises the institution that the additional educational program must be approved under § 600.20(c)(1)(v). Except as provided for direct assessment programs under 34 CFR 668.10, or pursuant to a requirement included in an institution's Program Participation Agreement under 34 CFR 668.14, the institution does not have to apply for approval to add any other type of educational program.

(2) An eligible institution that adds an educational program after it has been designated as an eligible institution by the Secretary does not have to apply to the Secretary to have that additional program designated as an eligible program of that institution except as provided in 34 CFR 668.10 if the additional program—

(i) Leads to an associate, baccalaureate, professional, or graduate degree, or a program with a Classification of Instructional Programs (CIP) code under the taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education’s National Center for Education Statistics that is different from any other program offered by the institution;

(ii) (A) Prepares students for gainful employment in the same or a related recognized occupation as an educational program that has previously been designated as an eligible program at that institution by the Secretary, and a program that has the same CIP code as another program offered by the institution but leads to a different degree or certificate; or

(B) Is at least 5 semester hours, 12 quarter hours, or 600 clock hours.

(iii) A program that the institution’s accrediting agency determines to be an additional program.

(3) If an institution incorrectly determines under paragraph (c)(2) of this section that an educational program satisfies the applicable statutory and regulatory eligibility provisions without applying to the Secretary for approval, the institution is liable to repay the Secretary all HEA program funds received by the institution for that educational program, and all the title IV, HEA program funds received by or on behalf of students who were enrolled in that educational program. An institution must repay to the Secretary all HEA program funds received by the institution for an educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program if the institution—

(i) Fails to obtain the Secretary’s approval to offer an additional educational program that prepares students for gainful employment in a recognized occupation as provided under paragraph (c)(1) of this section; or

(ii) Incorrectly determines that an educational program that is not subject to approval under paragraph (c)(1) of this section is an eligible program for title IV, HEA program purposes.

(d) Duration of eligibility. (1) If an institution participates in the title IV, HEA programs, the Secretary’s designation of the institution as an eligible institution under the title IV, HEA programs expires when the institution’s program participation agreement, as described in 34 CFR part 668, subpart B,
If an institution participates in an HEA program other than a title IV, HEA program, the Secretary’s designation of the institution as an eligible institution, for purposes of that non-title IV, HEA program, does not expire as long as the institution continues to satisfy the statutory and regulatory requirements governing its eligibility.

(e) Consequence of eligibility. (1) If, as a part of its institutional eligibility application, an institution indicates that it does not wish to participate in any title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the Secretary will determine whether the institution satisfies the standards of administrative capability and financial responsibility contained in 34 CFR part 668, subpart B.

(2) If, as part of its institutional eligibility application, an institution indicates that it does not wish to participate in any title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the institution is eligible to apply to participate in any HEA program listed by the Secretary in the eligibility notice it receives under § 600.21. However, the institution is not eligible to participate in those programs, or receive funds under those programs, merely by virtue of its designation as an eligible institution under this part.

(Approved by the Office of Management and Budget under control number 1845–0008)

Authority: 20 U.S.C. 1088 and 1141


§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) Change of accrediting agencies. For purposes of §§ 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides to the Secretary—

(1) All materials related to its prior accreditation or preaccreditation; and

(2) Materials demonstrating reasonable cause for changing its accrediting agency.

(b) Multiple accreditation. The Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is accredited or preaccredited as an institution by more than one accrediting agency, unless the institution—

(1) Provides to each such accrediting agency and the Secretary the reasons for that multiple accreditation or preaccreditation;

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation; and

(3) Designates to the Secretary which agency’s accreditation or preaccreditation the institution uses to establish its eligibility under this part.

(c) Loss of accreditation or preaccreditation.

(1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

(d) Religious exception. (1) If an otherwise eligible institution loses its accreditation or preaccreditation, the Secretary considers the institution to be accredited or preaccredited for purposes of complying with the provisions of §§ 600.4, 600.5, and 600.6 if the Secretary determines that its loss of accreditation or preaccreditation—

(i) Is related to the religious mission or affiliation of the institution; and

(ii) Is not related to its failure to satisfy the accrediting agency’s standards.

(2) If the Secretary considers an unaccredited institution to be accredited or preaccredited under the provisions of paragraph (d)(1) of this section, the Secretary will consider that unaccredited institution to be accredited or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.

Authority: 20 U.S.C. 1099b

Subpart B—Procedures for Establishing Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.20 Notice and Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

(a) Initial eligibility application. (1) An institution that wishes to establish its eligibility to participate in any HEA program must submit an application to the Secretary for a determination that it qualifies as an eligible institution under this part.

(2) If the institution also wishes to be certified to participate in the title IV, HEA programs, it must indicate that intent on the application, and submit all the documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its application to participate—

(i) A list of all medical school educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks; and

(ii) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (a)(3)(i)(A) of this section; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under § 600.55(e)(1).

(b) Reapplication. (1) A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply. If the institution wishes to be certified to participate in the title IV, HEA programs, it must submit an application to the Secretary and must submit all the supporting documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in subparts B and L of 34 CFR part 668.

(2) A currently designated eligible institution that participates in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part and in 34 CFR part 668 if the institution wishes to—

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its reapplication to participate—

(i) A list of all the foreign graduate medical school’s educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites that are
(v) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (b)(3)(i)(A) of this section; and

(ii) Whether the school offers—
(A) Only post-baccalaureate/equivalent medical programs, as defined in § 600.52; or
(B) Other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine; or
(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under § 600.55(e)(1).

(j) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution’s current eligibility and certification designation;

(ii) Reestablish eligibility and certification as a private nonprofit, private for-profit, or public institution following a change in ownership that results in a change in control as described in § 600.31; or

(iii) Reestablish eligibility and certification after the institution changes its status as a proprietary, nonprofit, or public institution.

(c) Application to expand eligibility. A currently designated eligible institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary and wait for approval to—

(1) Add a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under § 600.21:

(i) The institution participates in the title IV, HEA programs under a provisional certification, as provided in 34 CFR 668.13.

(ii) The institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment method, as provided in 34 CFR part 668, subpart K.

(iii) The institution acquires the assets of another institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year.

(iv) The institution would be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location.

(v) The Secretary previously notified notifies, or has notified, the institution that it must apply for approval of an additional educational program or a location under §

600.10(c).

(2) Increase its level of program offering (e.g., adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under § 600.10(c);

(4) Add a branch campus at a location that is not currently included in the institution’s eligibility and certification designation; or

(5) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, add a location that offers all or a portion of the foreign graduate medical school’s core clinical training or required clinical rotations, except for those locations that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

(6) Convert an eligible location to a branch campus.

(d) Application format, Notice and application. (1) Notice and application procedures. (i) To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must notify the Secretary of its intent to offer an additional educational program, or provide an application to expand its eligibility, apply in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(ii)(A) An institution that notifies the Secretary of its intent to offer an educational program under paragraph (c)(3) of this section must ensure that the Secretary receives the notice described in paragraph (d)(2) of this section at least 90 days before the first day of class of the educational program.

(B) An institution that submits a notice in accordance with paragraph (d)(1)(ii)(A) of this section is not required to obtain approval to offer the additional educational program unless the Secretary alerts the institution at least 30 days before the first day of class that the program must be approved for title IV, HEA program purposes. If the Secretary alerts the institution that the additional educational program must be approved, the Secretary will treat the notice provided about the additional educational program as an application for that program.

(c) Application to expand eligibility. An institution that notifies the Secretary of its intent to offer a new educational program under paragraphs (d)(1)(ii)(E)(2), (3), and (4) of this section must at a minimum—

(i) Describe in the notice how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. This description must contain any wage analysis the institution may have performed, including any consideration of Bureau of Labor Statistics data related to the program;

(ii) Describe in the notice how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, Base Document: GPO Compilation updated through July 1, 2010
October 29, 2010 Final Rules (Program Integrity Issues); October 29, 2010 Final Rules (Gainful Employment); November 1, 2010 Final Rules (Foreign School Issues)
and businesses that would likely employ graduates of the program;

(iii) Submit documentation that the program has been approved by its accrediting agency or is otherwise included in the institution’s accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; and

(iv) Provide the date of the first day of class of the new program.

(e) Secretary’s response to applications: (1) If the Secretary receives an application under paragraph (a) or (b)(1) of this section, the Secretary notifies the institution—

(i) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in §§ 600.4 through 600.7; and

(ii) Of the locations and educational programs that qualify as the eligible institution if only a portion of the applicant qualifies as an eligible institution;

(2) If the Secretary receives an application under paragraphs (a) or (b) of this section and that institution applies to participate in the title IV, HEA programs, the Secretary notifies the institution—

(i) Whether the institution is certified to participate in those programs;

(ii) Of the title IV, HEA programs in which it is eligible to participate;

(iii) Of the title IV, HEA programs in which it is eligible to apply for funds;

(iv) Of the effective date of its eligibility to participate in those programs; and

(v) Of the conditions under which it may participate in those programs;

(3) If the Secretary receives an application under paragraph (b)(2) of this section, the Secretary notifies the institution whether it continues to be certified, or whether it reestablished its eligibility and certification to participate in the title IV, HEA programs and the scope of such approval.

(4) If the Secretary receives an application under paragraph (c)(1) of this section for an additional location, the Secretary notifies the institution whether the location is eligible or ineligible to participate in the title IV, HEA programs, and the date of eligibility if the location is determined eligible;

(5) If the Secretary receives an application under paragraph (c)(2) of this section for an increase in the level of program offering, or for an additional educational program under paragraph (c)(3) of this section, the Secretary notifies the institution whether the program qualifies as an eligible program, and if the program qualifies, the date of eligibility; and

(6) If the Secretary receives an application under paragraphs (c)(4) or (c)(5) of this section to have a branch campus certified to participate in the title IV, HEA programs as a branch campus, the Secretary notifies the institution whether that branch campus is certified to participate and the date that the branch campus is eligible to begin participation.

(f) Disbursement rules related to applications: (1)(i) Except as provided under paragraph (f)(1)(ii) of this section and 34 CFR 686.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary’s notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (f)(1)(i) of this section may disburse title IV, HEA program funds to its students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 686.13(b)(2), and has not received a final decision from the Department on that application.

(2)(i) Except as provided under paragraph (f)(2)(ii) of this section and 34 CFR 686.26, if a private nonprofit, private for-profit, or public institution submits an application under paragraph (b)(2)(ii) or (b)(2)(iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change in ownership or status unless the institution receives the Secretary’s notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (f)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary issues a provisional extension of certification under paragraph (g) of this section.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (c)(4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch until the institution receives the Secretary’s notification that the location, program, or branch is eligible to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary’s approval of a new location, program, increased level of program offering, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburse to students enrolled at that location or branch or in that program.

(g) Application for provisional extension of certification. (1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in 34 CFR 600.31, the Secretary may continue the institution’s participation in those programs on a provisional basis, if the institution under the new ownership submits a “materially complete application” that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) For purposes of this section, a private nonprofit institution, a private for-profit institution, or a public institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution’s State license or equivalent document that—as of the day before the change in ownership—authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution’s accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of any non-degree programs it offers;

(iii) Audited financial statements of the institution’s two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23; and

(iv) Audited financial statements of the institution’s new owner’s two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(h) Terms of the extension. (1) If the Secretary approves the institution’s materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—
§ 600.21 Updating application information.

(a) Reporting requirements. Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

(1) Its name, the name of a branch, or the name of a previously reported location.

(2) Its address, the address of a branch, or the address of a previously reported location.

(3) Its establishment of an accredited and licensed additional location at which it offers or will offer 50 percent or more of an educational program if the institution wants to disburse title IV, HEA funds to students enrolled at that location under the provisions in paragraph (d) of this section.

(4) Except as provided in 34 CFR 668.10, the way it measures program length (e.g., from clock hours to credit hours, or from semester hours to quarter hours).

(5) A decrease in the level of program offering (e.g., the institution drops its graduate programs).

(6) A person’s ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—

(i) Holds alone or together with another member or members of his or her family, at least a 25 percent “ownership interest” in the institution as defined in § 600.31(b); or

(ii) Represents or holds, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent “ownership interest” in the institution, as defined in § 600.31(b); or

(iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.

(7) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.

(8) The closure of a branch campus or additional location that the institution was required to report to the Secretary.

(9) The governance of a public institution.

(10) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, the school adds a location that offers all or a portion of the school’s clinical rotations that are not required, except for those that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA), or that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.

(b) Additional reporting from institutions owned by publicly-traded corporations. An institution that is owned by a publicly-traded corporation must report to the Secretary any change in the information described in paragraph (a)(6) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

(c) Secretary's response to reporting. The Secretary notifies an institution if any reported changes affect the institution’s eligibility, and the effective date of that change.

(d) Disbursement rules related to additional locations. When an institution must report to the Secretary about an additional location under paragraph (a)(3) of this section, the institution may not disburse title IV, HEA funds to students at that location before it reports to the Secretary about that location. Unless it is an institution that must apply to the Secretary under § 600.20(c)(1), once it reports to the Secretary about that location, the institution may disburse those funds to those students if that location is licensed and accredited.

(e) Consequence of failure to report. An institution’s failure to inform the Secretary of a change described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against the institution.

(f) Definition. A family member includes a person’s—

(1) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or step-grandchild;

(2) Spouse’s parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child’s spouse; and

(4) Sibling’s spouse.

(Approved by the Office of Management and Budget under control number 1845–0012)

[65 FR 65673, Nov. 1, 2000, as amended at 71 FR 45692, Aug. 9, 2006]

Subpart C—Maintaining Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.30 [Reserved]

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control.

(2) A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity owns the institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

(b) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control.

(1) If a private nonprofit, private for-profit, or public institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of § 600.20(g) and (h), continue the institution’s participation in the title IV, HEA programs on a provisional basis, provided that the institution submits, under the provisions of § 600.20(g), a materially complete application—

(i) No later than 10 business days after the...
change occurs; or

(ii) For an institution owned by a publicly-traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

(3) In order to reestablish eligibility and to resume participation in the title IV, HEA programs, the institution must demonstrate to the Secretary that after the change in ownership and control—

(i) The institution satisfies all the applicable requirements contained in §§ 600.4, 600.5, and 600.6, except that if the institution is a proprietary institution of higher education or postsecondary vocational institution, it need not have been in existence for two years before seeking eligibility; and

(ii) The institution qualifies to be certified to participate under 34 CFR part 668, subpart B.

(b) Definitions. The following definitions apply to terms used in this section:

Closely-held corporation. Closely-held corporation (including the term close corporation) means—

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

(2) If the State of incorporation has no definition of closely-held corporation, a corporation the stock of which—

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

Control. Control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or corporate parent are included in the plan; or

(iv) An Employee Stock Ownership Plan (ESOP).

Parent. The parent or parent corporation of a specified corporation is the corporation or partnership that controls the specified corporation directly or indirectly through one or more intermediaries.

Person. Person includes a legal person (corporation or partnership) or an individual.

Wholly-owned subsidiary. A wholly-owned subsidiary is one substantially all of whose outstanding voting securities are owned by its parent together with the parent’s other wholly-owned subsidiaries.

(c) Standards for identifying changes of ownership and control—

(i) Closely-held corporation. A change in ownership and control occurs when—

(i) A person acquires more than 50 percent of the total outstanding voting stock of the corporation;

(ii) A person who holds an ownership interest in the corporation acquires control of more than 50 percent of the outstanding voting stock of the corporation; or

(iii) A person who holds or controls 50 percent or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

(ii) Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC). A change in ownership and control occurs when—

(i) A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

(ii)(A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the “same day” balance sheet.

(C) If a publicly-traded institution is provisionally certified due to a change in ownership under paragraph (c)(2)(ii) of this section, and that institution experiences another change of ownership under paragraph (c)(2)(ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling shareholder was listed on the change of ownership application for which the original provisional approval was granted.

(3) Other corporations. A change in ownership and control of a corporation that is neither closely-held nor required to be registered with the SEC occurs when—

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation;

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation; or

(iii) For a membership corporation, a person who is or becomes a member acquires or loses control of 25 percent of the voting interests of the corporation and control of the corporation.

(4) Partnership or sole proprietorship. A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

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

(6) Nonprofit institution. A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

(7) Public institution. The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided—

(i) The new governing authority is in the same State as included in the institution’s program participation agreement; and

(ii) The new governing authority has acknowledged the public institution’s continued responsibilities under its program participation agreement.

(d) Covered transactions. For the purposes of this section, a change in ownership of an institution that results in a change of control may include, but is not limited to—

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent
(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the liabilities of an institution to its parent corporation;

(6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or

(7) A change in status as a for-profit, nonprofit, or public institution.

(e) Excluded transactions. A change in ownership and control reported under §600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner’s equity or partnership interest in an institution, the institution’s parent corporation, or other legal entity that has signed the institution’s Program Participation Agreement—

(1) From an owner to a “family member” of that owner as defined in §600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer.

(Authority: 20 U.S.C. 1099c)

§ 600.32 Eligibility of additional locations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, to qualify as an eligible location, an additional location of an eligible institution must satisfy the applicable requirements of this section and §§600.4, 600.5, 600.6, 600.8, and 600.10.

(b) To qualify as an eligible location, an additional location is not required to satisfy the two-year requirement of §§600.5(a)(7) or 600.6(a)(6), unless—

(1) The location was a facility of another institution that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or its educational programs—

(A) The institution, location, or educational programs—

(i) Wished to transfer the liabilities of an institution to another owner or related party; or

(ii) Owes a liability for a violation of an HEA program requirement; and

(iii) Is not making payments in accordance with an agreement to repay that liability.

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of §600.5(a)(7) or §600.6(a)(6) if the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students who received title IV, HEA program funds; and

(3) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(d)(1) An institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations and the Secretary has taken an action to limit, suspend, or terminate the institution’s participation under §600.41 or subpart G of this part, or has taken an emergency action under 34 CFR 668.83; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed institution’s accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the two-year in existence requirement of §600.5(a)(7) or §600.6(a)(6) for the additional location described in paragraph (d)(1) of this section; and

(B) Is not responsible for any liabilities of the closed institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

(C) Will not have the default rate of the closed institution included in the calculation of its default rate, as would otherwise be required under 34 CFR 668.184 and 34 CFR 668.203, if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b).

(ii) As a condition for approving an additional location under paragraph (d)(1) of this section, the Secretary may require that payments from the institution conducting the teach-out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

(e) For purposes of this section, an “additional location” is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under §600.21.

(Authority: 20 U.S.C. 1088, 1089c, 1141)

Subpart D—Loss of Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.40 Loss of eligibility.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, an institution, or a location or educational program of an institution, loses its eligibility on the date that—

(i) The institution, location, or educational program fails to meet any of the eligibility requirements of this part;

(ii) The institution or location permanently closes;

(iii) The institution or location ceases to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, particular location, or the students of the institution or location; or

(iv) For purposes of the title IV, HEA programs—

(A) The institution’s period of participation as specified under 34 CFR 668.13 expires; or

(B) The institution’s provisional certification is revoked under 34 CFR 668.13.

(2) If an institution loses its eligibility because it violated the requirements of §600.5(a)(8), as evidenced by the determination under provisions contained in §600.5(d), it loses its eligibility on the last day of the fiscal year used in §600.5(d), except that if an institution’s latest fiscal year was described in §600.7(h)(1), it loses its eligibility as of June 30, 1994.

(3) If an institution loses its eligibility under the provisions of §600.7(a)(1), it loses its eligibility on the last day of the award year being evaluated under that provision.

(b) If the Secretary undertakes to terminate the eligibility of an institution because it violated the provisions of §600.5(a)(8) or §600.7(a), and the institution requests a hearing, the presiding official must terminate the institution’s eligibility if it violated those provisions, notwithstanding its status at the time of the hearing.

(c)(1) If the Secretary designates an institution or any of its educational programs or locations as eligible on the basis of
inaccurate information or documentation, the Secretary’s designation is void from the date the Secretary made the designation, and the institution or program or location, as applicable, never qualified as eligible.

(2) If an institution closes its main campus or stops providing any educational programs on its main campus, it loses its eligibility as an institution, and that loss of eligibility includes all its locations and all its programs. Its loss of eligibility is effective on the date it closes that campus or stops providing any educational program at that campus.

(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and

(2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

(Authority: 20 U.S.C. 1088, 1099a–3, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998]

§ 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that a previously designated eligible institution as a whole, or at one or more of its locations, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may—

(1) Terminate the institution’s eligibility designation in whole or as to a particular location—

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (a)(4), and (c) through (f), and 668.91; or

(ii) Under a show-cause hearing, if the institution’s loss of eligibility results from—

(A) Its previously qualifying as an eligible vocational school;

(B) Its previously qualifying as an eligible institution, notwithstanding its unaccredited status, under the transfer-of-credit alternative to accreditation (as that alternative existed in 20 U.S.C. 1085, 1088, and 1141(a)(5)(B) and § 600.8 until July 23, 1992);

(C) Its loss of accreditation or preaccreditation;

(D) Its loss of legal authority to provide postsecondary education in the State in which it is physically located;

(E) Its violations of the provisions contained in § 600.5(a)(8) or § 600.7(a);

(F) Its permanently closing; or

(G) Its ceasing to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, a particular location, or the students of the institution or location;

(2) Limit, under the provisions of 34 CFR 668.86, the authority of the institution to disburse, deliver, or cause the disbursement or delivery of funds under one or more title IV, HEA programs as otherwise provided under 34 CFR 668.26 for the benefit of students enrolled at the ineligible institution or location prior to the loss of eligibility of that institution or location; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution’s participation in one or more title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may in accordance with the procedural provisions described in paragraph (a) of this section—

(1) Undertake to terminate that educational program’s eligibility under one or more of the title IV, HEA programs under the procedural provisions applicable to terminations described in paragraph (a) of this section;

(2) Limit the institution’s authority to deliver, disburse, or cause the delivery or disbursement of funds provided under that title IV, HEA program to students enrolled in that educational program, as otherwise provided in 34 CFR 668.26; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution’s participation in one or more title IV, HEA programs with respect to students enrolled in that educational program.

(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

(2) Once a termination under this section becomes final, the termination is effective with respect to any commitment, delivery, or disbursement of funds provided under an applicable title IV, HEA program by the institution—

(i) Made to students enrolled in the ineligible institution, location, or educational program; and

(ii) Made on or after the date of the act or omission that caused the loss of eligibility as to the institution, location, or educational program.

(3) Once a limitation under this section becomes final, the limitation is effective with regard to any commitment, delivery, or disbursement of funds under the applicable title IV, HEA program by the institution—

(i) Made after the date on which the limitation became final; and

(ii) Made to students enrolled in the ineligible institution, location, or educational program.

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution may not certify applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

(1) In accordance with the requirements of 34 CFR 668.26(c) with respect to students enrolled in the ineligible institution, location, or educational program; and

(2) After satisfaction of any additional requirements, imposed pursuant to a limitation under paragraph (a)(2) of this section, which may include the following:

(i) Completion of the actions required by 34 CFR 668.26(a) and (b).

(ii) Demonstration that the institution has made satisfactory arrangements for the completion of actions required by 34 CFR 668.26(a) and (b).

(iii) Securing the confirmation of a third party selected by the Secretary that the proposed disbursements or delivery of title IV, HEA program funds meet the requirements of the applicable program.

(iv) Using institutional funds to make disbursements permitted under this paragraph and seeking reimbursement from the Secretary for those disbursements.

(e) If the Secretary undertakes to terminate the eligibility of an institution, location, or program under paragraphs (a) and (b) of this section:

(1) If the basis for the loss of eligibility is the loss of accreditation or preaccreditation, the sole issue is whether the institution, location, or program has the requisite accreditation or preaccreditation. The presiding official has no authority to consider challenges to the action of the accrediting agency.

(2) If the basis for the loss of eligibility is the loss of legal authorization, the sole issue is whether the institution, location, or program has the requisite legal authorization. The presiding official has no authority to consider challenges to the action of a State agency in removing the legal authorization.

(3) If the basis for the loss of eligibility of a...
foreign graduate medical school is one or more annual pass rates on the U.S. Medical Licensing Examination below the threshold required in §600.55(f)(1)(ii), the sole issue is whether one or more of the foreign medical school's pass rate or rates for the preceding calendar year fell below that threshold. For a foreign graduate medical school that opted to have the Educational Commission for Foreign Medical Graduates (ECFMG) calculate and provide the pass rates directly to the Secretary for the preceding calendar year as permitted under §600.55(d)(2) in lieu of the foreign graduate medical school providing pass rate data to the Secretary, the ECFMG's calculations of the school's rates are conclusive, and the presiding official has no authority to consider challenges to the computation of the rate or rates by the ECFMG.

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

SOURCE: 59 FR 22063, Apr. 28, 1994, unless otherwise noted.

§ 600.51 Purpose and scope.
(a) A foreign institution is eligible to apply to participate in the Federal Family Education Loan (FFEL) programs if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary in accordance with the provisions of this subpart.

(b) This subpart E contains the procedures and criteria under which a foreign institution may be deemed eligible to apply to participate in the FFEL programs.

(c) This subpart E does not include the procedures and criteria by which a foreign institution that is deemed eligible to apply to participate in the FFEL programs actually applies for that participation. Those procedures and criteria are contained in the regulations for the FFEL programs, 34 CFR part 682, subpart F. A foreign institution must comply with all requirements for eligible and participating institutions except—Applicability of other title IV, HEA program regulations.

(1) To the extent those provisions are inconsistent with this subpart or other provisions of those regulations or the HEA specific to foreign institutions, or a foreign institution must comply with all requirements for eligible and participating institutions except when made inapplicable by the HEA or when the Secretary, through publication in the Federal Register, identifies specific provisions as inapplicable to foreign institutions.

(2) When the Secretary, through a notice in the Federal Register, identifies specific provisions as inapplicable to foreign institutions:—(i) A public or nonprofit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this part except as provided in §§600.51(c)(1) and 600.54(a), is considered an "institute of higher education" for purposes of the title IV, HEA program regulations; and

(ii) A for-profit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this Part, except as provided in §§600.51(c)(1) and 600.54(a), is considered a "proprietary institution" for purposes of title IV, HEA program regulations.

(d)(1) A program offered by a foreign school through any use of a telecommunications course, correspondence course, or direct assessment program is not an eligible program;

(2) Correspondence course has the meaning given in §600.2;

(3) Direct assessment program has the meaning given in §668.10(a)(1) of this chapter;

(4) Telecommunications course is a course offered through any one or a combination of the technologies listed in the definition of telecommunications course in §600.2, except that telecommunications technologies may be used to supplement and support instruction that is offered in a classroom located in the foreign country where the students and instructor are physically present.

Authority: 20 U.S.C. 1082, 1088

§ 600.52 Definitions.
The following definitions apply to this subpart E:

Associate degree school of nursing: A school that provides primarily or exclusively a two-year program of professional education in nursing leading to a degree equivalent to an associate degree in the United States.

Clinical training: The portion of a graduate medical education program that counts as a clinical clerkship for purposes of professional education comprising core, required clinical rotation, and not required clinical rotation.

Collegiate school of nursing: A school that provides primarily or exclusively a minimum of a two-year program of professional education in nursing leading to a degree equivalent to a bachelor of arts, bachelor of science, or bachelor of nursing in the United States, or to a degree equivalent to a graduate degree in nursing in the United States, and including advanced training related to the program of education provided by the school.

Diploma school of nursing: A school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a two-year program of professional nursing leading to the equivalent of a diploma in the United States or to equivalent indica that the program has been satisfactorily completed.

Foreign graduate medical school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to a degree of medical doctor, doctor of osteopathic medicine, or the equivalent. A reference in these regulations to a foreign graduate medical school as “freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions that qualify to be listed in, and is listed as a medical school in, the most current edition of the World Directory of Medical Schools published by the World Health Organization (WHO).

Foreign institution:

(1) For the purposes of students who receive Title IV aid, an institution that—

(i) An institution that is not located in a State;

(ii) Except as provided with respect to clinical training offered under $600.55(h)(1), $600.56(b), or $600.57(a)(2)—

(A) Has no U.S. location;

(B) Has no written arrangements, within the meaning of §668.5, with institutions or organizations located in the United States for students enrolling at the foreign institution to take courses from institutions located in the United States;

(C) Does not permit students to enroll in any course offered by the foreign institution in the United States, including research, work, internship, externship, or special studies within the United States, except that independent research done by an individual student in the United States for not more than one academic year is permitted, if it is conducted during the dissertation phase of a doctoral program under the guidance of faculty, and the research can only be performed in a facility in the United States;

(iii) Is legally authorized by the education ministry, council, or equivalent agency of the country in which the institution is located to provide an educational program beyond the secondary education level; and

(iv) Awards degrees, certificates, or other recognized educational credentials in accordance with §600.54(e) that are officially recognized by the country in which the institution is located; or

Authority: 20 U.S.C. 1082, 1088

§ 600.54(a), is considered a "proprietary institution" for purposes of title IV, HEA program regulations.
Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located. (Authority: 20 U.S.C. 1082. 1088)

§ 600.53 Requesting an eligibility determination.
(a) To be designated as eligible to apply to participate in the FFEL programs or to continue to be eligible beyond the scheduled expiration of the institution’s current period of eligibility, a foreign institution must—
(1) Apply on the form prescribed by the Secretary; and
(2) Provide all the information and documentation requested by the Secretary to make a determination of that eligibility.
(b) If a foreign institution fails to provide, release, or authorize release to the Secretary of information that is required in this subpart E, the institution is ineligible to apply to participate in the FFEL programs. (Approved by the Office of Management and Budget under control number 1840–0673) (Authority: 20 U.S.C. 1082. 1088)

§ 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs/Direct Loan Program.
The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the FFEL programs/Direct Loan Program if the foreign institution—
(a) Meets the following requirements:
(1) Admits as regular students only persons who—Except for a freestanding foreign graduate medical school, a foreign veterinary school, or foreign nursing school, the foreign institution is a public or private nonprofit educational institution that—meets the following requirements:
(a)(i) Admits as regular students only persons who—Except for a freestanding foreign graduate medical school, a foreign veterinary school, or foreign nursing school, the foreign institution is a public or private nonprofit educational institution that—meets the following requirements:
(1) Admits as regular students only persons who—
(b) Is legally authorized by an appropriate authority to provide an eligible educational program beyond the secondary school level in the country in which the institution is located; and The foreign institution admits as regular students only persons who—
(1) Have a secondary school completion credential;
(2) Have the recognized equivalent of a secondary school completion credential;
(c) Provides an eligible education program—Notwithstanding § 668.5, an eligible foreign institution may not enter into a written arrangement under which an ineligible institution or organization provides any portion of one or more of the eligible foreign institution’s programs. For the purposes of this paragraph, written arrangements do not include affiliation agreements for the provision of clinical training for foreign medical, veterinary, and nursing schools.
(d) An additional location of a foreign institution must separately meet the definition of a foreign institution in § 600.52 if the additional location is—
(1) Located outside of the country in which the main campus is located, except as provided in § 600.55(h)(1), § 600.56(b), § 600.57(a)(2), § 600.55(h)(3), and the definition of foreign institution found in § 600.52, or
(2) Located within the same country as the main campus, but is not covered by the legal authorization of the main campus.
(e) The foreign institution provides an eligible education program—
(1) For which the institution is legally authorized to award a degree that is equivalent to an associate, baccalaureate, graduate, or professional degree awarded in the United States;
(2) That is at least a two-academic-year program acceptable for full credit toward the equivalent of a baccalaureate degree awarded in the United States; or
(3) That is equivalent to at least one academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation within the meaning of the gainful employment provisions.
(f) An institution must demonstrate to the satisfaction of the Secretary that the amount of academic work required by a program in paragraph (a)(3)(i) of this section is equivalent to at least the definition of an academic year in § 668.3.
(g) For a for-profit foreign medical, veterinary, or nursing school—
(1) No portion of an eligible medical or veterinary program offered may be at what would be an undergraduate level in the United States; and
(2) The title IV, HEA program eligibility does not extend to any joint degree program.
(h) Proof that a foreign institution meets the requirements of paragraph (1)(iii) of the definition of a foreign institution in § 600.52.

Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located.

Authority: 20 U.S.C. 1082. 1088
may be provided to the Secretary by a legal authorization from the appropriate education ministry, council, or equivalent agency—

(a) General. (1) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in §600.54 of this part (except the criterion in §600.54 that the institution be public or private nonprofit), the school satisfies all of the following criteria of this section:

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or

(ii) In the United States, through a training program for foreign medical students that has been approved by all medical licensing boards in the country where the school is located; and

(b) For a foreign graduate medical school outside of Canada, at least 60 percent of the school's students and graduates who took any step of the examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG) (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency requirements contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and

(2) Have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(3) Have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(4)(i) The school has been approved by an accrediting body—

(A) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(B) Whose standards of accreditation of graduate medical schools—

(1) Are met by the school

(2) Have been evaluated by the advisory panel of medical experts established by the Secretary, and

(3) A foreign graduate medical school must appoint for the program described in paragraph (a)(2) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at medical schools in the United States.

(4) A foreign graduate medical school must have graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(b) Accreditation. A foreign graduate medical school must—

(1) Be approved by an accrediting body—

(i) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(ii) Whose standards of accreditation of graduate medical schools have been evaluated by the NCFMEA or its successor committee of medical experts and have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(2) Be a public or private nonprofit educational institution that satisfies the requirements in §600.4(a)(5)(iii).

(c) Admission criteria. (1) A foreign graduate medical school having a post-baccalaureate/equivalent medical program must require students accepted for admission who are U.S. citizens, nationals, or permanent residents to have taken the Medical College Admission Test (MCAT) and to have reported their scores to the foreign graduate medical school; and

(2) A foreign graduate medical school must determine the consent requirements for, and require the necessary consents of, all students accepted for admission for whom the school must report to enable the school to comply with the collection and submission requirements of paragraph (d) of this section.

(d) Collection and submission of data. (1) A foreign graduate medical school must obtain, at its own expense, and submit, by the date required by paragraph (d)(3) of this section—

(i) To its accrediting authority and, on request, to the Secretary, the scores on the MCAT or successor examination, of all students admitted during the preceding calendar year who are U.S. citizens, nationals, or eligible permanent residents, together with a statement of the number of times each student took the examination;

(ii) To its accrediting authority and, on request, to the Secretary, the percentage of students graduating during the preceding calendar year (including at least all graduates who are U.S. citizens, nationals, or eligible permanent residents) who obtain
placement in an accredited U.S. medical residency program;

(iii) To the Secretary, except as provided for in paragraph (f)(3) of this section, all scores, disregarded by step/test—i.e., Step 1, Step 2—Clinical Skills (Step 2-CS), and Step 2—Clinical Knowledge (Step 2-CK), or the successor examinations—and attempt, earned during the preceding calendar year by each student and graduate on Step 1, Step 2-CS, and Step 2-CK, or the successor examinations, of the U.S. Medical Licensing Examination (USMLE), together with the dates the student has taken each test, including any failed tests;

(iv) To the Secretary, a statement of its citizenship rate for the preceding calendar year for a school that is subject to paragraph (f)(1)(i)(A) of this section, together with a description of the methodology used in deriving the rate that is acceptable to the Secretary.

(2) In lieu of submitting the information required in paragraph (f)(1)(i)(iii) of this section to the Secretary, a foreign graduate medical school that is not subject to paragraph (f)(4) of this section may agree to allow the Educational Commission for Foreign Medical Graduates (ECFMG) or other responsible third party to calculate the rate described in paragraph (f)(1)(i) and (f)(3) of this section for the preceding calendar year and provide the rate directly to the Secretary on the school's behalf with a copy to the foreign graduate medical school, provided—

(i) The foreign graduate medical school has provided by April 30 to the Secretary written consent acceptable to the Secretary to be relied on by the Secretary on the pass rate as calculated by the ECFMG or other responsible third party for purposes of determining compliance with paragraph (f)(1)(i) and (f)(3) of this section for the preceding calendar year; and

(ii) The foreign graduate medical school agrees in its written consent for the preceding calendar year as that rate as calculated by the ECFMG or other designated third party will be conclusive for purposes of determining compliance with paragraph (f)(1)(i) and (f)(3) of this section.

(3) A foreign graduate medical school must submit the data it collects in accordance with paragraph (d)(1) of this section no later than April 30 of each year, unless the Secretary specifies a different date through a notice in the Federal Register.

(e) Requirements for clinical training. (1)(i) A foreign graduate medical school must have—

(A) A formal affiliation agreement with any hospital or clinic at which all or a portion of the school's core clinical training or required clinical rotations are provided; and

(B) Either a formal affiliation agreement or other written arrangements with any hospital or clinic at which all or a portion of its clinical rotations that are not required are provided, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.

(ii) The agreements described in paragraph (f)(1)(i) of this section must state how the following will be addressed at each site—

(A) Maintenance of the school's standards;

(B) Appointment of faculty to the medical school staff;

(C) Design of the curriculum;

(D) Supervision of students;

(E) Evaluation of student performance; and

(F) Provision of liability insurance.

(iii) The foreign graduate medical school must notify its accrediting body within one year of any material changes in—

(A) The educational programs, including changes in clinical training programs; and

(B) The overseeing bodies and in the formal affiliation agreements with hospitals and clinics described in paragraph (e)(1)(i) of this section.

(f) Citizenship and USMLE pass rate percentages. (1)(i) The rate as calculated by the ECFMG or other responsible third party for the preceding year for a foreign graduate medical school that is not subject to paragraph (f)(1)(i) of this section would result in any pass rate based on fewer than eight step/test results, the school is deemed to have no pass rate for that year and the results for the year are combined with each subsequent year until a pass rate based on at least eight step/test results is derived. By no later than April 30 of each year, a foreign graduate medical school shall—

(1) Provide the Secretary with a description of the methodology used in deriving the rate that is acceptable to the Secretary.

(ii) Meet the requirements of §688.16(e)(2)(ii)(B), (C) and (D).

(j) Location of a program. (1) Except as provided in paragraph (h)(3)(i)(i) of this section, all portions of a graduate medical education program offered to U.S. students must be located in a country whose medical school accrediting standards are comparable to standards used in the United States, as determined by the NCMECA, except for clinical training sites located in the United States.

(2) No portion of the graduate medical education program offered to U.S. students, other than the clinical training

Base Document: GPO Compilation updated through July 1, 2010
October 29, 2010 Final Rules (Program Integrity Issues); October 29, 2010 Final Rules (Gainful Employment); November 1, 2010 Final Rules (Foreign School Issues)
portion of the program, may be located outside of the country in which the main campus of the foreign medical school is located.

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, for any part of the clinical training portion of the educational program located in a foreign country other than the country in which the main campus is located or in the United States, in order for students attending the site to be eligible to borrow title IV, HEA program funds—
(A) The site must be located in an NCFMEA approved comparable foreign country;
(B) The institution’s medical accrediting agency must have conducted an on-site evaluation and specifically approved the clinical training site; and
(C) Clinical instruction must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country.

(ii) A clinical training site located in a foreign country other than the country in which the main campus is located or in the United States is not required to meet the requirements of paragraph (h)(3)(i) of this section in order for students attending that site to be eligible to borrow title IV, HEA program funds if—
(A) The location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or
(B) No individual student takes more than two electives at the location and the combined length of the electives does not exceed eight weeks.

Authority: 20 U.S.C. 1002, 1082

§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs Direct Loan Program.

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the FFEL programs Direct Loan Program if, in addition to satisfying the criteria in § 600.54 of this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the school satisfies all of the following criteria:
(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school’s faculty, and that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.
(2) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction, or
(3) In the United States, through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.
(3) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school’s request for an eligibility determination.

(b) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at veterinary schools in the United States.

(c) For a veterinary school that is neither public nor private nonprofit, the school’s students complete their clinical training at an approved veterinary school located in the United States. Effective July 1, 2015, the school is accredited or provisionally accredited by an organization acceptable to the Secretary for the purpose of evaluating veterinary programs.

§ 600.57 Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the Direct Loan Program.

(a) Effective July 1, 2012 for a foreign nursing school that was participating in any title IV, HEA program on August 13, 2008, and effective July 1, 2011 for all other foreign nursing schools, the Secretary considers the foreign nursing school to be eligible to apply to participate in the Direct Loan Program if, in addition to satisfying the criteria in this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the nursing school satisfies all of the following criteria:

(1) The nursing school is an associate degree school of nursing or a graduate school of nursing, or a diploma school of nursing.

(2) The nursing school has an agreement with a hospital located in the United States or an accredited school of nursing located in the United States that requires students of the nursing school to complete the student’s clinical training at the hospital or accredited school of nursing.

(3) The nursing school has an agreement with an accredited school of nursing located in the United States providing that students graduating from the nursing school located outside of the United States also receive a degree from the accredited school of nursing located in the United States.

(4) The nursing school certifies only Federal Stafford Loan program loans or Federal PLUS program loans, as those terms are defined in § 668.2, for students attending the nursing school.

(5) The nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution’s cohort default rate during the previous fiscal year.

(6)(i) The nursing school determines the consent requirements for and requires the necessary consents of all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements of paragraph (a)(6)(ii) of this section.

(ii) The nursing school annually either—
(A) Obtains, at its own expense, all results achieved by students and graduates who are U.S. citizens, nationals, or eligible permanent residents on the National Council Licensure Examination for Registered Nurses (NCLEX-RN), together with the dates the student has taken the
(8) The school provides, including under the agreements described in paragraphs (a)(2) and (a)(3) of this section, and in the normal course requires its students to complete, a program of clinical and classroom nursing instruction that is supervised closely by members of the school’s faculty that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom nursing instruction. Through a training program for foreign nursing students that has been approved by all nurse licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(9) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school’s request for an eligibility determination.

(10) The school employs only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at nursing schools in the United States.

(b) For purposes of paragraph (a)(5) of this section, the cost of a loan default is the estimated future cost of collections on the defaulted loan.

(c) The Department continues to collect on the Direct Loan after a school reimburses the Secretary for the amount specified in paragraph (b) of this section until the loan is paid in full or otherwise satisfied, or the loan account is closed out.

(d) No portion of the foreign nursing program offered to U.S. students may be located outside of the country in which the main campus of the foreign nursing school is located, except for clinical sites located in the United States.

§ 600.578 Duration of eligibility determination.

(a) The eligibility of a foreign institution under this subpart expires six years after the date of the Secretary’s determination that the institution is eligible to apply for participation, except that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under § 600.55(a)(5)(i), subject to the terms described in § 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any of the criteria in this subpart E.

(c) Notwithstanding the provisions of 34 CFR 668.26, if a foreign institution loses its eligibility under this subpart E, an otherwise eligible student, continuously enrolled at the institution before the loss of eligibility, may receive an FFEL program loan for attendance at the institution for a period during which the institution was eligible under this subpart E.

(Authority: 20 U.S.C. 1082, 1088, 1099c)

34 CFR 601

Integrated Regulations Incorporating
Team I Final Rule (published in October 29, 2009 Federal Register)*
Team II Final Rule (published in October 28, 2009 Federal Register)

Developed by the NCHELP Program Regulations Committee
October 30, 2009

Base document:
GPO Compilation through July 1, 2010
Subpart A—General
§601.1 Scope.
§601.2 Definitions.

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations
§601.10 Preferred lender arrangement disclosures.
§601.11 Private education loan disclosures and self-certification form.
§601.12 Use of institution and lender name.

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations
§601.20 Annual report.
§601.21 Code of conduct.

Subpart D—Loan Information To Be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program
§601.30 Duties of institutions.

Subpart E—Lender Responsibilities
§601.40 Disclosure and reporting requirements for lenders.

Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a) and (h).
TITLE 34—EDUCATION
DEPARTMENT OF EDUCATION
PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a) and (h).

Subpart A—General

§601.1 Scope.
This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

(Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a)(25) and (e))

§601.2 Definitions.
(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:
Federal Family Education Loan (FFEL) Program
Secretary
Title IV, HEA program
(b) The following definitions also apply to this part:
Agent: An officer or employee of a covered institution or an institution-affiliated organization.
Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any Federal funding or assistance.
Education loan: Except when used as part of the term “private education loan”,
(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;
(2) Any loan made under the William D. Ford Federal Direct Loan Program; or
(3) A private education loan.
Institution-affiliated organization: (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.
Lender: (1) An eligible lender in the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR 682.200(b);
(2) The Department in the Direct Loan program;
(3) In the case of a private educational loan, a private education lender as defined in section 140 of the Truth in Lending Act; and
(4) Any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.
Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.
Preferred lender arrangement: (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.
§601.10 Preferred lender arrangement disclosures.
(a) A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must disclose—
(1) On such covered institution’s or institution-affiliated organization’s Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans—
(i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;
(ii) The information identified on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and
(iii) A statement that such institution is required to process the documents required to obtain a loan under the Federal Family Education Loan (FFEL) Program from any eligible lender the student selects; and
(2) On such covered institution’s or institution-affiliated organization’s Web site and in all informational materials described in paragraph (b) of this section that describe or discuss private education loans—
(i) In the case of a covered institution, the information that the Board of Governors of
the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students or the families of such students; and

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that—

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(3) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a)(1) of this section, and the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively, for each type of education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c)(1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.

(d) If a covered institution complies, maintains, and makes available a preferred lender list as required under §668.14(b)(28), the institution must—

(1) Clearly and fully disclose on such preferred lender list—

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution 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

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of borrower affiliates provided by the Secretary under section 487(h)(2) of the HEA, that—

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph (d) of this section—

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph (d) of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower’s choice of a lender or cause unnecessary delay in loan certification under title IV of the HEA for those borrowers who choose a lender that is not included on the preferred lender list.

(Approved by the Office of Management and Budget under control number 1845-XXXA)

(Authority: 20 U.S.C. 1019a(a)(1)(A) and 1019b(c))

§601.12 Use of institution and lender name.

A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement with a lender regarding private education loans must—

(a) Not agree to the lender’s use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; and

(b) Ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

(Authority: 20 U.S.C. 1019a(a)(2)-(a)(3))

Subpart C—Responsibilities of Covered
Institutions and Institution-Affiliated Organizations

§601.20 Annual report.
Each covered institution, and each institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must—
(a) Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that participates in a preferred lender arrangement with such covered institution or organization—
(1) The information described in §601.10(c); and
(2) A detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and
(b) Ensure that the report required under this section is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

(Approved by the Office of Management and Budget under control number 1845-XXXA)
(Authority: 20 U.S.C. 1019b(c)(2))

§601.21 Code of conduct.

(a)(1) A covered institution that participates in a preferred lender arrangement must comply with the code of conduct requirements described in this section.

(2) The covered institution must—
(i) Develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution’s agents must comply. The code of conduct must—
(A) Prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans; and
(B) At a minimum, include the provisions specified in paragraph (c) of this section; and
(ii) Publish such code of conduct prominently on the institution’s Web site; and
(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution’s agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.
(b) Any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement must—
(1) Comply with the code of conduct developed and published by such covered institution under paragraph (a)(1) of this section;
(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and
(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization’s agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of such code of conduct.
(c) A covered institution’s code of conduct must prohibit—
(i) Revenue-sharing arrangements with any lender. The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term revenue-sharing arrangement means an arrangement between a covered institution and a lender under which—
(A) A lender provides or issues a FFEL Program loan or private education loan to students attending the institution or to the families of such students; and
(B) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an agent; and
(ii) Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer. Agents who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to FFEL Program loans or private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of FFEL Program loans or private education loans;
(iii) Employees of the financial aid office are prohibited from receiving any advantage related to FFEL Program loans or private education loans. Nothing in paragraph (c) of this section will be construed as prohibiting—
(A) The gift of food, refreshments, training, or informational material furnished to an agent, if such training contributes to the professional development of the agent;
(B) Consulting or other contracting arrangements. An agent who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to FFEL Program loans or private education loans must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to FFEL Program loans or private education loans. Nothing in paragraph (c)(3) of this section will be construed as prohibiting—
(i) An agent who is not employed in the institution’s financial aid office and who does not otherwise have responsibilities with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;
(ii) An agent who is not employed in the institution’s financial aid office but who has responsibility with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of FFEL Program loans or private education loans, if the institution has a written conflict of interest policy that clearly...
sets forth that agents must recuse themselves from participating in any decision of the board regarding FFEL Program loans or private education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of FFEL Program loans or private education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding FFEL Program loans or private education loans at the institution;

(4) Directing borrowers to particular lenders or delaying loan certifications. The institution must not—

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower’s loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower’s selection of a particular lender or guaranty agency;

(5)(i) Offers of funds for private loans. The institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(A) A specified number of FFEL Program loans or private education loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term opportunity pool loan means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution must not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or Federally declared natural disasters, Federally declared national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) Advisory board compensation. Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to FFEL Program loans or private education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, as that term is defined in §686.16(d)(2)(ii), incurred in serving on such advisory board, commission, or group. (Approved by the Office of Management and Budget under control number 1845-XXXA)

(Authority: 20 U.S.C. 1019(b)(25) and (e))

Subpart D–Loan Information to be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program §601.30 Duties of institutions.

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA must—

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form. (Approved by the Office of Management and Budget under control number 1845-XXXB)

(Authority: 20 U.S.C. 1019(b)(b))

Subpart E–Lender Responsibilities §601.40 Disclosure and reporting requirements for lenders.

(a) Disclosures to borrowers. (1) A lender must, at or prior to disbursement of a FFEL loan, provide the borrower, in writing (including through electronic means), in clear and understandable terms, the disclosures required in §682.205(a) and (b).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(b) Reports to the Secretary. Each FFEL lender must report annually to the Secretary—

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include—

(i) The amount of expenses paid or provided for each specific instance in which the lender provided expenses;

(ii) The name of any agent described in paragraph (b)(1) of this section to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expenses were paid or provided.

(c) Lender certification of compliance. (1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the Secretary its compliance with the Higher Education Act of 1965, as amended; and

(2) If the lender is required to submit an audit under 34 CFR 682.305(c), the lender’s compliance with the requirements under this section must be reported on and attested to annually by the lender’s auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 CFR 682.305(c).

(4) A lender who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) Annual lender report to covered institutions. A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, on a date prescribed by the Secretary, provide to the covered institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangement for the next award year.
34 CFR 602

Integrated Regulations Incorporating
Program Integrity Issues Final Rules
(published in October 29, 2010 Federal Register)

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### Subpart A—General

| § 602.1 | Why does the Secretary recognize accrediting agencies? | 3 |
| § 602.2 | How do I know which agencies the Secretary recognizes? | 3 |
| § 602.3 | What definitions apply to this part? | 3 |

### Subpart B—The Criteria for Recognition

| § 602.10 | Link to Federal programs. | 4 |
| § 602.11 | Geographic scope of accrediting activities. | 4 |
| § 602.12 | Accrediting experience. | 4 |
| § 602.13 | Acceptance of the agency by others. | 4 |
| § 602.14 | Purpose and organization. | 4 |
| § 602.15 | Administrative and fiscal responsibilities. | 5 |
| § 602.16 | Accreditation and preaccreditation standards. | 6 |
| § 602.17 | Application of standards in reaching an accrediting decision. | 6 |
| § 602.18 | Ensuring consistency in decision-making. | 7 |
| § 602.19 | Monitoring and reevaluation of accredited institutions and programs. | 7 |
| § 602.20 | Enforcement of standards. | 7 |
| § 602.21 | Review of standards. | 7 |
| § 602.22 | Substantive change. | 7 |
| § 602.23 | Operating procedures all agencies must have. | 8 |
| § 602.24 | Additional procedures certain institutional accreditors must have. | 9 |
| § 602.25 | Due process. | 10 |
| § 602.26 | Notification of accrediting decisions. | 10 |
| § 602.27 | Other information an agency must provide the Department. | 11 |
| § 602.28 | Regard for decisions of States and other accrediting agencies. | 11 |

### Subpart C—The Recognition Process Application and Review by Department Staff

| § 602.30 | Activities covered by recognition procedures. | 12 |
| § 602.31 | Agency submissions to the Department. | 12 |
| § 602.32 | Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment. | 13 |
| § 602.33 | Procedures for review of agencies during the period of recognition. | 13 |
| § 602.34 | Advisory Committee meetings. | 14 |
| § 602.35 | Responding to the Advisory Committee’s recommendation. | 14 |
| § 602.36 | Senior Department official’s decision. | 14 |
| § 602.37 | Appealing the senior Department official’s decision to the Secretary. | 16 |
| § 602.38 | Contesting the Secretary’s final decision to deny, limit, suspend, or terminate an agency’s recognition. | 16 |

### Subpart D—Department Responsibilities

| § 602.50 | What information does the Department share with a recognized agency about its accredited institutions and programs? | 16 |
Subpart A—General
§ 602.1 Why does the Secretary recognize accrediting agencies?
(a) The Secretary recognizes accrediting agencies to ensure that those agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.
(b) The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B of this part.

(Authority: 20 U.S.C. 1099b, unless otherwise noted)

§ 602.2 How do I know which agencies the Secretary recognizes?
(a) Periodically, the Secretary publishes a list of recognized agencies in the FEDERAL REGISTER, together with each agency’s scope of recognition. You may obtain a copy of the list from the Department at any time. The list is also available on the Department’s website.

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency’s recognition before the end of its recognition period, the Secretary publishes a notice of that action in the FEDERAL REGISTER. The Secretary also makes the reasons for the action available to the public, on request.

(Authority: 20 U.S.C. 1099b)

§ 602.3 What definitions apply to this part?
The following definitions apply to this part:
Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency’s standards and requirements.
Accrediting agency or agency means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.
Act means the Higher Education Act of 1965, as amended.
Adverse accrediting action or adverse action means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.
Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.
Branch campus means a location of an institution that meets the definition of branch campus in 34 CFR 600.2.
Compliance report means a written report that the Department requires an agency to file to demonstrate that the agency has addressed deficiencies specified in a decision letter from the senior Department official or the Secretary.
Correspondence education means:
(1) Education provided through one or more courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor.
(2) Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student.
(3) Correspondence courses are typically self-paced.
(4) Correspondence education is not distance education.
Designated Federal Official means the Federal officer designated under section 10(f) of the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1.
Direct assessment program means an instructional program that, in lieu of credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, and meets the conditions of 34 CFR 668.10.
For title IV, HEA purposes, the institution must obtain approval for the direct assessment program from the Secretary under 34 CFR 668.10(g) or (h) as applicable. As part of that approval, the accrediting agency must—
(1) Evaluate the program(s) and include them in the institution’s grant of accreditation or preaccreditation; and
(2) Review and approve the institution’s claim of each direct assessment program’s equivalence in terms of credit or clock hours.
Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—
(1) The internet;
(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
(3) Audio conferencing; or
(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.
Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is not appealable within the agency.
Institution of higher education or institution means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.
Institutional accrediting agency means an agency that accredits institutions of higher education.
Nationally recognized accrediting agency, nationally recognized agency, or recognized agency means an accrediting agency that the Secretary recognizes under this part.
Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.
Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.
Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.
Recognition means an unappealed determination by the senior Department official under § 602.36, or a determination by the Secretary on appeal under § 602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its application of those criteria. A grant of recognition to an agency as a reliable authority regarding the quality of education or training.
offered by institutions or programs it accredits remains in effect for the term granted except upon a determination made in accordance with subpart C of this part that the agency no longer complies with the subpart B criteria or that it has become ineffective in its application of those criteria.

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or scope means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency’s recognition for Title IV, HEA purposes. The Secretary’s designation of scope defines the recognition granted according to—

(1) Geographic area of accrediting activities;

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

(4) Types of preaccreditation status covered, if any; and

(5) Coverage of accrediting activities related to distance education or correspondence education.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

Senior Department official means the senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate before all enrolled students have completed their program of study.

Teach-out plan means a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides one hundred percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution’s accrediting agency, a teachout agreement between institutions.

(Authority: 20 U.S.C. 1099b)

Subpart B—The Criteria for Recognition

Basic Eligibility Requirements

§ 602.10 Link to Federal programs.

The agency must demonstrate that—

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs; or

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

(Authority: 20 U.S.C. 1099b)

§ 602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities cover—

(a) A State, if the agency is part of a State government;

(b) A region of the United States that includes at least three States that are reasonably close to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency; and

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.

(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 Acceptance of the agency by others.

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by—

(a) Educators and educational institutions; and

(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

Organizational and Administrative Requirements

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of agencies:
<table>
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<tr>
<th>The Secretary recognizes . . .</th>
<th>that . . .</th>
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<tbody>
<tr>
<td>(1) An accrediting agency . . .</td>
<td>(i) Has a voluntary membership of institutions of higher education; (ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and (iii) Satisfies the “separate and independent” requirements in paragraph (b) of this section.</td>
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<tr>
<td>(2) An accrediting agency . . .</td>
<td>(i) Has a voluntary membership; and (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs, for purposes of determining eligibility for Title IV, HEA programs— (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of institutions within institutions that are accredited by a nationally recognized accrediting agency; and (ii) Either satisfies the “separate and independent” requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.</td>
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<tr>
<td>(3) An accrediting agency . . .</td>
<td>(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.</td>
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<td>(4) A State agency . . .</td>
<td>(b) For purposes of this section, the term separate and independent means that— (1) The members of the agency’s decision-making body—who decide the accreditation or preaccreditation status of institutions or programs, establish the agency’s accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization; (2) At least one member of the agency’s decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public; (3) The agency has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions; (4) The agency’s dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and (5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.</td>
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<td>(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the “separate and independent” requirements in paragraph (b) of this section if— (1) The agency pays the fair market value for its proportionate share of the joint use; and (2) The joint use does not compromise the independence and confidentiality of the accreditation process.</td>
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<td>(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the “separate and independent” requirements in paragraph (b) of this section if the agency demonstrates that— (1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date; (2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency; (3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and (4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.</td>
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<tr>
<td>(e) An agency seeking a waiver of the “separate and independent” requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition. (Authority: 20 U.S.C. 1099b)</td>
<td></td>
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</table>
§ 602.15 Administrative and fiscal responsibilities. The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that— (a) The agency has— (1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities; (2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency’s standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency’s scope, their responsibilities regarding distance education and correspondence education; (3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions; (4) Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession; (5) Representatives of the public on all decision-making bodies; and (6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency’s— (i) Board members; (ii) Commissioners; (iii) Evaluation team members; (iv) Consultants;
(v) Administrative staff; and
(vi) Other agency representatives; and
(b) The agency maintains complete and accurate records of—
(1) Its last full accreditation or preaccreditation review of each institution or program, including on-site evaluation team reports, the institution’s or program’s responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution’s or program’s most recent self-study; and
(2) All decisions made throughout an institution’s or program’s affiliation with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

Required Standards and Their Applications

§ 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if—

(1) The agency’s accreditation standards effectively address the quality of the institution or program in the following areas:
   (i) Success with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.
   (ii) Curricula.
   (iii) Faculty.
   (iv) Facilities, equipment, and supplies.
   (v) Fiscal and administrative capacity as appropriate to the specified scale of operations.
   (vi) Student support services.
   (vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.
   (viii) Measures of program length and the objectives of the degrees or credentials offered.
   (ix) Record of student complaints received by, or available to, the agency.
   (x) Record of compliance with the institution’s program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and
   (2) The agency’s preaccreditation standards, if offered, are appropriately related to the agency’s accreditation standards and do not permit the institution or program to hold preaccreditation status for more than five years.

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(c) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency’s standards must effectively address the quality of an institution’s distance education or correspondence education in the areas identified in paragraph (a)(1) of this section. The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education.

(d) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(e) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(f) Nothing in paragraph (a) of this section restricts—

(1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency; or
(2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

§ 602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution’s or program’s compliance with the agency’s standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded; and
(2) Is successful in achieving its stated objectives; and

(3) Maintains degree and certificate requirements that at least conform to commonly accepted standards;

(b) Requires the institution or program to prepare, following guidance provided by the agency, an in-depth self-study that includes the assessment of educational quality and the institution’s or program’s continuing efforts to improve educational quality;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency’s standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution’s or program’s response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency’s standards;

(f) Provides the institution or program with a detailed written report that assesses—

(1) The institution’s or program’s compliance with the agency’s standards, including areas needing improvement; and
(2) The institution’s or program’s performance with respect to student achievement; and

(g) Requires institutions that offer distance education or correspondence education to have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the
same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it—

(1) Requires institutions to verify the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as—
   (i) A secure login and pass code;
   (ii) Proctored examinations; and
   (iii) New or other technologies and practices that are effective in verifying student identity; and

(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

(Authority: 20 U.S.C. 1099b)

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency—

(a) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited;

(b) Has effective controls against the inconsistent application of the agency’s standards;

(c) Bases decisions regarding accreditation and preaccreditation on the agency’s published standards;

(d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate; and

(e) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution’s or program’s compliance with the agency’s standards.

(Authority: 20 U.S.C. 1099b)

§ 602.20 Enforcement of standards.

(a) If the agency’s review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency’s standards within a time period that must not exceed—

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.

(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution’s or program’s continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect headcount enrollment data from those institutions or programs.

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a)(5) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence education. If any such institution has experienced an increase in headcount enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

(Authority: 20 U.S.C. 1099b)

§ 602.21 Review of standards.

(a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.

(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—

(1) Is comprehensive;

(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;

(3) Examines each of the agency’s standards and the standards as a whole; and

(4) Involves all of the agency’s relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency’s relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.

(Authority: 20 U.S.C. 1099b)

Required Operating Policies and Procedures

§ 602.22 Substantive change.

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to...
meet the agency’s standards. The agency meets this requirement if—

(1) The agency requires the institution to obtain the agency’s approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(2) The agency’s definition of substantive change includes at least the following types of change:
   
   (i) Any change in the established mission or objectives of the institution.
   
   (ii) Any change in the legal status, form of control, or ownership of the institution.
   
   (iii) The addition of courses or programs that represent a significant departure from the existing offerings of educational programs or method of delivery, from those that were offered when the agency last evaluated the institution.
   
   (iv) The addition of programs of study at a degree or credential level different from that which is included in the institution’s current accreditation or preaccreditation.
   
   (v) A change from clock hours to credit hours.
   
   (vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.
   
   (vii) If the agency’s accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution’s educational programs.
   
   (viii) If the agency’s accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has—
   
   (1) Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;
   
   (2) At least three additional locations that the agency has approved; and
   
   (3) Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes—
   
   (i) Clearly identified academic control;
   
   (ii) Regular evaluation of the locations;
   
   (iii) Adequate faculty, facilities, resources, and academic and student support systems;
   
   (iv) Financial stability; and
   
   (v) Long-range planning for expansion.
   
   (B) The agency’s procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.
   
   (C) Each agency determination or redetermination to preapprove an institution’s addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.
   
   (D) The agency may not preapprove an institution’s addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.
   
   (E) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraph (a)(2)(viii)(A) of this section.
   
   (ix) The acquisition of any other institution or any program or location of another institution.
   
   (x) The addition of a permanent location at a site at which the institution is conducting a teach-out for students if another institution that has ceased operating before all students have completed their program of study.
   
   (3) The agency’s substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.
   
   (b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program’s or institution’s accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but need not, require a visit by the agency.
   
   (c) Except as provided in paragraph (a)(2)(viii)(A) of this section, if the agency’s accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency’s procedures for the approval of an additional location where at least 50 percent of an educational program is offered must provide for a determination of the institution’s fiscal and administrative capacity to operate the additional location. In addition, the agency’s procedures must include—
   
   (1) A visit, within six months, to each additional location the institution establishes, if the institution—
   
   (i) Has a total of three or fewer additional locations;
   
   (ii) Has not demonstrated, to the agency’s satisfaction, that it has a proven record of effective educational oversight of additional locations; or
   
   (iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;
   
   (2) An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and
   
   (3) An effective mechanism, which may, at the agency’s discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.
   
   (d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.
   
   (Authority: 20 U.S.C. 1099b)

§ 602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public written materials describing—

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny,
revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of—

(i) The members of the agency’s policy and decision-making bodies; and (ii) The agency’s principal administrative staff.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution’s or program’s qualifications for accreditation or preaccreditation. At the agency’s discretion, third-party comment may be received either in writing or at a public hearing, or both.

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency’s standards or procedures. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about—

(1) The accreditation or preaccreditation status of the institution or program;

(2) The contents of reports of on-site reviews; and

(3) The agency’s accrediting or preaccrediting actions with respect to the institution or program.

(f) The agency may establish any additional operating procedures it deems appropriate. At the agency’s discretion, these may include unannounced inspections.

(Approved by the Office of Management and Budget under control number 1845—0003)

(Authority: 20 U.S.C. 1099b)

§ 602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) Branch campus.

(1) The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus.

(2) The agency may extend accreditation to the branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency’s standards.

(3) The agency must undertake a site visit to the branch campus as soon as practicable, but no later than six months after the establishment of that campus.

(b) Change in ownership. The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.

(c) Teach-out and agreements.

(1) The agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required.

(ii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program.

(iv) A State licensing or authorizing agency notifies the agency that an institution’s license or legal authorization to provide an educational program has been or will be revoked.

(2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that—

(i) The teach-out institution has the necessary experience, resources, and support services to—

(A) Provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; and

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 Final Rule
October 29, 2010 Final Rules (Program Integrity Issues)
(B) Remain stable, carry out its mission, and meet all obligations to existing students; and

(ii) The teach-out institution demonstrates that it can provide
teaching and educational services without requiring them to move
or travel substantial distances and that it will provide students with
information about additional charges, if any.

(d) Closed institution. If an institution
the agency accredits or preaccredits
that it can provide
students access to the program services
without requiring them to move
and coursework; and

demonstrates that it can provide
students with information about additional charges, if any.

(e) Transfer of credit policies. The
accrediting agency must confirm, as
part of its review for initial accreditation or
preaccreditation or renewal of
accreditation, that the institution has
transfer of credit policies that—

(1) Are publicly disclosed in accordance
with § 668.43(a)(11); and

(2) Include a statement of the criteria
established by the institution regarding
the transfer of credit earned at another
institutions of higher education.

(f) Credit-hour policies. The accrediting
agency, as part of its review of an
institutions of higher education.

The agency must—

(C) Makes a reasonable determination
of whether the institution's assignment
of credit hours conforms to commonly
accepted practice in higher education.

(B) The application of the institution's
policies and procedures to its programs
and coursework; and

(ii) Makes a reasonable determination
of whether the institution's assignment
of credit hours conforms to commonly
accepted practice in higher education.

(2) In reviewing and evaluating an
institutions of higher education.

an accrediting agency may use
sampling or other methods in the
evaluation, sufficient to comply with
paragraph (f)(1)(i)(B) of this section.

(3) The accrediting agency must take
such actions that it deems appropriate
to address any deficiencies that it
identifies at an institution as part of its
reviews and evaluations under
paragraph (f)(1)(i) and (ii) of this
section, as it does in relation to other
deficiencies it may identify, subject to
the requirements of this part.

(d) If, following the institutional review
process under this paragraph (f), the
agency finds systemic noncompliance
with the agency's policies or significant
noncompliance regarding one or more
programs at the institution, the agency
must promptly notify the Secretary.

(Approved by the Office of Management and
Budget under control number 1845–0003)
(Authority: 20 U.S.C. 1099b)

§ 602.25 Due process.

The agency must determine that the
process it uses throughout the
accreditation process satisfy due
process. The agency must meet the
requirement if the agency does the
following:

(a) Provides adequate written
specification of its requirements,
including clear standards, for an
institution or program to be accredited
or preaccredited.

(b) Uses procedures that afford
an institution or program a reasonable
period of time to comply with the
agency's requests for information and
documents.

(c) Provides written specification of any
deficiencies identified at the institution
or program examined.

(d) Provides sufficient opportunity for a
written response by an institution or
program regarding any deficiencies
identified by the agency, to be
considered by the agency within a
timeframe determined by the agency,
and before any adverse action is taken.

(e) Notifies the institution or program in
writing of any adverse accrediting
action or an action to place the
institution or program on probation or
show cause. The notice describes the
basis for the action.

(f) Provides an opportunity, upon
written request of an institution or
program, for the institution or program
to appeal any adverse action prior to
the action becoming final.

(1) The appeal must take place at a
hearing before an appeals panel that—

(i) May not include current members of
the agency's decision-making body that
took the initial adverse action;

(ii) Is subject to a conflict of interest
policy;

(iii) Does not serve only an advisory
or procedural role, and has and uses the
authority to make the following
decisions: to affirm, amend, or reverse
adverse actions of the original decision-
making body; and

(iv) Affirms, amends, reverses, or
remands the adverse action. A decision
to affirm, amend, or reverse the
adverse action is implemented by the
appeals panel or by the original
decision-making body, at the agency's
option. In a decision to remand the
adverse action to the original decision-
making body for further consideration,
the appeals panel must identify specific
issues that the original decision-making
body must address. In a decision that is
implemented by or remanded to the
original decision-making body, that
body must act in a manner consistent
with the appeals panel's decisions or
instructions.

(2) The agency must recognize the right
of the institution or program to employ
counsel to represent the institution or
program during its appeal, including to
make any presentation that the agency
permits the institution or program to
make on its own during the appeal.

(g) The agency notifies the institution or
program in writing of the result of its
appeal and the basis for that result.

(h)(1) The agency must provide for a
process, in accordance with written
procedures, through which an institution
or program may, before the agency
reaches a final adverse action decision,
seek review of new financial information
if all of the following conditions are met:

(i) The financial information was
unavailable to the institution or program
until after the decision subject to appeal
was made.

(ii) The financial information is
significant and bears materially on the
financial deficiencies identified by the
agency. The criteria of significance and
materiality are determined by the
agency.

(iii) The only remaining deficiency cited
by the agency in support of a final
adverse action decision is the
institution's or program's failure to meet
an agency standard pertaining to
finances.

(2) An institution or program may seek
the review of new financial information
described in paragraph (h)(1) of this
section only once and any
determination by the agency made with
respect to that review does not provide
a basis for an appeal.

(Authority: 20 U.S.C. 1099b)

§ 602.26 Notification of accrediting
decisions.

The agency must demonstrate that it
has established and follows written
procedures requiring it to provide
written notice of its accrediting
decisions to the Secretary, the
appropriate State licensing or
authorizing agency, the appropriate
accrediting agencies, and the public.
The agency meets this requirement if
the agency, following its written
procedures—
§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) A copy of any annual report it prepares;

(2) A copy, updated annually, of its directory of accredited and preaccredited institutions and programs;

(3) A summary of the agency’s major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(4) Any proposed change in the agency’s policies, procedures, or accreditation or preaccreditation standards that might alter its—

(i) Scope of recognition, except as provided in paragraph (a)(5) of this section; or

(ii) Compliance with the criteria for recognition;

(5) Notification that the agency has expanded its scope of recognition to include distance education or correspondence education as provided in section 496(a)(4)(B)(i)(I) of the HEA. Such an expansion of scope is effective on the date the Department receives the notification;

(6) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency’s reasons for concern about the institution or program; and

(7) If the Secretary requests, information that may bear upon an accredited or preaccredited institution’s compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(6) or (a)(7) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. Upon a specific request by the Department, the agency must consider that contact confidential.

(Authority: 20 U.S.C. 1099b)

§ 602.28 Regard for decisions of States and other accrediting agencies.

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution’s legal authority to provide postsecondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution’s accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency’s grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preacredits, or an institution that offers a program it accredits or preacredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(Authority: 20 U.S.C. 1099b)

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Subpart C—The Recognition Process
Application and Review by Department Staff

Sec. 602.30 Activities covered by recognition procedures.
602.31 Agency submissions to the Department.
602.32 Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment.
602.33 Procedures for review of agencies during the period of recognition.

Review by the National Advisory Committee on Institutional Quality and Integrity
602.34 Advisory Committee meetings.
602.35 Responding to the Advisory Committee’s recommendation.

Review and Decision by the Senior Department Official
602.36 Senior Department official’s decision.

Appeal Rights and Procedures
602.37 Appealing the senior Department official’s decision to the Secretary.
602.38 Contesting the Secretary’s final decision to deny, limit, suspend, or terminate an agency’s recognition.

Subpart C—The Recognition Process Application and Review by Department Staff

§ 602.30 Activities covered by recognition procedures.
Recognition proceedings are administrative actions taken on any of the following matters:
(a) Applications for initial or continued recognition submitted under § 602.31(a).
(b) Applications for an expansion of scope submitted under § 602.31(b).
(c) Compliance reports submitted under § 602.31(c).
(d) Reviews of agencies that have expanded their scope of recognition by notice, following receipt by the Department of information of an increase in headcount enrollment described in § 602.19(e).
(e) Staff analyses identifying areas of non-compliance based on a review conducted under § 602.33.

§ 602.31 Agency submissions to the Department.
(a) Applications for recognition or renewal of recognition. An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision. The application must consist of—
(1) A statement of the agency’s requested scope of recognition;
(2) Evidence, including documentation, that the agency complies with the criteria for recognition listed in subpart B of this part and effectively applies those criteria; and
(3) Evidence, including documentation, of how an agency that includes or seeks to include distance education or correspondence education in its scope of recognition applies its standards in evaluating programs and institutions it accredits that offer distance education or correspondence education.
(b) Applications for expansions of scope. An agency seeking an expansion of scope by application must submit a written application to the Secretary. The application must—
(1) Specify the scope requested;
(2) Include documentation of experience in accordance with §602.12(b); and
(3) Provide copies of any relevant standards, policies, or procedures developed and applied by the agency and documentation of the application of these standards, policies, or procedures.
(c) Compliance reports. If an agency is required to submit a compliance report, it must do so within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.
(d) Review following an increase in headcount enrollment. If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence education in accordance with § 602.27(a)(5) reports an increase in headcount enrollment in accordance with §602.19(e) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency’s accredited institutions, the agency must, within 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—
(1) How the agency evaluates the capacity of the institutions or programs it accredits to accommodate significant growth in enrollment and to maintain educational quality;
(2) The specific circumstances regarding the growth at the institution(s) or programs(s) that triggered the review and the results of any evaluation conducted by the agency; and
(3) Any other information that the agency deems appropriate to demonstrate the effective application of the criteria for recognition or that the Department may require.
(e) Consent to sharing of information.
By submitting an application for recognition, the agency authorizes Department staff throughout the application process and during any period of recognition—
(1) To observe its site visits to one or more of the institutions or programs it accredits or preaccredits, on an announced or unannounced basis;
(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;
(3) To obtain copies of all documents the staff deems necessary to complete its review of the agency; and
(4) To gain access to agency records, personnel, and facilities.
(f) Public availability of agency records obtained by the Department.
(1) The Secretary’s processing and decision making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the Trade Secrets Act, 48 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C. 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies may—
(i) Redact information that would identify individuals or institutions that is not essential to the Department’s review of the agency;
(ii) Make a good faith effort to designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded;
(iii) Identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from disclosure; and
(iv) Ensure documents submitted are only those required for Department...
§ 602.32 Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment.

(a) After receipt of an agency’s application for initial or continued recognition, or change in scope, or an agency’s compliance report, or an agency’s report submitted under §602.31(d), Department staff publishes a notice of the agency’s application or report in the Federal Register inviting the public to comment on the agency’s compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(b) The Department staff analyzes the agency’s application for initial or renewal of recognition, compliance report, or report submitted under §602.31(d) to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and in the agency’s effectiveness in applying the criteria. The analysis of an application for recognition and, as appropriate, of a compliance report, or of a report required under § 602.31(d), includes—

(1) Observations from site visit(s), on an announced or unannounced basis, to the agency or to a location where agency activities such as training, review and evaluation panel meetings, and decision meetings take place and to one or more of the institutions or programs it accredits or preaccredits;

(2) Review of the public comments and other third-party information the Department staff receives by the established deadline, and the agency’s responses to the third-party comments, as appropriate, as well as any other information Department staff assembles for purposes of evaluating the agency under this part; and

(3) Review of complaints or legal actions involving the agency.

(c) The Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, policies that comply with subpart B of this part, capacity, and performance record to support the request.

(d) Department staff’s evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency’s standards, the effectiveness of the standards, and the agency’s application of those standards.

(e) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff—

(1) Returns the agency’s application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and

(2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance.

(f) Except with respect to an application that has been returned or is withdrawn under paragraph (e) of this section, when Department staff completes its evaluation of the agency, the staff—

(1) Prepares a written draft analysis of the agency;

(2) Sends the draft analysis including any identified areas of non-compliance and a proposed recognition recommendation, and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency;

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation and third-party comments, specifying a deadline that provides at least 30 days for the agency’s response;

(4) Reviews the response to the draft analysis the agency submits, if any, and prepares the written final analysis. The final analysis includes a recognition recommendation to the senior Department official, as the Department staff deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, require the submission of a compliance report and continue recognition pending a final decision on compliance, approve or deny a request for expansion of scope, or revise or affirm the scope of the agency; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under § 602.34(c).

(g) The agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs (f)(3) and (f)(5) of this section. If the Department staff’s failure to send the materials in accordance with the timeframe described in paragraph (f)(3) or (f)(5) of this section is due to the failure of the agency to submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, by the deadline established by the Secretary, the agency forfeits its right to request a deferral of its application.

(Authority: 20 U.S.C. 1099b)

§ 602.33 Procedures for review of agencies during the period of recognition.

(a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—

(1) At the request of the Advisory Committee; or

(2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

(b) The review may include, but need not be limited to, any of the activities described in § 602.32(b) and (d).

(c) If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff notes that one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of those criteria, it—

(1) Prepares a written draft analysis of the agency’s compliance with the criteria of concern. The draft analysis reflects the results of the review, and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;

(2) Sends the draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency; and

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation, specifying a deadline...
that provides at least 30 days for the agency’s response.

(d) If, after review of the agency’s response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency in writing of the results of the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.

(e) If, after review of the agency’s response to the draft analysis, Department staff concludes that the agency has not demonstrated compliance, the staff—

(1) Notifies the agency that the draft analysis will be finalized for presentation to the Advisory Committee;

(2) Publishes a notice in the Federal Register including, if practicable, an invitation to the public to comment on the agency’s compliance with the criteria in question and establishing a deadline for receipt of public comment;

(3) Provides the agency with a copy of all public comments received and, if practicable, invites a written response from the agency;

(4) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c).

(f) The Advisory Committee reviews the matter in accordance with § 602.34.

(Authority: 20 U.S.C. 1099b)

Review by the National Advisory Committee on Institutional Quality and Integrity

§ 602.34 Advisory Committee meetings.

(a) Department staff submits a proposed schedule to the Chairperson of the Advisory Committee based on anticipated completion of staff analyses.

(b) The Chairperson of the Advisory Committee establishes an agenda for the next meeting and, in accordance with the Federal Advisory Committee Act, presents it to the Designated Federal Official for approval.

(c) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with—

(1) The agency’s application for recognition or for expansion of scope, the agency’s compliance report, or the agency’s report submitted under §602.31(d), and supporting documentation;

(2) The final Department staff analysis of the agency developed in accordance with § 602.32 or § 602.33, and any supporting documentation;

(3) At the request of the agency, the agency’s response to the draft analysis;

(4) Any written third-party comments the Department received about the agency on or before the established deadline;

(5) Any agency response to third-party comments; and

(6) Any other information Department staff relied upon in developing its analysis.

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the Federal Register inviting interested parties, including those who submitted third-party comments concerning the agency’s compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section in a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations during the meeting. A transcript is made of all Advisory Committee meetings.

(f) The written motion adopted by the Advisory Committee regarding each agency’s recognition will be made available during the Advisory Committee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee at which a review of agencies occurs, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, to grant or deny a request for expansion of scope, to revise or affirm the scope of the agency, or to require the agency to submit a compliance report and to continue recognition pending a final decision on compliance.

(Authority: 20 U.S.C. 1099b)

§ 602.35 Responding to the Advisory Committee’s recommendation.

(a) Within ten days following the Advisory Committee meeting, the agency and Department staff may submit written comments to the senior Department official on the Advisory Committee’s recommendation. The agency must simultaneously submit a copy of its written comments, if any, to Department staff. Department staff must simultaneously submit a copy of its written comments, if any, to the agency.

(b) Comments must be limited to—

(1) Any Advisory Committee recommendation that the agency or Department staff believes is not supported by the record;

(2) Any incomplete Advisory Committee recommendation based on the agency’s application; and

(3) The inclusion of any recommendation or draft proposed decision for the senior Department official’s consideration.

(c) (1) Neither the Department staff nor the agency may submit additional documentary evidence with its comments unless the Advisory Committee’s recognition recommendation proposes finding the agency noncompliant with, or ineffective in its application of, a criterion or criteria for recognition not identified in the final Department staff analysis provided to the Advisory Committee.

(2) Within ten days of receipt by the Department staff of an agency’s comments or new evidence, if applicable, or of receipt by the agency of the Department staff’s comments, Department staff, the agency, or both, as applicable, may submit a response to the senior Department official. Simultaneously with submission, the agency must provide a copy of any response to the Department staff. Simultaneously with submission, Department staff must provide a copy of any response to the agency.

(Authority: 20 U.S.C. 1099b)

Review and Decision by the Senior Department Official

§ 602.36 Senior Department official’s decision.

(a) The senior Department official makes a decision regarding recognition of an agency based on the record compiled under §§ 602.32, 602.33, 602.34, and 602.35 including, as applicable, the following:

(1) The materials provided to the Advisory Committee under § 602.34(c).

(2) The transcript of the Advisory Committee meeting.
(3) The recommendation of the Advisory Committee.

(4) Written comments and responses submitted under § 602.35.

(5) New evidence submitted in accordance with § 602.35(c)(1).

(6) A communication from the Secretary referring an issue to the senior Department official’s consideration under § 602.37(e).

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed Advisory Committee members than needed to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency’s compliance with subpart B of this part that require prompt attention, the senior Department official may make a decision in a recognition proceeding based on the record compiled under § 602.32 or § 602.33 after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official absent a recommendation from the Advisory Committee may be appealed to the Secretary as provided in § 602.37.

(c) Following consideration of an agency’s recognition under this section, the senior Department official issues a recognition decision.

(d) Except with respect to decisions made under paragraph (f) or (g) of this section and matters referred to the senior Department official under § 602.37(e) or (f), the senior Department official notifies the agency in writing of the senior Department official’s decision regarding the agency’s recognition within 90 days of the Advisory Committee meeting or conclusion of the review under paragraph (b) of this section.

(e) The senior Department official’s decision may include, but is not limited to, approving, denying, limiting, suspending, or terminating recognition, granting or denying an application for an expansion of scope, revising or affirming the scope of the agency, or continuing recognition pending submission and review of a compliance report under §§ 602.32 and 602.34 and review of the report by the senior Department official under this section.

(1)(i) The senior Department official approves recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency effectively applies those criteria.

(ii) If the senior Department official approves recognition, the recognition decision defines the scope of recognition and the recognition period. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

(iii) If the scope or period of recognition is less than that requested by the agency, the senior Department official explains the reasons for approving a lesser scope or recognition period.

(2)(i) Except as provided in paragraph (e)(3)(i) of this section, if the agency either fails to comply with the criteria for recognition identified in subpart B of this part, or to apply those criteria effectively, the senior Department official denies, limits, suspends, or terminates recognition.

(ii) If the senior Department official denies, limits, suspends, or terminates recognition, the senior Department official specifies the reasons for this decision, including all criteria the agency fails to meet and all criteria the agency has failed to apply effectively.

(3)(i) Except as provided in paragraph (e)(3)(i) of this section, if a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria, but the senior Department official concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective application of those criteria within 12 months or less, the senior Department official may continue the agency’s recognition, pending submission by the agency of a compliance report, review of the report under §§ 602.32 and 602.34, and review of the report by the senior Department official under this section. In such a case, the senior Department official specifies the criteria the compliance report must address, and a time period, not longer than 12 months, during which the agency must achieve compliance and effectively apply the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official’s decision.

(ii) If the record includes a compliance report, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official’s decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

(i) If the senior Department official determines, based on the record, that a decision to deny, limit, suspend, or terminate an agency’s recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application of, a criterion or criteria of recognition not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides—

(1) The agency with an opportunity to submit a written response and documentary evidence addressing the finding; and

(2) The staff with an opportunity to present its analysis in writing.

(g) If relevant and material information pertaining to an agency’s compliance with recognition criteria, but not contained in the record, comes to the senior Department official’s attention while a decision regarding the agency’s recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate, and consideration by the Advisory Committee under § 602.34; or

(2)(i) Provides the information to the agency and Department staff;

(ii) Permits the agency to respond to the senior Department official and the Department staff in writing, and to include additional evidence relevant to the issue, and specifies a deadline;

(iii) Provides Department staff with an opportunity to respond in writing to the agency’s submission under paragraph (g)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on the record described in paragraph (a) of this section, as supplemented by the information provided under this paragraph.

(h) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the senior Department official will take
into account whether the information, if submitted by a third party, could have been submitted in accordance with §602.32(a) or §602.33(e)(2).

(i) If the senior Department official does not reach a final decision to approve, deny, limit, suspend, or terminate an agency’s recognition before the expiration of its recognition period, the senior Department official automatically extends the recognition period until a final decision is reached.

(j) Unless appealed in accordance with §602.37, the senior Department official’s decision is the final decision of the Secretary.

(Authority: 20 U.S.C. 1099b)

Appeal Rights and Procedures

§ 602.37 Appealing the senior Department official’s decision to the Secretary.

(a) The agency may appeal the senior Department official’s decision to the Secretary. Such appeal stays the senior Department official’s decision until final disposition of the appeal. If an agency wishes to appeal, the agency must—

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than ten days after receipt of the decision;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision; and

(3) Provide the senior Department official with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The senior Department official may file a written response to the appeal. To do so, the senior Department official must—

(1) Submit a response to the Secretary no later than 30 days after receipt of a copy of the appeal; and

(2) Provide the agency with a copy of the senior Department official’s response at the same time it is submitted to the Secretary.

(c) Neither the agency nor the senior Department official may include in its submission any new evidence it did not submit previously in the proceeding.

(d) On appeal, the Secretary makes a recognition decision, as described in §602.36(e). If the decision requires a compliance report, the report is due within 30 days after the end of the period specified in the Secretary’s decision. The Secretary renders a final decision after taking into account the senior Department official’s decision, the agency’s written submissions on appeal, the senior Department official’s response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the Secretary’s decision regarding the agency’s recognition.

(e) The Secretary may determine, based on the record, that a decision to deny, limit, suspend, or terminate an agency’s recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the issue under §602.36(f). After the senior Department official makes a decision, the agency may, if desired, appeal that decision to the Secretary.

(f) If relevant and material information pertaining to an agency’s compliance with recognition criteria, but not contained in the record, comes to the Secretary’s attention while a decision regarding the agency’s recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under §602.32 or §602.33, as appropriate, and review by the Advisory Committee under § 602.34; and consideration by the senior Department official under §602.36; or

(2)(i) Provides the information to the agency and the senior Department official;

(ii) Permits the agency to respond to the Secretary and the senior Department official in writing, and to include additional evidence relevant to the issue, and specifies a deadline;

(iii) Provides the senior Department official with an opportunity to respond in writing to the agency’s submission under paragraph (f)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on all the materials described in paragraphs (d) and (f) of this section.

(g) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (f) of this section. Before invoking paragraph (f) of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with §602.32(a) or §602.33(e)(2).

(h) If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency’s recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

(Authority: 20 U.S.C. 1099b)

§ 602.38 Contesting the Secretary’s final decision to deny, limit, suspend, or terminate an agency’s recognition.

An agency may contest the Secretary’s decision under this part in the Federal courts as a final decision in accordance with applicable Federal law. Unless otherwise directed by the court, a decision of the Secretary to deny, limit, suspend, or terminate the agency’s recognition is not stayed during an appeal in the Federal courts.

(Authority: 20 U.S.C. 1099b)

Subpart D—Department Responsibilities

§ 602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

(a) If the Department takes an action against an institution or program accredited by the agency, it notifies the agency no later than 10 days after taking that action.

(b) If another Federal agency or a State agency notifies the Department that it has taken an action against an institution or program accredited by the agency, the Department notifies the agency as soon as possible but no later than 10 days after receiving the written notice from the other Government agency.

(Authority: 20 U.S.C. 1099b)
34 CFR 603

Integrated Regulations Incorporating
Program Integrity Issues Final Rules
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## Table of Contents

**Subpart A [Reserved]** .................................................................................................................................................................. - 3 -  

**Subpart B—Criteria for State Agencies**...................................................................................................................................... - 3 -  

§ 603.20 Scope. ....................................................................................................................................................................... - 3 -  
§ 603.21 Publication of list. ....................................................................................................................................................... - 3 -  
§ 603.22 Inclusion on list. ......................................................................................................................................................... - 3 -  
§ 603.23 Initial recognition, and reevaluation. ........................................................................................................................... - 3 -  
§ 603.24 Criteria for State agencies. ......................................................................................................................................... - 3 -  

AUTHORITY: 20 U.S.C. 403(b), 1085(b), 1141(a), 1248(11); 42 U.S.C. 293a(b), 295f–3(b), 295h–4(1)(D), 298b(f), 1001, 1002, 1094(c)(4); 38 U.S.C. 1775(a)3675, unless otherwise noted.
Subpart A [Reserved]

Subpart B—Criteria for State Agencies


SOURCE: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 603.20 Scope.
(a) Pursuant to section 438(b) of the Higher Education Act of 1965 as amended by Pub. L. 92–318, the Secretary is required to publish a list of State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for Federal student assistance programs administered by the Department.

(b) Approval by a State agency included on the list will provide an alternative means of satisfying statutory standards as to the quality of public postsecondary vocational education to be undertaken by students receiving assistance under such programs.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.21 Publication of list.
Periodically the Secretary will publish a list in the FEDERAL REGISTER of the State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.22 Inclusion on list.
Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in § 603.24 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.23 Initial recognition, and reevaluation.
For initial recognition and for renewal of recognition, the State agency will furnish information establishing its compliance with the criteria set forth in § 603.24. This information may be supplemented by personal interviews or by review of the agency’s facilities, records, personnel qualifications, and administrative management. Each agency listed will be reevaluated by the Secretary at his discretion, but at least once every four years. No adverse decision will become final without affording an opportunity for a hearing.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.24 Criteria for State agencies.
The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

(a) Functional aspects. The functional aspects of the State agency must be shown by:

(i) Its scope of operations. The agency:

(A) Is statewide in the scope of its operations and is legally authorized to approve public postsecondary vocational institutions or programs;

(B) Clearly sets forth the scope of its objectives and activities, both as to kinds and levels of public postsecondary vocational institutions or programs covered, and the kinds of operations performed;

(C) Delineates the process by which it differentiates among and approves programs of varying levels.

(ii) Its organization. The State agency:

(A) Employs qualified personnel and uses sound procedures to carry out its operations in a timely and effective manner;

(B) Receives adequate and timely financial support, as shown by its appropriations, to carry out its operations;

(C) Selects competent and knowledgeable persons, qualified by experience and training, and selects such persons in accordance with nondiscriminatory practices, (A) to participate on visiting teams, (B) to engage in consultative services for the evaluation and approval process, and (C) to serve on decision-making bodies.

(iii) Its procedures. The State agency:

(A) Maintains clear definitions of approval status and has developed written procedures for granting, reaffirming, revoking, denying, and reinstating approval status;

(B) Requires, as an integral part of the approval and reapproval process, institutional or program self-analysis and onsite reviews by visiting teams, and provides written and consultative guidance to institutions or programs and visiting teams.

(C) Self-analysis shall be a qualitative assessment of the strengths and limitations of the instructional program, including the achievement of institutional or program objectives, and should involve a representative portion of the institution’s administrative staff, teaching faculty, students, governing body, and other appropriate constituencies.

(B) The visiting team, which includes qualified examiners other than agency staff, reviews instructional content, methods and resources, administrative management, student services, and facilities. It prepares written reports and recommendations for use by the State agency.

(C) Reevaluates at reasonable and regularly scheduled intervals institutions or programs which it has approved.

(D) Responsibility and reliability. The responsibility and reliability of the State agency will be demonstrated by:

(i) Its responsiveness to the public interest. The State agency:

(A) Has an advisory body which provides for representation from public employment services staff, employers, employees, postsecondary vocational educators, students, and the general public, including minority groups. Among its functions, this structure provides counsel to the State agency relating to the development of standards, operating procedures and policy, and interprets the educational needs and manpower projections of the State’s public postsecondary vocational education system;

(B) Demonstrates that the advisory body makes a real and meaningful contribution to the approval process;

(C) Provides advance public notice of proposed or revised standards or regulations through its regular channels of communications, supplemented, if necessary, with direct communication to inform interested members of the affected community. In addition, it provides such persons the opportunity to comment on the standards or regulations prior to their adoption;

(D) Secures sufficient qualitative information regarding the applicant institution or program to enable the institution or program to demonstrate that it has an ongoing program of evaluation of outputs consistent with its educational goals;

(E) Encourages experimental and innovative programs to the extent that these are conceived and implemented in a manner which ensures the quality and integrity of the institution or program;

(F) Demonstrates that it approves only those institutions or programs which meet its published standards; that its standards, policies, and procedures are fairly applied; and that its evaluations
are conducted and decisions are rendered under conditions that assure an impartial and objective judgment;

(vii) Regularly reviews its standards, policies and procedures in order that the evaluative process shall support constructive analysis, emphasize factors of critical importance, and reflect the educational and training needs of the student;

(viii) Performs no function that would be inconsistent with the formation of an independent judgment of the quality of an educational institution or program;

(ix) Has written procedures for the review of complaints pertaining to institutional or program quality as these relate to the agency’s standards, and demonstrates that such procedures are adequate to provide timely treatment of such complaints in a manner fair and equitable to the complainant and to the institution or program;

(x) Annually makes available to the public

(A) its policies for approval,

(B) reports of its operations, and

(C) list of institutions or programs which it has approved;

(xi) Requires each approved school or program to report on changes instituted to determine continued compliance with standards or regulations;

(xii) Confers regularly with counterpart agencies that have similar responsibilities in other and neighboring States about methods and techniques that may be used to meet those responsibilities.

(2) Its assurances that due process is accorded to institutions or programs seeking approval. The State agency:

(i) Provides for adequate discussion during the on-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(ii) Furnishes as a result of the evaluation visit, a written report to the institution or program commenting on areas of strength, areas needing improvement, and, when appropriate, suggesting means of improvement and including specific areas, if any, where the institution or program may not be in compliance with the agency’s standards;

(iii) Provides the chief executive officer of the institution or program with opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the agency takes action on the report;

(iv) Provides the chief executive officer of the institution with a specific statement of reasons for any adverse action, and notice of the right to appeal such action before an appeal body designated for that purpose;

(v) Publishes rules of procedure regarding appeals;

(vi) Continues the approval status of the institution or program pending disposition of an appeal;

(vii) Furnishes the chief executive officer of the institution or program with a written decision of the appeal body, including a statement of its reasons therefore.

(c) Credit-hour policies. The State agency, as part of its review of an institution for initial approval or renewal of approval, must conduct an effective review and evaluation of the reliability and accuracy of the institution’s assignment of credit hours.

(1) The State agency meets this requirement if—

(i) It reviews the institution’s—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution’s policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution’s assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution’s policies and procedures, for determining credit hour assignments, a State agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (c)(1)(i)(B) of this section.

(3) The State agency must take such actions that is deems appropriate to address any deficiencies that is identified at an institution as part of its reviews and evaluations under paragraph (c)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (c), the agency finds systemic noncompliance with the agency’s policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

(d) Capacity to foster ethical practices. The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program. (Authority: 20 U.S.C. 1092–1094(c)(4))
34 CFR 668
Integrated Regulations Incorporating
Program Integrity Final Rules
(published in October 29, 2010 Federal Register)
and
Foreign School Final Rules
(published in November 1, 2010 Federal Register)
and
Gainful Employment NPRM
(published in July 26, 2010 Federal Register)
and
Program Integrity Corrections
(published April 13, 2011)

Developed by the NCHELP Program Regulations Committee
April 15, 2011

Base document:
GPO Compilation through July 1, 2010

Reference Note: The July 26, 2010 NPRM on Gainful Employment contains Appendix A that has not been integrated into this document as it will not appear in the Code of Federal Regulations. However, the Appendix does contain additional information that provides background on the regulatory changes included in the proposed rule. To see Appendix A, access the actual NPRM located at: http://www.ifap.ed.gov/ifap/byYear.jsp?type=fregisters&year=2010.

Editorial Notes:
1. 668.22(b)(3)(iv): In the newly added language, the comma following the word “taken” needs to be deleted. Alternatively, it may be that ED wanted to set off the phrase “or requires that attendance be taken,”. If that is the case, they should leave the comma after “taken” and insert a new comma after the phrase “take attendance”. (From the October 29, 2010 Final Rule, pg 66952)
2. 668.41(e)(1)(ii): The word “paragraph” should be plural. (From the October 29, 2009, Final Rule, pg 55943)
3. 668.41(e)(4): For consistency, “or disclosures” should be added to read: “…by posting the disclosure or disclosures on…” (From the October 29, 2009, Final Rule, pg 55943).
4. 668.144(d)(12): In the newly added language, the word “the” at the beginning of the paragraph needs to be capitalized. (From the October 29, 2010 Final Rule, pg 66962)
5. 668.183(c)(1)(iii): A colon was inserted, but it should have inserted a semi-colon. (From October 28, 2009 Final Rule, pg 55649)
### TABLE OF CONTENTS

**Subpart A—General**
- § 668.1 Scope
- § 668.2 General definitions
- § 668.3 Academic year
- § 668.4 Payment period
- § 668.5 Written arrangements to provide educational programs
- § 668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation
- § 668.7 [Reserved]
- § 668.8 Eligible program
- § 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance
- § 668.10 Direct assessment programs

**Subpart B—Standards for Participation in Title IV, HEA Programs**
- § 668.11 Scope
- § 668.12 [Reserved]
- § 668.13 Certification procedures
- § 668.14 Program participation agreement
- § 668.15 Factors of financial responsibility
- § 668.16 Standards of administrative capability
- § 668.17 [Reserved]
- § 668.18 Readmission requirements for servicemembers
- § 668.19 Financial aid history
- § 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance
- § 668.21 Treatment of Title IV grant and loan funds if the recipient does not begin attendance at the institution
- § 668.22 Treatment of Title IV funds when a student withdraws
- § 668.23 Compliance audits and audited financial statements
- § 668.24 Record retention and examinations
- § 668.25 Contracts between an institution and a third-party servicer
- § 668.26 End of an institution’s participation in the Title IV, HEA programs
- § 668.27 Waiver of annual audit submission requirement
- § 668.28 Non-title IV revenue (90/10)

**Subpart C—Student Eligibility**
- § 668.31 Scope
- § 668.32 Student eligibility—general
- § 668.33 Citizenship and residency requirements
- § 668.34 Satisfactory Academic progress
- § 668.35 Student debts under the HEA and to the U.S.
- § 668.36 Social security number
- § 668.37 Selective Service registration
- § 668.38 Enrollment in telecommunications and correspondence courses
- § 668.39 Study abroad programs
- § 668.40 Conviction for possession or sale of illegal drugs

**Subpart D—Institutional and Financial Assistance Information for Students**
- § 668.41 Reporting and disclosure of information
- § 668.42 Financial assistance information
- § 668.43 Institutional information
Contents

§ 668.44 Availability of employees for information dissemination purposes. ................................................................. 55
§ 668.45 Information on completion or graduation rates. ........................................................................................................ 55
§ 668.46 Institutional security policies and crime statistics. ................................................................................................. 56
§ 668.47 Report on athletic program participation rates and financial support data. ................................................................. 59
§ 668.48 Report on completion or graduation rates for student-athletes. ................................................................................. 60
§ 668.49 Institutional fire safety policies and fire statistics. ................................................................................................. 61
Subpart E—Verification and Updating of Student Aid Application Information ......................................................... 61
§ 668.51 General. ................................................................................................................................................................. 61
§ 668.52 Definitions. ................................................................................................................................................................. 62
§ 668.53 Policies and procedures. ............................................................................................................................................... 62
§ 668.54 Selection of an applicant’s FAFSA information for verification. .................................................................................. 62
§ 668.55 Updating information. ............................................................................................................................................... 63
§ 668.56 Items Information to be verified. .................................................................................................................................. 64
§ 668.57 Acceptable documentation. ........................................................................................................................................... 64
§ 668.58 Interim disbursements. .................................................................................................................................................. 66
§ 668.59 Consequences of a change in an applicant’s FAFSA information. ........................................................................... 66
§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation. .................. 67
§ 668.61 Recovery of funds from interim disbursements. ........................................................................................................ 68
Subpart F—Misrepresentation ................................................................................................................................................ 68
§ 668.71 Scope and special definitions. ....................................................................................................................................... 68
§ 668.72 Nature of educational program. ................................................................................................................................. 69
§ 668.73 Nature of financial charges. ........................................................................................................................................... 69
§ 668.74 Employability of graduates. ........................................................................................................................................... 70
§ 668.75 Procedures Relationship with the Department of Education. ...................................................................................... 70
Subpart G—Fine, Limitation, Suspension and Termination Proceedings .......................................................................... 70
§ 668.81 Scope and special definitions. ....................................................................................................................................... 70
§ 668.82 Standard of conduct. ...................................................................................................................................................... 70
§ 668.83 Emergency action. ......................................................................................................................................................... 71
§ 668.84 Fine proceedings. ................................................................................................................................................................. 73
§ 668.85 Suspension proceedings. .................................................................................................................................................. 73
§ 668.86 Limitation or termination proceedings. ............................................................................................................................. 74
§ 668.87 Prehearing conference. .................................................................................................................................................... 75
§ 668.88 Hearing. .............................................................................................................................................................................. 75
§ 668.89 Authority and responsibilities of the hearing official. ............................................................................................. 75
§ 668.90 Initial and final decisions. .................................................................................................................................................... 75
§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates. ..................................................... 76
§ 668.92 Fines. .................................................................................................................................................................................... 77
§ 668.93 Limitation. .......................................................................................................................................................................... 77
§ 668.94 Termination. ................................................................................................................................................................. 77
§ 668.95 Reimbursements, refunds, and offsets. .......................................................................................................................... 78
§ 668.96 Reinstatement after termination. ...................................................................................................................................... 78
§ 668.97 Removal of limitation. ..................................................................................................................................................... 78
§ 668.98 Interlocutory appeals to the Secretary from rulings of a hearing official. ........................................................................ 79
Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations ......................................... 79
§ 668.111 Scope and purpose. ....................................................................................................................................................... 79
§ 668.112 Definitions. ................................................................................................................................................................. 79
§ 668.113 Request for review. ......................................................................................................................................................... 79
§ 668.114 Notification of hearing. .................................................................................................................................................. 80
§ 668.115 Prehearing conference. .................................................................................................................................................. 80
§ 668.116 Hearing. ........................................................................................................................................................................... 80
Contents

§ 668.117 Authority and responsibilities of the hearing official.................................................................81
§ 668.118 Decision of the hearing official..........................................................81
§ 668.119 Appeal to the Secretary...............................................................81
§ 668.120 Decision of the Secretary...............................................................81
§ 668.121 Final decision of the Department.................................................................81
§ 668.122 Determination of filing, receipt, and submission dates.................................................................81
§ 668.123 Collection...............................................................81
§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.................................................................81

Subpart I—Immigration-Status Confirmation .................................................................82
§ 668.130 General...............................................................82
§ 668.131 Definitions...............................................................82
§ 668.132 Institutional determinations of eligibility based on primary confirmation.................................................................82
§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.................................................................82
§ 668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.................................................................83
§ 668.135 Institutional procedures for completing secondary confirmation.................................................................83
§ 668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.................................................................83
§ 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.................................................................83
§ 668.138 Liability...............................................................83
§ 668.139 Recovery of payments and loan disbursements to ineligible students.................................................................84

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process .................................................................84
§ 668.141 Scope...............................................................84
§ 668.142 Special definitions...............................................................84
§ 668.143 Approval of State tests or assessments; [Reserved].................................................................85
§ 668.144 Application for test approval...............................................................85
§ 668.145 Test approval procedures...............................................................87
§ 668.146 Criteria for approving tests...............................................................87
§ 668.147 Passing scores...............................................................88
§ 668.148 Additional criteria for the approval of certain tests.................................................................88
§ 668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available individuals with disabilities.................................................................89
§ 668.150 Agreement between the Secretary and a test publisher or a State.................................................................89
§ 668.151 Administration of tests...............................................................90
§ 668.152 Administration of tests by assessment centers.................................................................91
§ 668.153 Administration of tests for students individuals whose native language is not English or for persons individuals with disabilities.................................................................91
§ 668.154 Institutional accountability...............................................................91
§ 668.155 Transitional rule for the 1996–97 award year; [Reserved].................................................................91
§ 668.156 Approved State process...............................................................92

Subpart K—Cash Management .................................................................92
§ 668.161 Scope and purpose cash management rules.................................................................92
§ 668.162 Requesting funds...............................................................93
§ 668.163 Maintaining and accounting for funds.................................................................93
§ 668.164 Disbursing funds...............................................................94
§ 668.165 Notices and authorizations...............................................................96
§ 668.166 Excess cash...............................................................97
§ 668.167 FFEL Program funds...............................................................97

Subpart L—Financial Responsibility.................................................................98
§ 668.171 General...............................................................98
§ 668.172 Financial ratios...............................................................99
§ 668.173 Refund reserve standards...............................................................99
§ 668.174 Past performance.................................................................100
§ 668.175 Alternative standards and requirements.................................101
Subpart M—Two Year Cohort Default Rates........................................102
§ 668.181 Purpose of this subpart..........................................................102
§ 668.182 Definitions of terms used in this subpart...............................102
§ 668.183 Calculating and applying cohort default rates.......................103
§ 668.184 Determining cohort default rates for institutions that have undergone a change in status.........................................................104
§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued........................................104
§ 668.186 Notice of your official cohort default rate.............................105
§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.................................................105
§ 668.188 Preventing evasion of the consequences of cohort default rates.........................................................................................106
§ 668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.................................106
§ 668.190 Uncorrected data adjustments................................................107
§ 668.191 New data adjustments............................................................107
§ 668.192 Erroneous data appeals........................................................107
§ 668.193 Loan servicing appeals............................................................108
§ 668.194 Economically disadvantaged appeals.................................109
§ 668.195 Participation rate index appeals.............................................110
§ 668.196 Average rates appeals............................................................110
§ 668.197 Thirty-or-fewer borrowers appeals.........................................110
Subpart N—Cohort Default Rates.......................................................110
§ 668.200 Purpose of this subpart..........................................................110
§ 668.201 Definitions of terms used in this subpart...............................110
§ 668.202 Calculating and applying cohort default rates.......................111
§ 668.203 Determining cohort default rates for institutions that have undergone a change in status.........................................................111
§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued........................................112
§ 668.205 Notice of your official cohort default rate.............................113
§ 668.206 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.................................................113
§ 668.207 Preventing evasion of the consequences of cohort default rates.........................................................................................113
§ 668.208 General requirements for adjusting official cohort default rates and for appealing their consequences.................................114
§ 668.209 Uncorrected data adjustments................................................115
§ 668.210 New data adjustments............................................................115
§ 668.211 Erroneous data appeals........................................................115
§ 668.212 Loan servicing appeals............................................................116
§ 668.213 Economically disadvantaged appeals.................................116
§ 668.214 Participation rate index appeals.............................................117
§ 668.215 Average rates appeals............................................................118
§ 668.216 Thirty-or-fewer borrowers appeals.........................................118
§ 668.217 Default prevention plans.......................................................118
Subpart O—Financial Assistance for Students With Intellectual Disabilities.......................................................................................118
§ 668.230 Scope and purpose...............................................................118
§ 668.231 Definitions..........................................................118
§ 668.232 Program eligibility...............................................................119
§ 668.233 Student eligibility...............................................................119
APPENDIX A TO SUBPART B OF PART 668—STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)..................................................120
APPENDIX B TO SUBPART B OF PART 668—APPENDIX I, STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)..................................................120
APPENDIX A TO SUBPART D OF PART 668—CRIME DEFINITIONS IN ACCORDANCE WITH THE FEDERAL BUREAU OF INVESTIGATION’S UNIFORM CRIME REPORTING PROGRAM..................126
TITLE 34—EDUCATION
DEPARTMENT OF EDUCATION
PART 668—STUDENT ASSISTANCE
GENERAL PROVISIONS

Subpart A—General

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution’s participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution’s use of a third-party servicer does not alter the institution’s responsibility for compliance with the rules in this part.

(b) As used in this part, an “institution” includes—

1 An institution of higher education as defined in 34 CFR 600.4;

2 A proprietary institution of higher education as defined in 34 CFR 600.5; and

3 A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

1 The Federal Pell Grant Program (20 U.S.C. 1070a et seq.; 34 CFR part 690);

2 The Academic Competitiveness Grant (ACG) Program (20 U.S.C. 1070a–1; 34 CFR part 691);

3 The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b et seq.; 34 CFR parts 673 and 676);

4 The Leveraging Educational Assistance Partnership (LEAP) Program (20 U.S.C. 1070c et seq.; 34 CFR part 692);

5 The Federal Stafford Loan Program (20 U.S.C. 1071 et seq.; 34 CFR part 682);

6 The Federal PLUS Program (20 U.S.C. 1078–2; 34 CFR part 682);

7 The Federal Consolidation Loan Program (20 U.S.C. 1078–3; 34 CFR part 682);

8 The Federal Work-Study (FWS) Program (42 U.S.C. 2751 et seq.; 34 CFR parts 673 and 675);

9 The William D. Ford Federal Direct Loan (Direct Loan) Program (20 U.S.C. 1087a et seq.; 34 CFR part 685);

10 The Federal Perkins Loan Program (20 U.S.C. 1087aa et seq.; 34 CFR parts 673 and 674);

11 The National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program (20 U.S.C. 1070a–1; 34 CFR part 691); and

12 The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

(Authority: 20 U.S.C. 1070 et seq.)


§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 660:

Accredited Award year Branch campus Clock hour Correspondence course Credit hour Educational program Eligible institution Federal Family Education Loan (FFEL) programs Foreign institution Incarcerated student Institution of higher education Legally authorized Nationally recognized accrediting agency Nonprofit institution One-year training program Postsecondary vocational institution Preaccredited Proprietary institution of higher education Recognized equivalent of a high school diploma Recognized occupation Regular student Secretary State Telecommunications course

(b) The following definitions apply to all Title IV, HEA programs:

Academic Competitiveness Grant (ACG) Program: A grant program authorized by Title IV—A–1 of the HEA under which grants are awarded during the first and second academic years of study to eligible financially needy undergraduate students who successfully complete rigorous secondary school programs of study.

(Authority: 20 U.S.C. 1070a–1)

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR parts 673 and 674);

(2) The Federal Work-Study (FWS) Program (34 CFR parts 673 and 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR parts 673 and 676).


(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see Independent student).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct Loan Program loan: A loan made under the William D. Ford Federal Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

Direct PLUS Loan: A loan made under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1078–2 and 1087a et seq.)

Direct Subsidized Loan: A loan made under the Federal Direct Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1071 and 1087a et seq.)

Direct Unsubsidized Loan: A loan made under the Federal Direct Unsubsidized Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

Enrolled: The status of a student who—

1 Has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or

2 Has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

(Authority: 20 U.S.C. 1068)

Expected family contribution (EFC): The amount, as determined under title IV, part F of the HEA, an applicant and his or her spouse and family are expected to contribute toward the applicant’s cost of attendance.

Federal Consolidation Loan program: The loan program authorized by Title IV-B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect...
Federal Direct PLUS Program: A loan program authorized by title IV. Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

Federal Direct Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

Federal Direct Unsubsidized Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Unsubsidized Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

Federal Perkins Loan Program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986. Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

Federal PLUS loan: A loan made under the Federal PLUS Program.

Federal PLUS program: The loan program authorized by Title IV-B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students. Beginning July 1, 2006, the PLUS Program provides for making loans to graduate and professional students.

Federal SLS loan: A loan made under the Federal SLS Program.

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

Federal Stafford Loan Program: The loan program authorized by Title IV-B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

Federal Supplemental Educational Opportunity Grant (FSEOG) program: The grant program authorized by Title IV-A of the HEA.

FFELP loan: A loan made under the FFEL programs.

Free application for Federal student aid (FAFSA): The student aid application provided for under section 483 of the HEA, which is used to determine an applicant’s eligibility for the title IV HEA programs.

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student’s workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student including for a term-based program, repeating any coursework previously taken in the program but not including either more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student failing other coursework. However, for an undergraduate student, an institution’s minimum standard must equal or exceed one of the following minimum requirements:

1. For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

2. For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

3. For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters or quarters) the number of credits determined by—
   i. Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program’s academic year; and
   ii. Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program’s academic year.

4. For a program that measures progress in clock hours, 24 clock hours per week.

5. A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

7. For correspondence coursework, a full-time course load must be—
   i. Commensurate with the full-time definitions listed in paragraphs (1) through
program: The student loan program authorized by Title IV-E of the HEA between July 1, 1972, and October 16, 1986. (Authority: 20 U.S.C. 1087aa–1087l)

National Early Intervention Scholarship and Partnership (NEISP) program: The scholarship program authorized by Chapter 2 of subpart 1 of Title IV-A of the HEA. (Authority: 20 U.S.C. 1070a–21 et seq.)

National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program: A grant program authorized by Title IV-A–1 of the HEA under which grants are awarded during the third and fourth academic years of study to eligible financially needy undergraduate students pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering, or foreign languages determined to be critical to the national security of the United States. (Authority: 20 U.S.C. 1070a–1)

One-third of an academic year: A period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 686.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution’s academic year. (Authority: 20 U.S.C. 1070a–1)

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education’s central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student’s biological or adoptive mother or father or the student’s stepparent, if the biological parent or adoptive mother or father has remarried at the time of application. Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary. Professional degree: A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor’s degree. Professional licensure is also generally required. Examples of a professional degree include but are not limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.). (Authority: 20 U.S.C. 1082 and 1088)

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under 34 CFR 668.83. (Authority: 20 U.S.C. 1070c et seq.)

Student aid report (SAR): A report provided to an applicant by the Secretary showing his or her FAFSA information and the amount of his or her EFC.

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program: A grant program authorized by title IV of the HEA under which grants are awarded by an institution to students who are completing, or intend to complete, coursework to begin a career in teaching and who agree to serve for not less than four years as a full-time, highly-qualified teacher in a high-need field in a low-income school. If the recipient of a TEACH Grant does not complete four years of qualified teaching service within eight years of completing the course of study for which the TEACH Grant was received or otherwise fails to meet the requirements of 34 CFR 686.12, the amount of the TEACH Grant converts into a Federal Direct Unsubsidized Loan. (Authority: 20 U.S.C. 1070g)

TEACH Grant: A grant authorized under title IV–A–9 of the HEA and awarded to students in exchange for prospective teaching service. (Authority: 20 U.S.C. 1070g)

Third-party servicer: (1) An individual or a State, or a private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution’s participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(i) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA, such as, but not restricted to—

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
(A) Processing student financial aid applications;
(B) Performing need analysis;
(C) Determining student eligibility and related activities;
(D) Certifying loan applications;
(E) Processing output documents for payment to students;
(F) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;
(G) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;
(H) Preparing and certifying requests for advance or reimbursement funding;
(I) Loan servicing and collection;
(J) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and
(K) Preparing a Fiscal Operations Report and Application to Participate (FISAP);
(ii) Exclude the following functions—
(A) Publishing ability-to-benefit tests;
(B) Performing functions as a Multiple Data Entry Processor (MDE);
(C) Financial and compliance auditing;
(D) Mailing of documents prepared by the institution;
(E) Warehousing of records; and
(F) Providing computer services or software; and
(iii) Notwithstanding the exclusions referred to in paragraph (1)(ii) of this definition, include any activity comprised of any function described in paragraph (1)(ii) of this definition.

2 For purposes of this definition, an employee of an institution is not a third-party servicer. The Secretary considers an individual to be an employee if the individual—
(i) Works on a full-time, part-time, or temporary basis;
(ii) Performs all duties on site at the institution under the supervision of the institution;
(iii) Is paid directly by the institution;
(iv) Is not employed by or associated with a third-party servicer; and
(v) Is not a third-party servicer for any other institution.

3 For purposes of dual degree programs that allow individuals to complete a bachelor’s degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

4 A student enrolled in a four to five year program designed to lead to an undergraduate degree. A student enrolled in a program of any other, longer length is considered an undergraduate student for only the first four years of that program.

Authority: 20 U.S.C. 1070g

U.S. citizen or national: (1) A citizen of the United States; or
(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

Authority: 8 U.S.C. 1101

Valid institutional student information record (valid ISIR): A valid institutional student information record as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program An ISIR on which all the information reported on a student’s FAFSA is accurate and complete as of the date the application is signed.

Valid student aid report (valid SAR): A valid student aid report (valid SAR) as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program on which all of the information reported on a student’s FAFSA is accurate and complete as of the date the application is signed.

Authority: 20 U.S.C. 1070 et seq., unless otherwise noted

William D. Ford Federal Direct Loan (Direct Loan) Program: The loan program authorized by Title IV, Part D of the HEA.

Authority: 20 U.S.C. 1087a et seq.

§ 688.3 Academic year.
(a) General. Except as provided in paragraph (c) of this section, an academic year for a program of study must include—
(1) For a program offered in credit hours, a minimum of 30 weeks of instructional time; or
(2) For a program offered in clock hours, a minimum of 26 weeks of instructional time; and

The Secretary considers an individual to be an employee if the individual—
(i) Works on a full-time, part-time, or temporary basis;
(ii) Performs all duties on site at the institution under the supervision of the institution;
(iii) Is paid directly by the institution;
(iv) Is not employed by or associated with a third-party servicer; and
(v) Is not a third-party servicer for any other institution.

Authority: 20 U.S.C. 1088

Three-quarter time student: An enrolled student who is carrying a three-quarter- time academic workload, as determined by the institution, that amounts to at least three quarters of the work of the applicable minimum requirement outlined in the definition of a full-time student.

Authority: 20 U.S.C. 1082 and 1088

Two-thirds of an academic year: A period that is at least two-thirds of an academic year as determined by an institution. For purposes of 34 CFR 690.6(c)(5) and 686.3(a) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

Authority: 20 U.S.C. 1088

Undergraduate student: (1) A student who is enrolled in an undergraduate course of study that usually does not exceed four years, or is enrolled in a longer program designed to lead to a degree at the baccalaureate level. For purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

Authority: 20 U.S.C. 1088

For purposes of dual degree programs that allow individuals to complete a bachelor’s degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

Authority: 20 U.S.C. 1070g

U.S. citizen or national: (1) A citizen of the United States; or
(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

Authority: 8 U.S.C. 1101

Valid institutional student information record (valid ISIR): A valid institutional student information record as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program An ISIR on which all the information reported on a student’s FAFSA is accurate and complete as of the date the application is signed.

Valid student aid report (valid SAR): A valid student aid report (valid SAR) as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program on which all of the information reported on a student’s FAFSA is accurate and complete as of the date the application is signed.

Authority: 20 U.S.C. 1070 et seq., unless otherwise noted

William D. Ford Federal Direct Loan (Direct Loan) Program: The loan program authorized by Title IV, Part D of the HEA.

Authority: 20 U.S.C. 1087a et seq.

§ 688.3 Academic year.
(a) General. Except as provided in paragraph (c) of this section, an academic year for a program of study must include—
(1) For a program offered in credit hours, a minimum of 30 weeks of instructional time; or
(2) For a program offered in clock hours, a minimum of 26 weeks of instructional time; and

For an undergraduate educational program, an amount of instructional time whereby a full-time student is expected to complete at least—
(i) Twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours; or
(ii) 900 clock hours for a program measured in clock hours.

(b) Definitions. For purposes of paragraph (a) of this section—
(1) A week is a consecutive seven-day

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length. For a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length—

1. For Pell Grant, ACG, National SMART Grant, FSEOG, Perkins Loan, and TEACH Grant program funds, the payment period is the academic term;
2. For FFEL and Direct Loan program funds—
   i. For a student enrolled in an eligible program that is one academic year or less in length—
   A. The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the program and half of the number of weeks of instructional time in the program; and
   B. The second payment period is the period of time in which the student successfully completes the program; and
   ii. For a student enrolled in an eligible program that is more than one academic year in length—
   A. For the first academic year and any subsequent full academic year—
   1. The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the academic year and half of the number of weeks of instructional time in the academic year; and
   2. The second payment period is the period of time in which the student successfully completes the academic year;
   B. For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—
   1. The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and
   2. The second payment period is the period of time in which the student successfully completes the remainder of the program; and
   C. For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

3. For purposes of paragraphs (c)(1) and (c)(2) of this section, if an institution is unable to determine when a student has successfully completed half of the credit hours or clock hours in a program, academic year, or remainder of a program, the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of the date, as determined by the institution, on which the student has successfully completed—
   i. Half of the academic coursework in the program, academic year, or remainder of the program; or
   ii. Half of the number of weeks of instructional time in the program, academic year, or remainder of the program.

§ 668.4 Payment period.
(a) Payment periods for an eligible program that measures progress in credit hours and uses standard terms or nonstandard terms that are substantially equal in length. For a student enrolled in an eligible program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), or for a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are substantially equal in length, the payment period is the academic term.
(b) Payment periods for an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length. For a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length—
   i. The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the program and half of the number of weeks of instructional time in the program; and
   ii. The second payment period is the period of time in which the student successfully completes the program or the remainder of the program.

(b) Payment periods for an eligible program that is more than one academic year in length—
   i. For the first academic year and any subsequent full academic year—
   A. The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and
   B. The second payment period is the period of time in which the student successfully completes the academic year; and
   ii. For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—
   A. The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and
   B. The second payment period is the period of time in which the student successfully completes the remainder of the program; and
   iii. For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

3. For purposes of paragraphs (c)(1) and (c)(2) of this section, if an institution is unable to determine when a student has successfully completed half of the credit hours or clock hours in a program, academic year, or remainder of a program, the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of the date, as determined by the institution, on which the student has successfully completed—
   i. Half of the academic coursework in the program, academic year, or remainder of the program; or
   ii. Half of the number of weeks of instructional time in the program, academic year, or remainder of the program.
(d) Application of the cohort default rate exemption. Notwithstanding paragraphs (a), (b), and (c) of this section, if 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies to an eligible program that measures progress in credit hours and uses nonstandard terms, an eligible program that measures progress in clock hours and does not have academic terms, or an eligible program that measures progress in clock hours, the payment period for purposes of FFEL and Direct Loan funds is the loan period for those portions of the program to which 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies.

(e) Excused absences. For purposes of this section, in determining whether a student successfully completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence (i.e., an absence that a student does not have to make up) if—

(1) The institution has a written policy that permits excused absences; and

(2) The number of excused absences under the written policy for purposes of this paragraph (e) does not exceed the lesser of—

(i) The policy on excused absences of the institution’s accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR 600.11(b);

(ii) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(iii) Ten percent of the clock hours in the payment period.

(f) Re-entry within 180 days. If a student withdraws from a program described in paragraph (c) of this section during a payment period and then reenters the same program within 180 days, the student remains in that same payment period when he or she returns and, subject to conditions established by the Secretary or by the FFEL lender or guaranty agency, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 686.22.

(g) Re-entry after 180 days or transfer. (1) Except as provided in paragraph (g)(3) of this section, and subject to the conditions of paragraph (g)(2) of this section, an institution calculates new payment periods for the remainder of a student’s program based on paragraph (c) of this section, for a student who withdraws from a program described in paragraph (c) of this section, and—

(i) Reenters that program after 180 days; and

(ii) Transfers into another program at the same institution within any time period; or

(iii) Transfers into a program at another institution within any time period.

(2) For a student described in paragraph (g)(1) of this section—

(i) For the purpose of calculating payment periods only, the length of the program is the number of credit hours and the number of weeks of instructional time, or the number of clock hours and the number of weeks of instructional time, that the student has remaining in the program he or she enters or reenters; and

(ii) If the remaining hours and weeks constitute half of an academic year or less, the remaining hours constitute one payment period.

(3) Notwithstanding the provisions of paragraph (g)(1) of this section, an institution may consider a student who transfers into another program at the same institution to remain in the same payment period if—

(i) The student is continuously enrolled at the institution;

(ii) The coursework in the payment period the student is transferring out of is substantially similar to the coursework the student will be taking when he or she first transfers into the new program;

(iii) The payment periods are substantially equal in length in weeks of instructional time and credit hours or clock hours, as applicable;

(iv) There are little or no changes in institutional charges associated with the payment period to the student; and

(v) The credits from the payment period the student is transferring out of are accepted toward the new program.

(h) Definitions. For purposes of this section—

(1) Terms are substantially equal in length if no term in the program is more than two weeks of instructional time longer than any other term in that program; and

(2) A student successfully completes credit hours or clock hours if the institution considers the student to have passed the coursework associated with those hours.

Authority: 20 U.S.C. 1070 et seq.

[72 FR 62025, Nov. 1, 2007, as amended at 73 FR 35492, June 23, 2008]

§ 668.5 Written arrangements to provide educational programs.

(a) Written arrangements between eligible institutions. (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides all or part of the educational program of students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8.

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

(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8; and

(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.

(b) Written arrangements for study abroad. Under a study abroad program, if an eligible institution enters into a written arrangement with a foreign institution in another country, or an organization acting on behalf of an foreign institution in another country, under which the foreign institution provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) Written arrangements between an eligible institution and an ineligible institution or organization. If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization has not—

(i) Failed to participate in the title IV, HEA programs terminated by the Secretary; or

(ii) Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution’s State licensing agency, accrediting agency, guarantor, or by the Secretary;

(2) A student successfully completes credit hours or clock hours if the institution considers the student to have passed the coursework associated with those hours.

Authority: 20 U.S.C. 1070 et seq.

[72 FR 62025, Nov. 1, 2007, as amended at 73 FR 35492, June 23, 2008]
(v) Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

(2) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of §668.8; and

(3)(i) The ineligible institution or organization provides not more than 25 percent or less of the educational program;
or

(ii) The ineligible institution or organization provides more than 25 percent but not more than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution’s accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the FEDERAL REGISTER in accordance with procedures established by the Secretary an institution must report information that includes—

(1) The name and CIP code of that program and the date the student completed the program;

(2) Whether the student matriculated to a higher credentialed program at the institution or if available, evidence that the student transferred to a higher credentialed program at another institution; and

(ii) The name and CIP code of that program, the total number of students that enrolled in the program at the end of each award year and identifying information for those students;

(2)(I) An institution must report the information required under paragraph (a)(1) of this section—

(A) No later than October 1, 2011 for information from the 2006-07 award year to the extent that the information is available;

(B) No later than October 1, 2011 for information from the 2007-08 through 2009-10 award years; and

(C) No earlier than September 30, but no later than the date established by the Secretary through a notice published in the Federal Register, for information from the most recently completed award year.

(ii) For each program, by name and CIP code, offered by the institution under §668.8(c)(3) or (d), the total number of students that are enrolled in the program and the cost of room and board, if applicable. The institution may include other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institutions make available under §668.43(a);

(iv) The placement rate for students completing the program, as determined under a methodology developed by the National Center for Education Statistics (NCES) or its successor site. If the accrediting agency or State requires an institution to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or State agency under whose requirements the rate was calculated. If the accrediting agency or State requires an institution to calculate a placement rate at the institutional level or other than a program basis, the institution must use the methodology developed by the accrediting agency or State to calculate a placement rate for the program and disclose that rate;

(v) The median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a third-party servicer for that arrangement.

(3) The institution that calculates and disburses a student’s title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the hours in which the student enrolls at each institution that apply to the student’s degree or certificate when determining the student’s enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student’s eligibility for and receipt of title IV, HEA program funds.

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

[65 FR 66574, Nov. 1, 2000]

§ 668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.

(a) Reporting requirements. (1) In accordance with procedures established by the Secretary an institution must report information that includes—

(i) For each student who enrolled in a program under §668.8(c)(3) or (d) during an award year—

(A) Information needed to identify the student and the institution the student attended;

(B) If the student began attending a program during the award year, the name and the Classification of Instructional Program (CIP) code of that program; and

(C) If the student completed a program during the award year—

(J) The name and CIP code of that program and the date the student completed the program;

(2) The amounts the student received from institutional loans and the amount from institutional financing plans that the student owes the institution upon completing the program; and

(3)(I) The ineligible institution or organization provides more than 25 percent but not more than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution’s accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the FEDERAL REGISTER in accordance with procedures established by the Secretary an institution must report information that includes—

(1) The name and CIP code of that program and the date the student completed the program;

(2) Whether the student matriculated to a higher accredented program at the institution or if available, evidence that the student transferred to a higher accredented program at another institution; and

(ii) The on-time graduation rate for students completing the program, as determined under a methodology developed by the National Center for Education Statistics (NCES) or its successor site. If the accrediting agency or State requires an institution to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or State agency under whose requirements the rate was calculated. If the accrediting agency or State requires an institution to calculate a placement rate at the institutional level or other than a program basis, the institution must use the methodology developed by the accrediting agency or State to calculate a placement rate for the program and disclose that rate; and

(v) The median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(2) For each program, the institution must—

(i) Include the information required under paragraph (b)(1) of this section in promotional materials it makes available to

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
promising students and post this information on its Web site;

(ii) Prominently provide the information required under paragraph (b)(1) of this section in a simple and meaningful manner on the home page of its program Web site, and provide a prominent and direct link on any other Web page containing general, academic, or admissions information about the program, to the single Web page that contains all the required information;

(iii) Display the information required under paragraph (b)(1) of this section on the institution’s Web site in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information, and

(iv) Use the disclosure form issued by the Secretary to provide the information in paragraph (b)(1), and other information, when that form is available.

(c) On-time completion rate. An institution calculates an on-time completion rate for each program subject to this section by--

(1) Determining the number of students who completed the program during the most recently completed award year;

(2) Determining the number of students in paragraph (c)(1) of this section who completed the program within normal time, as defined under §668.41(a), regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years, and this timeframe applies to all students in the program. If a student transfers into the program, regardless of the number of credits the institution accepts from the student’s attendance at the prior institution, those transfer credits have no bearing on the two-year timeframe. The student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who changes programs at the institution and begins attending the two-year program must complete within the two-year timeframe beginning from the date the student began attending the prior program; and

(3) Dividing the number of students who completed the program within normal time, as determined under paragraph (c)(2) of this section, by the total number of students who completed the program, as determined under paragraph (c)(1) of this section, and multiplying the result by 100.

(Approved by the Office of Management and Budget under control number 1845-NEW1)

Authority: 20 U.S.C. 1001(b), 1002(b) and (c)

§ 668.7 [Reserved]

Gainful employment in a recognized occupation.

(a) Gainful employment—(1) Debt thresholds. A program is considered to provide training that leads to gainful employment in a recognized occupation if, as calculated under paragraph (b) and (c) of this section—

(i) The program’s annual loan repayment rate is at least 35 percent;

(ii) Using the three-year period (3YP), the program’s annual loan payment is 30 percent or less of discretionary income or 12 percent or less of average annual earnings; or

(iii) Using the prior three-year period (P3YP), the program’s annual loan payment is less than 20 percent of discretionary income or less than 8 percent of average annual earnings.

(2) Restricted status. Unless a program is ineligible under paragraph (f) of this section, the Secretary grants the program a restricted status under the following conditions—

(i) The program has an annual loan repayment rate of less than 45 percent; and

(ii) The program has an annual loan payment that is more than 30 percent of discretionary income and more than 8 percent of average annual income using 3YP, and if applicable P3YP.

(b) On-time completion rate. The Secretary calculates the loan repayment rate for a program annually using the following ratio:

\[
\text{OOPB of LF} + \text{OOPB of RPL}
\]

OOPB of all loans for students attending the program

(1) Original Outstanding Principal Balance (OOPB). (i) The OOPB is the amount of the outstanding balance on FFEL or Direct loans owed by students who attended the program, including capitalized interest, on the date those loans entered repayment.

(ii) The OOPB of all loans includes the FFEL and Direct loans that entered repayment for the prior four FFYs.

(2) Loans Paid in Full (LPF). (i) LPF are loans to students who attended the program that have been paid in full. However, a loan that is paid through a consolidation loan is not counted as paid in full for this purpose until the consolidation loan is paid in full.

(ii) The OOPB of LPF in the numerator of the ratio is the total amount of OOPB for these loans.

(3) Reduced Principal Loan (RPL). (i) RPL represents a loan where payments made by a borrower during the most recently completed FFY reduced the outstanding principal balance of that loan from the beginning of that FFY. RPL also includes loans for borrowers whose payments during that FFY qualify for the Public Service Loan Forgiveness program under 34 CFR 685.219(c), even if there is no reduction during the FFY in the outstanding principal balance of those loans.

(ii) The OOPB of RPL in the numerator of the ratio is the total amount of OOPB for these loans.

(4) Exclusions. The following are excluded from both the numerator and the denominator of the ratio:

(i) The OOPB of borrowers on an in-school deferment or a military-related deferment status.

(ii) The OOPB of borrowers entering repayment after March 31 of the most recent FFY.
(c) Debt measures—(1) General. The Secretary determines annually for each program that the annual loan payment is less than the discretionary income and earnings thresholds in paragraph (a) of this section using the following formulas:

(i) Annual loan payment < Discretionary threshold * "Average Annual Earnings×1.5 * Poverty Guideline). For example, under paragraph (a)(1)(i) of this section, the Discretionary threshold is 20 percent or .20.

(ii) Annual loan payment < Earnings threshold * "Average Annual Earnings. For example, under paragraph (a)(1)(ii) of this section the Earnings threshold is 12 percent or .12.

(2) Annual loan payment. The Secretary determines the median loan debt of students who completed the program at the institution during the 3YP and uses this amount to calculate an annual loan payment based on a 10-year repayment schedule and the current annual interest rate on Federal Direct Unsubsidized Loans. If data are available, the Secretary also calculates the median loan debt of students who completed the program during the P3YP. If general, loan debt includes title IV, HEA program funds, other than Parent PLUS loans, and any private educational loans or debt obligations arising from institutional financing plans. Loan debt does not include any debt obligations arising from student attendance at prior or subsequent institutions unless the other and current institutions are under common ownership or control, or are otherwise related entities.

(3) Average annual earnings. The Secretary uses the most currently available actual average annual earnings obtained from a Federal agency, of the students who completed the program during the 3YP and, if the data are available, during the P3YP. P3YP data are used if, in accordance with procedures established by the Secretary—

(i) The institution shows that students completing the program typically experience a significant increase in earnings after an initial employment period and explains the basis for that earnings pattern; and

(ii) The institution provides the Secretary the information needed to calculate the annual debt measures under this section, including the CIP code, and for each student who completed the program, the completion date, the amount received from private educational loans, and the amount of debt incurred from institutional financing plans.

(d) Debt warning disclosure. On or after July 1, 2012, unless the program has a loan repayment rate of at least 45 percent and an annual loan payment that is at least 20 percent of discretionary income or 8 percent of average annual income, the Secretary notifies the institution that it must—

(1) include a prominent warning in its promotional, enrollment, registration, and in all other materials, including those on its Web site, and in all admissions meetings with prospective students, that is designed and intended to alert prospective and currently enrolled students that they may have difficulty repaying loans obtained for attending that program; and

(2) Disclose to current and prospective students, the program’s most recent loan repayment rate under paragraph (b) of this section, and most recent debt measures under paragraph (c) of this section.

(e) Restricted programs. The Secretary notifies an institution whenever one of its program’s is placed on a restricted status under paragraph (a)(2) of this section, that—

(1) The institution must provide annually to the Secretary the employer affirmations specified in paragraph (g)(1)(iii) of this section;

(2) The institution must make the debt warning disclosures specified in paragraph (d) of this section; and

(3) The Secretary limits the enrollment of title IV, HEA program recipients in that program to the average number enrolled during the prior three award years.

(f) Ineligible program—(1) General. Except for the transition year under paragraph (f)(2) of this section, on or after July 1, 2012, a program becomes ineligible if it does not satisfy at least one of the debt thresholds in paragraph (a)(1) of this section. The Secretary notifies the institution that the program becomes ineligible on the start date of that program, subject to the requirements of this section, and most recent debt measures during the transition period, the Secretary notifies the institution that the program no longer qualifies as an eligible program. For every other ineligible program, the Secretary notifies the institution that—

(A) It must limit the enrollment of title IV, HEA program recipients in that program to the average number of title IV, HEA program recipients enrolled during the prior three award years;

(B) It must provide the employer affirmations under paragraph (g)(1)(iii) of this section; and

(C) It must provide the debt warning disclosures specified in paragraph (d) of this section.

(g) Additional programs. (1) Before an institution offers an additional program that is subject to the requirements of this section, the institution must apply to the Secretary under 34 CFR 600.10(c)(1) to have that program approved as an eligible program. As part of its application, the institution must provide—

(i) If the additional program constitutes a substantive change as provided under 34 CFR 602.22(a)(1), documentation of the approval of the substantive change by its accrediting agency;

(ii) Projected student enrollment for the next five years for each location of the institution that will offer the additional program; and

(iii) Documentation from employers not affiliated with the institution affirming that the curriculum of the additional program aligns with recognized occupations at those employers’ businesses, and that there are projected job vacancies or expected demand for those occupations at those businesses. The number and locations of the businesses for which affirmation is required must be commensurate with the anticipated size of the program.
(2) In determining whether to approve the additional program, the Secretary may restrict the approval for an initial period based on the projected growth estimates provided by the institution and the demonstrated ability of the institution to offer programs subject to this section.

(3) If the additional program constitutes a substantive change based solely on program content as provided in 34 CFR 602.22(a)(2)(iii), the Secretary calculates the loan repayment rate and debt measures for that program as soon as data are available. Otherwise, the Secretary—

(i) Calculates the loan repayment rate under paragraph (b) of this section by using loan data from the additional program and, for the first three years, loan data from all other programs currently or previously offered by the institution that are in the same job family as the additional program. Any loans from the programs in the same job family that entered repayment after the third year that the loan repayment rate is calculated for the additional program, are not included in that program’s loan repayment rate. As described by the Bureau of Labor Statistics (BLS), a job family is a group of occupations grouped by Standard Occupational Classification (SOC) codes. Information about job families and SOC codes is available at http://www.bls.gov/oes/current/oes_stru.htm or http://online.onetcenter.org/find/family; and

(ii) Calculates the debt measures under paragraph (c) of this section by using the loan debt incurred by students in the additional program and in all other programs currently or previously offered by the institution that are in the same job family as the additional program, until loan debt data are available for a 3YP solely for the additional program.

(Approved by the Office of Management and Budget under control number 1845-NEW4)

(Authority: 20 U.S.C. 1001(b), 1002(b) and (c))

§ 668.8 Eligible program.

(a) General. An eligible program is an educational program that—

(1) Is provided by a participating institution; and

(2) Satisfies the other relevant requirements contained in this section.

(b) Definitions. For purposes of this section—

(1) The Secretary considers the “equivalent of an associate degree” to be—

(i) An associate degree; or

(ii) The successful completion of at least a two-year program that is acceptable for full credit toward a bachelor’s degree and qualifies a student for admission into the third year of a bachelor’s degree program;

(2) A week is a consecutive seven-day period; and

(3)(i) The Secretary considers that an institution provides one week of instructional time in an academic program during any week the institution provides at least one day of regularly scheduled instruction or examinations, or, after the last scheduled day of classes for a term or a payment period, at least one day of study for final examinations;

(ii) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) Institution of higher education. An eligible program provided by an institution of higher education must—

(1) Lead to an associate, bachelor’s, professional, or graduate degree;

(2) Provide training that prepares a student for gainful employment in a recognized occupation as provided under § 668.6;

(3)(i) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor’s degree; or

(ii) Be at least a one-academic-year training program that leads to a certificate, degree, or other nondegree recognized educational credential, and that prepares a student for gainful employment in a recognized occupation.

(d) Proprietary institution of higher education and postsecondary vocational institution. An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation as provided under § 668.6; and

(iv)(A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree;

(3) For purposes of the FFEL and Direct Loan programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation as provided under § 668.6;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section; or

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

(e) Qualitative factors. (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the...
institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under § 688.23 report on the institution’s calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(f) Calculation of completion rate. An institution shall calculate its completion rate for an educational program for any award year as follows:

(1) Determine the number of regular students who were enrolled in the program during the award year.

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner a refund of 100 percent of their tuition and fees.

(3) Subtract from the total obtained under paragraph (f)(2) of this section the number of students who were enrolled in the program at the end of that award year.

(4) Determine the number of regular students who, during that award year, received within 150 percent of the published length of the educational program the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(5) Divide the number determined under paragraph (f)(4) of this section by the total obtained under paragraph (f)(3) of this section.

(g) Calculation of placement rate. (1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Of the total obtained under paragraph (g)(1)(i) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed, or have been employed, for at least 13 weeks following receipt of the credential from the institution.

(iii) Divide the number of students determined under paragraph (g)(1)(i) of this section by the total obtained under paragraph (g)(1)(i) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(ii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student’s gainful employment include, but are not limited to—

(i) A written statement from the student’s employer;

(ii) Signed copies of State or Federal income tax forms; and

(iii) Written evidence of payments of Social Security taxes.

(h) Eligibility for Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, and FSEOG Programs. In addition to satisfying other relevant provisions of the section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c);

(2) An educational program qualifies as an eligible program for purposes of the ACG, National SMART Grant, and FSEOG programs only if the educational program is an undergraduate program; and

(3) An educational program qualifies as an eligible program for purposes of the TEACH Grant program if it satisfies the requirements of the definition of TEACH Grant-eligible program in 34 CFR 686.2(d).

(i) Flight training. In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

(j) English as a second language (ESL). (1) In addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if—

(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and

(ii) The program leads to a degree, certificate, or other recognized educational credential.

(2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

(3) An ESL program that qualifies as an eligible program under this paragraph is eligible for purposes of the Federal Pell Grant Program only.

(k) Undergraduate educational program in credit hours. (1) Except as provided in paragraph (k)(2) of this section, if an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (i) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless—

(A) The institution’s degree requires at least two academic years of study; and

(B) The institution demonstrates that students enroll in, and graduate from, the degree program.

(2) A program is considered to be a clock-hour program for purposes of the Title IV, HEA programs if—

(i) Except as provided in paragraph (k)(3) of this section, a program is required to measure student progress in clock hours when—

(A) Receiving Federal or State approval or licensure to offer the program; or

(B) Completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue;

(ii) The credit hours awarded for the program are not in compliance with the definition of a credit hour in 34 CFR 600.2; or

(iii) The institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in § 688.4(e), requires attendance in the clock hours that are the basis for the credit hours awarded.

(3) The requirements of paragraph (k)(2)(i) of this section do not apply to a program if

...
there is a State or Federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience component of the program that must include a minimum number of clock hours.

(1) Formula. (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and of determining the number of credit hours in that educational program with regard to the Title IV, HEA programs:

(i) A semester hour must include at least 30 37.5 clock hours of instruction; 
(ii) A trimester hour must include at least 20 25 clock hours of instruction; and 
(iii) A quarter hour must include at least 20 25 hours of instruction.

(2) The institution’s conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section, if the institution’s designated accrediting agency or recognized State agency for the approval of public postsecondary vocational institutions, for participation in the title IV, HEA programs, has not identified any deficiencies with the institution’s policies and procedures, or their implementation, for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for programs and courses, in accordance with 34 CFR 602.24(i), or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution’s student work outside of class combined with the clock-hours of instructional meet or exceed the numeric requirements in paragraph (l)(1) of this section; and 
(ii) A semester hour must include at least 30 37.5 clock hours of instruction; 
(iii) A trimester hour must include at least 20 25 clock hours of instruction; and 
(iv) A quarter hour must include at least 20 25 hours of instruction.

(3) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs. Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours.

(i) An academic year in a direct assessment program is a period of instructional time that consists of a minimum of 30 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete the equivalent of at least 24 semester or trimester credit hours, 36 quarter credit hours or 900 clock hours.

(ii) A payment period in a direct assessment program for which equivalence in credit hours has been established must be determined under the requirements in § 686.4(a), (b), or (c), as applicable, using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program). A payment period in a direct assessment program for which equivalence in clock hours has been established must be determined under the requirements in § 686.4(c), using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program).

(iii) A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student’s work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty.
member on a regular and substantive basis to assure progress within the course or program.

(iv) A full-time student in a direct assessment program is an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in the program. However, for an undergraduate student, the institution's minimum standard must equal or exceed the minimum full-time requirements specified in the definition of full-time student in § 668.2 based on the credit or clock hour equivalency established by the institution for the direct assessment program.

(b) An institution that offers a direct assessment program must apply to the Secretary to have that program determined to be an eligible program for title IV, HEA program purposes. The institution's application must provide information satisfactory to the Secretary that includes—

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

(c) To be an eligible program, a direct assessment program must meet the requirements in § 668.8 including, if applicable, minimum program length and qualitative factors.

(d) Notwithstanding paragraphs (a) through (c) of this section, no program offered by a foreign institution that involves direct assessment will be considered to be an eligible program under § 668.8.

(e) A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the institution providing the direct assessment program without regard to the limitations on contracting for part of an educational program in § 668.5(c)(3).

(f) Title IV, HEA program funds may be used only for learning that results from instruction provided, or overseen, by the institution, not for the portion of the program that the student has demonstrated mastery of prior to enrollment in the program or tests of learning that are not associated with educational activities overseen by the institution.

(g) Title IV, HEA program eligibility with respect to direct assessment programs is limited to direct assessment programs approved by the Secretary. Title IV, HEA program funds may not be used for—

1. The course of study described in § 668.32(a)(1)(ii) and (iii) if offered by direct assessment, or
2. Remedial coursework described in § 668.20 offered by direct assessment. However, remedial instruction that is offered in credit or clock hours in conjunction with a direct assessment program is eligible for Title IV, HEA program funds.

(h) The Secretary’s approval of a direct assessment program expires on the date that the institution changes one or more aspects of the program described in the institution’s application submitted under paragraph (b) of this section. To maintain program eligibility, the institution must obtain prior approval from the Secretary through reapplication under paragraph (b) of this section that sets forth the revisions proposed.

(i) An institution that designates under § 668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution’s chief administrator or a high level institutional official the chief administrator designates.

(3) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program or with applicable standards in this subpart by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under subpart G of this part. These proceedings may lead to any of the following actions:

1. An emergency action.
2. The imposition of a fine.
3. The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.
4. The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution’s participation in a Title IV, HEA program.

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

§ 668.12 [Reserved]

§ 668.13 Certification procedures.

(a) Requirements for certification. (1) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

(ii) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following requirements of paragraph (a)(2) of this section.

(iii) The institution’s chief administrator or a high level institutional official the chief administrator designates.

(3) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) Period of participation. (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary...
also specifies the period for which the institution may participate in a Title IV, HEA program. An institution’s period of participation expires no more than six years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that—

(i) The period of participation for a private, for-profit foreign institution expires three years after the date of the Secretary’s certification; and

(ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution’s existing certification will be extended on a month to month basis following the expiration of the institution’s period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(c) Provisional certification. (1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution—

(1) That is applying for a certification that the institution meets the standards of this subpart;

(2) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 and subpart L of this part or the standards of administrative capability under § 668.16; and

(3) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(D) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary’s recognition of that agency according to the provisions contained in 34 CFR part 603, or

(F) One or more programs offered by the institution—

(1) Are subject to the eligibility limitations under the gainful employment provisions in § 668.7(e); or

(2) Become ineligible under the gainful employment provisions in § 668.7(f).

(ii) A proprietary institution’s certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under § 668.14(b)(16).

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c)(3) and (4) of this section, a provisionally certified institution’s period of participation expires—

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i) of this section;

(ii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(ii), (iii), (iv) or (e)(2) of this section; and

(iii) If the Secretary provisionally certified the institution under paragraph (c)(1)(v) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution’s nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, “provisional certification” means that the Secretary certifies that an institution has demonstrated to the Secretary’s satisfaction that the institution—

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution’s responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution’s program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) Revocation of provisional certification. (1) If, before the expiration of a provisionally certified institution’s period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution’s provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (d)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in § 668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution’s receipt of the Secretary’s notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or facsimile transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by facsimile transmission.

(iii) Documents filed by facsimile transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.

(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) The designated department official making the decision concerning an institution’s request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution’s provisional certification. The deciding official promptly considers an institution’s request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary’s notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) Eighteen months after the Secretary mails the notice of the revocation to the institution.

(C) An institution may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(D) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(E) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(F) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(G) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(H) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(I) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(J) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(K) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(L) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(M) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(N) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(O) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(P) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(Q) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(R) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(S) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(T) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(U) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(V) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(W) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(X) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(Y) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(Z) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(A) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(B) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(C) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(D) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(E) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(F) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(G) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(H) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

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(R) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(S) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(T) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(U) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(V) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.

(W) The Secretary also may request reconsideration of a revocation if the Secretary determines that the revocation is unwarranted.

(X) An institution requesting reconsideration of a revocation must file the request in accordance with § 668.26.
(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution’s provisional certification is unwarranted, the Secretary’s notice informs the institution that the institution’s provisional certification is reindicated, effective on the date that the Secretary’s original revocation was mailed, for a specified period of time.

(5)(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(ii) The date on which a request for reconsideration of a revocation is submitted is—

(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and

(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.

(Approved by the Office of Management and Budget under control number 1845–0537)


§ 668.14 Program participation agreement.

(a)(1) An institution may participate in any Title IV, HEA program, other than the LEAP and NEISIP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution’s program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that—

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution’s immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student’s eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to—

(i) The Secretary;

(ii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan and Federal PLUS programs for attendance at the institution or any of the institution’s branch campuses or other locations;

(iii) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution’s branch campuses, other locations, or educational programs;

(iv) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(v) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of § 668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of § 668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or the Federal Perkins Loan Program, to holders of loans made to the institution’s students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purposes of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender in the case of an FFEL Program loan, or origination record to the Secretary in the case of a Direct Loan Program loan that qualifies the student or parent for a loan or loans in excess of the amount that the student or parent is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1)(A) and (B), 428B, 428H, and 455(a) of the HEA;

(9) It will comply with the requirements of subpart D of this part concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the FFEL program, the institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source of further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;
(15)(i) Except as provided under paragraph (b)(15)(ii) of this section, the institution will use a default management plan approved by the Secretary with regard to its administration of the FFEL or Direct Loan programs, or both for at least the first two years of its participation in those programs, if the institution—

(A) Is participating in the FFEL or Direct Loan programs for the first time; or

(B) Is an institution that has undergone a change in ownership that results in a change in control and is participating in the FFEL or Direct Loan programs.

(ii) The institution does not have to use an approved default management plan if—

(A) The institution, including its main campus and any branch campus, does not have a cohort default rate in excess of 10 percent; and

(B) The owner of the institution does not own and has not owned any other institution that had a cohort default rate in excess of 10 percent while that owner owned the institution.

(16) For a proprietary institution, the institution will derive at least 10 percent of its revenues for each fiscal year from sources other than Title IV, HEA program funds, as provided in § 668.28(a) and (b), or be subject to sanctions described in § 668.28(c).

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution’s eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly—

(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that is co-educational and has an intercollegiate athletic program, it will comply with the provisions of § 686.48;

(21) It will not impose any penalty, including, but not limited to, the limitation of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student’s inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22)(i) It will not provide 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 who is engaged in any student recruiting recruitment or admission activities activity, or in making decisions regarding the awarding of title IV, HEA program funds,

(A) except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds Federal student assistance, Federal student assistance;

(B) For the purpose of paragraph (b)(22)(i) of this section, an employee who receives multiple adjustments to compensation in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based upon success in securing enrollments or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) Merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; and

(B) Profit-sharing payments so long as such payments are not provided to any person or entity engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

(A) The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as long as that compensation is not adjusted up or down more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all full-time employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for title IV, HEA program funds.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays, directly or by reimbursement, 50 percent or more of the tuition and fees charged to its employees; provided that the compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation paid as part of a profit-sharing or bonus plan, as long as those payments are substantially the same amount or the same percentage of salary or wages, and made to all or substantially all of the institution’s full-time professional and administrative staff. Such payments can be limited to all, or substantially all of the full-time employees, one or more organizational level at the institution, except that an organizational level may not consist predominantly of recruiters, admissions

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
staff, or financial aid staff.

(E) Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution.

(F) Compensation paid to employees who perform clerical ‘pre-enrollment’ activities, such as answering telephone calls, referring inquiries, or distributing institutional materials.

(G) Compensation to managerial or supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

(H) The awarding of token gifts to the institution’s students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and the cost of the gift is not more than $100.

(I) Profit distributions proportionately based upon an individual’s ownership interest in the institution.

(J) Compensation paid for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission online.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of title IV, HEA program funds, provided that the individual performing the recruitment or admission activities, or the awarding of title IV, HEA program funds, are not compensated in a manner that would be impermissible under paragraph (b)(22) of this section.

(iii) As used in paragraph (b)(22) of this section,

(A) Commission, bonus, or other incentive payment means a sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.

(B) Securing enrollments or the award of financial aid means activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.

(I) These activities include contact in any form with a prospective student, such as but not limited to—contact through predmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student’s signing of an enrollment agreement or financial aid application.

(2) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on—

(i) Any additional conduct or action by the third party or the prospective students, such as participation in predmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student’s enrollment agreement or financial aid application; or

(ii) The number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are enrolled for any period of time, including through completion of an educational program.

(C) Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid means—

(1) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, the individual, person, or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards title IV, HEA program funds; and

(2) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards title IV, HEA program funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding title IV, HEA program funds.

(D) Enrollment means the admission or matriculation of a student into an eligible institution.

(23) It will meet the requirements established pursuant to part H of Title IV of the HEA by the Secretary and nationally recognized accrediting agencies;

(24) It will comply with the requirements of § 668.22;

(25) It is liable for all—

(i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(ii) Returns of title IV, HEA program funds that the institution or its servicer may be required to make;

(26) If the stated objectives of an educational program of the institution are to prepare a student for gainful employment in a recognized occupation, the institution will—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.

(27) In the case of an institution participating in a Title IV, HEA loan program, the institution—

(i) Will develop, publish, administer, and enforce a code of conduct with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs in accordance with 34 CFR 610.21; and

(ii) Must inform its officers, employees, and agents with responsibilities with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs annually of the provisions of the code required under paragraph (b)(27) of this section;

(28) For any year in which the institution has a preferred lender arrangement (as defined in 34 CFR 601.2(b)), it will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list in print or other medium, of the specific lenders for loans made, insured, or guaranteed under title IV of the HEA or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making
such a list, the institution must comply with the requirements in 34 CFR 682.212(h) and 34 CFR 601.10; (29)(i) It will, upon the request of an enrolled or admitted student who is an applicant for a private education loan (as defined in 34 CFR 601.2(b)), provide to the applicant the self-certification form required under 34 CFR 601.11(d) and the information required to complete the form, to the extent the institution possesses such information, including-- (A) The applicant’s cost of attendance at the institution, as determined by the institution under part F of title IV of the HEA; (B) The applicant’s estimated financial assistance, including amounts of financial assistance used to replace the expected family contribution as determined by the institution in accordance with title IV, for students who have completed the Free Application for Federal Student Aid; and (C) The difference between the amounts under paragraphs (b)(29)(i)(A) and (29)(i)(B) of this section, as applicable. (ii) It will, upon the request of the applicant, discuss with the applicant the availability of Federal, State, and institutional student financial aid; (30) The institution— (i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution’s network, without unduly interfering with educational and research use of the network, that include— (A) The use of one or more technology-based deterrents; (B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material, including that described in §668.43(a)(10); (C) Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and (D) Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution’s network using relevant assessment criteria. No particular technology measures are favored or required for inclusion in an institution’s plans, and each institution retains the authority to determine what its particular plans for compliance with paragraph (b)(30) of this section will be, including those that prohibit content monitoring; and (ii) Will, in consultation with the chief technology officer or other designated official of the institution— (A) Periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material; (B) Make available the results of the review in paragraph (b)(30)(i)(A) of this section to its students through a Web site or other means; and (C) To the extent practicable, offer legal alternatives for downloading or otherwise acquiring copyrighted material, as determined by the institution; and (31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution’s accrediting agency upon the occurrence of any of the following events: (i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under §668.83. (ii) The institution’s accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution. (iii) The institution’s State licensing or authorizing agency revokes the institution’s license or legal authorization to provide an educational program. (iv) The institution intends to close a location that provides 100 percent of at least one program. (v) The institution otherwise intends to cease operations. (c) In order to participate in any Title IV, HEA program (other than the LEAP and NEIPS programs), the institution must certify that it— (1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and (2) Has established a campus security policy in accordance with section 485(f) of the HEA; and (ii) Has complied with the disclosure requirements of §668.47 as required by section 485(f) of the HEA. (d)(1) The institution, if located in a State to which section 4(b) of the National Voter Registration Act (42 U.S.C. 1973gg–2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make those forms widely available to students at the institution. (2) The institution must request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution is not liable for not meeting the requirements of this section during that election year. (3) This paragraph applies to elections as defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1)), and includes the election for Governor or other chief executive within such State. (e)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement. (2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution. (f)(1) Except as provided in paragraphs (g) and (h) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part. (2) An institution may terminate a program participation agreement. (3) If the Secretary or the institution terminates a program participation agreement under paragraph (f) of this section, the Secretary establishes the termination date. (g) An institution’s program participation agreement automatically expires on the date that— (1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or (2) The institution’s participation ends under the provisions of §668.26(a)(1), (2), (4), or (7). (h) An institution’s program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution. (Approved by the Office of Management and Budget under control number 1845-0022) [Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141] [59 FR 22425, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 64 FR 59038, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000; 67 FR 67072, Nov. 1, 2002; 73 FR 35492, June 23, 2008; 74 FR 55648, Oct. 28, 2009; 74 FR 55934, Oct. 29, 2009] §668.15 Factors of financial responsibility. (a) General. To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section. (b) General standards of financial responsibility.
responsibility. In general, the Secretary considers an institution to be financially responsible only if it—

(1) Is providing the services described in its official publications and statements;
(2) Is providing the administrative resources necessary to comply with the requirements of this subpart;
(3) Is meeting all of its financial obligations, including but not limited to—
   (i) Refunds that it is required to make; and
   (ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary;
(4) Is current in its debt payments. The institution is not considered current in its debt payments if—
   (i) The institution is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statement; or
   (ii) the institution fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover those funds;
(5) Except as provided in paragraph (d) of this section, in accordance with procedures established by the Secretary, submits to the Secretary an irrevocable letter of credit, acceptable and payable to the Secretary equal to 25 percent of the total dollar amount of Title IV, HEA program refunds paid by the institution in the previous fiscal year;
(6) Has not had, as part of the audit report for the institution’s most recently completed fiscal year—
   (i) A statement by the accountant expressing substantial doubt about the institution’s ability to continue as a going concern; or
   (ii) A disclaimed or adverse opinion by the accountant;
(7) For a for-profit institution—
   (i)(A) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables;
   (B) Has not had operating losses in either or both of its two latest fiscal years that in sum result in a decrease in tangible net worth in excess of 10 percent of the institution’s tangible net worth at the beginning of the first year of the two-year period. The Secretary may calculate an operating loss for an institution by excluding from net income: extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and, the cumulative effect of changes in accounting principle. For purposes of this section, the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles; and
   (C) Had, for its latest fiscal year, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution’s tangible assets exceed its liabilities. The calculation of tangible net worth shall exclude all assets classified as intangible in accordance with the generally accepted accounting principles; or
   (ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations that are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization;
(8) For a nonprofit institution—
   (i)(A) Prepares a classified statement of financial position in accordance with generally accepted accounting principles or provides the required information in notes to the audited financial statements;
   (B) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables.
   (C) Has, at the end of its latest fiscal year, a positive unrestricted current fund balance or positive unrestricted net assets. In calculating the unrestricted current fund balance or the unrestricted net assets for an institution, the Secretary may include funds that are temporarily restricted in use by the institution’s governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or
   (2) Has not had, an excess of current fund expenditures over current fund revenues over both of its 2 latest fiscal years that results in a decrease exceeding 10 percent in either the unrestricted current fund balance or the unrestricted net assets at the beginning of the first year of the 2-year period. The Secretary may exclude from net changes in fund balances for the operating loss calculation: Extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and the cumulative effect of changes in accounting principle. In calculating the institution’s unrestricted current fund balance or the unrestricted net assets, the Secretary may include funds that are temporarily restricted in use by the institution’s governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or
   (ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.
(c) Past performance of an institution or persons affiliated with an institution. An institution is not financially responsible if—

(1) A person who exercises substantial control over the institution or any member or members of the person’s family alone or together—
   (i) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or
   (B) Owes a liability for a violation of a Title IV, HEA program requirement; and
   (ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary; or
(2) The institution has—
   (i) Been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency (as defined in 34 CFR
part 682) within the preceding five years;

(ii) Had—

(A) An audit finding, during its two most recent audits of its conduct of the Title IV, HEA programs, that resulted in the institution’s being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the audit; or

(B) A program review finding, during its two most recent program reviews, of its conduct of the Title IV, HEA programs that resulted in the institution’s being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the program review;

(iii) Been cited during the preceding five years for failure to submit acceptable audit reports required under this part or individual Title IV, HEA program regulations in a timely fashion; or

(iv) Failed to resolve satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary issued pursuant to subpart G or subpart H of this part.

(d) Exceptions to the general standards of financial responsibility. (1)(i) An institution is not required to meet the standard in paragraph (b)(5) of this section if the Secretary determines that the institution—

(A)(1) Is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that is acceptable to the Secretary and ensures that the institution is able to pay all required refunds; and

(B) Has its liabilities backed by the full faith and credit of the State, or by an equivalent governmental entity; or

(C) As determined under paragraph (g) of this section, demonstrates, to the satisfaction of the Secretary, that for each of the institution’s two most recently completed fiscal years, it has made timely refunds to students in accordance with §686.22(j), and that it has met or exceeded all of the financial responsibility standards in this section that were in effect for the corresponding periods during the two-year period.

(ii) In evaluating an application to approve a State tuition recovery fund to exempt its participating schools from the Federal cash reserve requirements, the Secretary will consider the extent to which the State tuition recovery fund:

(A) Provides refunds to both in-state and out-of-state students;

(B) Allocates all refunds in accordance with the order delineated in §686.22(i); and

(C) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the funds assets.

(2) The Secretary considers an institution to be financially responsible, even if the institution is not otherwise financially responsible under paragraphs (b)(1) through (4) and (b)(6) through (9) of this section, if the institution—

(i) Submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; or

(ii) Establishes to the satisfaction of the Secretary, with the support of a financial statement submitted in accordance with paragraph (e) of this section, that the institution has sufficient resources to ensure against its precipitous closure, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary). The Secretary considers the institution to have sufficient resources to ensure against precipitous closure only if—

(A) The institution formerly demonstrated financial responsibility under the standards of financial responsibility in its preceding audited financial statement (or, if no prior audited financial statement was requested by the Secretary, demonstrates in conjunction with its current audit that it would have satisfied this requirement), and that its most recent audited financial statement indicates that—

(1) All taxes owed by the institution are current;

(2) The institution’s net income, or a change in total net assets, before extraordinary items and discontinued operations, has not decreased by more than 10 percent from the prior fiscal year, unless the institution demonstrates that the decreased net income shown on the current financial statement is a result of downsizing pursuant to a management-approved business plan;

(3) Loans and other advances to related parties have not increased from the prior fiscal year unless such increases were secured and collateralized, and do not exceed 10 percent of the prior fiscal year’s working capital of the institution;

(4) The equity of a for-profit institution, or the total net assets of a nonprofit institution, have not decreased by more than 10 percent of the prior year’s total equity;

(5) Compensation for owners or other related parties (including bonuses, fringe benefits, employee stock option allowances, 401k contributions, deferred compensation allowances) has not increased from the prior year at a rate higher than for all other employees;

(6) The institution has not materially leveraged its assets or income by becoming a guarantor on any new loan or obligation on behalf of any related party;

(7) All obligations owed to the institution by related parties are current, and that the institution has demanded and is receiving payment of all funds owed from related parties that are payable upon demand. For purposes of this section, a person does not become a related party by attending an institution as a student;

(B) There have been no material findings in the institution’s latest compliance audit of its administration of the Title IV HEA programs; and

(C) There are no pending administrative or legal actions being taken against the institution by the Secretary, any other Federal agency, the institution’s nationally recognized accrediting agency, or any State entity.

(3) An institution is not required to meet the acid test ratio in paragraph (b)(7)(i)(A) or (b)(8)(i)(B) of this section if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that—

(i) There is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(ii) It is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(iii) It has substantial equity in institution-occupied facilities, the acquisition of which was the direct cause of its failure to meet the acid test ratio requirement.

(4) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(1) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(1) of this section exercises substantial control over the institution; and

(ii) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(1) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person’s family, either alone or in combination with
one another;

(2) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or member of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(3) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity that is related to that institution or servicer under section 1028(b); or

(B) The applicable liability described in paragraph (c)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(f) Definitions and terms. For the purposes of this section—

(1)(i) An “ownership interest” is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution’s parent corporation, a third-party servicer, or a third-party servicer’s parent corporation.

(ii) The term “ownership interest” includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) An interest in a trust.

(H) Foreign institutions. The Secretary makes a determination of the financial responsibility for a foreign institution on the basis of financial statements submitted under the following requirements—

(1) If the institution received less than $500,000 U.S. in Title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement for that fiscal year. For purposes of this paragraph, the audited financial statements may be prepared under the auditing standards and accounting principles used in the institution’s home country;

(2) If the institution received $500,000 U.S. or more in Title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement in accordance with the requirements of §668.23, and satisfy the general standards of financial responsibility contained in this section, or qualify under an alternate standard of financial responsibility contained in this section.

§668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

(a) Administers the Title IV, HEA programs in accordance with all statutory provisions of

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment) - 27 -
or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA;

(b)(1) Designates a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates and for coordinating those programs with the institution’s other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be “capable” under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual’s successful completion of Title IV, HEA program training provided or approved by the Secretary, and previous experience and documented success in administering the Title IV, HEA programs properly;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons—

(i) The number and types of programs in which the institution participates;

(ii) The number of applications evaluated;

(iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;

(iv) The financial aid delivery system used by the institution;

(v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;

(vi) The number and distribution of financial aid staff; and

(vii) The use of third-party servicers to aid in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student’s eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any individual student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in § 668.15, or who do not together exercise substantial control, as defined in § 668.15, over the institution;

(d)(1) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations; and

(2)(i) Reports annually to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders as described under section 140(d) of the Truth in Lending Act (15 U.S.C. 1631(d)) to any employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, including responsibilities involving the selection of lenders, or other financial aid of the institution, including—

(A) The amount for each specific instance of reasonable expenses paid or provided;

(B) The name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) The dates of the activity for which the expenses were paid or provided; and

(D) A brief description of the activity for which the expenses were paid or provided.

(ii) Expenses are considered to be reasonable if the expenses—

(A) Meet the standards of and are paid in accordance with a State government reimbursement policy applicable to the entity; or

(B) Meet the standards of and are paid in accordance with the applicable Federal cost principles for reimbursement, if no State policy that is applicable to the entity exists.

(iii) The policy must be consistently applied to an institution’s employees reimbursed under this paragraph;

(e) For purposes of determining student eligibility for assistance under a Title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory academic progress in his or her educational program. The Secretary considers an institution’s standards to be reasonable if the standards are in accordance with the provisions specified in § 668.34;

(1) Are the same as or stricter than the institution’s standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;

(2) Include the following elements:

(i) A qualitative component which consists of grades (provided that the standards meet or exceed the requirements of § 668.34(b)(4)), work projects completed, or comparable factors that are measurable against a norm.

(ii) A quantitative component that consists of a maximum timeframe in which a student must complete his or her educational program. The timeframe must—

(A) For an undergraduate program, be no longer than 150 percent of the educational program measured in academic years, terms, credit hours attempted, clock hours completed, etc., as appropriate;

(B) Be divided into increments not to exceed the lesser of one academic year or one-half the published length of the educational program;

(C) Include a schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment to complete his or her educational program within the maximum timeframe; and

(D) Include specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(3) Provide for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(4) Provide for a determination at the end of each increment by the institution as to whether the student has met the qualitative and quantitative components of the standards (as provided for in paragraphs (e)(3)(i) and (ii) of this section);

(5) Provide specific procedures under which a student may appeal a determination that the student is not making satisfactory progress; and

(6) Provide specific procedures for a student to reestablish that he or she is maintaining satisfactory progress.

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student’s application for financial aid under Title IV, HEA programs. In determining whether the institution’s system is adequate, the Secretary considers whether the...
institutions obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student’s citizenship, previous educational experience, documentation of the student’s social security number, or other factors relating to the student’s eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation—

(1) After conducting the review of an application provided for under paragraph (f) of this section, any credible information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer to is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are—

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income; and

(2) Any credible information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer to is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student’s account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution’s refund policy, the requirements for the treatment of Title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student’s aid package;

(i) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(j) Shows no evidence of significant problems that affect, as determined by the Secretary, the institution’s ability to administer a Title IV, HEA program and that are identified in—

(1) Reviews of the institution conducted by the Secretary, the Department of Education’s Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(k) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 34 CFR part 85) that is—

(1) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; or

(l) For an institution that seeks initial participation in a Title IV, HEA program, does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution’s latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period—

(1) Withdrew from, dropped out of, or were expelled from the institution;

(2) Were entitled to and actually received in a timely manner a refund of 100 percent of their tuition and fees;

(m)(1) Has a cohort default rate—

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part; and

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

(2)(i) However, if the Secretary determines that an institution’s administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under Sec. Sec. 668.187(a) or 668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with Sec. 668.13(c) except as provided in paragraphs (m)(2)(ii), (m)(2)(iii), (m)(2)(iv), and (m)(2)(v) of this section.

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (m)(2)(ii) of this section—

(A) If it has timely filed a request for adjustment or appeal under Sec. Sec. 668.209, 668.210, or 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent; or

(B) If it has timely filed an appeal under Sec. Sec. 668.213 or 668.214 after receiving the second such rate, and the appeal is either pending or successful.

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(2)(ii) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in Sec. Sec. 668.192 or 668.211 as applicable;

(iv) If you have 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate your cohort default rate under subpart N of this part, we not provisionally certify you solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject you to provisional certification under paragraph (m)(1)(ii) and (m)(2)(ii) of this section is calculated as an average rate, we will not provisionally certify you solely based on cohort default rates;

(n) Does not otherwise appear to lack the...
ability to administer the Title IV, HEA programs competently; and

(o) Participates in the electronic processes that the Secretary—

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the FEDERAL REGISTER; and

(p) Develops and follows procedures to evaluate the validity of a student’s high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

(Approved by the Office of Management and Budget under control number 1849-0557 1845-0022)

[Authority: 20 U.S.C. 1082, 1085, 1092, 1094, and 1094c.)


§ 668.17 [Reserved]

§ 668.18 Readmission requirements for servicemen.

(a) General. (1) An institution may not deny readmission to a person 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.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(ii) “Promptly readmit” means that the institution must readmit the student into the next class or classes in the student’s program beginning after the student provides notice of his or her intent to reenroll, unless the student requests a later date of readmission or unusual circumstances require the institution to admit the student at a later date.

(iii) To readmit a person with the “same academic status” means that the institution admits the student—

(A) To the same program to which he or she was last admitted by the institution or, if that exact program is no longer offered, the program that is most similar to that program, unless the student requests or agrees to admission to a different program;

(B) At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;

(C) With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;

(D) With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had; and

(E)(1) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing—

(i) The tuition and fee charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(ii) Up to the amount of tuition and fee charges that other students in the program are assessed for that academic year. If veterans’ education benefits, as defined in section 480(c) of the HEA, or other servicemember education benefits, will pay the amount in excess of the tuition and fee charges assessed for the academic year in which the student left the institution; or

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

(iv)(A) If the institution determines that the student is not prepared to resume the program with the same academic status at the point where he or she left off, or will not be able to complete the program, the institution must make reasonable efforts at no extra cost to the student to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost to the student and allowing the student to retake a pretest at no extra cost to the student.

(B) The institution is not required to readmit the student on his or her return if—

(1) After reasonable efforts by the institution, the institution determines that the student is not prepared to resume the program at the point where he or she left off;

(2) After reasonable efforts by the institution, the institution determines that the student is unable to complete the program; or

(3) The institution determines that there are no reasonable efforts the institution can take to prepare the student to resume the program at the point where he or she left off to enable the student to complete the program.

(C)(1) “Reasonable efforts” means actions that do not place an undue hardship on the institution.

(2) “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.

(D) The institution carries 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 the student left off, or that the student will not be able to complete the program.

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

(b) Service in the uniformed services. For purposes of this section, service in the uniformed services means 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.

(c) Readmission procedures. (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if—

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written notice of such service to an office designated by the institution, and provides such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that
institution by reason of service in the uniformed services, including only the time the student spends actually performing service in the uniformed services, does not exceed five years; and

(iii) Except as provided in paragraph (f) of this section, the student gives oral or written notice of his or her intent to return to an office designated by the institution—

(A) For a student who completes a period of service in the uniformed services, not later than three years after the completion of the period of service; or

(B) For a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services, not later than two years after the end of the period that is necessary for recovery from such illness or injury.

(ii) An institution must designate one or more offices at the institution that a student may contact to provide notification of service required by paragraph (c)(1)(i) of this section.

(iii) An institution may not require that the notice provided by the student under paragraph (c)(1)(i) or (c)(1)(iii) of this section follow any particular format.

(iv) The notice provided by the student under paragraph (c)(1)(i) of this section—

(A) May not be subject to any rule for timeliness; timeliness must be determined by the facts in any particular case; and

(B) Does not need to indicate whether the student intends to return to the institution.

(v) For purposes of paragraph (c)(1)(i) of this section, an “appropriate officer” is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) Exceptions to advance notice. (1) No notice is required under paragraph (c)(1)(i) of this section if the giving of such notice is precluded by military necessity, such as—

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or oral notice of service to the appropriate official at the institution in accordance with paragraph (c)(1)(i) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student’s absence from the institution.

(e) Cumulative length of absence. For purposes of paragraph (c)(1)(ii) of this section, a student’s cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) Ordered to or retained on active duty under—

(A) 10 U.S.C. 688 ( involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) ( involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 ( involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 ( involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 ( involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 ( involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 ( voluntary active duty by retired Coast Guard officer);

(i) 14 U.S.C. 359 ( involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 ( voluntary active duty by retired Coast Guard enlisted member);

(K) 14 U.S.C. 367 ( involuntary retention of Coast Guard enlisted member on active duty); or

(L) 14 U.S.C. 712 ( involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code ( i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

(f) Notification of intent to reenroll. A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution’s established leave of absence policy and general practices.

(g) Documentation. (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student’s eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for
readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) Termination of readmission eligibility. A student’s eligibility for readmission to an institution under this section by reason of such student’s service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; or in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

(3) A dropping of a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

(4) An A separation from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(5) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; or in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

§ 668.21 Treatment of title IV grant and (f) Courses in English as a second language do not count against the one year academic limitation contained in paragraph (d) of this section.

loan funds if the recipient does not begin attendance at the institution.

(a) If a student does not begin attendance in a payment period or period of enrollment—

(1) The institution must return all title IV, HEA program funds that were credited to the student’s account at the institution or disbursed directly to the student for that payment period or period of enrollment, for Federal Perkins Loan, FSEOG TEACH Grant, Federal Pell Grant, ACG, and National SMART Grant program funds; and

(2) For FFEL and Direct Loan funds—

(i) The institution must return all FFEL and Direct Loan funds that were credited to the student’s account at the institution for that payment period or period of enrollment; and

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, including funds that are disbursed directly to the student by the lender for a study abroad program in accordance with §682.207(b)(1)(v)(C)(1) or for a student enrolled in a foreign school in accordance with §682.207(b)(1)(v)(D), the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate; and

(iii) Notwithstanding paragraph (a)(2)(ii) of this section, if an institution knew that a student would not begin attendance prior to disbursing FFEL or Direct Loan funds directly to the student for that payment period or period of enrollment (e.g., the student notified the institution that he or she would not attend, or the institution expelled the student), the institution must return those funds.

(b) The institution must return those funds for which it is responsible under paragraph (a) of this section to the respective title IV, HEA program as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(c) For purposes of this section, the Secretary considers that a student has not begun attendance in a payment period or period of enrollment if the institution is unable to document the student’s attendance at any class during the payment period or period of enrollment.

(d) In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under §668.163 as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(2) The institution initiates an electronic funds transfer (EFT) as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(3) The institution initiates an electronic transaction, as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance; and

(4) The institution issues a check as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance, that informs an FFEL lender to adjust the borrower’s loan account for the amount returned; or

(5) The institution’s records show that the check was issued more than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance, that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(iii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(iv) The institution initiates an electronic transfer (EFT) as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(v) The institution initiates an electronic transaction, as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(vi) The institution issues a check as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

Subsection (b) and (c) do not apply to funds returned to the institution under §668.227.

§668.227 Treatment of title IV funds when a student withdraws.

(a) General. (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student’s withdrawal date in accordance with paragraph (e) of this section.

(2) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, a student is considered to have withdrawn from a payment period or period of enrollment if—

(A) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete;

(B) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours and weeks of instructional time in the payment period or period of enrollment that the student was scheduled to complete; or

(C) For a student in a nonterm or nonstandard-term program, the student is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending, unless the student is on an approved leave of absence, as defined in paragraph (d) of this section.

(ii) Notwithstanding paragraph (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section, for a payment period or period of enrollment in which courses in the program are offered in modules—

(1) A student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will attend a module that begins later in the same payment period or period of enrollment; and

(2) For nonterm and nonstandard-term programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending.

(b) If an institution has obtained the written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) of this section—

(1) A student may change the date of return to a module that begins later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed; and

(2) For nonterm and nonstandard-term programs, the later module that he or she will attend begins no later than 45 calendar days after the end of the module the student ceased attending.

(c) If an institution obtains written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) and, if applicable, (a)(2)(ii)(B) of this section, but the student does not return as scheduled—

(1) The student is considered to have withdrawn from the payment period or period of enrollment; and

(2) The student’s withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of a future date of attendance in accordance with paragraph (a)(2)(ii)(A) of this section.
If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period, subject to conditions established by the Secretary, the student is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section, provided the student’s enrollment status continues to support the full amount of those funds.

In accordance with §668.4(f), if a student withdraws from a clock-hour or nonterm credit hour program during a payment period or period of enrollment and then reenters the same program within 180 calendar days, the student remains in that same period when he or she returns and, subject to conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section.

For purposes of this section, “title IV grant or loan assistance” includes only assistance from the Federal Perkins Loan, Direct Loan, FFEL, Federal Pell Grant, Academic Competitiveness Grant, National SMART Grant, TEACH Grant, and FSEOG programs, not including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the institution or student under the provisions of this section.

If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution’s determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution’s determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(5)(ii) of this section and §686.164(g).

A post-withdrawal disbursement must be made from available grant funds before available loan funds.

If outstanding charges exist on the student’s account, the institution may credit the student’s account up to the amount of outstanding charges with all or a portion of any—

(1) Grant funds that make up the post-withdrawal disbursement in accordance with §668.164(d)(1) and (d)(2); and

(2) Loan funds that make up the post-withdrawal disbursement in accordance with §668.164(d)(1), (d)(2), and (d)(3) only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(5)(i) of this section.

The institution must disburse directly to a student any amount of a post-withdrawal disbursement of grant funds that is not credited to the student’s account. The institution must make the disbursement as soon as possible, but no later than 45 days after the date of the institution’s determination that the student withdrew, as defined in paragraph (l)(3) of this section.

The institution must make a direct disbursement of any loan funds that make up the post-withdrawal disbursement only after obtaining the student’s, or parent’s in the case of a parent PLUS loan, any amount of a post-withdrawal disbursement of loan funds that is not credited to the student’s account, in accordance with paragraph (a)(5)(i) of this section.

The institution must provide within 30 days of the date of the institution’s determination that the student withdrew, a written notification to the student, or parent in the case of a parent PLUS loan, that—

(1) Requests confirmation of any post-withdrawal disbursement of loan funds that the institution wishes to credit to the student’s account in accordance with paragraph (a)(5)(i) of this section, identifying the type and amount of those loan funds and explaining that a student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(2) Requests confirmation of any post-withdrawal disbursement of loan funds that the student, or parent in the case of a parent PLUS loan, can receive as a direct disbursement, identifying the type and amount of these title IV funds and explaining that the student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(3) Explains that a student, or parent in the case of a parent PLUS loan, who does not confirm that a post-withdrawal disbursement of loan funds may be credited to the student’s account may not receive any of those loan funds as a direct disbursement unless the institution concurs;

(4) Explains the obligation of the student, or parent in the case of a parent PLUS loan, to repay any loan funds he or she chooses to have disbursed; and

(5) Advises the student, or parent in the case of a parent PLUS loan, that no post-withdrawal disbursement of loan funds will be made, unless the institution chooses to make a post-withdrawal disbursement based on a late response in accordance with paragraph (a)(5)(i)(C) of this section, if the student or parent in the case of a parent PLUS loan, does not respond within 14 days of the date that the institution sent the notification, or a later deadline set by the institution.

The deadline for a student, or parent in the case of a parent PLUS loan, to accept a post-withdrawal disbursement under paragraph (a)(5)(i)(A) of this section must be the same for both a confirmation of a direct disbursement of the post-withdrawal disbursement of loan funds and a confirmation of a post-withdrawal disbursement of loan funds to be credited to the student’s account.

If the student, or parent in the case of a parent PLUS loan, submits a timely response that confirms that they wish to receive all or a portion of a direct disbursement of the post-withdrawal disbursement of loan funds, or confirms that a post-withdrawal disbursement of loan funds may be credited to the student’s account, the institution must disburse the funds in the manner specified by the student, or parent in the case of a parent PLUS loan, as soon as possible, but no later than 180 days after the date of the institution’s determination that the student withdrew, as defined in paragraph (l)(3) of this section.

If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution’s notice requesting confirmation, the institution may make the post-withdrawal disbursement of loan funds as instructed by the student, or parent in the case of a parent PLUS loan, provided the institution disburses all the funds accepted by the student, or parent in the case of a parent PLUS loan, or decline to do so.

If a student, or parent in the case of a parent PLUS loan, submits a late response
to the institution and the institution does not choose to make the post-withdrawal disbursement of loan funds, the institution must inform the student, or parent in the case of a parent PLUS loan, in writing of the outcome of the post-withdrawal disbursement request.

(F) If the student, or parent in the case of a parent PLUS loan, does not respond to the institution’s notice, no portion of the post-withdrawal disbursement of loan funds that the institution wishes to credit to the student’s account, nor any portion of loan funds that would be disbursed directly to the student, or parent in the case of a parent PLUS loan, may be disbursed.

(iv) An institution must document in the student’s file the result of any notification made in accordance with paragraph (a)(2)(b)(iii) of this section of the student’s right to cancel all or a portion of loan funds or of the student’s right to accept or decline loan funds, and the final determination made concerning the disbursement.

(b) Withdrawal date for a student who withdraws from an institution that is required to take attendance. (1) For purposes of this section, for a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the student’s withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must document a student’s withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution’s determination that the student withdrew, as defined in paragraph (i)(3) of this section.

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution’s accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; or

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program participate or attend in the classes of that program, or a portion of that program.

(ii) If, in accordance with paragraph (b)(3)(i) of this section, an outside entity requires an institution to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(iii)(A) If, in accordance with paragraph (b)(3)(ii) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance the last time attendance is required to be taken during the limited period identified in paragraph (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

(iv) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

Editorial Note: The comma following the word “taken” needs to be deleted. Alternatively, it may be that ED wanted to set off the phrase “or requires that attendance be taken.” If that is the case, they should leave the comma after “taken” and insert a new comma after the phrase “take attendance.”

(c) Withdrawal date for a student who withdraws from an institution that is not required to take attendance. (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student’s withdrawal date is—

(i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;

(ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw;

(iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);

(iv) If the institution determines that a student did not begin the institution’s withdrawal process or otherwise provide official notification (including notice from an individual acting on the student’s behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student’s control, the date that the institution determines is related to that circumstance;

(v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence; or

(vi) If a student takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the date that the student began the leave of absence.

(2)(i)(A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) of this section by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.

(B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student’s rescission is negated and the withdrawal date is the student’s original date under paragraph (c)(1)(i) or (ii) of this section, unless a later date is determined under paragraph (c)(3) of this section.

(ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student’s withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.

(3)(i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student’s withdrawal date a student’s last date of attendance at an academically-related activity provided that the institution documents that the activity is academically related and documents the student’s attendance at the activity.

(ii) An “academically-related activity” includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

(4) An institution must document a student’s withdrawal date determined in accordance with paragraphs (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution’s determination that the student withdrew, as defined in paragraph (i)(3) of this section.

(5)(i) “Official notification to the institution” is a notice of intent to withdraw that a student provides to an office designated by the institution.

(ii) An institution must designate one or
more offices at the institution that a student may readily contact to provide official notification of withdrawal.

(d) Approved leave of absence. (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student’s in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student followed the institution’s policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approved the student’s request in accordance with the institution’s policy;

(v) The leave of absence does not involve additional charges by the institution;

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

(vii) Except for a clock hour or nonterm credit hour program, upon the student’s return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

(viii) If the student is a title IV, HEA program loan recipient, the institution explains to the student, prior to granting the leave of absence, the effects that the student’s failure to return from a leave of absence may have on the student’s loan repayment terms, including the exhaustion of some or all of the student’s grace period.

(2) If a student does not resume attendance at the institution at or before the end of a leave of absence that meets the requirements of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(3) For purposes of this paragraph—

(i) The number of days in a leave of absence is counted beginning with the first day of the student’s initial leave of absence in a 12-month period.

(ii) A “12-month period” begins on the first day of the student’s initial leave of absence.

(iii) An institution’s leave of absence policy is a “formal policy” if the policy—

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request, that includes the reason for the request, for a leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student’s request for a leave of absence, if the institution documents its decision and collects the written request at a later date.

(e) Calculation of the amount of title IV assistance earned by the student—(1) General. The amount of title IV grant or loan assistance that is earned by the student is calculated by—

(i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and

(ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (i)(1) of this section) to the student, or on the student’s behalf, for the payment period or period of enrollment as of the student’s withdrawal date.

(2) Percentage earned. The percentage of title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student’s withdrawal date, if this date occurs on or before—

(A) Completion of 60 percent of the payment period or period of enrollment for a program that is measured in credit hours; or

(B) Sixty percent of the clock hours scheduled to be completed for the payment period or period of enrollment for a program that is measured in clock hours; or

(ii) 100 percent, if the student’s withdrawal date occurs after—

(A) Completion of 60 percent of the payment period or period of enrollment for a program that is measured in credit hours; or

(B) Sixty percent of the clock hours scheduled to be completed for the payment period or period of enrollment for a program measured in clock hours.

(3) Percentage unearned. The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.

(4) Total amount of unearned title IV assistance to be returned. The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV aid that was disbursed to the student as of the date of the institution’s determination that the student withdrew.

(5) Use of payment period or period of enrollment. (i) The treatment of title IV grant or loan funds if a student withdraws must be determined on a payment period basis for a student who attended a standard term-based (semester, trimester, or quarter) educational program.

(ii)(A) The treatment of title IV grant or loan funds if a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program or a nonstandard term-based educational program.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for each of the following categories of students who withdraw from the same non-term based or nonstandard term-based educational program:

1) Students who have attended an educational program at the institution from the beginning of the payment period or period of enrollment.

2) Students who re-enter the institution during a payment period or period of enrollment.

3) Students who transfer into the institution during a payment period or period of enrollment.

(iii) For a program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length, if the institution uses the payment period to determine the treatment of title IV grant or loan funds for a category of students found in paragraph (e)(5)(ii)(B) of this section, the institution must—

(A) (1) For students in the category who are disbursed or could have been disbursed aid using both the payment period definition in § 668.4(b)(1) and the payment period definition in § 668.4(b)(2), use the payment period during which the student withdrew that ends later; and

(2) If in the payment period that ends later there are funds that have been or could have been disbursed from overlapping payment periods, the institution must include in the return calculation any funds that can be attributed to the payment period that ends later; and

(B) For students in the category who are disbursed or could have been disbursed aid using only the payment period definition in § 668.4(b)(1) or the payment period definition in § 668.4(b)(2), use the payment period definition for which title IV, HEA program funds were disbursed for a student’s calculation under this section.
(f) Percentage of payment period or period of enrollment completed. (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student’s withdrawal date; and

(ii)(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student’s withdrawal date.

(B) The scheduled clock hours used must be those established by the institution prior to the student’s beginning class date for the payment period or period of enrollment and must be consistent with the published materials describing the institution’s programs, unless the schedule was modified prior to the student’s withdrawal.

(C) The schedule must have been established in accordance with requirements of the accrediting agency and the State licensing agency, if such standards exist.

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period that the student was scheduled to complete, except that scheduled breaks of at least five consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period.

(ii) The total number of calendar days in a payment period or period of enrollment does not include—

(A) Days in which the student was on an approved leave of absence; or

(B) For a payment period or period of enrollment in which any courses in the program are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course offered during that period of time.

(g) Return of unearned aid, responsibility of the institution. (1) The institution must return, in the order specified in paragraph (i)(i) of this section, the lesser of—

(i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

(ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student, as described in paragraph (e)(3) of this section.

(2) For purposes of this section, “institutional charges” are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally- related expenses assessed by the institution.

(3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, “total institutional charges incurred by the student for the payment period” is the greater of—

(i) The prorated amount of institutional charges for the longer period; or

(ii) The amount of title IV assistance retained for institutional charges as of the student’s withdrawal date.

(h) Return of unearned aid, responsibility of the student. (1) After the institution has allocated the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

(2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.

(3) The student (or parent in the case of funds due to a parent PLUS Loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to—

(i) Any title IV loan program in accordance with the terms of the loan; and

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return the following—

(A) The portion of a grant overpayment amount that is equal to or less than 50 percent of the total grant assistance that was disbursed (and that could have been disbursed, as defined in paragraph (i)(1) of this section) to the student for the payment period or period of enrollment.

(B) With respect to any grant program, a grant overpayment amount, as determined after application of paragraph (h)(3)(ii)(A) of this section, of 50 dollars or less that is not a remaining balance.

(4)(i) A student who owes an overpayment under this section remains eligible for title IV, HEA program funds through and beyond the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment if, during those 45 days the student—

(A) Repays the overpayment in full to the institution;

(B) Enters into a repayment agreement with the institution in accordance with repayment arrangements satisfactory to the institution; or

(C) Signs a repayment agreement with the Secretary, which will include terms that permit a student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds.

(ii) Within 30 days of the date of the institution’s determination that the student withdrew, an institution must send a notice to any student who owes a title IV, HEA grant overpayment as a result of the student’s withdrawal from the institution in order to recover the overpayment in accordance with paragraph (h)(4)(i)(B) of this section with a student who owes an overpayment of title IV, HEA grant funds, it must—

(A) Provide the student with terms that permit the student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds; and

(B) Require repayment of the full amount of the overpayment within two years of the date of the institution’s determination that the student withdrew.

(iv) An institution must refer to the Secretary, in accordance with procedures required by the Secretary, an overpayment of title IV, HEA grant funds owed by a student as a result of the student’s withdrawal from the institution if—

(A) The student does not repay the overpayment in full to the institution, or enter a repayment agreement with the institution or the Secretary in accordance with paragraph (h)(4)(i) of this section within the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment;

(B) At any time the student fails to meet the terms of the repayment agreement with the institution entered into in accordance with paragraph (h)(4)(i)(B) of this section; or

(C) The student chooses to enter into a repayment agreement with the Secretary.

(v) A student who owes an overpayment is ineligible for title IV, HEA program funds—

(A) If the student does not meet the requirements in paragraph (h)(4)(i) of this section, on the day following the 45-day...
(B) As of the date the student fails to meet the terms of the repayment agreement with the institution or the Secretary entered into in accordance with paragraph (h)(4)(i) of this section.

(vi) A student who is ineligible under paragraph (h)(4)(v) of this section regains eligibility if the student and the Secretary enter into a repayment agreement.

(5) The Secretary may waive grant overpayment amounts that students are required to return under this section if the withdrawals on which the refunds are based are withdrawals by students—

(i) Who were residing in, employed in, or attending an institution of higher education that is located in an area in which the President has declared that a major disaster exists, in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170);

(ii) Whose attendance was interrupted because of the impact of the disaster on the student or institution; and

(iii) Whose withdrawal occurred within the award year during which the designation occurred or during the next succeeding award year.

(i) Order of return of title IV funds

(1) Loans. Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

(vi) Federal PLUS loans received on behalf of the student.

(vii) Federal Direct PLUS received on behalf of the student.

(2) Remaining funds. If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Academic Competitiveness Grants.

(iii) National SMART Grants.

(iv) FSEOG Program aid.

(v) TEACH Grants.

(2) For an institution that is not required to take attendance. An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 45 days after the end of the earlier of the—

(i) Payment period or period of enrollment, as appropriate, in accordance with paragraph (e)(5) of this section;

(ii) Academic year in which the student withdrew; or

(iii) Educational program from which the student withdrew.

(k) Consumer information. An institution must provide students with information about the requirements of this section in accordance with § 668.43.

(i) Definitions. For purposes of this section—

(1) Title IV grant or loan funds that "could have been disbursed" are determined in accordance with the late disbursement provisions in § 686.164(g).

(2) A "period of enrollment" is the academic period established by the institution for which institutional charges are generally assessed (i.e., length of the student's program or academic year).

(3) The "date of the institution's determination that the student withdrew for an institution that is not required to take attendance" is—

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his or her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(6) A program is "offered in modules" if a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) "Academic attendance" and "attendance at an academically-related activity"—

(A) Include, but are not limited to—

(1) Physically attending a class where there is an opportunity for direct interaction between the instructor and students;

(2) Submitting an academic assignment;

(3) Taking an exam, an interactive tutorial, or computer-assisted instruction;

(4) Attending a study group that is assigned by the institution;

(5) Participating in an online discussion about academic matters; and

(6) Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and

(B) Do not include activities where a student may be present, but not academically engaged, such as—

(1) Living in institutional housing;

(2) Participating in the institution's meal plan;

(3) Logging into an online class without active participation; or

(4) Participating in academic counseling or advisement.

(i) A determination of "academic attendance" or "attendance at an academically-related activity" must be made by the institution; a student's certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.65(a)(1) or (a)(2) to calculate Federal
Pell Grant payments under 34 CFR 680.63(b) or (c).

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1070g, 1091b)

§ 686.23 Compliance audits and audited financial statements.

(a) General—(1) Independent auditor. For purposes of this section, the term “independent auditor” refers to an independent certified public accountant or a government auditor. To conduct an audit under this section, a government auditor must meet the Government Auditing Standards qualification and independence standards, including standards related to organizational independence.

(2) Institutions. An institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution’s general purpose financial statements.

(3) Third-party servicers. Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education’s Office of Inspector General. A third-party servicer is defined under § 686.2 and 34 CFR 682.200.

(4) Submission deadline. Except as provided by the Single Audit Act, Chapter 75 of title 31, United States Code, an institution must submit annually to the Secretary its compliance audit and its audited financial statements no later than six months after the last day of the institution’s fiscal year.

(5) Audit submission requirements. In general, the Secretary considers the compliance audit and audited financial statement submission requirements of this section to be satisfied by an audit conducted in accordance with the Office of Management and Budget Circular A–133, “Audits of Institutions of Higher Education and Other Nonprofit Organizations”; Office of Management and Budget Circular A–128, “Audits of States, and Local Governments, and Non-Profit Organizations”; or the audit guides developed by and available from the Department of Education’s Office of Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. (Both OMB circulars are available by calling OMB’s Publication Office at (202) 395–7332, or they can be obtained in electronic form on the OMB Home Page (http://www.whitehouse.gov).

(b) Compliance audits for institutions.

(1) An institution’s compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution’s last compliance audit.

(2) The compliance audit required under this section must be conducted in accordance with—

(i) The general standards and the standards for compliance audits contained in the U.S. General Accounting Office’s (GAO’s) Government Auditing Standards. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) Procedures for audits contained in audit guides developed by, and available from, the Department of Education’s Office of Inspector General.

(3) The Secretary may require an institution to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(c) Compliance audits for third-party servicers. (1) A third-party servicer that administers title IV, HEA programs for institutions does not have to have a compliance audit performed if—

(i) The servicer contracts with only one institution; and

(ii) The audit of that institution’s administration of the title IV, HEA programs involves every aspect of the servicer’s administration of that program for that institution.

(2) A third-party servicer that contracts with more than one participating institution may submit a compliance audit report that covers the servicer’s administration of the title IV, HEA programs for all institutions with which the servicer contracts.

(3) A third-party servicer must submit annually to the Secretary its compliance audit no later than six months after the last day of the servicer’s fiscal year.

(4) The Secretary may require a third-party servicer to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(d) Audited financial statements—(1) General. To enable the Secretary to make a determination of financial responsibility, an institution must, to the extent requested by the Secretary, submit to the Secretary a set of financial statements for its latest complete fiscal year, as well as any other documentation the Secretary deems necessary to make that determination.

Financial statements submitted to the Secretary must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States, and other guidance contained in the Office of Management and Budget Circular A–133, “Audits of Institutions of Higher Education and Other Nonprofit Organizations”; Office of Management and Budget Circular A–128, “Audits of States, and Local Governments, and Non-Profit Organizations”; or in audit guides developed by, and available from, the Department of Education’s Office of Inspector General, whichever is applicable. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in the Statement of Financial Accounting Standards (SFAS) 57. The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable to Secretary to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) Submission of additional financial statements. To the extent requested by the Secretary in determining whether an institution is financially responsible, the Secretary may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary.

(3) Audited financial statements for foreign institutions. A foreign institution must submit—

(i) Audited financial statements prepared in accordance with the generally accepted accounting principles of the institution’s home country, if the institution received less than $500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year; or

(ii) Audited financial statements translated to meet the requirements of paragraph (d) of this section, if the institution received $500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year.

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
Disclosure of Title IV HEA program revenue. A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenue derived from the Title IV HEA programs that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with § 686.28. The institution must also report in the footnote the dollar amount of the numerator and denominator of the 50/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.

Audited financial statements for third-party servicers. A third-party servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender’s or guaranty agency’s programs, as provided under 34 CFR part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education’s Office of Inspector General.

Access to records. (1) An institution or a third-party servicer that has a compliance or financial statement audit conducted under this section must—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review that audit, including the right to obtain copies of those records or documents; and

(ii) Require an individual or firm conducting the audit to give the Secretary and the Inspector General access to records, audit work papers, or other documents necessary to review that audit, including the right to obtain copies of those records, work papers, or documents.

(2) An institution must give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer’s compliance or financial statement audit, including the right to obtain copies of those records or documents.

Determination of liabilities. (1) Based on the audit finding and the institution’s or third-party servicer’s response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution’s title IV, HEA programs, the servicer must notify each institution under whose contract the servicer owes a liability of that determination. The servicer must also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

Repayments. (1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary’s notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (f) and (g)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may use administrative offset pursuant to 34 CFR part 30 to collect the funds owed under the procedures of this section.

(3) If, under the proceedings in subpart H, liabilities asserted in the Secretary’s notification, under paragraph (e)(1) of this section, to the institution or third-party servicer are upheld, the institution or third-party servicer must repay those funds at the direction of the Secretary within 30 days of the final decision under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (g)(2) of this section.

(4) An institution is held responsible for any liability owed by the institution’s third-party servicer for a violation incurred in servicing any aspect of that institution’s participation in the title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

Audit submission requirements for foreign institutions. (1) Audited financial statements. (i) The Secretary waives for that fiscal year the submission of audited financial statements if the institution is a foreign public or nonprofit institution that received less than $500,000 in U.S. title IV program funds during its most recently completed fiscal year, unless that foreign public or nonprofit institution is in its initial provisional period of participation, and received title IV program funds during that fiscal year, in which case the institution must submit, in English, audited financial statements prepared in accordance with generally accepted accounting principles of the institution’s home country.

(ii) Except as provided in paragraph (h)(1)(ii) of this section, a foreign institution that received $500,000 or more in U.S. title IV program funds during its most recently completed fiscal year must submit, in English, for each most recently completed fiscal year in which it received title IV program funds, audited financial statements prepared in accordance with generally accepted accounting principles of the institution’s home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section.

(iii) In lieu of making the submission required by paragraph (h)(1)(i) of this section, a public or private nonprofit institution that received—

(A) $500,000 or more in U.S. title IV program funds, but less than $3,000,000 in U.S. title IV program funds during its most recently completed fiscal year, may submit for that year, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution’s home country, and is not required to submit the corresponding audited financial statements that meet the requirements of paragraph (d) of this section;

(B) At least $3,000,000, but less than $10,000,000 in U.S. title IV program funds during its most recently completed fiscal year, must submit in English, for each most recently completed fiscal year, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution’s home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section.

(2) Compliance audits. A foreign institution’s compliance audit must cover, on a fiscal
condition or financial reporting and requires the submission of audited financial statements in the manner specified by the Secretary.

(ii) Notwithstanding the provisions of paragraphs (h)(2)(ii) and (h)(2)(iii) of this section, the Secretary may issue a letter to a foreign institution a letter that identifies problems with its administrative capability or compliance reporting that may require the compliance audit to be performed at a higher level of engagement, and may require the compliance audit to be submitted annually.

(Approved by the Office of Management and Budget under control number 1840–0697)


§ 668.24 Record retention and examinations.

(a) Program records. An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

(i) Its eligibility to participate in the title IV, HEA programs;

(ii) The eligibility of its educational programs for title IV, HEA program funds;

(iii) Its administration of the title IV, HEA programs in accordance with all applicable requirements;

(iv) Its financial responsibility, as specified in this part;

(v) Information included in any application for title IV, HEA program funds; and

(vi) Its disbursement and delivery of title IV, HEA program funds.

(b) Fiscal records. (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(ii) An institution shall establish and maintain on a current basis—

(i) Financial records that reflect each HEA, title IV program transaction; and

(ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) Required records. (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—

(i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;

(ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;

(iii) Documentation of each student’s or parent borrower’s eligibility for title IV, HEA program funds;

(iv) Documentation relating to each student’s or parent borrower’s receipt of title IV, HEA program funds, including but not limited to documentation of

(A) 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 the grant, loan, or FWS award;

(B) The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;

(C) The amount, date, and basis of the institution’s calculation of any refunds or overpayments due to or on behalf of the student, or the treatment of title IV, HEA program funds when a student withdraws; and

(D) The payment of any overpayment or the return of any title IV, HEA program funds to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

(v) Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations;

(vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and

(vii) Documentation supporting the institution’s calculations of its completion or graduation rates under §§ 668.46 and 668.49.

(2) In addition to the records required under this part—

(i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;

(ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and

(iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.

(d) General. (1) An institution shall maintain required records in a systematically organized manner.

(2) An institution shall make its records readily available for review by the Secretary

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A1. An institution may keep required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, provided that—

(i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;

(ii) An institution shall maintain the Student Aid Report (SAR) or Institutional Student Information Report (ISIR) used to determine eligibility for title IV, HEA program funds in the format in which it was received by the institution, except that the SAR may be maintained in an imaged media format;

(iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original document;

(iv) 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; and

(v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.

A2. If an institution closes, stops providing educational programs, is terminated or undergoes a change of ownership that results in a change of control as described in paragraph (d)(3)(iv) of this section, the institution's third-party servicer, if any, shall cooperate by—

(i) Refusing to allow those personnel to supply all relevant information;

(ii) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

(iii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

A3. The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer—

(i) Refuses to allow those personnel to supply all relevant information;

(ii) Provides interviews with those personnel only if the institution's or servicer's management is present; or

(iii) Provides interviews with those personnel only if the interviews are tape recorded by the institution or servicer.

A4. Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution or servicer promptly shall provide the requestor with any information the institution or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

(1) With respect to any borrower under the FFEL Program, the Secretary shall provide for—

(A) An examination of the records of the institution or servicer administers under any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(B) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(C) In a contract with an institution, a third-party servicer shall agree to—

(1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program.

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
(2) Refer to the Office of Inspector General of the Department of Education for investigation any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution’s administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are—

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications; and

(vi) False statements of income; and

(vii) 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 Title IV, HEA program funds.

(3) Be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory provision or applicable to Title IV, HEA program, any regulatory provision prescribed under that statutory authority, any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA programs) or delivers Federal Stafford Loan Program proceeds to a student—

(i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under § 668.24; and

(ii) Calculate and return any unearned title IV, HEA program funds to the Title IV, HEA program accounts and the student’s lender, as appropriate, in accordance with the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

(5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all—

(i) Records in the servicer’s possession pertaining to the institution’s participation in the program or programs for which services are no longer provided; and

(ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution’s students, for the purposes of the program or programs for which services are no longer provided.

(d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution’s participation in any Title IV, HEA program, if—

(1)(i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;

(ii) The servicer has had, during the servicer’s two most recent audits of the servicer’s administration of the Title IV, HEA programs, an audit finding that resulted in the servicer’s being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or

(iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

(2)(i) In the case of a third-party servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of § 668.15) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer’s potential liabilities arising from the servicer’s administration of the Title IV, HEA programs; and

(ii) One or more persons or entities that the Secretary determines (under the provisions of § 668.15) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer’s administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e)(1)(i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that—

(A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;

(B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or

(C) A third-party servicer that administers any aspect of the institution’s participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.

(ii) The institution’s notification must include the name and address of the servicer.

(2) An institution that contracts with a third-party servicer to administer any aspect of the institution’s participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer’s administration of the institution’s participation in any Title IV, HEA program.

(Approved by the Office of Management and Budget under control number 1840–0537)

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


§ 668.26 End of an institution’s participation in the Title IV, HEA programs.

(a) An institution’s participation in a Title IV, HEA program ends on the date that—

(1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution’s students;

(2) The institution loses its institutional eligibility under 34 CFR part 600;

(3) The institution’s participation is terminated under the proceedings in subpart G of this part;

(4) The institution’s period of participation, as specified under § 668.13, expires, or the institution’s provisional certification is revoked under § 668.13;

(5) The institution’s program participation agreement is terminated or expires under § 668.14;

(6) The institution’s participation ends under subpart M of this part; or

(7) The Secretary receives a notice from the appropriate State postsecondary review entity designated under 34 CFR part 667 that the institution’s participation should be withdrawn.

(b) If an institution’s participation in a Title IV, HEA program ends, the institution shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date that the participation ends—

(i) All financial, performance, and other reports required by appropriate Title IV, HEA program regulations; and

(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the
report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements that the institution has made for the proper retention and storage for a minimum of three years of all records concerning the administration of that program;

(4) If the institution’s participation in the Federal Perkins Loan Program ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under that program;

(5) If the institution’s participation in the LEAP Program ended—
   (i) Inform immediately the State in which the institution is located of that fact; and
   (ii) Notwithstanding paragraphs (c) through (e) of this section, follow the instructions of that State concerning the end of that participation;

(6) If the institution’s participation in all the Title IV, HEA programs ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan programs; and

(7) Continue to comply with the requirements of § 668.22 for the treatment of title IV, HEA program funds when a student withdraws.

(c) If an institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution’s students, the institution shall—
   (1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended funds that the institution has received under the Title IV, HEA programs for attendance at the institution, less the institution’s administrative allowance, if applicable; and
   (2) Return to the appropriate lenders any Federal Stafford Loan program proceeds that the institution has received but not delivered to, or credited to the accounts of, students attending the institution.

(d)(1) An institution may use funds that it has received under the Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—
   (i) The institution’s participation in that Title IV, HEA program ends during a payment period;
   (ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;
   (iii) The commitment was made prior to the end of the participation; and
   (iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student’s account or deliver to the student the proceeds of a disbursement of a Federal Family Education Loan Programs loan to satisfy any unpaid commitment made to the student under the Federal Family Education Loan Programs Loan Program only if—
   (i) The institution’s participation in that Title IV, HEA program ends during a period of enrollment;
   (ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;
   (iii) The loan was made for attendance during that period of enrollment.

(3) An institution may use funds that it has received under the Direct Loan Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student’s account or disburse to the student the proceeds of a Direct Loan Program loan only if—
   (i) The institution’s participation in the Direct Loan Program ends during a period of enrollment;
   (ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;
   (iii) The loan was made for attendance during that period of enrollment; and
   (iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student’s account prior to the end of the participation.

(4) An institution may use funds that it has received under the Direct Loan Program to satisfy any unpaid commitment made to the institution for the collection of any outstanding loans made under the Federal Pell Grant, ACG, National SMART Grant, and TEACH Grant programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report; and

(5) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid.

History:
(ii) The auditor who conducts the audit must audit the institution’s annual determinations for the period subject to the waiver that it satisfied the 90/10 rule in § 600.5 and the other conditions of institutional eligibility in § 600.7 and § 668.8(e)(2), and disclose the results of the audit of the 90/10 rule for each year in accordance with § 668.23(d)(4).

(c) Criteria for granting the waiver. The Secretary grants a waiver to an institution if the institution—

(1) Is not a foreign institution;
(2) Did not disburse $200,000 or more of title IV, HEA program funds during each of the two completed award years preceding the institution’s waiver request;
(3) Agrees to keep records relating to each award year in the unaudited period for two years after the end of the record retention period in § 668.24(e) for that award year;
(4) Has participated in the title IV, HEA programs under the same ownership for at least three award years preceding the institution’s waiver request;
(5) Is financially responsible under § 668.171, and does not rely on the alternative standards of § 668.175 to participate in the title IV, HEA programs;
(6) Is not on the reimbursement or cash monitoring system of payment;
(7) Has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guarantee agency in the three years preceding the institution’s waiver request;
(8) Has submitted its compliance audits and audited financial statements for the previous two fiscal years in accordance with and subject to § 668.23, and no individual audit disclosed liabilities in excess of $10,000; and
(9) Submits a letter of credit in the amount determined in paragraph (d) of this section, which must remain in effect until the Secretary has resolved the audit covering the award years subject to the waiver.

(d) Letter of credit amount. For purposes of this section, the letter of credit amount equals 10 percent of the amount of title IV, HEA program funds the institution disbursed to or on behalf of its students during the award year preceding the institution’s waiver request.

(e) Recission of the waiver. (1) The Secretary rescinds the waiver if the institution—

(i) Disburses $200,000 or more of title IV, HEA program funds for an award year;
(ii) Undergoes a change in ownership that results in a change of control; or
(iii) Becomes the subject of an emergency action or a limitation, suspension, fine, or termination action initiated by the Department or a guarantee agency.

(2) If the Secretary rescinds a waiver, the rescission is effective on the last day of the fiscal year in which the rescission takes place.

(f) Renewal. An institution may request a renewal of its waiver when it submits its audits under paragraph (b) of this section. The Secretary grants the waiver if the audits and other information available to the Secretary show that the institution continues to satisfy the criteria for receiving that waiver.

§ 668.28 Non-title IV revenue (90/10).

(a) General. (1) Calculating the revenue percentage. A proprietary institution meets the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than Title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

(2) Cash basis accounting. Except for institutional loans made to students under paragraph (a)(5)(i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

(3) Revenue generated from programs and activities. The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;
(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—
(A) Conducted on campus or at a facility under the institution’s control;
(B) Performed under the supervision of a member of the institution’s faculty; and
(C) Required to be performed by all students in a specific educational program at the institution; and
(iii) Funds paid by a student, on behalf of a student by a party other than the institution, for an education or training program that is not eligible under § 668.8 if the program—
(A) Is approved or licensed by the appropriate State agency;
(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602; and
(C) Provides an industry-recognized credential or certification or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;
(D) Provides training needed for students to maintain State licensing requirements; or
(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) Application of funds. The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student’s tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student’s account or pays the funds directly to the student, except to the extent that the student’s tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;
(ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;
(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the savings plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or
(iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

(5) Revenue generated from institutional aid. The institution must include the following institutional aid as revenue:

(i) For loans made to students and credited in full to the students’ accounts at the institution on or after July 1, 2008 and prior to July 1, 2012, include as revenue only those funds used by the institution to finance direct costs of attendance for those funds made on or after July 1, 2008, including as revenue only the amount included as revenue as described above;
(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.
(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(6) Revenue generated from loan funds in excess of loan limits prior to the Enforcing Continued Access to Student Loans Act of 2008 (ECASLA).

For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included and deemed to be revenue from a source other than Title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student’s account after other Title IV, HEA program funds are applied.

(7) Funds excluded from revenues.

For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student’s account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match Title IV, HEA program funds;

(iv) The amount of Title IV, HEA program funds refunded or returned under § 686.22. If any funds from the loan disbursement used in the return calculation under § 686.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under § 686.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(b) Net present value (NPV). (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—

(i) Using the formula, NPV = sum of the discounted cash flows $R/(1+i)^t$, where—

(A) The variable ‘‘i’’ is the discount rate.

(B) The variable ‘‘t’’ is time or period of the cash flow, in years, from the time the loan entered repayment; and

(C) The variable ‘‘R’’ is the net cash flow at time or period t; and

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable ‘‘i’’; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable ‘‘t’’; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution’s loan collection rate (e.g., the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable ‘‘R’’ in each period ‘‘t’’, for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV, the institution calculates the NPV of the loans it made during the fiscal year by—

(A) For two consecutive fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution’s provisionally certified terminations on—

(i) The expiration date of the institution’s program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section; and

(3) It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.

(Approved by Office of Management and Budget under control number 1845–NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, 1141)

[74 FR 55937, Oct. 29, 2009]

Subpart C—Student Eligibility

SOURCE: 60 FR 61810, Dec. 1, 1995, unless otherwise noted.

§ 668.31 Scope.

This subpart contains rules by which a student establishes eligibility for purposes of the ACG, National SMART Grant, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment, in an eligible program at an eligible institution; and

§ 668.32 Student eligibility—general.

A student is eligible to receive Title IV, HEA program assistance if the student either meets all of the requirements in paragraphs (a) through (m) of this section or meets the requirement in paragraph (n) of this section as follows:

(a)(1)(i) is a regular student enrolled, or accepted for enrollment, in an eligible program at an eligible institution;

(ii) For purposes of the FFEL and Direct Loan programs, is enrolled for no longer than one twelve-month period in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Federal Perkins Loan, FWS, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State; and

(2) For purposes of the ACG, National SMART Grant, FFEL, and Direct Loan programs, is at least a half-time student.

(b) Is not enrolled in either an elementary or secondary school.

(c)(1) For purposes of the ACG, National SMART Grant, and FSEOG programs, does not have a baccalaureate or first professional degree;
(2) For purposes of the Federal Pell Grant Program—

(i)(A) Does not have a baccalaureate or first professional degree; or

(B) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(ii) Is not incarcerated in a Federal or State penal institution;

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated; and

(4) For the purposes of the TEACH Grant program—

(i) For an undergraduate student other than a student enrolled in a postbaccalaureate program, has not completed the requirements for a first baccalaureate degree; or

(ii) For the purposes of a student in a first post-baccalaureate program, has not completed the requirements for a post-baccalaureate program as described in 34 CFR 686.2(d).

(d) Satisfies the citizenship and residency requirements contained in § 668.33 and subpart O of this part.

(e)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part;

(3) Is enrolled in an eligible institution that participates in a State “process” approved by the Secretary under subpart J of this part; or

(4) Was home-schooled, and either—

(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

(ii) If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law;

or

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

(f) Maintains satisfactory academic progress in his or her course of study according to the institution’s published standards of satisfactory academic progress that satisfy the provisions of § 668.16(e), and, if applicable, meet the provisions requirements of § 668.34.

(g) Except as provided in § 668.35—(1) Is not in default, and certifies that he or she is not in default, on a loan made under any title IV, HEA loan program;

(2) Has not obtained loan amounts that exceed annual or aggregate loan limits made under any title IV, HEA loan program;

(3) Does not have property subject to a judgment lien for a debt owed to the United States; and

(4) Is not liable for a grant or Federal Perkins loan overpayment. A student receives a grant or Federal Perkins loan overpayment if the student received grant or Federal Perkins loan payments that exceeded the amount he or she was eligible to receive; or if the student withdrew, that exceeded the amount he or she was entitled to receive for non-institutional charges;

(h) Files a Statement of Educational Purpose in accordance with the instructions of the Secretary.

(i) Has a correct social security number as determined under § 668.36, except that this requirement does not apply to students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(j) Satisfies the Selective Service registration requirements contained in § 668.37, and, if applicable, satisfies the requirements of § 668.36 and § 668.39 involving enrollment in telecommunication and correspondence courses and a study abroad program, respectively.

(k) Satisfies the program specific requirements contained in—

(1) 34 CFR 674.9 for the Federal Perkins Loan program;

(2) 34 CFR 675.9 for the FWS program;

(3) 34 CFR 676.9 for the FSEOG program;

(4) 34 CFR 682.201 for the FFEL programs;

(5) 34 CFR 685.200 for the William D. Ford Federal Direct Loan programs;

(6) 34 CFR 690.75 for the Federal Pell Grant program;

(7) 34 CFR 691.75 for the ACG and National SMART Grant programs;

(8) 34 CFR 692.40 for the LEAP program; and

(9) 34 CFR 686.11 for the TEACH Grant program.

(l) Is not ineligible under § 668.40.

(m) In the case of a student who has been convicted of, or has pled nolo-contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, has completed the repayment of such assistance to:

(1) The Secretary; or

(2) The holder, in the case of a title IV, HEA program loan.

(n) Is enrolled in a comprehensive transition and postsecondary program under subpart O of this part and meets the student eligibility criteria in that subpart.

(Authority: 20 U.S.C. 1070g, 1091; 28 U.S.C. 3201(e))

§ 668.33 Citizenship and residency requirements.

(a) Except as provided in paragraphs (b) of this section, to be eligible to receive title IV, HEA program assistance, a student must—

(1) Be a citizen or national of the United States; or

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(b)(1) A citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends an eligible institution in a State, or a public or nonprofit private eligible institution of higher education in those jurisdictions.

(2) A student who satisfies the requirements of paragraph (a) of this section is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends a public or nonprofit private eligible institution of higher education in the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(c)(1) If a student asserts that he or she is a citizen of the United States on the Free Application for Federal Student Aid (FAFSA), the Secretary attempts to confirm that assertion under a data match with the Social Security Administration. If the Social Security Administration confirms the student’s citizenship, the Secretary reports that confirmation to the institution and the student.

(2) If the Social Security Administration does not confirm the student’s citizenship assertion under the data match with the Secretary, the student can establish U.S. citizenship by submitting documentary
§ 668.34 Satisfactory academic progress.

(a) Satisfactory academic progress policy. An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution’s policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student’s academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of study of more than two academic years, to be eligible to receive title IV, HEA program assistance after the second year, in addition to satisfying the requirements contained in §668.32(d), the student must be making satisfactory academic progress under the provisions of paragraphs (b), (c) and (d) of this section.

(b) A student is making satisfactory academic progress if, the policy specifies that at the end of the second academic year, the student has—

(i) Must have a grade point average (GPA) of at least a “C” or its equivalent, or has—have academic standing consistent with the institution’s requirements for graduation.

(i) The policy specifies the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student’s progress at each evaluation; and

(ii) An institution calculates the pace at which the student is progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to include remedial courses.

(c) The policy describes how a student’s GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student’s educational program must count as both attempted and completed hours,

(d) Except as provided in paragraphs (c) and (d) of this section, the policy provides that, at the time of each evaluation, a student who has not achieved the required GPA, or who is not successfully completing his or her educational program at the required pace, is no longer eligible to receive assistance under the title IV, HEA programs.

(e) If the institution places students on financial aid warning, or on financial aid probation, as defined in paragraph (b) of this section, the policy describes these statuses and that—

(i) A student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student; and

(ii) A student on financial aid probation may receive title IV, HEA program funds for one payment period while a student is on financial aid probation, the institution may require the student fulfill specific terms and conditions such as taking a reduced course load or enrolling in specific courses. At the end of one payment period on financial aid probation, the student must meet the institution’s satisfactory academic progress standards or meet the requirements of the academic plan developed by the institution and the student to qualify for further title IV, HEA program funds;

(f) If the institution permits a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy describes—

(i) How the student may reestablish his or her eligibility for title IV, HEA programs;

(ii) An institution may find that a student is making satisfactory progress even though the student does not satisfy the requirements in paragraph (b) of this section, if the institution determines that the student’s failure to meet those requirements is based upon—

(1) The basis on which a student may file an appeal: The death of a relative, a

(2) Injury or illness of the student, or

(3) Other special circumstances.

(g) Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student’s situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;

(h) If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may re-establish his or her eligibility for title IV, HEA programs, and

(i) The policy provides for notification to students of the results of an evaluation that impacts the student’s eligibility for title IV, HEA program funds.

(b) Definitions. The following definitions apply to the terms used in this section:

(1) Appeal. Appeal means a process by which a student who is not meeting the institution’s satisfactory academic progress standards petitions the institution for reconsideration of the student’s eligibility for title IV, HEA program assistance.

(2) Financial aid warning. Financial aid warning means a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

(3) Financial aid probation. Financial aid probation means a status assigned to a student who fails to make satisfactory academic progress and who is not meeting the institution’s satisfactory academic progress standards.

(4) Maximum timeframe. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length...
of the educational program.

(c) Institutions that evaluate satisfactory academic progress at the end of each payment period. (1) An institution that evaluates satisfactory academic progress at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (c)(2), (c)(3), or (c)(4) of this section.

(2) For the payment period following the payment period in which the student did not make satisfactory academic progress, the institution may—

(i) Place the student on financial aid warning, and disburse title IV, HEA program funds to the student; or

(ii) Place a student directly on financial aid probation, following the procedures outlined in paragraph (d)(2) of this section and disburse title IV, HEA program funds to the student.

(3) For the payment period following a payment period during which a student was on financial aid warning, the institution may place the student on financial aid probation, and disburse title IV, HEA program funds to the student if—

(i) The institution evaluates the student’s progress and determines that the student did not make satisfactory academic progress during the payment period the student was on financial aid warning;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to meet the institution’s satisfactory academic progress standards by the end of the subsequent payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution’s satisfactory academic progress standards by a specific point in time.

(4) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(5) A student who is not in default on a loan made under a title IV, HEA loan program, may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the loan in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes repayment arrangements that are satisfactory to the holder of the debt; and

(ii) Makes at least six consecutive, voluntary monthly payments under those arrangements. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(c) A student who reestablishes eligibility under either paragraph (a)(2) of this section or paragraph (b)(2) of this section may not reestablish eligibility again under either of those paragraphs.

(d) A student who is not in default on a loan made under a title IV, HEA loan program, but has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeds the annual or aggregate loan limits under that program, may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(e) Except as provided in 34 CFR 668.22(h), a student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program, may nevertheless be eligible to receive title IV, HEA program assistance if—

(1) The student pays the overpayment in full;

(2) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment;

(3) The overpayment amount is less than $25 and is neither a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d); or

(4) The overpayment is an amount that a student is not required to return under the requirements of §668.22(h)(3)(ii)(B).

(f) A student who has property subject to a judgment lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(g)(1) A student is not liable for a Federal Pell Grant overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent Federal Pell Grant payments in that same award year.
(2) A student is not liable for an ACG overpayment received in an award year if—
   (i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, or National SMART Grant) payments in that same award year; or
   (ii) The institution cannot eliminate the overpayment under paragraph (g)(2)(i) of this section but can eliminate that overpayment by adjusting subsequent ACG payments in that same award year.

(3) A student is not liable for a National SMART Grant overpayment received in an award year if—
   (i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, or National SMART Grant) payments in that same award year; or
   (ii) The institution cannot eliminate the overpayment under paragraph (g)(3)(i) of this section but can eliminate that overpayment by adjusting subsequent National SMART Grant payments in that same award year.

(4) A student is not liable for a TEACH Grant overpayment received in an award year if—
   (i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant) payments in that same award year; or
   (ii) The institution cannot eliminate the overpayment under paragraph (g)(4)(i) of this section but can eliminate that overpayment by adjusting subsequent TEACH Grant payments in that same award year.

(5) A student is not liable for a FSEOG or LEAP overpayment or Federal Perkins loan overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) payments in that same award year.

(h) A student who otherwise is in default on a loan made under a title IV, HEA program, or who otherwise owes an overpayment on a title IV, HEA program grant or Federal Perkins loan, is not considered to be in default or owe an overpayment if the student—
   (1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or
   (2) Demonstrates to the satisfaction of the holder of the debt that—
       (i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the overpayment, had been outstanding for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and
       (ii) The debt otherwise qualifies for discharge under applicable bankruptcy law; and
   (i) In the case of a student who has been convicted of, or has pled nolo contendere or guilty to a crime involving fraud in obtaining title IV, HEA program assistance, has completed the repayment of such assistance to:
       (1) The Secretary; or
       (2) The holder, in the case of a title IV, HEA program loan.
   (Authority: 20 U.S.C. 1070g, 1091; 11 U.S.C. 523, 525)


§ 668.36 Social security number.

(a)(1) Except for residents of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, the Secretary attempts to confirm the social security number a student provides on the Free Application for Federal Student Aid (FAFSA) under a data match with the Social Security Administration. If the Social Security Administration confirms that number, the Secretary notifies the institution and the student of that confirmation.

(2) If the student’s verified social security number is the same number as the one he or she provided on the FAFSA, and the institution has no reason to believe that the verified social security number is inaccurate, the institution may consider the number to be accurate.

(3) If the Social Security Administration does not verify the student’s social security number on the FAFSA, or the institution has reason to believe that the verified social security number is inaccurate, the student can provide evidence to the institution, such as the student’s social security card, indicating the accuracy of the student’s social security number. An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to produce that evidence.

(4) An institution may not deny, reduce, delay, or terminate a student’s eligibility for assistance under the title IV, HEA programs because verification of that student’s social security number is pending.

(b)(1) An institution may not disburse any title IV, HEA program funds to a student until the institution is satisfied that the student’s reported social security number is accurate.

(2) The institution shall ensure that the Secretary is notified of the student’s accurate social security number if the student demonstrates the accuracy of a social security number that is not the number the student included on the FAFSA.

(c) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and that student has not provided evidence under paragraph (a)(3) of this section indicating the accuracy of the social security number, and a loan has been guaranteed for the student under the FFEL program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified before the date that the lender and the guaranty agency receive the notice.

(d) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—
   (1) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or
   (2) Any student with respect to any error in a social security number, unless the error was the result of fraud on the part of the student.

(Authority: 20 U.S.C. 1091)

§ 668.37 Selective Service registration.

(a)(1) To be eligible to receive title IV, HEA program funds, a male student who is subject to registration with the Selective Service must register with the Selective Service.

(2) A male student does not have to register with the Selective Service if the student—
   (i) Is below the age of 18, or was born before January 1, 1960; or
   (ii) Is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:
   (A) The Citadel, Charleston, South Carolina;
   (B) North Georgia College, Dahlonega, Georgia;
   (C) Norwich University, Northfield, Vermont; or
   (D) Virginia Military Institute, Lexington, Virginia; or
   (iii) Is a commissioned officer of the Public Health Service or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act.

(b)(1) When the Secretary processes a male student’s FAFSA, the Secretary determines
whether the student is registered with the Selective Service under a data match with the Selective Service. 

(2) Under the data match, Selective Service reports to the Secretary whether its records indicate that the student is registered, and the Secretary reports the results of the data match to the student and the institution the student is attending.

(c)(1) If the Selective Service does not confirm through the data match, that the student is registered, the student can establish that he—

(i) Is registered;

(ii) Is not, or was not required to be, registered;

(iii) Has registered since the submission of the FAFSA; or

(iv) Meets the conditions of paragraph (d) of this section.

(2) An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to provide evidence to establish the condition described in paragraph (c)(1) of this section. 

(d) An institution may determine that a student, who was required to, but did not register with the Selective Service, is not ineligible to receive title IV, HEA assistance for that reason, if the student can demonstrate by submitting clear and unambiguous evidence to the institution that—

(1) He was unable to present himself for registration for reasons beyond his control such as hospitalization, incarceration, or institutionalization; or

(2) He is over 26 and when he was between 18 and 26 required to register—

(i) He did not knowingly and willfully fail to register with the Selective Service; or

(ii) He served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, “Certificate of Release or Discharge from Active Duty,” showing military service with other than the uniformed services of the United States Armed Forces; or

(e) For purposes of paragraph (d)(2)(i) of this section, an institution may consider that a student did not knowingly and willfully fail to register with the Selective Service only if—

(1) The student submits to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register; and

(2) The institution does not have uncontroverted evidence that the student knowingly and willfully failed to register.

(f)(1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has registered with Selective Service may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (f)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (f)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(g) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(h) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one that is not an institute or school described in section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Act of 1995. 

(Authority: 20 U.S.C. 1091)


§ 668.39 Study abroad programs.

A student enrolled in a program of study abroad is eligible to receive title IV, HEA program assistance if—

(a) The student remains enrolled as a regular student in an eligible program at an eligible institution during his or her program of study abroad; and

(b) The eligible institution approves the program of study abroad for academic credit. However, the study abroad program need not be required as part of the student’s eligible degree program. 

(Authority: 20 U.S.C. 1091(o)

§ 668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive title IV, HEA program funds, for the period described in paragraph (b) of this section, if the student has been convicted of an offense under any Federal or State law involving the possession or sale of illegal drugs for conduct that occurred during a period of enrollment for which the student was receiving title IV, HEA program funds. However, the student may regain eligibility before that time period expires under the conditions described in paragraph (c) of this section.

(2) For purposes of this section, a conviction means only a conviction that is on a student’s record. A conviction that was reversed, set aside, or removed from the student’s record is not relevant for purposes of this section, nor is a determination or adjudication arising out of a juvenile proceeding.

(3) For purposes of this section, an illegal drug is a controlled substance as defined by section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)), and does not include alcohol or tobacco.

(b)(1) Possession. Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for one year after the date of conviction; 

(ii) Two times for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for two years after the date of the second conviction; or

(iii) Three or more times for possession of
illegal drugs, the student is ineligible to receive title IV, HEA program funds for an indefinite period after the date of the third conviction.

(2) Sale. Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for sale of illegal drugs, the student is ineligible to receive title IV, HEA program funds for two years after the date of conviction; or

(ii) Two or more times for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for an indefinite period after the date of the second conviction.

(c) If a student successfully completes a drug rehabilitation program described in paragraph (d) of this section after the student’s most recent drug conviction, the student regains eligibility on the date the student successfully completes the program.

(d) A drug rehabilitation program referred to in paragraph (c) of this section is one which—

(1) Includes at least two unannounced drug tests; and

(2)(i) Has received or is qualified to receive funds directly or indirectly under a Federal, State, or local government program;

(ii) Is administered or recognized by a Federal, State, or local government agency or court;

(iii) Has received or is qualified to receive payment directly or indirectly from a Federally- or State-licensed insurance company; or

(iv) Is administered or recognized by a Federally- or State-licensed hospital, health clinic or medical doctor.

(2) It includes a student enrolled in a course of credit who

(i) Is recognized by the institution as seeking a degree or certificate.

First-time undergraduate student means an entering undergraduate who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution’s catalog. This is typically four years for a bachelor’s degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs. Notice means a notification of the availability of information an institution is required by this subpart to disclose, 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.

Official fall reporting date means that date (in the fall) on which an institution must report fall enrollment data to either the State, its board of trustees or governing board, or some other external governing body.

On-campus student housing facility: A dormitory or other residential facility for students that is located on an institution’s campus, as defined in § 668.46(a).

Prospective employee means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor’s degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) Disclosure through Internet or Intranet websites. Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed; and

(2) Prospective students or prospective employees by posting the information on an Internet website.

(c) Notice to enrolled students. (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which the information is posted; and

(ii) A statement that the institution will provide a paper copy of the information on request.

(d) General disclosures for enrolled or prospective students. An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42).

(2) The institution (pursuant to § 668.43).

(3) The institution’s retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student’s enrolling or entering into any financial obligation with the institution.

(4) The institution’s completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student’s enrolling or entering into any financial obligation with the institution.

(5) The placement, and types of employment obtained by, graduates of the institution’s degree or certificate programs.

(6) The information provided in compliance with this paragraph may be gathered from—

(A) The institution’s placement rate for any program, if it calculates such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.
(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(iii) The institution must disclose any placement rates it calculates.

(6) The types of graduate and professional education in which graduates of the institution’s four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(e) Annual security report and annual fire safety report—

(1) Enrolled students and current employees—annual security report and annual fire safety report. By October 1 of each year, an institution must distribute, to all enrolled students and current employees: its annual security report described in §668.46(b), and, if the institution maintains an on-campus student housing facility, its annual fire safety report described in §668.49(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet Web site or an Intranet Web site, subject to paragraph (e)(2) and (3) of this section.

Editorial Note: The word “paragraph” should be plural. (From October 28, 2009 Final Rule, pg 55943).

(2) Enrolled students—annual security report and annual fire safety report. If an institution chooses to distribute either its annual security report or annual fire safety report to enrolled students by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) Current employees—annual security report and annual fire safety report. If an institution chooses to distribute either its annual security report or annual fire safety report to current employees by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution 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 institution will provide a paper copy of the report upon request.

(4) Prospective students and prospective employees—annual security report and annual fire safety report. For each of the reports, the institution must provide a notice to prospective students and prospective employees that includes a statement of the report’s availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee. If the institution chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet Web site, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

Editorial Note: For consistency, “or disclosures” should be added so the language reads: “...by posting the disclosure or disclosures on...”. (From October 29, 2009 Final Rules, pg 55943)

(5) Submission to the Secretary—annual security report and annual fire safety report. Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by §§668.46(c) and 668.49(c) to the Secretary.

(6) Publication of the annual fire safety report. An institution may publish its annual fire safety report concurrently with its annual security report only if the title of the report clearly states that the report contains both the annual security report and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the annual security report, it must include information in each of the two reports about how to directly access the other report.

(i) Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, when an institution offers a prospective student-athlete athletically related student aid, it must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to §668.48(a).

(ii) An institution’s responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete’s high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by §668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to §668.48.

(g) Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data. (1)(i) An institution of higher education subject to §668.47 must, not later than October 15 of each year, make available to enrolled students, prospective students, and the public, the report produced pursuant to §668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1)(i) of this section. If the institution chooses to make the report available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092)

[64 FR 59066, Nov. 1, 1999, as amended at 74 FR 55942, Oct. 29, 2009]

§668.42 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.
(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(4) The institution must describe the terms and conditions of the loans students receive under the Federal Family Education Loan Program, the William D. Ford Federal Direct Student Loan Program, and the Federal Perkins Loan Program.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student’s award.

(c) The institution must describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student’s financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans;

(5) The general conditions and terms applicable to any employment provided to a student as part of the student’s financial assistance package; and

(6) The exit counseling information the institution provides and collects as required by 34 CFR 674.42 for borrowers under the Federal Perkins Loan Program, by 34 CFR 685.304 for borrowers under the William D. Ford Federal Direct Student Loan Program, and by 34 CFR 682.604 for borrowers under the Federal Stafford Loan Program.

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(Authority: 20 U.S.C. 1092)


§ 668.43 Institutional information.

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to fulltime and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(3) The requirements and procedures for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of Title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;

(iii) The institution’s faculty and other instructional personnel; and

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of the services and facilities available to students with disabilities, including students with intellectual disabilities as defined in subpart O of this part;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted;

(9) A statement that a student’s enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs;

(10) Institutional policies and sanctions related to copyright infringement, including—

(i) A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) A summary of the penalties for violation of Federal copyright laws;

(iii) A description of the institution’s policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution’s information technology system; and

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution’s current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and

(ii) A list of institutions with which the institution has established an articulation agreement.

(12) A description of written arrangements the institution has entered into in accordance with § 668.5, including but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution’s accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State or agency that would appropriately handle a student’s complaint.
§ 668.44 Availability of employees for information dissemination purposes.

(a) Availability. (1) Except as provided in paragraph (b) of this section each institution shall 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 specified in §§ 668.42, 668.43, 668.45 and 668.46.

(2) If the institution 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 institution.

(3) 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 institution.

(b) Waiver. (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution’s total enrollment, or the portion of the enrollment participating in the title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution’s total enrollment or the number of title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(1) Exclude students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;

(ii) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution’s drop-add period, or another official reporting date as defined in § 668.41(a).

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate calculations.

(6)(i) Completion or graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup (as defined in IPEDS), by recipients of a Federal Pell Grant, by recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a Federal Family Education Loan nor a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Loan) if the number of students in such group or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purpose, i.e., is too small to be meaningful, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) With respect to the requirement in paragraph (a)(6)(i) of this section to disaggregate the completion or graduation rate information by the receipt or nonreceipt of Federal family aid, students shall be considered to have received the aid in question only if they received such aid for the period specified in paragraph (a)(3) of this section.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150 percent of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated, but are subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may

(1) Exclude students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;
(iii) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(iv) Are totally and permanently disabled; or

(v) Are deceased.

(2) In cases where the students described in paragraphs (d)(1)(i) through (iii) of this section represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of those students by adding to the 150 percent time-frame they normally have to complete or graduate, as described in paragraph (b) of this section, the time period the students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(e)(1) The Secretary grants a waiver of the requirements of this section dealing with completion and graduation rate data to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate for students described in paragraphs (d)(1)(i) through (iv) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

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[Authority: 20 U.S.C. 1092]

§ 668.46 Institutional security policies and crime statistics.

(a) Additional definitions that apply to this section.

Business day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) 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; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) Any individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution’s community and who is functioning within the scope of his or her license or certification.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Referred for campus disciplinary action: The referral of any person to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

Test: Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

(b) Annual security report. An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution’s policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police...
agencies and whether those security personnel have the authority to arrest individuals;
(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and
(iii) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution’s campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—
(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;
(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;
(iii) Information on a student’s option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;
(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;
(v) Notification to students that the institution will change a victim’s academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;
(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—
(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution’s final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and
(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(12) Beginning with the annual security report distributed by October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under section 170101(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(13) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as described in paragraph (g) of this section.

(14) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as described in paragraph (h) of this section.

(c) Crime statistics—
(1) Crimes that must be reported. An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority:
(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.

(2) Recording crimes. An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.

(3) Reported crimes if a hate crime. 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.

(4) Crimes by location. The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (3) of this section according to the following categories:
(i) On campus.
(ii) Of the crimes in paragraph (c)(4)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.
(iii) In or on a noncampus building or property.
(iv) On public property.

(5) Identification of the victim or the accused. The statistics required under
paragraphs (c)(1) and (3) of this section may not include the identification of the victim or the person accused of committing the crime.

(6) Pastoral and professional counselor. An institution is not required to report statistics under paragraphs (c)(1) and (3) of this section for crimes reported to a pastoral or professional counselor.

(7) UCR definitions. An institution must compile the crime statistics required under paragraphs (c)(1) and (3) of this section using the definitions of crimes provided in appendix A to this subpart and the Federal Bureau of Investigation’s Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook.

Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304-625-2823).

(8) Use of a map. In complying with the statistical reporting requirements under paragraphs (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(9) Statistics from police agencies. In complying with the statistical reporting requirements under paragraphs (c)(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) Separate campus. An institution must comply with the requirements of this section for each separate campus.

(e) Timely warning and emergency notification. (1) An institution 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—

(i) Described in paragraph (c)(1) and (3) of this section;

(ii) Reported to campus security authorities as identified under the institution’s statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(3) If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

(f) Crime log. (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

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

(g) Emergency response and evacuation procedures. An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include—

(1) The procedures the institution will use to—

(i) Confirm that there is a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system.

(2) A description of the process the institution will use to—

(i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system.

(3) A statement that the institution will, 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;

(4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section;

(5) The institution’s procedures for disseminating emergency information to the larger community; and

(6) The institution’s procedures to test the emergency response and evacuation procedures on at least an annual basis, including—

(i) Tests that may be announced or unannounced;

(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and

(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

(h) Missing student notification policies and procedures. (1) An institution that provides

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must—

(i) Indicate 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;

(ii) Require that any missing student report must be referred immediately to the institution’s police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area;

(iii) Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;

(iv) Advise students 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;

(v) Advise students that if they are under 18 years of age and not emancipated, the institution 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

(vi) Advise students that, the institution 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.

(2) The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include—

(i) If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;

(ii) If the student is under 18 years of age and is not emancipated, notifying the student’s custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1092)


§ 668.47 Report on athletic program participation rates and financial support data.

(a) Applicability. This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program. 

(b) Definitions. The following definitions apply for purposes of this section only.

(1) Expenses—(i) Expenses means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) Operating expenses means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as “game-day expenses”), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) Recruiting expenses means all expenses attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) Institutional salary means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3) (i) Participants means students who, as of the day of a varsity team’s first scheduled contest—

(A) Are listed by the institution on the varsity team’s roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (i.e., a redshirt), or for academic, medical, or other reasons.

(4) Reporting year means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) Revenues means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) Undergraduate students means students who are consistently designated as such by the institution.

(7) Varsity team means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) Report. An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men’s and women’s teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an
institution may report operating expenses attributable to the team on a per-participant basis.

(iii) Whether the head coach was male or female was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, the number of assistant coaches was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(vi) (A) The number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

4) (i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and, if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees.):

(A) Total revenues attributable to intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities.):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregated by sport, and for men's teams, and aggregated by sport and for women's teams.

7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

8) The total amount of recruiting expenses incurred, aggregated by sport, and for all men's teams, and aggregated by sport and for all women's teams.

9) (i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

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

10) (i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the nonvolunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

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

(Approved by the Office of Management and Budget under control number 1845–0010)

[Authority: 20 U.S.C. 1092]

[64 FR 59071, Nov. 1, 1999]

§ 668.48 Report on completion or graduation rates for student-athletes.

(a)(1) Annually, by July 1, an institution that is attended by students receiving athletically-related student aid must produce a report containing the following information:

(i) The number of students, categorized by race and gender, who attended that institution during the year prior to the submission of the report.

(ii) The number of students described in paragraph (a)(1)(i) of this section who received athletically-related student aid, categorized by race and gender within each sport.

(iii) The completion or graduation rate and if applicable, transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in § 668.45(a)(1), categorized by race and gender.

(iv) The completion or graduation rate and if applicable, transfer-out rate of the entering students described in § 668.45(a)(1) who received athletically-related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate and if applicable, transfer-out rate for the four most recent completing or graduating classes of entering students described in § 668.45(a)(1), (3), and (4) categorized by race and gender. If an institution has completion or graduation rates and, if applicable, transfer-out rates for fewer than four of those classes, it must disclose the average rate of those classes for which it has rates.

(vi) The average completion or graduation rate and if applicable, transfer-out rate of the four most recent completing or graduating classes of entering students described in § 668.45(a)(1) who received athletically-related student aid, categorized by race and gender within each sport. If an institution has completion or graduation rates and if applicable, transfer-out rates for fewer than four of those classes, it must disclose the average rate of those classes for which it has rates.

(2) For purposes of this section, sport means—

(i) Basketball;

(ii) Football;

(iii) Baseball;

(iv) Cross-country and track combined; and
(v) All other sports combined.

(3) If a category of students identified in paragraph (a)(1)(iv) above contains five or fewer students, the institution need not disclose information on that category of students.

(b) The provisions of § 668.45(a), (b), (c), and (d) apply for purposes of calculating the completion or graduation rates and, if applicable, transfer-out rates required under paragraphs (a)(1)(iii) through (vi) of this section.

(c) Each institution of higher education described in paragraph (a) of this section may also provide to students and the Secretary supplemental information containing—

(1) The graduation or completion rate of the students who transferred into the institution; and

(2) The number of students who transferred out of the institution.

(d) The provisions of § 668.45(e) apply for purposes of this section.

§ 668.49 Institutional fire safety policies and fire statistics.

(a) Additional definitions that apply to this section.

Cause of fire: The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.

Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

Fire drill: A supervised practice of a mandatory evacuation of a building for a fire.

Fire-related injury: Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of the fire. The term “person” may include students, employees, visitors, firefighters, or any other individuals.

Fire-related death: Any instance in which a person—

(1) Is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or

(2) Dies within one year of injuries sustained as a result of the fire.

Fire safety system: Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

Value of property damage: The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

Annual fire safety report: Beginning by October 1, 2010, an institution that maintains any on-campus student housing facility must prepare an annual fire safety report that contains, at a minimum, the following information:

(1) The fire statistics described in paragraph (c) of this section.

(2) A description of each on-campus student housing facility fire safety system.

(3) The number of fire drills held during the previous calendar year.

(4) The institution’s policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.

(5) The institution’s procedures for student housing evacuation in the case of a fire.

(6) The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.

(7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

(8) Plans for future improvements in fire safety, if determined necessary by the institution.

Fire statistics: (1) An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning—

(i) The number of fires and the cause of each fire;

(ii) The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center;

(iii) The number of deaths related to a fire; and

(iv) The value of property damage caused by a fire.

(2) An institution is required to submit a copy of the fire statistics in paragraph (c)(1) of this section to the Secretary on an annual basis.

Fire log: (1) An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire 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.

(2) An institution must make an entry or an addition to an entry in the log within two business days, as defined under § 668.46(a), of the receipt of the information.

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

(4) An institution must make an annual report to the campus community on the fires recorded in the fire log. This requirement may be satisfied by the annual fire safety report described in paragraph (b) of this section.

Subpart E—Verification and Updating of Student Aid Application Information

SOURCE: 56 FR 61337, Dec. 2, 1991, unless otherwise noted.

§ 668.51 General.

(a) Scope and purpose. The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance under the subsidized student financial assistance programs in connection with the calculation of their expected family contributions (EFC) for the Federal Pell Grant, ACG, National SMART Grant, campus-based Federal Stafford Loan, Federal Direct Stafford/Ford Loan programs.

(b) Applicant responsibility. If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant shall provide the specified documents or information.

(c) Foreign schools. The Secretary exempts from the provisions of this subpart participating institutions participating in the Federal Stafford Loan Program that are not located in a State.

(Authority: 20 U.S.C. 1092)
§ 668.52 Definitions.

The following definitions apply to this subpart:

Base year—Specified year means (1) the calendar year preceding the first calendar year of an award year, i.e., the base year; or (2) the year preceding the year described in paragraph (1) of this definition.

Edits—means a set of pre-established factors for identifying—
(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and
(b) Randomly selected student aid applications.

Institutional student information record—means as defined in 34 CFR 690.2 and 691.2 for purposes of the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, and William D. Ford Federal Direct Loan programs.

Subsidized student financial assistance programs—means application approved by the Secretary and submitted by a person to have his or her Title IV, HEA programs for which eligibility is determined on the basis of an applicant’s EFC, determined under these programs include the Federal Pell Grant, ACG, National SMART Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, or William D. Ford Federal Direct Loan programs.

Unsubsidized student financial assistance programs—means application for which eligibility is not based on an applicant’s EFC. These programs include the Teacher Education Assistance for College and Higher Education (TEACH) Grant, Direct Unsubsidized Loan, and Direct PLUS Loan programs.

§ 668.53 Policies and procedures.

(a) An institution shall—must establish and use written policies and procedures for verifying an applicant’s FAFSA information contained in a student aid application in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the any documentation requested by the institution in accordance with § 668.57;

(2) The consequences of an applicant’s failure to provide required the requested documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of the verification if, as a result of verification, the applicant’s EFC changes and results in a change in the amount of the applicant’s award or loan assistance under the title IV, HEA programs;

(4) The procedures the institution will follow if it or the procedures the institution will require an applicant to follow to correct application FAFSA information determined to be in error, and

(5) The procedures for making referrals under § 668.16.(a).

(b) The institution’s procedures must provide that it shall will furnish, in a timely manner, to each applicant whose FAFSA information is selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant’s responsibilities with respect to the verification of application FAFSA information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(c) An institution’s procedures must provide that an applicant whose FAFSA information is selected for verification is required to complete verification before the institution exercises any authority under section 479A(a) of the HEA to make changes to the applicant’s cost of attendance or to the values of the data items required to calculate the EFC.

§ 668.54 Selection of applications an applicant’s FAFSA information for verification.

(a) General requirements. (1) Except as provided in paragraph (b) of this section, an institution shall must require an applicant whose FAFSA information is selected for verification by the Secretary, to verify application the information as specified in this paragraph by the Secretary pursuant to § 668.56.

(2)(i) An institution shall require each applicant whose application is selected for verification on the basis of edits specified by the Secretary, to verify all of the applicable items specified in § 668.56, except that no institution is required to verify the applications of more than 30 percent of its total number of applicants for assistance under the Federal Pell Grant, ACG, National SMART Grant, Federal Direct Stafford/Ford Loan, campus-based, and Federal Stafford Loan programs in an award year.

(ii) An institution may only include those applications selected for verification by the Secretary in its calculation of 30 percent of total applicants.

(b) Exclusions from verification. (1) An institution need not verify an application’s FAFSA information if—

(i) submitted for an award year if the applicant dies during the award year;

(ii) The applicant does not receive assistance under the title IV, HEA programs for reasons other than failure to verify FAFSA information;

(iii) The applicant is eligible to receive only unsubsidized student financial assistance; or

(iv) The applicant who transfers to the institution, had previously completed verification at the institution from which he or she transferred, and applies for assistance based on the same FAFSA information used at the previous institution, if the current institution obtains a letter from the previous institution—

(A) Stating that it has verified the applicant’s information; and

(B) Providing the transaction number of the applicable valid ISIR.
(2) Unless the institution has reason to believe that the information reported by the applicant is incorrect, it need not verify applications of the following families:

(a) [deleted]

(b) A citizen of and in the case of a dependent student, whose parents are also citizens of, the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or

(c) An applicant who is incarcerated at the time at which verification would occur.

(d) An applicant who is a dependent student, whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication. In this case the institution shall verify the information contained in the applicant's FAFSA application to document the applicant's address and the number of family members in the applicant's household. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section for a change in the applicant's marital status if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(e) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

§ 668.55 Updating information.

(a)(1) Unless the provisions of paragraph (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her address if an applicant's address is incorrect, it is unknown and cannot be obtained by the applicant.

(a)(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(b) An applicant whose address is unknown and cannot be obtained by the institution.

(3) An application has reason to believe that the information reported by an independent student is incorrect, it need not verify the application to document a spouse's information or provide a spouse's signature if—

(a) The spouse is deceased;

(b) The spouse is mentally or physically incapacitated;

(c) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(d) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(4) An application is required to verify the information contained in its or her application for assistance in an award year if—

(a) The number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status. An institution may require an applicant to update the FAFSA information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information under paragraph (a) or (b) of this section if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.
§ 668.56 Items information to be verified.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall require an applicant selected for verification under § 668.54(a)(2) or (3) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant’s EFC: For each award year the Secretary publishes in the Federal Register notice the FAFSA information that an institution and an applicant may be required to verify.

(b) For each applicant whose FAFSA information is selected for verification by the Secretary, the Secretary specifies the specific information under paragraph (a) of this section that the applicant must verify.

(1) Adjusted gross income (AGI) for the base year, if base year data was used in determining eligibility, or income earned from work, for a non-tax filer.

(2) U.S. income tax paid for the base year if base year data was used in determining eligibility.

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household or households of the applicant’s parents if—

(A) The applicant’s parent is single, divorced, separated, or widowed and the aggregate number of family members is greater than two, or

(B) The applicant’s parents are married to each other and not separated and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the aggregate number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the aggregate number of family members is greater than one, or

(B) The applicant is married and not separated and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The following untaxed income and benefits for the base year if base year data was used in determining eligibility—

(i) Social Security benefits if the institution has reason to believe that those benefits were received and were not reported or were incorrectly reported;

(ii) Child support if the institution has reason to believe that child support was received;

(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account;

(iv) Interest on tax-free bond;

(v) Foreign income excluded from U.S. income taxation if the institution has reason to believe that foreign income was received;

(vi) The earned income credit taken on the applicant’s tax return; and

(vii) All other untaxed income subject to U.S. income tax reporting requirements in the base year which is included on the tax return form, excluding information contained on schedules appended to such forms.

(b) If an applicant selected for verification submits an SAR or other document to the institution or the institution receives the applicant’s IRS, within 90 days of the date the applicant submitted his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household;

(2) The number of family members in the household, who are enrolled as at least half-time students in postsecondary educational institutions;

(3)(i) If the number of family members in the household is greater than two, or

(ii) If the number of family members in the household or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(d) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment status from its own records, the institution need not require the applicant to verify that information.

(e) If the applicant or the applicant’s spouse or, in the case of a dependent student, the applicant’s parents receive untaxed income or benefits from a Federal, State, or local government agency determining their eligibility for that income or those benefits by means of a financial needs test, the institution need not require the untaxed income and benefits to be verified.

(4) For a dependent student, a copy of each filer of a joint return or an IRS form that lists tax account information of the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2, for the specified year he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or divorced or separated.

(2) If an individual who files a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit a copy, in lieu of a copy of the income tax return, a copy of an IRS form which that lists tax account information, the information reported for an item on the applicant’s FAFSA for the specified year if the Secretary has identified that item as having been obtained from the IRS and not having been changed.

(3) An institution shall accept, in lieu of an income tax return or an IRS form that lists tax account information of an individual whose income was used in calculating the EFC of an applicant, the documentation set forth in paragraph (a)(4) of this section if the individual for the base specified year—

(i) Has not filed and, under IRS rules, or other applicable government agency rules, is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or an IRS form that lists tax account information, and

§ 668.57 Acceptable documentation.

If an applicant is selected to verify any of the following information, an institution must obtain the specified documentation.

(a) Adjusted Gross Income (AGI), income earned from work, and U.S. income tax paid. (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify AGI, income earned from work, and U.S. income tax paid by—

(i) A copy of the income tax return if an Internal Revenue Service (IRS) form that lists tax account information of the applicant, his or her spouse, and all of his or her parents, as applicable for the specified year. The copy of the return must be signed by the filer (which need not be an original) of the filer of the return or by one of the files of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2, for the specified year received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2, for the specified year he or she received if the independent student—

(A)Filed a joint return; and

(B) Is a widow or widower, or divorced or separated.

(2) If an individual who files a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit a copy, in lieu of a copy of the income tax return, a copy of an IRS form which that lists tax account information, the information reported for an item on the applicant’s FAFSA for the specified year if the Secretary has identified that item as having been obtained from the IRS and not having been changed.

(3) An institution shall accept, in lieu of an income tax return or an IRS form that lists tax account information of an individual whose income was used in calculating the EFC of an applicant, the documentation set forth in paragraph (a)(4) of this section if the individual for the base specified year—

(i) Has not filed and, under IRS rules, or other applicable government agency rules, is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or an IRS form that lists tax account information, and
the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide an IRS Form W-2, or a statement signed by the filer of the return or one of the filers of a joint return, a copy of the filer’s return that includes the preparer’s Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed, stamped, typed, or printed by the preparer of the return or stamped with the name and address of the preparer of the return.

(b) Number of family members in household. An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by both the applicant and one of the applicant’s parents if the applicant is a dependent student, or only the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(1) Number of family household members enrolled in eligible postsecondary institutions. (i) Except as provided in §688.56(b)(c)(d), and (e), an institution shall require an applicant selected for verification to verify annually information included on the application regarding the number of household members in the applicant’s family enrolled on at least a half-time basis in eligible postsecondary institutions. The institution shall require the applicant to verify the information by submitting a statement signed by both the applicant and one of the applicant’s parents, if the applicant is a dependent student, or by only the applicant if the applicant is an independent student, listing—

(I) The name of each family member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the award year; and

(II) The age of each student; and

(iii) The name of the institution that attended by each student.

(ii) If the institution has reason to believe that the applicant’s FAFSA information included on the application or the statement provided under paragraph (c)(1) of this section regarding the number of family household members enrolled in eligible postsecondary institutions is inaccurate, the institution shall require the applicant to verify the information by submitting a statement from each family member named in the application in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless—

(I) The statement required in paragraph (c)(1)(iii) of this section from the individual described in paragraph (c)(1)(i) of this section

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless The institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or

(III) The institution has information itself indicating that the student will be attending the same school institution as the applicant.

(d) Unsubsidized income and benefits. An institution shall require an applicant selected for verification to verify—Other Information. If an applicant is selected to verify other information specified in the annual Federal Register notice, the applicant must provide the documentation specified for that information in the Federal Register notice.

(4) Unsubsidized income and benefits described in §688.56(a)(5)(ii), (vi), (vii), and (viii) by submitting to it—

(i) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the base specified year, or a copy of the IRS’s approval of an extension beyond the automatic four-month extension if the individual requested an additional extension of the filing time; and

(ii) A copy of each IRS Form W-2 that the individual received for the base specified year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income the AGI for the base specified year; and

(iii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of each IRS Form W-2 that the individual received for the base specified year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U.S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of adjusted gross income the AGI and taxes paid for the base specified year.

(5) An institution may require an institution to verify the adjusted gross income AGI and taxes paid for the base specified year.

(6) If an individual who is required to submit an IRS Form W-2, under this paragraph (a) of this section, is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W-2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer’s return that includes the preparer’s Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed, stamped, typed, or printed by the preparer of the return or stamped with the name and address of the preparer of the return.

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
amount listed on the applicant’s aid application is correct; and

(3) Child support received by submitting to it—

(i) A statement signed by the applicant and one of the applicant’s parents in the case of a dependent student, or by the applicant in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution has reason to believe that the information provided is inaccurate, the applicant must verify the amount of child support received by providing a document such as—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(Approved by the Office of Management and Budget under Control Number 1840–0520–045–0041)

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

§ 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that the applicant’s FAFSA information included on the application is inaccurate, until the applicant verifies or corrects the information included on his or her application information is verified and any corrections are made in accordance with § 668.59(a), the institution may not—

(i) Disburse any Federal Pell Grant, ACG, National SMART Grant, campus-based Federal Perkins Loan, or FSEOG Program funds to the applicant;

(ii) Employ or allow an employer to employ the applicant in the Federal Work-Study FWS Program;

(iii) Certify the applicant’s Federal Stafford Loan origination of the applicant’s Direct Subsidized Loan; or

(iv) If an institution does not have reason to believe that the applicant’s FAFSA information included on an application is inaccurate prior to verification, the institution may—

(A) May withhold payment of Federal Pell Grant, ACG, National SMART Grant, or campus-based Federal Perkins Loan, or FSEOG Program funds for the applicant; or

(B) May re– make one disbursement of any combination from each of the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant’s first payment period of the award year; and

(ii) May employ or allow an employer to employ an eligible student that applicant, once he or she is an eligible student, under the Federal Work-Study FWS Program for the first 60 consecutive days after the student’s enrollment in that award year; and

(iii)(A) May withhold certification of the applicant’s Federal Stafford Loan application origination of the applicant’s Direct Subsidized Loan; or

(B) May certify the Federal Stafford Loan application origination of the Direct Subsidized Loan provided that the institution does not deliver disburse Federal Stafford Loan proceeds or disburse Direct Subsidized Loan proceeds.

(3) If, after verification, an institution determines that changes to an applicant’s information will not change the amount the applicant would receive under a title IV, HEA program, the institution—

(i) Must ensure corrections are made in accordance with § 668.59(a); and

(ii) May prior to receiving the corrected valid SAR or valid ISIR—

(A) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant’s first payment period of the award year;

(B) Employ or allow an employer to employ the applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student’s enrollment in that award year; or

(C) Originate the Direct Subsidized Loan and disburse the Direct Subsidized Loan proceeds for the applicant.

(b) If an institution chooses to make a disbursement under—

(B) The institution does not recalculate the applicant’s EFC, determines that the applicant’s EFC changes, and determines that the change in the EFC changes the applicant’s Federal Pell Grant, ACG, or National SMART Grant programs—

(1) Except as provided in paragraph (a)(2)(i) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her application information to the Secretary for corrections if—

(i) The institution recalculates the applicant’s EFC, determines that the applicant’s EFC changes, and determines that the change in the EFC changes the applicant’s Federal Pell Grant, ACG, or National SMART Grant programs; or

(ii) The institution does not recalculate the
(2) An institution need not require an applicant to resubmit his or her application to the Secretary, recalculate an applicant’s EFC, or adjust an applicant’s Federal Pell Grant, ACG, or National SMART Grant award if, as a result of the verification process, the institution finds—

(i) No errors in (1) A nondollar item used to calculate the applicant’s EFC; or

(ii) A single dollar item of $25 or more, if the dollar amount is in excess of $400 calculated by the net difference between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).

(b) For the Federal Pell Grant, ACG, and National SMART Grant programs, if an applicant’s FAFSA for an overpayment that is not an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced; or

(c) For the campus-based and Federal Stafford Loan or Federal Direct Stafford/Ford Direct Loan student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant’s FAFSA information changes as a result of verification, the institution must—

(i) Recalculate the applicant’s EFC; and

(ii) Adjust the applicant’s financial aid package for the campus-based and Federal Stafford Loan or Federal Direct Stafford/Ford Direct Loan programs to reflect the new, on the basis of the EFC, on the corrected valid SAR or valid ISIR; and

(C) (2)(ii) Disburse any additional funds under that award only if the applicant provides the institution with the corrected valid SAR or valid ISIR for the applicant and to the extent that additional funds are payable based on the recalculation.

(ii) If an institution recalculates an applicant’s EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant’s award, the institution—Comply with the procedures specified in §686.61(b) for an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced.

(iii) Comply with the procedures specified in 34 CFR 690.79 for an overpayment that is not an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced.

(A) May disburse the applicant’s Federal Pell, ACG, or National SMART Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her application information to the Secretary; and

(B) Except as provided in §686.60(h), disburse any additional funds under the increased award reflecting the new EFC if the institution receives the corrected SAR or ISIR.

(c) For the campus-based, and Federal Stafford Loan or Federal Direct Stafford/Ford Direct Loan subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant’s FAFSA information changes as a result of verification, the institution must—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant’s EFC; and

(ii) Adjust the application’s financial aid package for the campus-based and Federal Stafford Loan or Federal Direct Stafford/Ford Direct Loan programs to reflect the new, on the basis of the EFC, on the corrected valid SAR or valid ISIR; and

(ii) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant’s EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary; and

(B) Recalculate the applicant’s Federal Pell Grant, ACG, or National SMART Grant award on the basis of the EFC on the corrected valid SAR or valid ISIR; and

(C) (2) (i) Disburse any additional funds under that award only if the applicant provides the institution with the corrected valid SAR or valid ISIR for the applicant and to the extent that additional funds are payable based on the recalculations.

(ii) If the institution recalculates an applicant’s EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant’s award, the institution—Comply with the procedures specified in §686.61 for an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced.

(iii) Comply with the procedures specified in 34 CFR 690.79 for an overpayment that is not an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced.

(d)(1) If the institution selects an applicant for verification for an award year who previously received a Direct Stafford/Ford Direct Loan except for the award year, and as a result of verification the loan amount is reduced, the institution shall comply with the procedures specified in §§668.61(b)(2).

(ii) If the institution selects an applicant for verification for an award year who previously received a loan under the Federal Stafford Loan Program for that award year, and as a result of verification the loan amount is reduced, the institution shall comply with the procedures for notifying the borrower and lender specified in §§686.61(b)(2).
Process disburse any additional Federal Stafford Loan or Direct Subsidized Loan proceeds for the applicant; and

(ii) The institution shall return the lender, or to the Secretary, in the case of a Direct Subsidized Loan, any Federal Stafford Loan or Direct Subsidized Loan proceeds that otherwise would be payable to the applicant; and

(iii) The applicant shall must repay to the institution any Federal Perkins Loan, or FSEOG, or payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award disburse aid to the applicant notwithstanding paragraph (b)(1)(i) of this section; and

(3) If an institution may not withhold any Federal Stafford Loan has received proceeds for a Direct Subsidized Loan on behalf of proceeds from an applicant, under paragraph (b)(1)(i)(D) of this section for more than 45 days, if the applicant does not complete verification within the 45-day period, the institution shall must return the Federal Stafford Loan proceeds to the lender, all or a portion of those funds as provided under § 668.166(b)(i) if the applicant does not complete verification within the time period specified.

(c) For purposes of the Federal Pell Grant, ACG, and National SMART Grant Programs—

(1) An applicant may submit a verified valid SAR to the institution or the institution may receive a verified valid ISIR after the applicable deadline specified in 34 CFR 690.61 and 690.64 but within an established additional time period set by the Secretary through publication of a notice in the Federal Register, and if the institution receives a verified SAR or ISIR during the established additional time period, and the EFC on the two SARs or ISIRs are different, payment must be based on the higher of the two EFCs.

(2) If the applicant does not provide to the institution the requested documentation and, if necessary, a verified valid SAR or the institution does not receive a verified valid ISIR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) forfeits the Federal Pell Grant, ACG, or National SMART Grant for the award year;

and

(ii) shall must return any Federal Pell Grant, ACG, or National SMART Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent application for Federal Pell Grant, ACG, or National SMART Grant program assistance, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, Federal Direct Stafford/Ford Loan, or Federal Stafford Loan program assistance FAFSA information of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing the verification process without completing that process, and the deadline is in the subsequent award year, the institution may not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify that applicant's Federal Stafford Loan application or Originate that applicant's Direct Subsidized Loan, or process disburse that applicant's Federal Stafford Loan or Direct Subsidized Loan proceeds; or

(3) Consider any funds disbursed to that applicant under § 668.58(a)(2) as an overpayment.

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

40625, July 29, 1998; 71 FR 64419, Nov. 1, 2006

§ 668.61 Recovery of funds from interim disbursements—

(a) If an institution discovers, as a result of the verification process, that an applicant received under § 668.58(a)(2)(ii)(A)(i)(B) more financial aid than the applicant was eligible to receive, the institution shall must eliminate the Federal Pell Grant, Federal Perkins Loan, or FSEOG overpayment by—

(1) Adjusting subsequent financial aid payments disbursements in the award year in which the overpayment occurred; or

(2) Reimbursement of the appropriate program account by—

(i) Requiring the applicant to retum the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant’s last day of attendance.

(B) The last day of the award year in which the institution disbursed Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, or FSEOG Program funds to the applicant.

(b)(4) If the institution determines discovers, as a result of the verification process, that an applicant received Stafford Loan or proceeds for an award year in excess of the student’s under § 668.58(a)(2)(ii) more financial need for the loan, the institution shall must refund and promptly return to the lender or escrow agent any disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid received by the student.

However, instead of returning the entire undisbursed disbursement, the school may choose to return promptly to the lender only the portion of the disbursement for which the student is ineligible. In either case, the institution shall provide the lender with a written statement describing the reason for the returned loan funds—aid as the applicant was eligible to receive, the institution must eliminate the FWS overpayment by—

(1) Adjusting the applicant’s other financial aid;

or

(2) If the institution determines as a result of the verification process that a student received Direct Subsidized Loan proceeds for an award year in excess of the student’s need, the institution shall reduce or cancel one or more subsequent disbursements to eliminate the amount in excess of the student’s need. Reimbursement of the FWS program account by making restitution from its own funds, if the institution cannot correct the overpayment under paragraph (b)(1) of this section. The applicant must still be paid for all work performed under the institution’s own payroll account.

(c) If an institution disbursed subsidized student financial assistance to an applicant under § 668.58(a)(3), and did not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60, the institution must reimburse the appropriate program account by making restitution from its own funds. The applicant must still be paid for all work performed under the institution’s own payroll account.

(Approved by the Office of Management and Budget under control number 4840–05701845– 0041)

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


Subpart F—Misrepresentation

SOURCE: 51 FR 43324, Dec. 1, 1986, unless otherwise noted.

§ 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution’s program participation agreement;
§ 668.72 Nature of educational program.

Misrepresentation by an institution of concerning the nature of its 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;

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

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

1) For acceptance into a labor union or similar organization; or

2) To receive, to apply to take or to take the examination required to receive Receipt of a local, State, or Federal license, or a non-govermental 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;

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

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

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

2) Governmental officials for governmental employment;

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

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

(i)(1) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

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

(iii) 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;

(iv) 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 §§ 668.44 668.42 and 668.47 668.43 of this part.

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

§ 668.73 Nature of financial charges.

Misrepresentation by an institution of concerning the nature of its 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, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(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)

§ 668.74 Employability of graduates.

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

(a) That the institution is connected with relationship with any organization, or is an employment agency, or other agency providing authorized training leading directly to employment.

(b) That the institution’s plans to maintain a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance.

(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, through the use of phrases such as “Men/women wanted to train for * * *,” “Help Wanted,” “Employment,” or “Business Opportunities”.

(c)(e) Concerning government job market statistics in relation to the potential placement of its graduates.

(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)

§ 668.75 Procedures Relationship with the 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.

(a) On receipt of a written allegation or complaint from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in § 688.81 reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend, or terminate the institution’s eligibility to participate in the Title IV, HEA programs according to the procedures set forth in subpart G, or

(2) Take other appropriate action.

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

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

SOURCE: 51 FR 43325, Dec. 1, 1986, unless otherwise noted.

§ 668.81 Scope and special definitions.

(a) This subpart establishes regulations for the following actions with respect to a participating institution or third-party servicer:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution’s participation in a Title IV, HEA program.

(b) This subpart applies to an institution or a third-party servicer that violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location, or educational program because the institution, location, or educational program fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the Title IV, HEA program for which a designation of eligibility is sought;

(2) An institution fails to qualify for initial certification or provisional certification to participate in any Title IV, HEA program because the institution does not meet the factors of financial responsibility and standards of administrative capability contained in subpart B of this part;

(3) A participating institution’s or a provisionally certified participating institution’s period of participation, as specified under § 688.13, has expired; or

(4) A participating institution’s provisional certification is revoked under the procedures in § 688.13.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to a participating institution (i.e., advance payments and payments by way of reimbursements).

(Authority: 20 U.S.C. 1094 and 1099a–3(h))


§ 668.82 Standard of conduct.

(a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

(b) In the capacity of a fiduciary—

(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

(c) The failure of a participating institution or any of the institution’s third-party servicers to administer a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for—

(1) An emergency action against the institution, a fine on the institution, or the limitation, suspension, or termination of the institution’s participation in that program; or
A participating institution or a third-party servicer’s eligibility to contract with any limitation, suspension, or termination of the servicer, a fine on the servicer, or the contracts violates its fiduciary duty if—

(i)(A) The servicer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) A person who exercises substantial control over the servicer, as determined according to § 668.15, has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(C) The servicer employs a person in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or who has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(D) The servicer uses or contracts in a capacity that involves any aspect of the administration of the Title IV, HEA programs with any other person, agency, or organization that has been or whose officers or employees have been—

(1) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(2) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1)(i) of this section, the institution or servicer, as applicable, does not promptly—

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution’s or servicer’s participation in the Title IV, HEA programs.

(2) A violation for a reason contained in paragraph (d)(1)(i) of this section is grounds for terminating—

(i) The servicer’s eligibility to contract with any institution to administer any aspect of the institution’s participation in any Title IV, HEA program; and

(ii) The participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution had been aware of the violation and had failed to take the appropriate action described in paragraph (d)(1)(ii) of this section.

(e)(1) A participating institution or third-party servicer, as applicable, violates its fiduciary duty if—

(i)(A) The institution or servicer, as applicable, is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Cause exists under 34 CFR 85.700 or 85.800 for debarring or suspending the institution, servicer, or any principal or affiliate of the institution or servicer under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(ii) Upon learning of the debarment, suspension, or cause for debarment or suspension, the institution or servicer, as applicable, does not promptly—

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution’s or servicer’s participation in the Title IV, HEA programs.

(3) A debarment or suspension not described in (f)(1) or (f)(2) of this section of a participating institution or third-party servicer by another Federal agency constitutes prima facie evidence in a proceeding under this subpart that cause for suspension or debarment and termination, as applicable, exists.

(3)(i) Withhold Title IV, HEA program funds from a participating institution or its students, or from a third-party servicer, as applicable;

(ii) Withhold the authority of the institution or servicer, as applicable, to contract, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds; or

(3)(ii) Withhold the authority of the institution or servicer, as applicable, to contract, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds except in accordance with a particular procedure; and

(3)(iii) Withhold the authority of the servicer...
to administer any aspect of any institution’s participation in any Title IV, HEA program; or
(ii) Withdraw the authority of the servicer to administer any aspect of any institution’s participation in any Title IV, HEA program except in accordance with a particular procedure.

(b)(1) An initiating official begins an emergency action against an institution or third-party servicer by sending the institution or servicer a notice by registered mail, return receipt requested. In an emergency action against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution or servicer, as applicable.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action, and that the institution or servicer, as applicable, may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) An initiating official takes emergency action against an institution or third-party servicer only if that official—
(i) Receives information, determined by the official to be reliable, that the institution or servicer, as applicable, is violating any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;
(ii) Determines that immediate action is necessary to prevent misuse of Title IV, HEA program funds; and
(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate, as applicable—
(A) The participation of the institution in one or more Title IV, HEA programs; or
(B) The eligibility of the servicer to contract with any institution to administer any aspect of the institution’s participation in a Title IV, HEA program.

(2) Examples of violations of a Title IV, HEA program requirement that cause misuse and the likely loss of Title IV, HEA program funds include—
(i) Causing the commitment, disbursement, or delivery by any party of Title IV, HEA program funds in an amount that exceeds—
(A) The amount for which students are eligible; or
(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Federal Stafford or Federal PLUS loan if a refund allocable to that loan had been made in the amount and at the time required;
(ii) Using, offering to make available, or causing the use or availability of Title IV, HEA program funds for educational services if—
(A) The institution, servicer, or agents of the institution or servicer have made a substantial misrepresentation as described in §§ 668.72, 668.73, or 668.74 related to those services;
(B) The institution lacks the administrative or financial ability to provide those services in full; or
(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to make all required payments under § 668.22; and
(iii) Engaging in fraud involving the administration of a Title IV, HEA program. Examples of fraud include—
(A) Falsification of any document received from a student or pertaining to a student’s eligibility for assistance under a Title IV, HEA program;
(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Secretary;
(C) Falsification, including false certifications, of any document used for or pertaining to—
(1) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or
(2) The accreditation or preaccreditation of an institution or any of the institution’s educational programs or locations;
(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan or Federal PLUS programs or an independent auditor;
(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution’s participation in a Title IV, HEA program; and
(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(3) If the Secretary begins an emergency action against a third-party servicer, the Secretary may also begin an emergency action against any institution under whose contract a third-party servicer commits the violation.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action becomes effective, an institution or third-party servicer, as applicable, may not—
(i) Make or increase awards or make other commitments of aid to a student under the applicable Title IV, HEA program;
(ii) Disburse either program funds, institutional funds, or other funds as assistance to a student under that Title IV, HEA program;
(iii) In the case of an emergency action pertaining to participation in the Federal Stafford Loan or Federal PLUS programs—
(A) Certify an application for a loan under that program;
(B) Deliver loan proceeds to a student under that program; or
(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect; or
(iv) In the case of an emergency action against a third-party servicer, administer any aspect of any institution’s participation in any Title IV, HEA program.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution or servicer to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds, or the authority of the servicer to administer any aspect of any institution’s participation in any Title IV, HEA program, except in accordance with a particular procedure specified in the notice of emergency action, the institution or servicer, as applicable, may not take any action described in paragraph (d)(1) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution or servicer, as applicable, the Secretary provides the institution or servicer, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution or servicer may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution or servicer, as applicable, has the burden of persuading the show-cause official that the emergency action
imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of Title IV, HEA program funds; or

(iii) The institution or servicer, as applicable, will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution or servicer, as applicable, and the initiating official.

(6) The show-cause official notifies the institution or servicer, as applicable, of that official’s determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action. In the case of a notice to a third-party servicer, the official also notifies each institution that contracts with the servicer of that determination. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution or servicer, as applicable, within that 30-day period, in which case the emergency action continues until a final determination is made in that proceeding, as provided in §668.90(c), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, any action affecting the emergency action is at the sole discretion of the initiating official, or, if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution or servicer, as applicable, may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration of an emergency action, or its modification or revocation by the show-cause official, does not bar subsequent emergency action on a ground other than one specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation of an agreement or limitation imposed or resulting from the prior emergency action. (Authority: 20 U.S.C. 1094)


§668.84 Fine proceedings.

(a) Scope and consequences. (1) The Secretary may impose a fine of up to $27,500 per violation on a participating institution or third-party servicer that—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a fine proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(b) Procedures. (1) A designated department official begins a fine proceeding by sending the institution or servicer, as applicable, a notice by certified mail, return receipt requested. In the case of a fine proceeding against a third-party servicer, the official also sends the notice to each institution that is affected by the alleged violations identified as the basis for the fine action, and, to the extent possible, to each institution that contracts with the servicer for the same service affected by the violation.

(2) If the institution or servicer requests a hearing but submits written material indicating why the fine should not be imposed, and

(3) In the case of a fine proceeding against a third-party servicer, informs each institution that is affected by the alleged violations of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution affected by the alleged violations that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(ii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with §668.88.

(c) Expedited proceedings. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, any time schedule specified in this section may be shortened.

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

[59 FR 22446, Apr. 29, 1994, as amended at 67 FR 69655, Nov. 18, 2002]

§668.85 Suspension proceedings.

(a) Scope and consequences. (1) The Secretary may suspend an institution’s participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution’s participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the institutions applicable to Title IV, HEA program funds; or

(c) Expedited proceedings. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, any time schedule specified in this section may be shortened.

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

[59 FR 22446, Apr. 29, 1994, as amended at 67 FR 69655, Nov. 18, 2002]
graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a suspension proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The suspension may not exceed 60 days unless—

(i) The institution or servicer and the Secretary agree to an extension if the institution or servicer, as applicable, has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) Procedures. (1) A designated department official begins a suspension proceeding by sending a notice to an institution or third-party servicer by certified mail, return receipt requested. In the case of a suspension proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. The notice—

(i) Informs the institution or servicer of the intent of the Secretary to suspend the institution’s participation or the servicer’s eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent; and

(iii) Informs the institution or servicer that the suspension will not be effective on the date specified in the notice, except as provided in § 668.90(b)(2), if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension should not take place; and

(iv) In the case of a suspension proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing, but submits written material, the designated department official receives from the institution or servicer, as applicable, the reason why the suspension should not take place; and

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) Expedit ed proceedings. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

(1) A designated department official begins a suspension proceeding by sending an notice to an institution or third-party servicer that—

(i) Informs the institution or servicer that the suspension or termination proceeding against a third-party servicer, the servicer and each institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension or termination should not take place; and

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. The termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) Expedit ed proceeding. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)
§ 668.87 Prehearing conference.
(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by—
(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or
(2) The institution or servicer, as applicable.
(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.
(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of—
(1) A conference telephone call;
(2) An informal meeting; or
(3) The submission and exchange of written material.
(Authority: 20 U.S.C. 1094)
[59 FR 22448, Apr. 29, 1994]

§ 668.88 Hearing.
(a) A hearing is an orderly presentation of arguments and evidence conducted by a hearing official.
(b) If the hearing official, the designated department official who brought a proceeding against an institution or third-party servicer under this subpart, and the institution or servicer, as applicable, agree, the hearing process may be expedited. Procedures to expedite the hearing process may include, but are not limited to, the following—
(1) A restriction on the number or length of submissions;
(2) The conduct of the hearing by telephone conference call;
(3) A stipulation by the parties to facts and legal authorities not in dispute; or
(4) A review limited to the written record.
(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.
(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.
(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.
(4) The hearing official accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.
(d) The designated department official makes a transcribed record of the proceeding and makes one copy of the record available to the institution or servicer.
(Authority: 20 U.S.C. 1094)

§ 668.89 Authority and responsibilities of the hearing official.
(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.
(b) (1) The hearing official is not authorized to issue subpoenas.
(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.
(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—
(1) Scheduling of conferences;
(2) Setting time limits for hearings and submission of written documents; and
(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.
(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—
(1) Waive applicable statutes and regulations; or
(2) Rule them invalid.
(Authority: 20 U.S.C. 1094)

§ 668.90 Initial and final decisions.
(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to—
(A) The designated department official who began a proceeding against an institution or third-party servicer;
(B) The institution or servicer, as applicable; and
(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.
(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.
(iii) The hearing official issues the decision within the latest of the following dates:
(A) The 30th day after the last submission is filed with the hearing official.
(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.
(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.
(2) The hearing official’s initial decision states whether the imposition of the fine, limitation, suspension, or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution’s participation or servicer’s eligibility, as applicable, impose one or more limitations on the institution’s participation or servicer’s eligibility.
(3) Notwithstanding the provisions of paragraph (a)(2) of this section—
(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution’s participation is warranted;
(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.82(d)(1), the hearing official also finds that termination of the institution’s participation or servicer’s eligibility, as applicable, is warranted;
(iii) If an action brought against an institution or third-party servicer involves its failure to provide surety in the amount specified by the Secretary under § 668.15, the hearing official finds that the amount of the surety established by the Secretary was appropriate, unless the institution can demonstrate that the amount was unreasonable;
(iv) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(3), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;
(v) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.15(c)(1), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.15(d)(4) have been satisfied;
(vi) In a termination action against an institution or third-party servicer on the grounds that the institution or servicer, as applicable, engaged in fraud involving the administration of any Title IV, HEA program, the hearing official finds that the termination action is warranted if the hearing official finds that the institution or servicer, as applicable, engaged in that fraud. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student’s eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document submitted to the Department of Education;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, an independent auditor, an eligible institution, or a third-party servicer;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution’s participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations; and

(vii) In a termination action against a program based on the grounds that the program does not meet the standards for gainful employment in § 668.7(a), the hearing official accepts as accurate the average annual earnings calculated by another Federal agency, so long as the Federal agency provided that calculation for the list of program completers identified by the institution and accepted by the Department. The hearing official may consider evidence from an institution about earnings from its graduates to establish a different amount for the average annual earnings of the program graduates, so long as that information is for the same individuals and determined to be reliable.

(4) The hearing official bases findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted solely through written submissions, the parties must agree to findings of fact.

(b)(1) In a suspension proceeding, the Secretary reviews the hearing official’s initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) The Secretary notifies the institution or servicer and, in the case of a suspension proceeding against a third-party servicer, each institution that contracts with the servicer of the final decision. If the Secretary suspends the institution’s participation or servicer’s eligibility, the suspension takes effect on the later of—

(i) The day that the institution or servicer receives the notice; or

(ii) The date specified in the designated department official’s original notice of intent to suspend the institution’s participation or servicer’s eligibility.

(3) A suspension may not exceed 60 days unless a designated department official begins a limitation or termination proceeding under this subpart before the expiration of that period. In that case, the period may be extended until a final decision is issued in that proceeding according to paragraph (c) of this section.

(c)(1) In a fine, limitation, or termination proceeding, the hearing official’s initial decision automatically becomes the Secretary’s final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2)(i) A party may appeal the hearing official’s initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant’s brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution’s participation or servicer’s eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (c)(2)(vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary’s decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary’s decision states the reasons for the action taken.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1082, 1094)


§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) Filing of request for hearing, show-cause opportunity, or appeal. (1) A request by an institution or third-party servicer for a hearing or show-cause opportunity, other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by
facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4) If agreed upon by the parties, service of a document required to be served on another party may be made upon the other party by facsimile transmission.

(b) Confirmation of mailing and receipt dates. (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received, as applicable—

(i) The date of receipt evidenced on the original receipt for a document sent by facsimile equipment that receives the transmission is recorded as received by the transmission.

(ii) The date of receipt evidenced on the original receipt for a document sent by next-day delivery service.

(ii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

(c) Refusals. If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

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


§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account—

(1)(i) The gravity of an institution’s or third-party servicer’s violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) The gravity of the institution’s or servicer’s misrepresentation;

(2) The size of the institution;

(3) The size of the servicer’s business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to which the servicer can document that the institution contributed to that violation; and

(5) For purposes of assessing a fine on a third-party servicer, the extent to which—

(i) Violations are caused by repeated mechanical systemic unintentional errors. The Secretary counts the total of violations caused by a repeated mechanical systemic unintentional error as a single violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system; and

(ii) The financial loss of Title IV, HEA program funds attributable to a repeated mechanical systemic unintentional error.

(b) In determining the gravity of the institution’s or servicer’s violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on—

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

(2) Required refunds, including the treatment of title IV, HEA program funds when a student withdraws under § 668.22.

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(d)(1) Notwithstanding any other provision of statute or regulation, any individual described in paragraph (d)(2) of this section, in addition to other penalties provided by law, is liable to the Secretary for amounts that should have been refunded or returned under § 668.22 of the Title IV program funds not returned, to the same extent with respect to those funds that such an individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.

(2) The individual subject to the penalty described in paragraph (d)(1) is any individual who—

(i) The Secretary determines, in accordance with § 668.174(c), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;

(ii) Is required under § 668.22 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower, or was required under § 668.22 in effect on June 30, 2000 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower; and

(iii) Willfully fails to return those funds or willfully attempts in any manner to evade that payment.

(Authority: 20 U.S.C. 1094 and 1099c)


§ 668.93 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution’s total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer’s ability to meet the servicer’s financial obligations under a contract; or

(i) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

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

[59 FR 22450, Apr. 29, 1994]

§ 668.94 Termination.

(a) A termination—

(1) Ends an institution’s participation in a Title IV, HEA program or ends a third-party servicer’s eligibility to contract with any institution to administer any aspect of the institution’s participation in a Title IV, HEA program;

(2) Ends the authority of a third-party servicer to administer any aspect of any institution’s participation in that program;
(3) Prohibits an institution or third-party servicer, as applicable, or the Secretary from making or increasing awards under that program;

(4) Prohibits an institution or third-party servicer, as applicable, from making any other new commitments of funds under that program; and

(5) If an institution’s participation in the Federal Stafford Loan Program or Federal PLUS programs has been terminated, prohibits further guarantee commitments by the Secretary for loans under that program to students to attend that institution, and, if the institution is a lender under that program, prohibits further disbursements by the institution (whether or not guarantee program, prohibits further disbursements by the institution is a lender under that program has been terminated, an institution may disburse or deliver funds under that program has been terminated, an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

If an institution’s participation in a Title IV, HEA program has been terminated, an institution or third-party servicer must—

(a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(b) After its participation in a Title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with §668.26 and with any additional requirements imposed under this part.

(c) If a third-party servicer’s eligibility is terminated, the servicer must return to each institution that contracts with the servicer any funds received by the servicer under the applicable Title IV, HEA program on behalf of the institution or the institution’s students or otherwise dispose of those funds under instructions from the Secretary. The servicer also must return to each institution that contracts with the servicer all records pertaining to the servicer’s administration of that program on behalf of that institution.

(d) If an institution’s violation in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(5) If a final decision requires an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

§668.95 Reimbursements, refunds, and offsets.

(a) The designated department official, hearing official, or Secretary may require an institution or third-party servicer to take reasonable and appropriate corrective action to remedy the institution’s or servicer’s violation, as applicable, of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, that the institution or servicer, as applicable, improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs—

(i) Ineligible interest benefits, special allowances, or other claims paid by the Secretary; and

(ii) Discounts, premiums, or excess interest paid in violation of 34 CFR part 682; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds or returns of title IV, HEA program funds required under program regulations when a student withdraws.

(ii) Any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

(d) If an institution’s violation in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(2) Meet all applicable requirements of this part; and

(3) In the case of an institution, enter into a new program participation agreement with the Secretary.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to a limitation or limitations.


§668.97 Removal of limitation.

(a) An institution whose participation in a Title IV, HEA program has been limited may not apply for removal of the limitation before the expiration of 12 months from the effective date of the limitation.

(b) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution’s participation in a Title IV, HEA program has been limited may request removal of the limitation.

(c) The institution or servicer may not apply for removal of the limitation before the later of the expiration of—

(1) Twelve months from the effective date of the limitation; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(d) If the institution or servicer requests removal of the limitation, the request must be in writing and show that the institution or servicer, as applicable, has corrected the violation or violations on which the limitation was based.

(e) No later than 60 days after the Secretary receives the request, the Secretary responds to the institution or servicer—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation or limitations.

(f) If the Secretary denies the request or establishes other limitations, the Secretary grants the institution or servicer, upon the
§ 668.98 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party’s petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party’s response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

Authority: 20 U.S.C. 1094

(Approved by the Office of Management and Budget under control number 1801–0003)


Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations


§ 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution’s participation in any Title IV, HEA program or of the servicer’s administration of any aspect of an institution’s participation in any Title IV, HEA program.

(b) This subpart applies to any participating institution or third-party servicer that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by subpart G of this part or to a determination that—

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

Authority: 20 U.S.C. 1094


§ 668.112 Definitions.

The following definitions apply to this subpart:

(a) Final audit determination means the written notice of a determination issued by a designated department official based on an audit of—

(1) An institution’s participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer’s administration of any aspect of an institution’s participation in any or all of the Title IV, HEA programs.

(b) Final program review determination means the written notice of a determination issued by a designated department official and resulting from a program compliance review of—

(1) An institution’s participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer’s administration of any aspect of an institution’s participation in any Title IV, HEA program.

Authority: 20 U.S.C. 1094

[59 FR 22452, Apr. 29, 1994]

§ 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary’s review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer shall file its request for review and any records or documentation supporting the request with the Secretary. The Secretary shall forward the request and supporting documentation to the designated department official for review.

Authority: 20 U.S.C. 1094

[59 FR 22452, Apr. 29, 1994]
materials admissible under the terms of §668.116(e) and (f), no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution’s or servicer’s position, as applicable, together with the pertinent facts and reasons supporting that position.

(d)(1) If an institution’s violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

(2) If the institution is charged with a liability as a result of an error described in paragraph (d)(1) of this section, the institution cures or corrects that error with program requirements.

(3) If an institution’s violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

§668.116 Hearing.

(a) A hearing is a process conducted by the hearing official whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the hearing official.

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(ii) Department of Education audit reports and audit work papers for audits performed by the department’s Office of Inspector General.

(ii) In the case of a third-party servicer, the servicer’s audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer.

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence that shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) of this section include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution or third-party servicer other than the institution or servicer bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution or servicer bringing the appeal in the program areas at issue in the appeal.

The hearing official may schedule an oral argument if he or she determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties’ written submissions.

(2) In the event that an oral argument is conducted, the designated department official makes a transcribed record of the proceedings and makes one copy of that record available to each of the parties to the proceeding.

(h) Any oral argument shall take place in the Washington, DC metropolitan area.
(i) Either party may be represented by counsel.

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


§ 668.117 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The hearing official is not authorized to issue subpoenas or compel discovery as provided for in the Federal Rules of Civil Procedure.

(c) The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

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


§ 668.118 Decision of the hearing official.

(a) Upon review of the parties’ written submissions and termination of the oral argument if one is held, the hearing official issues a written decision.

(b) The hearing official’s decision states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part.

(c) The hearing official bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

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


§ 668.119 Appeal to the Secretary.

(a) Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

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


§ 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may, affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary’s decision.

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

(b) If the Secretary modifies, remands, or overturns the initial decision of the hearing official, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the hearing official for further review or determination of fact, becomes final upon its issuance.

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


§ 668.121 Final decision of the Department.

(a) In the event that the initial decision of the hearing official is appealed, the decision of the Secretary is the final decision of the Department, unless the hearing official’s decision is remanded by the Secretary.

(b) In the event that the initial decision of the hearing official is not appealed within the time limit specified in §668.119(a), the initial decision automatically becomes the final decision of the Department.

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


§ 668.122 Determination of filing, receipt, and submission dates.

(a) The request for review, appeals, and other written submissions referred to in this subpart may be either hand-delivered or mailed.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates shall be based on either the date of hand-delivery or the date of receipt indicated on the original U.S. Postal Service return receipt.

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

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of §668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

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

[59 FR 22453, Apr. 29, 1994]

§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.
(b)(1) A petition for interlocutory review of an interim ruling must include the following:
(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.
(ii) A statement of the issue.
(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Approved by the Office of Management and Budget under control number 1801–0003)
(Authority: 20 U.S.C. 1094)

Subpart I—Immigration-Status Confirmation

AUTHORITY: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

SOURCE: 38 FR 3184, Jan. 7, 1993, unless otherwise noted.

§ 668.130 General.

(a) Scope and purpose. The regulations in this subpart govern the responsibilities of institutions and programs in determining the eligibility of those noncitizen applicants for title IV, HEA assistance who must, under § 668.33(a)(2), produce evidence from the United States Immigration and Naturalization Service (INS) that they are permanent residents of the United States or in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents.

(b) Student responsibility. At the request of the Secretary or the institution at which an applicant for title IV, HEA financial assistance is enrolled or accepted for enrollment, an applicant who asserts eligibility under § 668.33(a)(2) shall provide documentation from the INS of immigration status.

(Authority: 20 U.S.C. 1091, 1094)
[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§ 668.131 Definitions.

The following definitions apply to this subpart:

Eligible noncitizen: An individual possessing an immigration status that meets the requirements of § 668.33(a)(2).


Primary confirmation: A process by which the Secretary, by means of a matching program conducted with the INS, compares the information contained in an Application for Federal Student Aid or a multiple data entry application regarding the immigration status of a noncitizen applicant for title IV, HEA assistance with records of that status maintained by the INS in its Alien Status Verification Index (ASVI) system for the purpose of determining whether a student's immigration status meets the requirements of § 668.33(a)(2) and reports the results of this comparison on an output document.

Secondary confirmation: A process by which the INS, in response to the submission of INS Document Verification Form G–845 by an institution, searches pertinent paper and automated INS files, other than the ASVI database, for the purpose of determining a student’s immigration status and the validity of the submitted INS documents, and reports the results of this search to the institution.

(Authority: 20 U.S.C. 1091)

§ 668.132 Institutional determinations of eligibility based on primary confirmation.

(a) Except as provided in § 668.133(a)(1)(ii), the institution shall determine a student to be an eligible noncitizen if the institution receives an output document for that student establishing that—

(1) The INS has confirmed the student’s immigration status; and

(2) The student’s immigration status meets the noncitizen eligibility requirements of § 668.33(a)(2).

(b) If an institution determines a student to be an eligible noncitizen in accordance with paragraph (a) of this section, the institution may not require the student to produce the documentation otherwise required under § 668.33(a)(2).

(Authority: 20 U.S.C. 1091, 1094)
[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

(a) General requirements. Except as provided in paragraph (b) of this section, an institution shall require the student to produce the documentation required under § 668.33(a)(2) and request the INS to perform secondary confirmation for a student claiming eligibility under § 668.33(a)(2), in accordance with the procedures set forth in § 668.135, if—

(1) The institution—

(i) Receives an output document indicating that the student must provide the institution with evidence of the student’s immigration status required under § 668.33(a)(2); or

(ii) Receives an output document that satisfies the requirements of § 668.132(a) (1) and (2), but the institution—

(A) Has documentation that conflicts with immigration-status documents submitted by the student or the immigration status reported on the output document; or

(B) Has reason to believe that the immigration status reported by the student or on the output document is incorrect; and

(2) The institution determines that the immigration-status documents submitted by
the student constitute reasonable evidence of the student’s claim to be an eligible noncitizen.

(b) Exclusions from secondary confirmation.

(1) An institution may not require the student to produce the documentation requested under §668.33(a)(2) and may not request that INS perform secondary confirmation, if the student—

(i) Demonstrates eligibility under the provisions of §668.33(a)(1) or (b); or

(ii) Demonstrated eligibility under the provisions of §668.33(a)(2) in a previous award year as a result of secondary confirmation and the documents used to establish that eligibility have not expired; and

(iii) The institution does not have conflicting documentation or reason to believe that the student’s claim of citizenship or immigration status is incorrect.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 1840–0650)

[Authority: 20 U.S.C. 1091, 1094]


§668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

(a) An institution shall establish and use written policies and procedures for requesting proof and securing confirmation of the immigration status of applicants for title IV, HEA student financial assistance who claim to meet the eligibility requirements of §668.33(a)(2). These policies and procedures must include—

(1) Providing the student a deadline by which to provide the documentation that the student wishes to have considered to support the claim that the student meets the requirements of §668.33(a)(2);

(2) Providing to the student information concerning the consequences of a failure to provide the documentation by the deadline set by the institution; and

(3) Providing that the institution will not make a determination that the student is not an eligible noncitizen until the institution has provided the student the opportunity to submit the documentation in support of the student’s claim of eligibility under §668.33(a)(2).

(b) An institution shall furnish, in writing, to each student required to undergo secondary confirmation—

(1) A clear explanation of the documentation the student must submit as evidence that the student satisfies the requirements of §668.33(a)(2); and

(2) A clear explanation of the student’s responsibilities with respect to the student’s compliance with §668.33(a)(2), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action, as specified in §668.137.

(Approved by the Office of Management and Budget under control number 1840–0650)

[Authority: 20 U.S.C. 1091, 1092, 1094]


§668.135 Institutional procedures for completing secondary confirmation.

Within 10 business days after an institution receives the documentary evidence of immigration status submitted by a student required to undergo secondary confirmation, the institution shall—

(a) Complete the request portion of the INS Document Verification Request Form G–845;

(b) Copy front and back sides of all immigration-status documents received from the student and attach copies to the Form G–845; and

(c) Submit Form G–845 and attachments to the INS District Office.

(Approved by the Office of Management and Budget under control number 1840–0650)

[Authority: 20 U.S.C. 1091, 1094]


§668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has requested secondary confirmation under §668.133(a) shall make its determination concerning a student’s eligibility under §668.33(a)(2) by relying on the INS response to the Form G–845.

(b) An institution shall make its determination concerning a student’s eligibility under §668.33(a)(2) pending the institution’s receipt of an INS response to the institution’s Form G–845 request concerning that student, if—

(1) The institution has given the student an opportunity to submit documents to the institution to support the student’s claim to be an eligible noncitizen;

(2) The institution possesses sufficient documentation concerning a student’s immigration status to make that determination;

(3) At least 15 business days have elapsed from the date that the institution sent the Form G–845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration-status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution shall establish and use policies and procedures to ensure that, if the institution has disbursed or released title IV, HEA funds to the student in the award year, or employed the student under the Federal Work-Study Program, and the institution determines, in reliance on the INS response to the institution’s request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides the student with notice of the institution’s determination, an opportunity to contest the institution’s determination, and notice of the institution’s final determination.

(Approved by the Office of Management and Budget under control number 1840–0650)

[Authority: 20 U.S.C. 1091, 1094]

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim that the student meets the requirements of §668.33(a)(2). The deadline, set by the institution, must be not less than 30 days from the date the institution receives the student’s output document.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; certify a Federal Stafford or Federal PLUS loan application, or originate a Direct Loan Program loan application for the student for that period of enrollment.

(Approved by the Office of Management and Budget under control number 1840–0650)

[Authority: 20 U.S.C. 1091, 1094]

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§668.138 Liability.

(a) A student is liable for any LEAP, FSEOG, Federal Pell Grant, AGC, National SMART Grant, or TEACH Grant payment and for any Federal Stafford, Direct Subsidized, Direct Unsubsidized or Federal Perkins loan made to him or her if the student was ineligible for the Title IV, HEA assistance.

(b) A Federal PLUS or Direct PLUS Loan borrower is liable for any Federal PLUS or Direct PLUS Loan made to him or her on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error
in the institution’s determination that a student is an eligible noncitizen if, in making that determination, the institution followed the provisions in this subpart and relied on—

(1) An output document for that student indicating that the INS has confirmed that the student’s immigration status meets the eligibility requirements for title IV, HEA assistance;
(2) An INS determination of the student’s immigration status and the authenticity of the student’s immigration documents provided in response to the institution’s request for secondary confirmation; or
(3) Immigration-status documents submitted by the student and the institution did not have reason to believe that the documents did not support the student’s claim to be an eligible noncitizen.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any title IV, HEA disbursements made to this student during the award year or period of enrollment for which the student applied for title IV, HEA assistance.

(Authority: 20 U.S.C. 1070g, 1091, 1094)

§ 668.139 Recovery of payments and loan disbursements to ineligible students.

(a) If an institution makes a payment of a grant or a disbursement of a Federal Perkins loan to an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by—

(1) Making a reasonable effort to contact the student; and
(2) Making a reasonable effort to collect the payment or Federal Perkins loan.

(b) If an institution causes a Federal Stafford, Federal PLUS, Direct Subsidized Direct Unsubsidized, or Direct PLUS Loan disbursement to an ineligible student, the institution shall repay an amount equal to the disbursement to the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan, and provide written notice to the borrower.

(Authority: 20 U.S.C. 1070g, 1091, 1094)


§ 668.141 Scope.

This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive title IV, HEA program funds by—

(a) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(b) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(2) The procedures and conditions under which the Secretary determines that an approved test is independently administered; and

(3) The procedures and conditions under which a State determines that test score irregularities have occurred; and

(4) The information that a test publisher or a State must submit, as part of its test submission, to explain the methodology it will use for the test anomaly studies as described in § 668.144(c)(17) and (d)(8), as appropriate;

(5) The requirements that a test publisher or a State, as appropriate—

(i) Have a process to identify and follow up on test score irregularities;

(ii) Take corrective action—up to and including decertification of test administrators—if the test publisher or the State determines that test score irregularities have occurred; and

(iii) Report to the Secretary the names of any test administrators it decertifies and any other action taken as a result of test score analyses; and

(4) (c) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

§ 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A center facility that—

(1) Is located at an eligible institution that provides two-year or four-year degrees, or is a qualifies as an eligible public vocational institution, i.e., a “postsecondary vocational institution;”

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Is independent of the admissions and financial aid processes at the institution at which it is located;

(4) Is staffed by professionally trained personnel; and

(5) Uses test administrators to administer tests approved by the Secretary under this subpart.

ATB test irregularity: An irregularity that results from ATB test being administered in a manner that does not conform to the established rules for test administration consistent with the provisions of subpart J of part 668 and the test administrator’s manual.

Computer-based test: A test taken by a student on a computer and scored by a computer.

Disabled student: A student who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Independent test administrator: A test administrator who administers tests at a location other than an assessment center and who—

(1) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned for administering
approved ATB tests through an agreement with the test publisher or State and has no controlling interest in any other institution; (2) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals; (3) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and (4) Is not a current or former student of the institution.

Individual with a disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to "content," "curricula," or "basic verbal and quantitative skills," refers to the basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test: A standardized test, assessment or instrument that has formal protocols on how it is to be administered in order to be valid. These protocols include, for example, the use of parallel, equated forms; testing conditions; time allowed for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

Test administrator: An individual who may be certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or is licensed or has been authorized by the copyright holder to sell or distribute a representation of the copyright holder’s interests regarding the test.

(Authority: 20 U.S.C. 1091(d))

§ 668.143 Approval of State tests or assessments. [Reserved.]

(a) The Secretary approves tests or other assessments submitted by a State that the State uses to measure a student’s skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State.

(b) The Secretary approves passing scores or other methods of evaluation established by the State for each test or assessment described in paragraph (a) of this section.

(c) If the Secretary approves a State’s tests and assessments and the passing scores on those tests and assessments under paragraphs (a) and (b) of this section, that test or assessment may be used, for purposes of section 489(d) of the HEA, only for students who attend eligible institutions located in that State.

(d) If a State wishes to have the Secretary approve its tests or assessments under this section, the State shall—

(1) Submit to the Secretary those tests and assessments, its passing scores on those tests and assessments, and the educational standards those tests and assessments measure at such time and in such manner as the Secretary may prescribe;

(2) Provide the Secretary with an explanation of how the tests, assessments, and passing scores are appropriate in light of the State’s educational standards; and

(3) Provide the Secretary with an assurance that the tests and assessments will be administered in an independent, fair, and secure manner. (Approved by the Office of Management and Budget under control number 1840-0627.)


§ 668.144 Application for test approval.

Except as provided in § 668.143—

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test or by a State;

(b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application shall contain all the information necessary for the Secretary to evaluate and approve the test under this subpart, excluding but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable, and—

(1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests and abbreviated tests for which approval is being sought;

(2) The name, address, and telephone number and e-mail address of a contact person to whom the Secretary may address inquiries.

(3) Each edition, form, level, and sub-test of the test for which the test publisher requests approval;

(4) The distribution of test scores for each edition, form, level, or sub-test, or partial battery, for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;

(5) Documentation of test development, including a history of the test’s use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) For tests first published five years or more before the date submitted to the Secretary for review and approval, documentation of periodic reviews of the content and specifications of the test to ensure that the test continues to reflect secondary school level verbal and quantitative skills;

(9) If a test has been submitted in a revised form of the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(2)(3), and an analysis of the effects of time on performance. This description may also include the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b);

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;
(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population representative of persons who are beyond the usual age of compulsory school attendance have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the tests for persons with documented individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in §668.146(b);

(14) For performance-based tests or tests containing performance-based sections, a description of the training or certification required of test administrators and scorers by the test publisher;

(45)(14) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(46)(15) Other evidence establishing the test’s compliance with the criteria for approval of tests as provided in §668.146;

(16) A description of its test administrator certification process that provides—

(i) How the test publisher will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with this subpart and the test publisher’s requirements; and

(ii) How the test publisher will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(17) A description of the test anomaly analysis the test publisher will conduct and submit to the Secretary that includes—

(i) An explanation of how the test publisher will identify potential test irregularities and make a determination that test irregularities

have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a certified test administrator) when the test publisher determines that test irregularities have occurred; and

(iii) Information on when and how the test publisher will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that test publisher, that the test administrator has been decertified; and

(iv) An explanation of any accessible technologies that are available to accommodate individuals with disabilities; and

(v) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes, and

(10) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries.

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the State.

Editorial Note: The word “the” should be capitalized.
§ 668.145 Test approval procedures.

Except as provided in § 668.143—

(a)(1) When the Secretary receives a complete application from a test publisher or a State, the Secretary selects one or more experts in the field of educational testing and assessment, who possess adequate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in § 668.146, 668.147, 668.148, or 668.149, as applicable, and to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in § 668.148 and 668.149;

(2) If the test involves a language other than English, the Secretary selects at least one individual who is fluent in the language in which the test is written to collaborate with the testing expert or experts described in paragraph (a)(1) of this section who is fluent in the language in which the test is written and to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in § 668.148 and 668.149;

(3) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those sub-tests covering the verbal and quantitative domains.

(b) The Secretary determines whether the test publisher's test meets the criteria and requirements for test approval after taking the advice of the experts into account.

(c)(1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and publishes the name of the test and the passing scores in the Federal Register.

(2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary advises the test publisher or the State, as applicable, of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(3) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary advises the test publisher or the State that submitted the test for approval may request that the Secretary review the Secretary's decision. Such a request must be accompanied by—

(i) Documentation and information that address the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(d)(1) The Secretary approves a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher or approval of the test is published in the Federal Register.

(2) The Secretary extends the approval period of a test to include the period of review if the test publisher or the State, as applicable, re-submits the test for review and approval under § 668.144 at least six months before the date on which the test approval is scheduled to expire.

(e)(d)(1) The Secretary's approval of a test may be withdrawn or revoked if the Secretary determines that the test publisher or the State violated any terms of the agreement described in § 668.150, or that the information the test publisher or the State submitted as a basis for approval of the test was inaccurate or, that the test publisher or the State substantially changed the test and did not resubmit the test, as revised, for approval.

(2) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the Federal Register. The revocation becomes effective—

(i) 120 One hundred and twenty days from the date the notice of revocation is published in the Federal Register, or

(ii) An earlier date specified by the Secretary in a notice published in the Federal Register.

(g) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those sub-tests covering verbal and quantitative domains.

(1) Approve a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher or approval of the test is published in the Federal Register, and

(2) Approve a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher or approval of the test is published in the Federal Register, except as provided in § 668.143(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.

(3) Approve a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher or approval of the test is published in the Federal Register, except as provided in § 668.143(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.

(b) To be approved under this subpart, a test shall must—

(1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (b)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) If Have, in the case of a test that is revised, issue new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores; and

(6) Meet all primary and applicable conditional and secondary standards for test construction provided in the 1985 1999 edition of the Standards for Educational and Psychological Testing, with amendments dated June 2, 1999, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Office of Postsecondary Education Federal Student Aid, Room 4318, ROB-3 1100 Independence Avenue, S.W. 830 First Street NE., Washington, D.C. 20202 20002, phone (202) 377-4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 1-866-272-6727, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. The standards document also may be obtained from the American Psychological Educational Research

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
§ 668.148 Additional criteria for the approval of certain tests.

Except as provided in § 668.143—

(a) In addition to satisfying the criteria in § 668.146, to be approved by the Secretary, a test or a test publisher must meet the following criteria, if applicable:

(i) In the case of a test that is performance-based, or includes performance-based sections, for measuring writing, speaking, or quantitative problem-solving skills, the test publisher must provide—

(A) A minimum of four parallel forms of the test; and

(B) A description of the training provided to test administrators, and the criteria under which trained individuals are certified to administer and score the test.

(ii) A contemporary sample that is representative of the population of high school graduates in the United States.

(iii) If translated from an English version, supported by documentation detailing the development of normative data:

(A) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(B) Supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(C) Developed in accordance with guidelines provided in the 1985 1999 edition of the "Testing Individuals of Diverse Linguistic Minities Backgrounds" section of the Standards for Educational and Psychological Testing, with amendments dated June 2, 1989, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 52(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Office of Postsecondary Education Federal Student Aid, Room 4318, ROB - 3 113F, 800 Independence Avenue, S.W., 830 First Street, N.E., Washington, D.C. 20202 20002, phone (202) 377-4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or 202-672-7840, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. The standards document also may be obtained from the American Psychological Educational Research Association, Inc., 750 First Street, N.W., Washington, D.C. 20026 at http://www.aera.net; and

(iv) A test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—

(A) Recognized as a pre-college-level language proficiency test;

(B) A contemporary sample that is representative of the population of non-English speaking individuals who speak a language other than Spanish and who have a high school diploma. The sample upon which the recommended provisional passing score is based must be large enough to produce stable norms.

(B) In the case of a test that is modified for use for persons individuals with disabilities, the test publisher or State must—

(i) Follow guidelines provided in the "Testing People Who Have Handicapping Conditions Individuals With Disabilities" section of the Standards for Educational and Psychological Testing; and

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(iii) Recommend passing score(s) based on the previous performance of test-takers.

(c) In order for a test to be approved under this subpart, a test publisher or a State shall—

(1) Include in the test booklet or package—

(i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in §§668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date on that the test is submitted to the Secretary for approval under § 668.144;

(4) Norm the test with—

(i) Groups that were are of sufficient size to produce defensible standard errors of the mean and were are not disproportionately composed of any race or gender; and

(ii) A contemporary sample that is representative of the population of persons who are beyond the usual age of compulsory school attendance have earned a high school diploma in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either—

(i) A passing score for each sub-test; or

(ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

(Authority: 20 U.S.C. 1091(d))

§ 668.147 Passing scores.

Except as provided in §§668.143 and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered by the institution, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean score for a sample of students with high school diplomas individuals who have taken the test within the three years before the date on which the test is submitted to the Secretary for approval. The sample must be representative of the population of high school graduates in the United States.

(Authority: 20 U.S.C. 1091(d))
§ 668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available individuals with disabilities.

If no test is reasonably available for persons with disabilities, and the Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of disabled students individuals with disabilities to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test developer, provided that the test publisher or State, as applicable, must—

(i) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and

(ii) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator.

(3) Only the test administrator who—

(i) Has given the test in violation of the terms and conditions of the agreement; or

(ii) Has compromised the integrity of the test procedure, or instrument measures both basic verbal and quantitative skills at the secondary school level.

(4) The passing scores and the methods for determining the passing scores are fully documented.

§ 668.150 Agreement between the Secretary and a test publisher or State.

(a) If the Secretary approves a test under this subpart, the test publisher or the State that submitted the test must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student’s eligibility for Title IV, HEA program funds.

(b) The agreement between a test publisher or a State, as applicable, and the Secretary provides that the test publisher or the State, as applicable, shall—

(i) Allow only test administrators that it certifies to give its test;

(ii) Require each test administrator it certifies to—

(1) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and

(2) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator;

(3) Only certify test administrators who have—

(i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's or State’s testing requirements; and

(ii) The ability and facilities to keep its test secure against disclosure or release; and

(4) Score a test answer sheet that it scores for these testing procedures or instruments to be those recommended by the test developer, provided that the test publisher or State, as applicable, must—

(i) Use those procedures or instruments; and

(ii) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and

(iii) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator.

(5) If a computer-based test is used, provide the test administrator with software that will—

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher or the State, as applicable, a secure, write-protected diskette copy record of the test taker's performance on each test item and the test taker's test scores using a data transfer method that is encrypted and secure; and

(iii) Prohibit any changes in test taker responses or test scores.

(6) Promptly send to the student and the institution the student indicated he or she is
attending or scheduled to attend a notice stating the student’s score for the test and whether or not the student passed the test; (7)(2) Keep for a period of three years each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test for a period of three years from the date the analysis of the test results, described in paragraph (b)(13) of this section, was sent to the Secretary; (8)(13) Three years after the date the Secretary approves the test and for each subsequent three-year period, analyze the test scores of students who take the test to determine whether the test scores and data produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis within 18 months after the test was approved and every 18 months thereafter during the period of test approval; and (9)(14) Upon request, give the Secretary, a guaranty State agency, or an accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of the institution, the test publisher, or a test administrator; (15) Immediately report to the Secretary if the test publisher or the State finds any credible information indicating that a test has been compromised; (16) Immediately report to the Office of Inspector General of the Department of Education for investigation if the test publisher or the State finds any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud, or other misconduct; and (17) Require a test administrator who provides a test to an individual with a disability who requires an accommodation in the test’s administration to report to the test publisher or the State within the time period specified in § 668.151(b)(2) or § 668.152(b)(2), as applicable, the nature of the disability and the accommodations that were provided. (c)(1) The Secretary may terminate an agreement with a test publisher or a State, as applicable, if the test publisher or the State fails to carry out the terms of the agreement described in paragraph (b) of this section. (2) Before terminating the agreement, the Secretary gives the test publisher or the State, as applicable, the opportunity to show that it has not failed to carry out the terms of its agreement. (3) If the Secretary terminates an agreement with a test publisher or a State under this section, the Secretary notifies institutions through publication in the Federal Register specifying when they institutions may no longer use the test publisher’s or the State’s test(s) for purposes of determining a student’s eligibility for Title IV, HEA program funds. (Approved by the Office of Management and Budget under control number 1840-06273845-0546) (Authority: 20 U.S.C. 1091(d)) (90 FR 31842, Dec. 1, 1995, as amended at 61 FR 34035, June 19, 1996) § 668.151 Administration of tests. (a)(1) To establish a student’s eligibility for Title IV, HEA program funds under this section, if a student has not passed an approved state test, under § 668.143, an institution must select a certified test administrator to give an approved test. (2) An institution may use the results of an approved test it received from an approved test publisher or assessment center to determine a student’s eligibility to receive Title IV, HEA program funds if the test was independently administered and properly administered in accordance with this section. (b) The Secretary considers that a test is independently administered if the test is— (1) Given at an assessment center by a certified test administrator who is an employee of the center; or (2) Given by an independent test administrator who— maintains the test at a secure location and submits the test for proper administration, and provide the test publisher or the State with a copy of this analysis in accordance with this section; has no interest in an institution, its affiliates, or its parent corporation other than the interest obtained through its employment; and in a manner that ensures the integrity and security of the test; (3) Makes the test available only to a test-taker, and then only during a regularly scheduled test; (4) Secures the test against disclosure or release; and (5) Submits the completed test or, for a computer-based test, a record of test scores, to the test publisher or the State, as applicable, within two business days after test administration, the time period specified in § 668.152(b) or paragraph (b)(2) of this section, as appropriate, and in accordance with the test publisher’s or the State’s instructions; and (6) Upon request, give the Secretary, guaranty agency, licensing agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of the institution, or test publisher. (e) Except as provided in § 668.152, a certified independent test administrator may not score a test. (f) An student individual who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test’s publisher or the State responsible for the test. (g) An institution shall maintain a record for each student individual who took a test under this subpart. Of The record must include— (1) The test taken by the student individual; (2) The date of the test; and (3) The student’s scores as reported by the test publisher, assessment center, or the State; (4) The name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the
§ 668.152 Administration of tests by assessment centers.

(a)(4) If a test is given by an assessment center, the assessment center shall must properly administer the test as described in § 668.151(d) and § 668.153, if applicable.

(2) [Reserved]

(b)(1) Unless an agreement between a test publisher or the State, as applicable, and an assessment center indicates otherwise, an assessment center scores the tests it gives and promptly notifies the institution and the student of the student’s score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide annually weekly to the test publisher or the State, as applicable—

(i) All copies of the completed tests, including the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable; or

(ii) A report listing all test-takers’ scores and institutions to which the scores were sent and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable.

(Approved by the Office of Management and Budget under control number 1480-06271845-0049)

§ 668.153 Administration of tests for students individuals whose native language is not English or for persons individuals with disabilities.

(a) Students Individuals whose native language is not English. For an student individual whose native language is not English and who is not fluent in English, the institution shall must use the following tests, as applicable:

(1) If the student individual is enrolled or plans to enroll in a program conducted entirely in his or her native language, the student individual must take a test approved under § 668.146 and 668.148(a)(1) or 668.149(b).

(2) If the student individual is enrolled or plans to enroll in a program that is taught in English with an ESL component, and the student is enrolled in that program and the ESL component, the student individual must take either an ESL test—English language proficiency assessment approved under § 668.149(b), or a test in the student’s native language and, before beginning the portion of the program taught in English, a test approved under § 668.146, 668.148 or 668.149.

(3) If the student individual is enrolled or plans to enroll in a program that is taught in English without an ESL component, or the student individual does not enroll in the ESL component and the institution offers such a component, the student individual must take a test in English approved under § 668.146.

(4) If the student individual enrolls in an ESL program, the student individual must take an ESL test approved under § 668.148(b).

(5) If the individual or plans to enroll in a program that is taught in the student’s native language that either has an ESL component or a portion of the program will be taught in English, the individual must take an English proficiency test approved under § 668.148(b) prior to beginning the portion of the program taught in English.

(b) Persons Individuals with disabilities. (1) For an individual with a disability who has neither a high school diploma nor its equivalent and who is applying for Title IV, HEA program funds and seeks to show his or her ability to benefit through the testing process in any way; or

(a) The institution used a test administrator who was not administered independently of the institution at the time the test was given in accordance with § 668.151(b).

(b) The institution or an employee of the institution Compromised the testing process in any way; or

(c) The institution is unable to document that the student received a passing score on an approved test.

(2) The test must reflect the student’s individual’s skills and general learned abilities rather than reflect the student’s impairment.

(3) The institution shall document that a student is disabled and unable to be evaluated by the use of a conventional test from the list of tests approved by the Secretary. The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—taking an approved test, or is unable to be evaluated by the use of an approved ATB test.

(4) Documentation of an student’s impairment individual’s disability may be satisfied by—

(i) A written determination, including a diagnosis and recommended information about testing accommodations, if such accommodation information is available, by a licensed psychologist or medical physician; or

(ii) A record of such a determination by an elementary or secondary school the disability from a local or State educational agency, or other government agency, such as the Social Security Administration, or a vocational rehabilitation agency, that identifies the individual’s disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1480-06271845-0049)

(Authority: U.S.C. 1091(d))

§ 668.154 Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution—

(a) The institution used a test administrator who was not administered independently of the institution at the time the test was given in accordance with § 668.151(b).

(b) The institution or an employee of the institution Compromised the testing process in any way; or

(c) The institution is unable to document that the student received a passing score on an approved test.

(2) The test must reflect the student’s individual’s skills and general learned abilities rather than reflect the student’s impairment.

(3) The institution shall document that a student is disabled and unable to be evaluated by the use of a conventional test from the list of tests approved by the Secretary. The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—taking an approved test, or is unable to be evaluated by the use of an approved ATB test.

(4) Documentation of an student’s impairment individual’s disability may be satisfied by—

(i) A written determination, including a diagnosis and recommended information about testing accommodations, if such accommodation information is available, by a licensed psychologist or medical physician; or

(ii) A record of such a determination by an elementary or secondary school the disability from a local or State educational agency, or other government agency, such as the Social Security Administration, or a vocational rehabilitation agency, that identifies the individual’s disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1480-06271845-0049)

(Authority: U.S.C. 1091(d))

§ 668.155 Transitional rule for the 1996–97 award year. [Reserved]

(a) Notwithstanding any other provision of this part, an institution may continue to base an eligibility determination under section 484(d) of the HEA for a student on a test that was an approved test as of June 30, 1996, and the passing score on that test, until 60 days after the Secretary publishes in the FEDERAL REGISTER the name of an approved test and the passing score on that test that is appropriate for that student.

(b) If an institution properly based a student’s eligibility determination for purposes of section 484(d) of the HEA on a test and passing score that was in effect on June 30, 1996, the institution does not have to redetermine the student’s eligibility based upon a test and passing score that was approved under §§ 668.143 through 668.149.

(Authority: U.S.C. 1091(d))

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
§ 668.156 Approved State process.
(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student’s eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State’s process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State’s process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services—

(1) Orientation regarding the institution’s academic standards and requirements, and student rights;

(2) Assessment of each student’s existing capabilities through means other than a single standardized test;

(3) Tutoring in basic verbal and quantitative skills, if appropriate;

(4) Assistance in developing educational goals;

(5) Counseling, including counseling regarding the appropriate class level for that student given the student’s individual’s capabilities; and

(6) Follow-up by teachers and counselors regarding the student’s classroom performance and satisfactory progress toward program completion.

(d) A State process must—

(1) Monitor on an annual basis each participating institution’s compliance with the requirements and standards contained in the State’s process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State’s request for approval of its State’s process within six months after the Secretary’s receipt of that request. If the Secretary does not respond by the end of six months, the State’s process becomes effective if deemed to be approved.

(2) An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart—

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves, nor does not nor disapproves, the process during that six month period.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State shall must calculate the success rates as referenced in paragraph (b) of this section by—

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and—

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(ii) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions’ refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(60 FR 61843, Dec 1, 1995, as amended at 61 FR 31035, June 19, 1996)

Subpart K—Cash Management
SOURCE: 61 FR 60603, Nov. 29, 1996, unless otherwise noted.

§ 668.161 Scope and purpose cash management rules.
(a) General. (1) This subpart establishes the rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. This subpart is intended to—

(i) Promote sound cash management of title IV, HEA program funds by an institution;

(ii) Minimize the financing costs to the Federal Government of making title IV, HEA program funds available to a student or an institution; and

(iii) Minimize the costs that accrue to a student under a title IV, HEA loan program.

(2) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(3) As used in this subpart—

(i) The title IV, HEA programs include only the Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs;

(ii) The term “parent” means a parent borrower under the PLUS programs;

(iii) With regard to the FFEL Programs, the term “disburse” means the same as deliver loan proceeds under 34 CFR part 682 of the FFEL Program regulations; and

(iv) A day is a calendar day unless otherwise specified.

(4) An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under
the FWS Program instead of the disbursement procedures in §§ 668.164(a), (b), and (d) through (g) and 668.165.

(b) Federal interest in title IV, HEA program funds: Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries, the Secretary, or lender or a guaranty agency under the FFEL programs. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1070g, 1094)


§ 668.162 Requesting funds.

(a) General. (1) The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance, reimbursement, just-in-time, or cash monitoring payment methods.

(2) Each time an institution requests funds from the Secretary, the institution must identify the amount of funds requested by program and fiscal year designation that the Secretary assigned to the authorization for those funds.

(b) Advance payment method. Under the advance payment method—

(1) An institution submits a request for funds to the Secretary. The institution’s request for funds may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to a bank account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) Just-in-time payment method. Under the just-in-time payment method—

(1) For each student or parent that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student or parent. As part of those records, the institution reports the date and amount of the disbursements that it will make or has made to that student or that student’s parent;

(2) For each record the Secretary accepts for a student or parent, the Secretary provides by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement;

(3) When the institution receives the funds for each record accepted by the Secretary, the institution may disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement; and

(4) The institution must report any adjustment to a previously accepted record within the time established by the Secretary in a notice published in the FEDERAL REGISTER.

(d) Reimbursement payment method. Under the reimbursement payment method—

(1) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student’s account or paid a student or parent directly with its own funds;

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(3) As part of the institution’s reimbursement request, the Secretary requires the institution to—

(i) Identify the students for whom reimbursement is sought; and

(ii) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(4) The Secretary approves the amount of the institution’s reimbursement request for a student or parent and pays the institution for the amount of those funds.

§ 668.163 Maintaining and accounting for funds.

(a)(1) Bank or investment account. An institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

(2) For each bank or investment account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each account the phrase “Federal Funds”; or

(ii) Notifying the bank or investment company of the accounts that contain title IV, HEA program funds and retaining a record of that notice; and

(B) Except for a public institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintaining a copy of that statement.

(b) Separate bank account. The institution may require an institution to maintain title IV, HEA program funds in a separate bank or investment account that contains no other funds if the Secretary determines that the institution failed to comply with—
(1) The requirements in this subpart;
(2) The recordkeeping and reporting requirements in subpart B of this part; or
(3) Applicable program regulations.

(c) Interest-bearing or investment account. (1) An institution must maintain the Fund described in §674.8(a) of the Federal Perkins Loan Program regulations in an interest-bearing bank account or investment account accounting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on Fund proceeds are retained by the institution as part of the Fund.

(2) Except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

(3) An institution does not have to maintain Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—
(i) The institution draws down less than a total of $3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;
(ii) The institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year; or
(iii) The institution requests those funds from the Secretary under the just-in-time payment method.

(4) If an institution maintains Direct Loan, Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial $250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over $250.

(d) Accounting and internal control systems and financial records. (1) An institution must maintain accounting and internal control systems that—
(i) Identify the cash balance of the funds of each title IV, HEA program that are included in the institution’s bank or investment account as readily as if those program funds were maintained in a separate account; and
(ii) Identify the earnings on title IV, HEA program funds maintained in the institution’s bank or investment account.

(2) An institution must maintain its financial records in accordance with the provisions under §688.24.

(e) Standard of conduct. An institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

(Authority: 20 U.S.C. 1070g, 1091, 1094)


§688.164 Disbursing funds.

(a) Disbursement. (1) Except as provided in paragraph (a)(2) of this section, an institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student’s account at the institution or pays a student or parent directly with—
(i) Funds received from the Secretary;
(ii) Funds received from a lender under the FFEL Programs; or
(iii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2) If, earlier than 10 days before the first day of classes of a payment period, or for a student subject to the requirements of §682.604(c)(5) or §685.303(b)(4) earlier than 30 days after the first day of the payment period, an institution credits a student’s institutional account with institutional funds in advance of receiving title IV, HEA program funds, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes, or the 30th day after the beginning of the payment period for a student subject to the requirements of §682.604(c)(5) or §685.303(b)(4).

(b) Disbursements by payment period. (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. An institution must disburse title IV, HEA program funds once each payment period unless—
(i) For FFEL and Direct Loan funds, 34 CFR 682.604(c)(6)(ii) or 34 CFR 685.301(b)(3) applies;
(ii) For Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant funds, an institution chooses to make more than one disbursement in each payment period in accordance with 34 CFR 674.16(b)(3), 34 CFR 676.16(a)(3), 34 CFR 690.76, or 34 CFR 691.76, as applicable; or
(iii) Other program regulations allow or require otherwise.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(c) Direct payments. (1) An institution pays a student or parent directly by—
(i) Releasing to the student or parent a check provided by a lender to the institution under the FFEL Program;
(ii) Issuing a check payable to and requiring the endorsement of the student or parent. An institution issues a check on the date that it—
(A) Mails the check to the student or parent; or
(B) Notifies the student that the check is available for immediate pickup at a specified location at the institution. The institution may hold the check for up to 21 days after the date it notifies the student. If the student does not pick up the check within this 21-day period, the institution must immediately mail the check to the student or parent, initiate an EFT to the student’s or parent’s bank account, or return the funds to the appropriate title IV, HEA program;
(iii) Initiating an EFT to a bank account designated by the student or parent; or
(iv) Dispensing cash for which the institution obtains a signed receipt from the student or parent.

(2) For purposes of this section, “bank account” means an account insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). This account may be a checking, savings, or similar account that underlies a stored-value card or other transaction device.

(3) An institution may establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay the disbursement of title IV, HEA program funds to students. Consequently, if a student does not comply with the institution’s policy, the institution must nevertheless disburse the funds to the student using a method described in paragraph (c) of this section in accordance with any timeframes required under subpart k of this part. In cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must—
(i) Obtain in writing affirmative consent from the student or parent to open that account;
(ii) Before the account is opened, inform the student or parent of the terms and conditions associated with accepting and
using the account;
(iii) Not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;
(iv) Ensure that the student or parent does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of automated teller machine (ATM) card, or similar transaction device that is used to access the funds in that account;
(v) Ensure that the student has convenient access to a branch office of the bank or an ATM of the bank in which the account was opened (or an ATM of another bank), so that the student does not incur any cost in making cash withdrawals from that office or these ATMs. This branch office or these ATMs must be located on the institution’s campus, in institutionally-owned or operated facilities, or, consistent with the meaning of the term “Public Property” as defined in § 682.604(c), immediately adjacent to and accessible from the campus;
(vi) Ensure that the debit, stored-value or ATM card, or other device can be widely used, e.g., the institution may not limit the use of the card or device to particular vendors; and
(vii) Not market or portray the account, card, or device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument.

(d) Crediting a student’s account at the institution. An institution may use title IV, HEA program funds to credit a student’s account at the institution to satisfy—

(1) Current year charges for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board;

(iii) Room, if the student contracts with the institution for room; and

(iv) If the institution obtains the student’s or parent’s authorization under § 686.165(b), other educationally related charges incurred by the student at the institution; and

(2) Prior award year charges for a total of not more than $200 for—

(i) Tuition and fees, room, or board; and

(ii) If the institution obtains the student’s or parent’s authorization under § 686.165(b), other educationally related charges incurred by the student at the institution.

(e) Credit balances. Whenever an institution disburses title IV, HEA program funds by crediting a student’s account and the total amount of all title IV, HEA program funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but—

(1) No later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(2) No later than 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(f) Early disbursements. Except as provided under paragraph (f)(3) of this section—

(1) If a student is enrolled in a credit-hour educational program that is offered in semester, trimester, or quarter academic terms, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is 10 days before the first day of classes for a payment period.

(2) If a student is enrolled in a credit-hour educational program that is not offered in semester, trimester, or quarter academic terms, or in a clock hour educational program the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of—

(i) Ten days before the first day of classes of the payment period; or

(ii) The date the student completed the previous payment period for which he or she received title IV, HEA program funds, except that this provision does not apply to the payment of Direct Loan or FFEL program funds under the conditions described in 34 CFR 685.301(b)(3)(ii), (b)(5), and (b)(6) and 34 CFR 682.604(c)(6)(ii), (c)(7), and (c)(8), respectively.

(3) The earliest an institution may disburse the initial installment of a loan under the Direct Loan or FFEL programs to a first-year, first-time borrower as described in 34 CFR 682.604(c) and 34 CFR 685.303(b)(4) is 30 days after the first day of the student’s program of study.

(g) Late disbursements.—(1) Ineligible student. For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, ACG, National SMART Grant, FSEOG, Federal Perkins Loan, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) Conditions for a late disbursement. Except as limited under paragraph (g)(4) of this section, a student who becomes ineligible (or the student’s parent in the case of a PLUS loan) qualifies for a late disbursement if, before the date the student became ineligible—

(i) Except in the case of a parent PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and

(ii) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan;

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student; or

(C) For an award under the TEACH Grant program, the institution originates the award to the student.

(3) Making a late disbursement. Provided that the conditions described in paragraph (g)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 686.22(a)(4) in accordance with the provisions of § 686.22(a)(5);

(ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV, HEA program funds that the student (or parent) was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student’s account to pay for current and allowable charges as described in paragraph (d) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.

(4) Limitations. (i) An institution may not make a late disbursement later than 180 days after the date of the institution’s determination that the student withdrew, as provided in § 686.22, or for a student who did not withdraw, 180 days after the date the student otherwise becomes ineligible.

(ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan programs unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan programs if the student was a
first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30- day delayed disbursement requirements under § 682.604(c)(5)(i), (ii), or (iii) or § 685.303(b)(4)(i)(A), (B), or (C) of this chapter.

(iv) An institution may not make a late disbursement of a Federal Pell Grant, an AGG, or a National SMART Grant, any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the FEDERAL REGISTER.

(h) Returning funds. (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary, lender, or guaranty agency, any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent but the student or parent does not receive or negotiate those funds. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an institution attempts to disburse the funds by check and the check is not cashed, the institution must return the funds no later than 240 days after the date it was issued.

(3) If a check is returned to the institution, or an EFT is rejected, the institution may make additional attempts to disburse the funds, provided that those attempts are made no later than 45 days after the funds were returned or rejected. In cases where the institution does not make another attempt, the funds must be returned before the end of this 45 day period; and

(ii) No later than the 240 day period described in paragraph (h)(2) of this section, the institution must cease any additional disbursement attempts and immediately return those funds.

(i) Provisions for books and supplies. (1) An institution must provide a way for a Federal Pell Grant eligible student to obtain or purchase, by the seventh day of a payment period, the books and supplies required for the payment period if, 10 days before the beginning of the payment period—

(I) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (e) of this section.

(2) The amount the institution provides to the Federal Pell Grant eligible student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which a Federal Pell Grant eligible student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph.

(4) If a Federal Pell Grant eligible student uses the way provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (d)(1)(iv) of this section and §686.165(b) for this purpose.

(Authority: 20 U.S.C. 1070g, 1094)

§ 668.165 Notices and authorizations.

(a) Notices. (1) Before an institution disburse title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan or FFEL Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(4), if an institution credits a student’s account at the institution with Direct Loan, FFEL, Federal Perkins Loan, or TEACH Grant Program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student’s right or parent’s right to cancel all or a portion of that loan, loan disbursement TEACH Grant, or TEACH Grant disbursement and have the loan proceeds returned to the holder of that loan, the TEACH Grant proceeds returned to the Secretary. However, if the institution releases a check provided by a lender under the FFEL Program, the institution is not required to provide this information; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student’s account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request—

(A) The later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan disbursement after the period set forth in paragraph (a)(4)(ii)A) or (B) of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for an award year before the institution credits the student’s account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(b) Student or parent authorizations. (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student’s or parent’s title IV, HEA program funds to pay for charges described in §688.164(d)(2) that are included in that
authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student or parent any title IV, HEA program, funds that would otherwise be paid directly to the student or parent under § 686.164(e).

Under this provision, the institution may issue a stored-value card or other similar device that allows the student or parent to access those funds at his or her discretion to pay for educationally related expenses.

(2) In obtaining the student’s or parent’s authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization; (ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under § 686.164(d), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(iii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(iii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

(Approved by the Office of Management and Budget under control number (b) 1845-0038)

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


§ 686.166 Excess cash.

(a) General. (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan Program funds, that an institution does not disburse to students or parents by the end of the third business day following the date the institution—

(i) Received those funds from the Secretary; or

(ii) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds received from the Secretary, such as those resulting from award adjustments, recoveries, or cancellations.

(2) The provisions of this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) Excess cash tolerances. An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount remaining in its account after the seven-day tolerance period.

(c) Consequences for maintaining excess cash. Upon a finding that an institution maintains excess cash for any amount or timeframe over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Secretary incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or cash monitoring payment method described in § 686.163(d) and (e), respectively.

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

[72 FR 62030, Nov. 1, 2007]

§ 686.167 FFEL Program funds.

(a) Requesting FFEL Program funds. In certifying a loan application for a borrower under § 682.603—

(1) An institution may not request a lender to provide it with loan funds by EFT or master check earlier than—

(i) Twenty-seven days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirteen days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

(2) An institution may not request a lender to provide it with loan funds by check requiring the endorsement of the borrower earlier than—

(i) The first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirty days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

(3)(i) An institution may not request a lender to provide it with loan funds by EFT or master check for any Federal PLUS Program loan earlier than 13 days before the first day of classes for any payment period.

(ii) An institution may not request a lender to provide with loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than 30 days before the first day of classes for any payment period.

(b) Returning funds to a lender. (1) Except as provided in paragraph (c)(1) of this section, an institution must return FFEL Program funds to a lender if the institution does not disburse those funds to a student or parent for a payment period within—

(i) Ten business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT or master check on or after July 1, 1997 but before July 1, 1999;

(ii) Three business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT and master check on or after July 1, 1999; or

(iii) Thirty days after the institution receives the funds if a lender provides those funds by a check payable to the borrower or copayable to the borrower and the institution.

(2) If the institution does not disburse the loan funds as specified in paragraph (b)(1) or (c) of this section, the institution must return those funds to the lender promptly but no later than 10 business days after the date the institution is required to disburse the funds.

(3) If an institution must return loan funds to the lender under paragraph (b)(2) of this
section and the institution determines that the student is eligible to receive the loan funds, the school may disburse the funds to the student or parent rather than return them to the lender provided the funds are disbursed prior to the end of the applicable timeframe under paragraph (b)(2) of this section.

(c) Delay in returning funds to a lender. An institution may delay returning FFEL Program funds to a lender because the student did not complete the required number of clock or credit hours in a preceding payment period; and

(B) The institution expects the student to complete required hours within this 10-day period; or

(ii)(A) The institution has not met all the FFEL Programs eligibility requirements; and

(B) The institution expects the student to meet those requirements within this 10-day period; or

(ii) Thirty days after the date set forth in paragraph (b) of this section for funds a lender provides by EFT or master check if the Secretary places the institution under the reimbursement payment method under paragraph (d) or (e) of this section.

(d) An institution placed under the reimbursement payment method. (1) If the institution places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-based programs, the institution—

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower’s loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary’s approval of a disbursement or certification request, the Secretary may—

(i) Prohibit the institution from endorsing a master check or obtaining a borrower’s endorsement of any loan check the institution receives from a lender; and

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under §668.163; and

(iii) Prohibit the institution from certifying a borrower’s loan application.

(e) An institution participating solely in the FFEL Programs. If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to monitor strictly the institution’s participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

(f) An institution placed under the cash monitoring payment method. The Secretary may require an institution that is placed under the cash monitoring described under paragraph §668.162(e), to comply with the disbursement and certification provisions under paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the institution’s disbursement or certification request. (Approved by the Office of Management and Budget under control number 1840-0079)

(i) Thirty days after the date set forth in paragraph §668.162(e), to comply with the disbursement and certification provisions under paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the institution’s disbursement or certification request.

(ii) A ten-day timeframe under paragraph (b)(2) of this section and the institution determines that there is a need to monitor strictly the institution’s participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

Subpart L—Financial Responsibility

§668.171 General.

(a) Purpose. To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution’s ability to—

(1) Provide the services described in its official publications and statements;

(2) Administer properly the title IV, HEA programs in which it participates; and

(3) Meet all of its financial obligations.

(b) General standards of financial responsibility. Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution’s Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under §668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV HEA program funds, as provided under §668.173;

(3) The institution is current in its debt payments. An institution is not current in its debt payments if—

(i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or

(ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; and

(4) The institution is meeting all of its financial obligations, including but not limited to—

(i) Refunds that is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under 34 CFR 668.22; and

(ii) Repayments to the Secretary for debts and liabilities arising from the institution’s participation in the title IV, HEA programs.

(c) Public institutions. (1) The Secretary considers a domestic public institution to be financially responsible if the institution—

(i)(i)(A) Requires the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(ii)(B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(ii) Is not in violation of any past performance requirement under §668.174.

(2) The Secretary considers a foreign public institution to be financially responsible if the institution—

(i) Requires the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and

(ii) Is not in violation of any past performance requirement under §668.174.

(d) Audit opinions and past performance provisions. Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if—
(1) In the institution’s audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimer opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines that a qualified or disclaimer opinion does not have a significant bearing on the institution’s financial condition; or

(2) As provided under the past performance provisions in § 668.174(a) and (b)(1), the institution violated a title IV, HEA program requirement, or the persons or entities affiliated with the institution owe a liability for a violation of a title IV, HEA program requirement.

(e) Administrative actions. If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution’s participation in title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d).

(Approved by the Office of Management and Budget under control number 1840–0037)


§ 668.172 Financial ratios.

(a) Appendices A and B. ratio methodology. As provided under appendices A and B to this subpart, the Secretary determines an institution’s composite score by—

(1) Calculating the result of its Primary Reserve, Equity, and Net Income ratios, as described under paragraph (b) of this section;

(2) Calculating the strength factor score for each of those ratios by using the corresponding algorithm;

(3) Calculating the weighted score for each ratio by multiplying the strength factor score by its corresponding weighting percentage;

(4) Summing the resulting weighted scores to arrive at the composite score; and

(5) Rounding the composite score to one digit after the decimal point.

(b) Ratios. The Primary Reserve, Equity, and Net Income ratios are defined under appendix A for proprietary institutions, and under appendix B for private non-profit institutions.

(1) The ratios for proprietary institutions are:

- **Primary Reserve ratio** = Adjusted Equity / Total Expenses
- **Equity ratio** = Modified Equity / Modified Assets Net Income ratio = Income Before Taxes / Total Revenues

(2) The ratios for private non-profit institutions are:

- **Primary Reserve ratio** = Expendable Net Assets / Total Expenses
- **Equity ratio** = Modified Net Assets / Modified Assets Net Income ratio = Change in Unrestricted Net Assets / Total Unrestricted Revenues

(c) Excluded items. In calculating an institution’s ratios, the Secretary—

(1) Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;

(2) May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;

(3) Excludes all unsecured or uncollateralized related-party receivables;

(4) Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and

(5) Excludes from the ratio calculations Federal funds provided to an institution by the Secretary under program authorized by the HEA only if—

(i) In the notes to the institution’s audited financial statement, or as a separate attestation, the auditor discloses by name and CFDA number, the amount of HEA program funds reported as expenses in the Statement of Activities for the fiscal year covered by that audit or attestation; and

(ii) The institution’s composite score, as determined by the Secretary, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the ratio calculations.

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§ 668.173 Refund reserve standards.

(a) General. The Secretary considers that an institution has sufficient cash reserves, as required under § 668.171(b)(2), if the institution—

(i) Satisfies the requirements for a public institution under § 668.171(c)(1);

(ii) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(iii) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA program funds that it is responsible for returning under the provisions of § 668.22 for a student that withdrew from the institution.

(b) Timely return of title IV, HEA program funds. In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns unearned title IV, HEA program funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 no later than 45 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) no later than 45 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction, no later than 45 days after the date it determines that the student withdrew, that informs a FFEL lender to adjust the borrower’s loan account for the amount returned; or

(4) The institution issues a check no later than 45 days after the date it determines that the student withdrew.

(i) The institution returns unearned title IV, HEA program funds timely if—

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 60 days after the date the institution determined that the student withdrew.

(c) Compliance thresholds. (1) An institution does not comply with the reserve standard under § 668.173(a)(3) if, in a compliance audit conducted under § 668.23, an audit conducted by the Office of the Inspector General, or a program review conducted by the Department or guaranty agency, the auditor or reviewer finds—

(i) In the sample of student records audited or reviewed that the institution did not return unearned title IV, HEA program funds within the timeframes described in paragraph (b) of this section for 5% or more of the students in the sample. (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned funds during its most recently completed fiscal year.); or

(ii) A material weakness or reportable condition in the institution’s report on internal controls relating to the return of unearned funds.
showing that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution’s control and that the institution would not have exceeded the compliance thresholds under paragraph (c)(1) of this section had it not been for these exceptional circumstances; or
(B) The institution submits documents showing that it did not fail to make timely refunds as provided under paragraphs (b) and (c) of this section; and
(ii) The institution’s request, along with the documents described in paragraph (e)(2)(i) of this section, is submitted to the Secretary no later than the date it would otherwise be required to submit a letter of credit under paragraph (d)(3).
(3) If the Secretary denies the institution’s request under paragraph (e)(2) of this section, the Secretary notifies the institution of the date it must submit the letter of credit.
(i) State tuition recovery funds. In determining whether to approve a State’s tuition recovery fund, the Secretary considers the extent to which that fund—
(1) Provides refunds to both in-State and out-of-State students;
(2) Allocates all refunds in accordance with the order required under § 668.22; and
(3) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the fund’s assets.
(Approved by the Office of Management and Budget under control number 1845–0022)
§ 668.174 Past performance.
(a) Past performance of an institution. An institution is not financially responsible if the institution—
(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, or that person’s family, alone or together—
(i) With regard to the letter of credit described in paragraph (d) of this section,
(ii) An institution does not have to submit the letter of credit if the amount calculated under paragraph (d)(2) of this section is less than $5,000 and the institution can demonstrate that it has cash reserves of at least $5,000 available at all times.
(a)(2) An institution may delay submitting the letter of credit and request the Secretary to reconsider a finding made in its most recent audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if—
(i)(A) The institution submits documents showing that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution’s control and that the institution would not have exceeded the compliance thresholds under paragraph (c)(1) of this section had it not been for these exceptional circumstances; or
(B) The institution submits documents showing that it did not fail to make timely refunds as provided under paragraphs (b) and (c) of this section; and
(ii) The institution’s request, along with the documents described in paragraph (e)(2)(i) of this section, is submitted to the Secretary no later than the date it would otherwise be required to submit a letter of credit under paragraph (d)(3).
(3) If the Secretary denies the institution’s request under paragraph (e)(2) of this section, the Secretary notifies the institution of the date it must submit the letter of credit.
(1) Provides refunds to both in-State and out-of-State students;
(2) Allocates all refunds in accordance with the order required under § 668.22; and
(3) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the fund’s assets.
(Approved by the Office of Management and Budget under control number 1845–0022)
member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why—

(A) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person who exercises substantial control over the institution and each member of that person’s family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) Ownership interest. (1) An ownership interest is a share of the legal or beneficial ownership of or control of, or a right to share in the proceeds of the operation of, an institution, an institution’s parent corporation, a third-party servicer, or a third-party servicer’s parent corporation. The term “ownership interest” includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term “ownership interest” does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer if the person—

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, a general partner, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

(4) “Family member” is defined in § 600.21(f) of this chapter.

(Approved by the Office of Management and Budget under control number 1840–0537)


§ 668.175 Alternative standards and requirements.

(a) General. An institution that is not financially responsible under the general standards and provisions in § 668.171, may begin or continue to participate in the title IV, HEA programs by qualifying under an alternate standard set forth in this section.

(b) Letter of credit alternative for new institutions. A new institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount equal to at least one-half of the amount of the title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) Letter of credit alternative for participating institutions. A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b), or because of an audit opinion described under § 668.171(d), qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(d) Zone alternative. (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative.

(i) An institution qualifies initially under this alternative if, based on the institution’s audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(ii) An institution continues to qualify under this alternative if, based on the institution’s audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution’s composite score is in the range from 1.0 to 1.4. 

(ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5. as determined by the Secretary.

(2) Under this zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in § 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution’s or related entity’s most recent audited financial statement;

(C) Any violation by the institution of any loan agreement;

(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;

(E) Any withdrawal of owner’s equity from the institution by any means, including by declaring a dividend; or

(F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

(iii) May require the institution to submit its financial statement and compliance reports earlier than the time specified under § 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described under paragraph (d)(2)(i) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic or facsimile transmission no later than 10 days after that event occurs. An institution that provides this information electronically or by facsimile transmission is responsible for confirming that the Secretary received a complete and legible copy of that

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)

- 101 -
transmission; and
(ii) As part of its compliance audit, require its auditor to express an opinion on the institution’s compliance with the requirements under the zone alternative, including the institution’s administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraphs (d) (2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) Transition year alternative. A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 for the institution’s fiscal year that began on or after June 30, 1997 but on or before June 30, 1998, may qualify as a financially responsible institution under the provisions in § 668.15(b)(7), (b)(8), (d)(2)(ii), or (d)(3), as applicable.

(f) Provisional certification alternative. (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if—

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b) or because of an audit opinion described under § 668.171(d); or

(ii) The institution not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition.

(2) Under this alternative, the institution must—

(i) Submit to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution;

(ii) Demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under § 668.171(b)(3) and (b)(4), for its two most recent fiscal years; and

(iii) Comply with the provisions under the zone alternative, as provided under paragraph (d) (2) and (3) of this section.

(3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary may again permit the institution to participate under a provisional certification, but the Secretary—

(i) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution’s participation in the title IV, HEA programs; and

(ii) May require one or more of the persons or entities that exercise substantial control over the institution to be jointly or severally liable for any liabilities that may arise from the institution’s participation in the title IV, HEA programs.

(g) Provisional certification alternative for persons or entities owing liabilities. (1) The Secretary may permit an institution that is not financially responsible because the persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), to be jointly or severally liable for any liabilities that may arise from the institution’s participation in the title IV, HEA programs.

(ii) The institution is not financially responsible because the persons or entities that exercise substantial control over the institution owe a liability for any liabilities that may arise from the institution’s participation in the title IV, HEA programs.

(iii) The institution assumes that liability, and repays or enters into an agreement with the Secretary to repay that liability;

(iv) The institution satisfies the general standards and provisions of financial responsibility under § 668.171(b) and (d)(1), except that institution must demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under § 668.171(b)(3) and (b)(4), for its two most recent fiscal years; and

(b) The institution submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(2) Under this alternative, the Secretary—

(i) Requires the institution to comply with the provisions under the zone alternative, as provided under paragraph (d) (2) and (3) of this section;

(ii) May require the institution, or one or more persons or entities that exercise substantial control over the institution, or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution’s participation in the title IV, HEA programs; and

(iii) May require one or more of the persons or entities that exercise substantial control over the institution to be jointly or severally liable for any liabilities that may arise from the institution’s participation in the title IV, HEA programs.

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Subpart M—Two Year Cohort Default Rates

SOURCE: 65 FR 65638, Nov. 1, 2000, unless otherwise noted.

§ 668.181 Purpose of this subpart.

(a) General. Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in Sec. Sec. 668.182(a) and 668.183(b), for fiscal years through 2011. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a “challenge” after you receive your draft cohort default rate, and you request an “adjustment” or “appeal” after your official cohort default rate is published.

(b) Cohort Default Rates. Notwithstanding anything to the contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart N of this part.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§ 668.182 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) Cohort. Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.183(b).

(b) Data manager. (1) For FFELP loans held

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by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) Days. In this subpart, “days” means calendar days.

(d) Default. A borrower is considered to be in default for cohort default rate purposes under the rules in §688.183(c).

(e) Draft cohort default rate. Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in §688.185.

(f) Entering repayment. (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of “repayment period”) and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower’s Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a halftime basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) Fiscal year. A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) Loan record detail report. The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) Official cohort default rate. Your official cohort default rate is the cohort default rate that we publish for you under §688.186. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) We. We are the Department, the Secretary, or the Secretary’s designee.

(k) You. You are an institution.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§688.183 Calculating and applying cohort default rates.

(a) General. This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) Identify the borrowers in a cohort. (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying cohort default rates.

(c) Identify the borrowers in a cohort who are in default. (1) Except as provided in paragraph (c)(2) of this section, for the purposes of this subpart a borrower in a cohort for a fiscal year is considered to be in default if—

(i) Before the end of the following fiscal year, the borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower’s failure persists for 360 days (or for 270 days, if the borrower’s first day of delinquency was before October 7, 1998);

(iii) Before the end of the following fiscal year, you or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower’s default on a loan that is used to include the borrower in that cohort; or

Editorial Note: A colon was inserted, but it should have inserted a semi-colon. From October 28, 2009 Final Rule, pg 55649)

(iv) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower’s failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the fiscal year immediately following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) Calculate the cohort default rate. Except as provided in §688.184, if there are—

(1) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section; by (ii) The number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for
each cohort under paragraph (c) of this section; by
(ii) The total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1845–0022)
(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)


§ 668.184 Determining cohort default rates for institutions that have undergone a change in status.

(a) General. (1) Except as provided under 34 CFR 600.32(d), if you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.187 or § 668.188.

(4) If another institution’s cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under § 668.185 and 668.189.

(b) Acquisition or merger of institutions. If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.183.

(c) Acquisition of branches or locations. If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.183;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.183; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) Branches or locations becoming institutions. If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.183; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.183.

(Approved by the Office of Management and Budget under control number 1845–0022)
(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55649, Oct. 28, 2009]

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) General. (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for your participation rate index for that cohort's fiscal year.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.183(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the “Cohort Default Rate Guide” that we provide to you. If your challenge does not comply with the requirements in the “Cohort Default Rate Guide,” we may deny your challenge.

(b) Incorrect data challenges. (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager’s position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.190, or in an erroneous data appeal, under § 668.192.

(c) Participation rate index challenges. (1)(i) You may challenge an anticipated loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort’s fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those three cohorts’ fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.195(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.183(d)(2).
(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility based on your participation rate index challenge, we will not lose eligibility under § 668.187 when your next official cohort default rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility. However, if your successful challenge of a loss of eligibility under paragraph (c)(1)(ii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.187(a)(2), that would be based on that official cohort default rate. (Approved by the Office of Management and Budget under control number 1845–0022) [Authority: 20 U.S.C. 1082, 1085, 1094, 1099c]

(6) Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates calculated under this subpart for all institutions.

(b) If you have one or more borrowers entering repayment or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department's Web site.

(e) If you timely report a problem with the receipt of the electronic transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved. (Approved by the Office of Management and Budget under control number 1845–0022) (Authority: 20 U.S.C. 1082, 1085, 1094, 1099c) [74 FR 56649, Oct. 28, 2009]

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) End of participation. (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 25 percent or greater.

(b) Length of period of ineligibility. Your loss of eligibility under this section continues--

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) Using a cohort default rate more than once. The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for--

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) Continuing participation in Pell. If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you--

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) Requests for adjustments and appeals. (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under Sec. 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under Sec. 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) Liabilities during the adjustment or appeal process. If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility--

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after we receive your notice of the estimated amount, you must pay us that amount, unless--

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) Regaining eligibility. If you lose your eligibility to participate in a program under this section, you may not participate in that program until--

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us; and

(3) You submit a new application for participation in the program;

Base Document: GPO Compilation updated through July 1, 2009, and changes from October 27, 2009 and October 29, 2009 Final Rules October 29, 2010 Final Rules (Program Integrity Issues) and April 13, 2011 Corrections (Program Integrity Issues); November 1, 2010 Final Rules (Foreign School Issues); July 26, 2010 NPRM (Gainful Employment)
(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c) [74 FR 55650, Oct. 28, 2009]

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) General. You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) Commonality of ownership or management. For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person’s family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution’s actions, within the meaning of 34 CFR 600.21.

(c) Teach-outs. Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) Initial determination. We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change's effect on your eligibility.

(e) Notice of accountability. (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.189.

(Approved by the Office of Management and Budget under control number 1845–0022)


§ 668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) Remaining eligible. You do not lose eligibility under § 668.187 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.190;

(ii) A new data adjustment submitted under this section and § 668.191;

(iii) An erroneous data appeal submitted under this section and § 668.192; or

(iv) A loan servicing appeal submitted under this section and § 668.193; or

(b) Limitations on your ability to dispute your cohort default rate. (1) You may not dispute the calculation of a cohort default rate except as described in this subpart.

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.187, based entirely or partially on that cohort default rate.

(c) Content and format of requests for adjustments and appeals. We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor’s opinions, management’s written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the “Cohort Default Rate Guide” that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) Our copies of your correspondence. Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) Requirements for data managers’ responses. (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is...
not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) Our decision on your request for adjustment or appeal. (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.190 or § 668.191, or an appeal, under § 668.192 or § 668.193—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.187, within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.192(a) to avoid provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c

§ 668.190 Uncorrected data adjustments.

(a) Eligibility. You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.185(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) Deadlines for requesting a new data adjustment. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records; or

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(c) Determination. We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released, if we determine that—

(1) In response to your challenge under Sec. 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect. (Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c

§ 668.191 New data adjustments.

(a) Eligibility. You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) Deadlines for requesting a new data adjustment. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records; or

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(c) Determination. We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released, if we determine that—

(1) In response to your challenge under Sec. 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect. (Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c

§ 668.192 Erroneous data appeals.

(a) Eligibility. Except as provided in § 668.189(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.187, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.185(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) Deadlines for submitting an appeal. (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting
§ 668.193 Loan servicing appeals.

(a) Eligibility. Except as provided in § 668.189(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

1. Your most recent cohort default rate; or
2. Any cohort default rate upon which a loss determination is based under § 668.187 is based.

(b) Improper loan servicing. For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

1. Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan;
2. Attempt at least one phone call to the borrower;
3. Send a final demand letter to the borrower;
4. For a Direct Loan Program loan only, a document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address; and
5. For an FFELP loan only—
   (i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and
   (ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) Deadlines for submitting an appeal. (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

   (2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

   (3) Within 20 days after receiving your request for loan servicing records, the data manager must—
   (i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);
   (ii) Send you and us a description of how your representative sample was chosen; and
   (iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

   (4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

   (5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

   (6) If the data manager charges a fee for providing copies of loan servicing records, and—
   (i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or
   (ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

   (7) Within 15 days after receiving a guaranty agency’s notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

   (8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

   (9) Within 20 days after receiving your request for replacement records, the data manager must either—
   (i) Replace the missing or illegible records; or
   (ii) Notify you and us that no additional or improved records are available.

   (10) You must send your appeal to us, including all supporting documentation—
   (i) Within 30 days after you receive the final data manager’s response to your request; or
   (ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.191(b)(6)(i) or § 668.193(c)(10)(i).

(d) Representative sample of records. (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

   (2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) Loan servicing records. Loan servicing records are the collection and payment history records—

   (1) Provided to the guaranty agency by the borrowers in your representative sample.
lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or
(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) Determination. (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

[65 FR 65638, Nov. 1, 2000, as amended at 67 FR 67075, Nov. 1, 2002]

§ 668.194 Economically disadvantaged appeals.

(a) Eligibility. As described in this section, you may appeal a notice of a loss of eligibility under § 668.187 if an independent auditor’s opinion certifies that your low income rate is two-thirds or more and—
(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or
(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(b) Low income rate. (1) Your low income rate is the percentage of your students, as described in paragraph (b)(2) of this section, who—
(i) For a calendar year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an expected family contribution, as defined in § 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student’s enrollment status or cost of attendance; or
(ii) For a calendar year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student’s parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student’s family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort’s fiscal year.

(c) Completion rate. (1) Your completion rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—
(i) Completed the educational programs in which they were enrolled;
(ii) Transferred from your institution to a higher level educational program;
(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or
(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—
(i) Initially enrolled on a full-time basis in an eligible program; and
(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(d) Placement rate. (1) Except as provided in paragraph (d)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (d)(3) and (d)(4) of this section, who—
(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;
(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or
(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—
(i) Were initially enrolled in an eligible program on at least a half-time basis;
(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and
(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student’s originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(e) Scheduled to complete. In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—
(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or
(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(f) Deadline for submitting an appeal. (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management’s written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor’s opinion described in paragraph (g) of this section.

(g) Independent auditor’s opinion. (1) The independent auditor’s opinion must state whether your management’s written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor’s opinion must be an examination-level compliance attestation engagement performed in accordance with—
(i) The American Institute of Certified Public Accountant’s (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA’s order department, at 1–888–777–7077); and
(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(h) Determination. You do not lose eligibility under § 668.187 if—
(1) Your independent auditor’s opinion agrees that you meet the requirements for an economically disadvantaged appeal; and
(2) We determine that the independent auditor’s opinion and your management’s
using either that average rate or the cohort participation rate index for that fiscal year.

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.195 Participation rate index appeals.

(a) Eligibility. (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort’s fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those three cohorts’ fiscal years.

(b) Calculating your participation rate index. (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that was calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(c) Deadline for submitting an appeal. You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) Determination. (1) You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.187(a)(2) that would be based on the official cohort default rate for that fiscal year.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.196 Average rates appeals.

(a) Eligibility. (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) Deadline for submitting an appeal. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) Determination. You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) Eligibility. You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) Deadline for submitting an appeal. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) Determination. You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

Subpart N—Cohort Default Rates

§ 668.200 Purpose of this subpart.

(a) General. Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.201(a) and 668.202(b), for fiscal years 2009 and later. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a “challenge” after you receive your draft cohort default rate, and you request an “adjustment” or an “appeal” after your official cohort default rate is published.

(b) Cohort Default Rates. Notwithstanding anything to the contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart M of this part.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

§ 668.201 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) Cohort. Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.202(b).

(b) Data manager. (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) Days. In this subpart, “days” means calendar days.

(d) Default. A borrower is considered to be in default for cohort default rate purposes

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under the rules in § 668.202(c).

(e) Draft cohort default rate. Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.204.

(f) Entering repayment. (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of “repayment period”) and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower’s Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) Fiscal year. A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) Loan record detail report. The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) Official cohort default rate. Your official cohort default rate is the cohort default rate that we publish for you under § 668.205. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) We. We are the Department, the Secretary, or the Secretary's designee.

(k) You. You are an institution. (Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§ 668.202 Calculating and applying cohort default rates.

(a) General. This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) Identify the borrowers in a cohort. (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(c) Identify the borrowers in a cohort who are in default. (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower’s failure persists for 360 days (or for 270 days, if the borrower’s first day of delinquency was before October 7, 1998);

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower’s default on a loan that is used to include the borrower in that cohort; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation was used to include the borrower in the cohort, and the borrower’s failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) Calculate the cohort default rate. Except as provided in § 668.203, if there are—

(1)(i) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2)(i) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section by the total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c.)

§ 668.203 Determining cohort default rates for institutions that have undergone a change in status.

(a) General. (1) Except as provided under 34 CFR 600.32(d), if you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger,
acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.206 or § 668.207.

(4) If another institution’s cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.204 and 668.208.

(b) Acquisition or merger of institutions. If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.202.

(c) Acquisition of branches or locations. If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.202;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.202.


§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) General. (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.202(d)(1).

(b) Incorrect data challenges. (1) You may challenge the accuracy of the data included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.202(d)(1).

(3) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), if your participation rate index is equal to or less than 0.0625 for either of the two cohorts’ fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.214(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.202(d)(2).

(4) You may challenge an anticipated loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts’ fiscal years.

(5) If we determine that you qualify for continued eligibility or full certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published.

(6) A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph

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§ 668.205 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If you had one or more borrowers entering repayment in the fiscal year for which the rate is calculated, or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department’s Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department’s Web site.

(e) If you timely report a problem with transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§ 668.206 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) End of participation. (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate for fiscal year 2011 or later is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 30 percent or greater.

(b) Length of period of ineligibility. Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) Using a cohort default rate more than once. The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) Continuing participation in Pell. If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 30 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) Requests for adjustments and appeals. (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.208(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.208.

(3) Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(4) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.208.

(5) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) Liabilities during the adjustment or appeal process. If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) Regaining eligibility. If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§ 668.207 Preventing evasion of the consequences of cohort default rates.

(a) General. You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or
in part in institutional structure or identity; (2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and (3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) Commonality of ownership or management. For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person’s family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution’s actions, within the meaning of 34 CFR 600.21.

(c) Teach-outs. Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) Initial determination. We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change’s effect on your eligibility.

(e) Notice of accountability. (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under §668.208.


§668.208 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) Remaining eligible. You do not lose eligibility under §668.206 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and §668.209;

(ii) A new data adjustment submitted under this section and §668.210;

(iii) An erroneous data appeal submitted under this section and §668.211; or

(iv) A loan servicing appeal submitted under this section and §668.212; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and §668.213;

(ii) A participation rate index appeal submitted under this section and §668.214;

(iii) An average rates appeal submitted under this section and §668.215; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and §668.216.

(b) Limitations on your ability to dispute your cohort default rate. (1) You may not dispute the calculation of a cohort default rate except as described in this subpart or in §668.16(m)(2).

(2) You may not request an adjustment or appeal a cohort default rate, under §668.209, §668.210, §668.211, or §668.212, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under §668.209, §668.210, §668.211, or §668.212, if you previously lost your eligibility to participate in a Title IV, HEA program, under §668.206, or were placed on provisional certification under §668.16(m)(2)(i), based entirely or partially on that cohort default rate.

(c) Content and format of requests for adjustments and appeals. We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor’s opinions, management’s written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the “Cohort Default Rate Guide” that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) Our copies of your correspondence. Whenever you are required by this subpart to correspond with a party other than us, the data manager must send us a copy of the correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) Requirements for data managers’ responses. (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence’s format, and we may prescribe a format for that data manager’s subsequent correspondence with us.

(f) Our decision on your request for adjustment or appeal. (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under §668.209 or §668.210, or an appeal, under §668.211 or §668.212—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of
eligibility under §668.206 or potential placement on provisional certification under §668.213(a)(2), within 45 days after we receive your completed request for an adjustment or appeal; or
(ii) In all other cases, except for appeals submitted under §668.211(a) following placement on provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§668.209 Uncorrected data adjustments.

(a) Eligibility. You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under §668.204(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) Deadlines for requesting an uncorrected data adjustment. You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) Determination. We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released if we determine that—

(1) In response to your challenge under §668.204(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§668.210 New data adjustments.

(a) Eligibility. You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) Deadlines for requesting a new data adjustment. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager’s position.

(3) Within 15 days after receiving a guaranty agency’s notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager’s response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in §668.211(b)(6)(i) or §668.212(c)(10)(i).

(c) Determination. If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and make electronic corrections to the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§668.211 Erroneous data appeals.

(a) Eligibility. Except as provided in §668.206(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under §668.206, or provisional certification, under §668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under §668.204(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) Deadlines for submitting an appeal. (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager’s position.

(3) Within 15 days after receiving a guaranty agency’s notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager’s response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in §668.211(b)(6)(i) or §668.212(c)(10)(i).

(c) Determination. If we determine that...
incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§ 668.212 Loan servicing appeals.

(a) Eligibility. Except as provided in § 668.208(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.206 is based.

(b) Improper loan servicing. For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower’s current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) Deadlines for submitting an appeal. (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager’s records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency’s notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager’s response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.210(b)(6)(i) or § 668.211(b)(6)(i).

(d) Representative sample of records. (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) Loan servicing records. Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) Determination. (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§ 668.213 Economically disadvantaged appeals.

(a) General. As provided in this section you may appeal—

(1) A notice of a loss of eligibility under § 668.206; or
(2) A notice of a second successive official cohort default rate calculated under this subpart that is equal to or greater than 30 percent but less than or equal to 40 percent, potentially subjecting you to provisional certification under §668.16(m)(2)(i).

(b) Eligibility. You may appeal under this section if an independent auditor’s opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

c) Low income rate. (1) Your low income rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an expected family contribution, as defined in 34 CFR 668.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student’s enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student’s parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student’s family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort’s fiscal year.

d) Completion rate. (1) Your completion rate is the percentage of your students, as described in paragraph (d)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv)Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

e) Placement rate. (1) Except as provided in paragraph (e)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (e)(3) and (e)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(f) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii)Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(g) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student’s originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(h) Scheduled to complete. In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(g) Deadline for submitting an appeal. (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management’s written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor’s opinion described in paragraph (h) of this section.

(h) Independent auditor’s opinion. (1) The independent auditor’s opinion must state whether your management’s written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor’s opinion must be an examination-level compliance attestation performed in accordance with—

(i) The American Institute of Certified Public Accountants’ (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA’s order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(i) Determination. You do not lose eligibility under §668.206, and we do not provisionally certify you under §668.16(m)(2)(i), if—

(1) Your independent auditor’s opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor’s opinion and your management’s written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor’s opinion unacceptable.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§668.214 Participation rate index appeals.

(a) Eligibility. (1) You may appeal a notice of a loss of eligibility under §668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort’s fiscal year is equal to or less than 0.06915.

(2) You may appeal a notice of a loss of eligibility under §668.206(a)(2), based on
three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts’ fiscal years.

(3) You may appeal potential placement on provisional certification under §668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in §668.16(m)(1)(ii) if your participation rate index is equal to or less than 0.0625 for either of the two cohorts’ fiscal years.

(b) Calculating your participation rate index. (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort’s fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under §668.202(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in §668.202(d)(1).

(c) Deadline for submitting an appeal. You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive—

(1) Notice of your loss of eligibility; or

(2) Notice of a second cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent and that, in combination with an earlier rate, potentially subjects you to provisional certification under §668.16(m)(2)(i).

(d) Determination. (1) You do not lose eligibility under §668.206 and we do not place you on provisional certification, if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0625, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under §668.206(a)(2) or placement on provisional certification under §668.16(m)(2)(i) that would be based on the official cohort default rate for that fiscal year.

§668.215 Average rates appeals. (a) Eligibility. (1) You may appeal a notice of a loss of eligibility under §668.206(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under §668.202(d)(2).

(2) You may appeal a notice of a loss of eligibility under §668.206(a)(2), based on three cohort default rates of 30 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under §668.202(d)(2); and

(ii) Would be less than 30 percent if calculated for the fiscal year alone using the method described in §668.202(d)(1).

(b) Deadline for submitting an appeal. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) Determination. You do not lose eligibility under §668.206 if we determine that you meet the requirements for an average rates appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§668.216 Thirty-or-fewer borrowers appeals. (a) Eligibility. You may appeal a notice of a loss of eligibility under §668.206 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) Deadline for submitting an appeal. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) Determination. You do not lose eligibility under §668.206 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.)

§668.217 Default prevention plans. (a) First year. (1) If your cohort default rate is equal to or greater than 30 percent you must establish a default prevention task force that prepares a plan to—

(i) Identify the factors causing your cohort default rate to exceed the threshold;

(ii) Establish measurable objectives and the steps you will take to improve your cohort default rate;

(iii) Specify the actions you will take to improve student loan repayment, including counseling students on repayment options; and

(iv) Submit your default prevention plan to us.

(2) We will review your default prevention plan and offer technical assistance intended to improve student loan repayment.

(b) Second year. (1) If your cohort default rate is equal to or greater than 30 percent for two consecutive fiscal years, you must revise your default prevention plan and submit it to us for review.

(2) We may require you to revise your default prevention plan or specify actions you need to take to improve student loan repayment.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.) Subpart O—Financial Assistance for Students With Intellectual Disabilities §668.230 Scope and purpose. This subpart establishes regulations that apply to an institution that offers comprehensive transition and postsecondary programs to students with intellectual disabilities. Students enrolled in these programs are eligible for Federal financial assistance under the Federal Pell Grant, FSEOG, and FWS programs. Except for provisions related to needs analysis, the Secretary may waive any Title IV, HEA program requirement related to the Federal Pell Grant, FSEOG, and FWS programs or institutional eligibility, to ensure that students with intellectual disabilities remain eligible for funds under these assistance programs. However, unless provided in this subpart or subsequently waived by the Secretary, students with intellectual disabilities and institutions that offer comprehensive transition and postsecondary programs are subject to the same regulations and procedures that otherwise apply to Title IV, HEA program participants.

(Authority: 20 U.S.C. 1091) §668.231 Definitions. The following definitions apply to this subpart:

(a) Comprehensive transition and postsecondary program means a degree,
certificate, nondegree, or noncertification program that—
(1) Is offered by a participating institution;
(2) Is delivered to students physically attending the institution;
(3) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;
(4) Includes an advising and curriculum structure;
(5) Requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of the following activities:
(i) Taking credit-bearing courses with students without disabilities.
(ii) Auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit.
(iii) Taking non-credit-bearing, nondegree courses with students without disabilities.
(iv) Participating in internships or work-based training in settings with individuals without disabilities; and
(6) Provides students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

(b) Student with an intellectual disability means a student—
(1) With mental retardation or a cognitive impairment characterized by significant limitations in—
(i) Intellectual and cognitive functioning; and
(ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and
(2) Who is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

Possible correction in paragraph (1):
(1) Is offered by a participating institution;
(2) Is delivered to students physically attending the institution;
(3) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;
(4) Includes an advising and curriculum structure;
(5) Requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of the following activities:
(i) Taking credit-bearing courses with students without disabilities.
(ii) Auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit.
(iii) Taking non-credit-bearing, nondegree courses with students without disabilities.
(iv) Participating in internships or work-based training in settings with individuals without disabilities; and
(6) Provides students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

§ 668.232 Program eligibility.
An institution that offers a comprehensive transition and postsecondary program must apply to the Secretary to have the program determined to be an eligible program.

The institution applies under the provisions in 34 CFR 600.20 for adding an educational program, and must include in its application—
(a) A detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231;
(b) The institution’s policy for determining whether a student enrolled in the program is making satisfactory academic progress; and
(c) The number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;
(d) A description of the educational credential offered (e.g., degree or certificate) or identified outcome or outcomes established by the institution for all students enrolled in the program;
(e) A copy of the letter or notice sent to the institution’s accrediting agency informing the agency of its comprehensive transition and postsecondary program. The letter or notice must include a description of the items in paragraphs (a) through (d) of this section; and
(f) Any other information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

§ 668.233 Student eligibility.
A student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under this subpart if—
(a) The student satisfies the general student eligibility requirements under § 668.32, except for the requirements in paragraphs (a), (e), and (f) of that section. With regard to these exceptions, a student—
(1) Does not have to be enrolled for the purpose of obtaining a degree or certificate;
(2) Is not required to have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and
(3) Is making satisfactory progress according to the institution’s published standards for students enrolled in its comprehensive transition and postsecondary programs;
(b) The student is enrolled in a comprehensive transition and postsecondary program approved by the Secretary; and
(c) The institution obtains a record from a local educational agency that the student is or was eligible for special education and related services under the IDEA. If that record does not identify the student as having an intellectual disability, as described in paragraph (1) of the definition of a student with an intellectual disability in § 668.231, the institution must also obtain documentation establishing that the student has an intellectual disability, such as—
(1) A documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or
(2) A record of the disability from a local or State educational agency, or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability.

(Approved by the Office of Management and Budget under control number 1845–NEW4)
APPENDIX A TO SUBPART B OF PART 668—STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Part III Chapter 3—Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.1

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor’s ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objectives or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decision-making or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or influence the auditor’s ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.2

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures of the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial or opportunity to obtain explanations by officials and employees of the governmental organization, program, or activity under audit.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditors judgment as to the appropriate content of the audit report.

7. Influences that place the auditor’s continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor’s independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management structure of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

APPENDIX B TO SUBPART B OF PART 668—APPENDIX I, STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below: “Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the
continuing licensing of public accountants
and which are prescribed by the Secretary in
appropriate regulations may perform such
audits until December 31, 1975; Provided,
That if the Secretary deems it necessary in
the public interest, he may prescribe by
regulations higher standard than those
required for the practice of public
accountancy by the regulatory authorities of
the States.”

(b) The standards for examination and
evaluation require consideration of
applicable laws and regulations in the
auditor’s examination. The standards for
reporting require a statement in the auditor’s
report regarding any significant instances of
noncompliance disclosed by his or her
examination and evaluation work. What is to
be included in this statement requires
judgment. Significant instances of
noncompliance, even those not resulting in
legal liability to the audited entity, should be
included. Minor procedural noncompliance
need not be disclosed.

(c) Although the reporting standard is
generally on an exception basis—that only
noncompliance need be reported—it should
be recognized that governmental entities
often want positive statements regarding
whether or not the auditor’s tests disclosed
instances of noncompliance. This is
particularly true in grant programs where
authorizing agencies frequently want
assurance in the auditor’s report that this
matter has been considered. For such
audits, auditors should obtain an
understanding with the authorizing agency
as to the extent to which such positive
comments on compliance are desired. When
coordinated audits are involved, the audit
program should specify the extent of
comments that the auditor is to make
regarding compliance.

(d) When noncompliance is reported, the
auditor should place the findings in proper
perspective. The extent of instances of
noncompliance should be related to the
number of cases examined to provide the
reader with a basis for judging the
prevalence of noncompliance.

[45 FR 86856, Dec. 31, 1980. Redesignated at 65
FR 65650, Nov. 1, 2000]

1 Letter (B–148144, September 15, 1970) from the
Comptroller General to the heads of Federal
departments and agencies. The reference to
“Secretary” means the head of the department or
agency.
### APPENDIX C TO SUBPART B OF PART 668 - 90/10 REVENUE CALCULATION

Section 1: Sample Student Account at the Institution / Funds Applied in Priority Order

<table>
<thead>
<tr>
<th>Item</th>
<th>Debit</th>
<th>Credit</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tuition and Fees</td>
<td>$7,000.00</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Grant funds for the student from non-Federal public agencies or private sources independent of the institution</td>
<td>$2,200.00</td>
<td>$4,800.00</td>
</tr>
<tr>
<td>3</td>
<td>Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals</td>
<td></td>
<td>$4,800.00</td>
</tr>
<tr>
<td>4</td>
<td>Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code</td>
<td></td>
<td>$4,800.00</td>
</tr>
<tr>
<td>5</td>
<td>Institutional scholarships disbursed to the student</td>
<td>$500.00</td>
<td>$4,300.00</td>
</tr>
<tr>
<td>6</td>
<td>Total Funds Applied First</td>
<td>$2,700.00</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Subsidized Loan</td>
<td>$1,000.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>8</td>
<td>Unsubsidized Loan up to pre-ECASLA Loan Limits</td>
<td>$1,500.00</td>
<td>$1,800.00</td>
</tr>
<tr>
<td>9</td>
<td>Federal Pell Grant</td>
<td>$1,700.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>10</td>
<td>FSEOG (subject to matching reduction)</td>
<td>$500.00</td>
<td>($400.00)</td>
</tr>
<tr>
<td>11</td>
<td>Federal Work Study Applied to Tuition and Fees (subject to matching reduction)</td>
<td>-</td>
<td>($400.00)</td>
</tr>
<tr>
<td>12</td>
<td>Total Title IV Aid</td>
<td>$4,700.00</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits</td>
<td>$250.00</td>
<td>($650.00)</td>
</tr>
<tr>
<td>14</td>
<td>Student payments</td>
<td>-</td>
<td>($650.00)</td>
</tr>
<tr>
<td>15</td>
<td>Institutional loan disbursed</td>
<td>$300.00</td>
<td>($950.00)</td>
</tr>
<tr>
<td>16</td>
<td>Total Cash and Other Non-Title IV Aid</td>
<td></td>
<td>$550.00</td>
</tr>
</tbody>
</table>

*Refund to Student* $950.00
## Section 2: Revenue by Source

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount Disbursed</th>
<th>Adjusted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Subsidized Loan</td>
<td>$1,000.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>8</td>
<td>Unsubsidized Loan up to pre-ECASLA Loan Limits</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>9</td>
<td>Federal Pell Grant</td>
<td>$1,700.00</td>
<td>$1,700.00</td>
</tr>
<tr>
<td>10</td>
<td>FSEOG (subject to matching reduction, see Section 3, Adjustments to Student Title IV Revenue, item 1)</td>
<td>$500.00</td>
<td>$375.00</td>
</tr>
<tr>
<td>11</td>
<td>Federal Work Study Applied to Tuition and Fees (subject to matching reduction)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>17</td>
<td><strong>Student Title IV Revenue</strong></td>
<td>$4,575.00</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Revenue Adjustment (see Section 3, Adjustments to Student Title IV Revenue, item 2)</td>
<td>($275.00)</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td><strong>Adjusted Student Title IV Revenue</strong></td>
<td>$4,300.00</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Student Non-Title IV Revenue</td>
<td>$2,200.00</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Grant funds for the student from non-Federal public agencies or private sources independent of the institution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Institutional scholarships disbursed to the student</td>
<td>$500.00</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Student payments</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td><strong>Student Non-Title IV Revenue</strong></td>
<td>$2,700.00</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Activities conducted by the institution that are necessary for education and training</td>
<td>$25,000.00</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs</td>
<td>$43,000.00</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>The Net Present Value (NPV) of institutional loans disbursed to students</td>
<td>$129,818.68</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td><strong>Revenue from Other Sources</strong></td>
<td>$197,818.68</td>
<td></td>
</tr>
</tbody>
</table>
Section 3: Calculating the Revenue Percentage

\[ \frac{\sum \text{Adjusted Student Title IV Revenue}}{\sum \text{Adjusted Student Title IV Revenue} + \sum \text{Student Non-Title IV Revenue} + \text{Total Revenue from Other Sources}} = 90/10 \text{ Revenue Percentage} \]

Adjustments to Student Title IV Revenue

1. The amount of FSEOG funds disbursed to a student (Item 10) and the amount of FWS funds credited to the student’s account (Item 11) are reduced by the amount of the institutional matching funds (see Item 10 in Section 2 of the example).

2. If the amount of Funds Applied First (Item 6) + Student Title IV Revenue (Item 17) is more than Tuition and Fees (Item 1), then Student Title IV Revenue (Item 17) is reduced by the amount over Tuition and Fees (Item 1) (see Item 18 in Section 2 of the example).

3. If Title IV funds are returned for a student under 34 CFR 668.22, then Student Title IV Revenue is reduced by the amount returned.

\[ \sum \text{Adjusted Student Title IV Revenue} = \text{The sum of the amounts of item 17, as adjusted, for each student at the institution during the fiscal year to whom the institution disbursed Title IV Aid} \]

Adjustments to Student Non-Title IV Revenue

An Unsubsidized loan over the pre-ECSALA loan limit (Item 13) and any Student Payments (Item 14) count as Student Non-Title IV Revenue only for the amount needed to cover Tuition and Fees (Item 1) that are not paid by Funds Applied First (Item 6) and funds under Student Title IV Revenue (Item 19) (see Items 13 and 14 in Section 2 of the example).

\[ \sum \text{Student Non-Title IV Revenue} = \text{The sum of the amounts of item 20, as adjusted, for each student at the institution during the fiscal year whose Non-Title IV funds were used to pay all or some of those student's Tuition and Fee charges} \]

Total Revenue from Other Sources

Activities conducted by the institution that are necessary for education and training (Item 21) = Total revenue generated by the institution from these activities during the fiscal year.

Funds paid to the institution by, or on behalf of, students for education and training in qualified Non-Title IV eligible programs (Item 22) = Total revenue generated by the institution from these programs during the fiscal year.

The Net Present Value (NPV) of institutional loans disbursed to students (Item 23)

\[ \text{Total Revenue from Other Sources} = \text{The sum of the amounts for Items 21, 22, and 23 for the fiscal year} \]
Section 4: Calculating the Net present Value

$$\text{NPV} = \sum R^t / (1+i)^t$$

An institution makes a total of $125,000 in 3-year loans at 8.5% and a total of $75,000 in 4-year loans at 8.5%. The Discount rate is 3%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Expected Cash Flow*</th>
<th>Actual Cash Flow (R) using 60%</th>
<th>Discounted Cash Flow</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-year Loans</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>47340.00</td>
<td>28404.00</td>
<td>28404 / (1+.03)^1 = 27576.70</td>
</tr>
<tr>
<td>2</td>
<td>47340.00</td>
<td>28404.00</td>
<td>28404 / (1+.03)^2 = 26773.49</td>
</tr>
<tr>
<td>3</td>
<td>47340.00</td>
<td>28404.00</td>
<td>28404 / (1+.03)^3 = 25993.68</td>
</tr>
</tbody>
</table>

NPV or Sum of the discounted cash flows for 3-year loans = 80343.87

<table>
<thead>
<tr>
<th>Year</th>
<th>Expected Cash Flow*</th>
<th>Actual Cash Flow (R) using 60%</th>
<th>Discounted Cash Flow</th>
</tr>
</thead>
<tbody>
<tr>
<td>4-year Loans</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>22183.44</td>
<td>13310.06</td>
<td>13310.06 / (1+.03)^1 = 12922.39</td>
</tr>
<tr>
<td>2</td>
<td>22183.44</td>
<td>13310.06</td>
<td>13310.06 / (1+.03)^2 = 12546.01</td>
</tr>
<tr>
<td>3</td>
<td>22183.44</td>
<td>13310.06</td>
<td>13310.06 / (1+.03)^3 = 12180.59</td>
</tr>
<tr>
<td>4</td>
<td>22183.44</td>
<td>13310.06</td>
<td>13310.06 / (1+.03)^4 = 11825.82</td>
</tr>
</tbody>
</table>

NPV or Sum of the discounted cash flows for 4-year loans = 49474.81

Total NPV for all loans = 129818.68

* Expected cash flow represents the total amount of payments due on the loans for the fiscal year.
APPENDIX A TO SUBPART D OF PART 668—CRIME DEFINITIONS IN ACCORDANCE WITH THE FEDERAL BUREAU OF INVESTIGATION’S UNIFORM CRIME REPORTING PROGRAM

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program. The definitions for murder; robbery; aggravated assault; burglary; motor vehicle theft; weapons: carrying, possessing, etc.; liquor law violations; and drug abuse violations and liquor law violations are excerpted from the Uniform Crime Reporting Handbook. The definitions of forcible and nonforcible sex offenses are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of larceny-theft (except motor vehicle theft), simple assault, intimidation, and destruction/damage/vandalism of property are excerpted from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

Crime Definitions From the Uniform Crime Reporting Handbook

**Arson**
Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

**Criminal Homicide—Manslaughter by Negligence**
The killing of another person through gross negligence.

**Criminal Homicide—Murder and Nonnegligent Manslaughter**
The willful (nonnegligent) killing of one human being by another.

**Robbery**
The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Aggravated Assault**
An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

**Burglary**
The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

**Motor Vehicle Theft**
The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)

**Weapons: Carrying, Possessing, Etc.**
The violation of laws of ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

**Drug Abuse Violations**
The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of state and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

**Liquor Law Violations**
The violation of state or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

**Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook**

**Larceny-Theft (Except Motor Vehicle Theft)**
The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

**Simple Assault**
An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

**Intimidation**
To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**Destruction/Damage/Vandalism of Property**
To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

**SEX OFFENSES DEFINITIONS FROM THE NATIONAL INCIDENT-BASED REPORTING SYSTEM EDITION OF THE UNIFORM CRIME REPORTING PROGRAM**

**Sex Offenses—Forcible Any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent.**

- **A. Forcible Rape**—The carnal knowledge of a person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

- **B. Forcible Sodomy**—Oral or anal sexual intercourse with another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

- **C. Sexual Assault With An Object**—The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

- **D. Forcible Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Sex Offenses—Nonforcible Unlawful, nonforcible sexual intercourse.**

- **A. Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- **B. Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.
Appendices to Part 668

APPENDIX A TO SUBPART L OF PART 668—RATIO METHODOLOGY FOR PROPRIETARY INSTITUTIONS

Section 1: Ratios and Ratio Terms

Primary Reserve Ratio = \( \frac{\text{Adjusted Equity}}{\text{Total Expenses}} \)

Equity Ratio = \( \frac{\text{Modified Equity}}{\text{Modified Assets}} \)

Net Income Ratio = \( \frac{\text{Income Before Taxes}}{\text{Total Revenues}} \)

Definitions:

Adjusted Equity = (total owner’s equity) - (intangible assets) - (unsecured related-party receivables) - (net property, plant and equipment) + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)

Total Expenses excludes income tax, discontinued operations, extraordinary losses, or change in accounting principle.

Modified Equity = (total owner’s equity) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Income Before Taxes is taken directly from the audited financial statement.

Total Pre-Tax Revenues = (total operating revenues) + (non-operating revenues and gains). Investment gains should be recorded net of investment losses. No revenues shown after income taxes (e.g., discontinued operations, extraordinary gains, or change in accounting principle) on the income statement should be included.

* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.

** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.
### Section 2, Calculating the Ratios from the Balance Sheet and Income Statement

#### Balance Sheet

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cash</td>
<td>$190,000</td>
</tr>
<tr>
<td>2</td>
<td>Accounts Receivable</td>
<td>1,010,000</td>
</tr>
<tr>
<td>3</td>
<td>Prepaid Expenses</td>
<td>150,000</td>
</tr>
<tr>
<td>4</td>
<td>Inventories</td>
<td>120,000</td>
</tr>
<tr>
<td>5</td>
<td>Net Receivable from Affiliate</td>
<td>200,000</td>
</tr>
<tr>
<td>6</td>
<td>Investments</td>
<td>330,000</td>
</tr>
<tr>
<td>7</td>
<td>Total Current Assets</td>
<td>$2,610,000</td>
</tr>
<tr>
<td>8</td>
<td>Property and Equipment, net</td>
<td>500,000</td>
</tr>
<tr>
<td>9</td>
<td>Amount Due from Owners</td>
<td>170,000</td>
</tr>
<tr>
<td>10</td>
<td>Goodwill</td>
<td>80,000</td>
</tr>
<tr>
<td>11</td>
<td>Organization Costs</td>
<td>70,000</td>
</tr>
<tr>
<td>12</td>
<td>Deposits</td>
<td>60,000</td>
</tr>
<tr>
<td>13</td>
<td>Total Assets</td>
<td>$2,890,000</td>
</tr>
<tr>
<td>14</td>
<td>Accounts Payable</td>
<td>200,000</td>
</tr>
<tr>
<td>15</td>
<td>Accrued Expenses</td>
<td>330,000</td>
</tr>
<tr>
<td>16</td>
<td>Current Portion of Long-Term Debt</td>
<td>120,000</td>
</tr>
<tr>
<td>17</td>
<td>Deferred Revenue</td>
<td>650,000</td>
</tr>
<tr>
<td>18</td>
<td>Total Current Liabilities</td>
<td>$1,300,000</td>
</tr>
<tr>
<td>19</td>
<td>Long-Term Debt, net of Current Portion</td>
<td>330,000</td>
</tr>
<tr>
<td>20</td>
<td>Total Liabilities</td>
<td>$1,630,000</td>
</tr>
<tr>
<td>21</td>
<td>Contributed Capital</td>
<td>440,000</td>
</tr>
<tr>
<td>22</td>
<td>Retained Earnings</td>
<td>830,000</td>
</tr>
<tr>
<td>23</td>
<td>Total Owner's Equity</td>
<td>1,260,000</td>
</tr>
<tr>
<td>24</td>
<td>Total Liabilities and Owner's Equity</td>
<td>$2,990,000</td>
</tr>
</tbody>
</table>

#### Statement of Income and Retained Earnings

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>Operating Income</td>
<td>$9,700,000</td>
</tr>
<tr>
<td>26</td>
<td>Non-Operating Income</td>
<td>300,000</td>
</tr>
<tr>
<td>27</td>
<td>Total Income</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>28</td>
<td>Cost of Goods Sold</td>
<td>6,800,000</td>
</tr>
<tr>
<td>29</td>
<td>Administrative Expenses</td>
<td>2,600,000</td>
</tr>
<tr>
<td>30</td>
<td>Depreciation Expense</td>
<td>60,000</td>
</tr>
<tr>
<td>31</td>
<td>Interest Expense</td>
<td>40,000</td>
</tr>
<tr>
<td>32</td>
<td>Total Expenses</td>
<td>$9,500,000</td>
</tr>
<tr>
<td>33</td>
<td>Other: Gain on Sale of Investments</td>
<td>10,000</td>
</tr>
<tr>
<td>34</td>
<td>Net Income Before Taxes</td>
<td>510,000</td>
</tr>
<tr>
<td>35</td>
<td>Federal Income Taxes</td>
<td>150,000</td>
</tr>
<tr>
<td>36</td>
<td>Net Income After Taxes</td>
<td>357,000</td>
</tr>
<tr>
<td>37</td>
<td>Extraordinary Loss, net of tax</td>
<td>800,000</td>
</tr>
<tr>
<td>38</td>
<td>Net Income</td>
<td>(443,000)</td>
</tr>
<tr>
<td>39</td>
<td>Retained Earnings, beginning of year</td>
<td>1,260,000</td>
</tr>
<tr>
<td>40</td>
<td>Retained Earnings, end of year</td>
<td>830,000</td>
</tr>
</tbody>
</table>

#### Ratios

- **Primary Reserve (lines 32)**
  - Ratio: \( \frac{23.5 \times 10^4 \times (15 \times 10^9)}{23} = \frac{3,500,000}{23} = 150,000 \)  
  - **Value:** 0.080

- **Equity Ratio (lines 13, 5, 10)**
  - Ratio: \( \frac{23.5 \times 10^4 \times (15 \times 10^9)}{23} = \frac{3,500,000}{23} = 150,000 \)  
  - **Value:** 0.332

- **Net Income (lines 27, 33)**
  - Ratio: \( \frac{27 \times 33}{27 + 33} = \frac{910,000}{2,030,000} \)  
  - **Value:** 0.051

*Long-Term Debt (lines 16, 19) cannot exceed Property and Equipment (line 8) in this formula.*
Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms

Primary Reserve strength factor score = 10 x Primary Reserve ratio result:  

Example (for Private Non-Profit institutions)  

10 x 0.188 = 1.880

Equity strength factor score = 6 x Equity ratio result:  

6 x 0.350 = 2.100

Because the Net Income ratio result is negative, the algorithm for negative net income is used -- Net Income strength factor score = 1 + (25 x Net Income ratio result):  

1 + (25 x -0.0015) = 0.963

(Note: If the Net Income ratio result is positive, the following algorithm is used, Net Income strength factor score = 1 + (50 x Net Income ratio result) -- If the Net Income ratio result is 0, the Net Income strength factor score is 1).

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 40% x Primary Reserve strength factor score:  

0.40 x 1.880 = 0.752

Equity weighted score = 40% x Equity strength factor score:  

0.40 x 2.100 = 0.840

Net Income weighted score = 20% x Net Income strength factor score:  

0.20 x 0.963 = 0.193

Composite score = sum of all weighted scores:  

0.752 + 0.840 + 0.193 = 1.785

Round the composite score to one digit after the decimal point to determine the final score:  

1.8

* The symbol "x" denotes multiplication.
APPENDIX A TO SUBPART L OF PART 668—RATIO METHODOLOGY FOR PRIVATE NON-PROFIT INSTITUTIONS

Section 1: Ratios and Ratio Terms

\[
\begin{align*}
\text{Primary Reserve Ratio} &= \frac{\text{Expendable Net Assets}}{\text{Total Expenses}} \\
\text{Equity Ratio} &= \frac{\text{Modified Net Assets}}{\text{Modified Assets}} \\
\text{Net Income Ratio} &= \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenue}}
\end{align*}
\]

Definitions:

Expendable Net Assets = (unrestricted net assets) + (temporarily restricted net assets) - (annuities, term endowments, and life income funds that are temporarily restricted) - (intangible assets) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)** - (unsecured related-party receivables)

Total Expenses is total unrestricted expenses taken directly from the audited financial statement.

Modified Net Assets = (unrestricted net assets) + (temporarily restricted net assets) + (permanently restricted net assets) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Change in Unrestricted Net Assets is taken directly from the audited financial statement.

Total Unrestricted Revenue is taken directly from the audited financial statement (This amount includes net assets released from restriction during the fiscal year).

* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.
** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.
### Section 2, Calculating the Ratios from the Balance Sheet and Statement of Activities

<table>
<thead>
<tr>
<th>Balance Sheet</th>
<th>Statement of Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Line</strong></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td>1</td>
<td>Cash and Cash Equivalents</td>
</tr>
<tr>
<td>2</td>
<td>Accounts Receivable</td>
</tr>
<tr>
<td>3</td>
<td>Prepaid Expenses</td>
</tr>
<tr>
<td>4</td>
<td>Inventories</td>
</tr>
<tr>
<td>5</td>
<td>Contributions Receivable</td>
</tr>
<tr>
<td>6</td>
<td>Student Loans Receivable</td>
</tr>
<tr>
<td>7</td>
<td>Investments</td>
</tr>
<tr>
<td>8</td>
<td>Property and Equipment, net</td>
</tr>
<tr>
<td>9</td>
<td>Bond Insurance Costs</td>
</tr>
<tr>
<td>10</td>
<td>Goodwill</td>
</tr>
<tr>
<td>11</td>
<td>Deposits</td>
</tr>
<tr>
<td>12</td>
<td>Total Assets</td>
</tr>
<tr>
<td>13</td>
<td>Line of Credit</td>
</tr>
<tr>
<td>14</td>
<td>Accounts Payable</td>
</tr>
<tr>
<td>15</td>
<td>Accrued Expenses</td>
</tr>
<tr>
<td>16</td>
<td>Deferred Revenue</td>
</tr>
<tr>
<td>17</td>
<td>Post-Retirement Benefits Liability</td>
</tr>
<tr>
<td>18</td>
<td>Bonds Payable</td>
</tr>
<tr>
<td>19</td>
<td>Total Liabilities</td>
</tr>
<tr>
<td>20</td>
<td>Unrestricted Net Assets</td>
</tr>
<tr>
<td>21</td>
<td>Accounts</td>
</tr>
<tr>
<td>22</td>
<td>John Doe Scholarship Fund</td>
</tr>
<tr>
<td>23</td>
<td>Total Temp., Restricted Net Assets</td>
</tr>
<tr>
<td>24</td>
<td>Permanent Res. Net Assets</td>
</tr>
<tr>
<td>25</td>
<td>Total Net Assets</td>
</tr>
<tr>
<td><strong>26</strong></td>
<td>Total Liabilities &amp; Net Assets</td>
</tr>
</tbody>
</table>

**Statement of Activities**

- **Taxes and Fees**: $45,000,000
- **Contributions**: $300,000 ($120,000)
- **Auxiliary Enterprises**: $5,500,000
- **Net Assets Released from Restrictions**: $200,000
- **Total Revenue**: $51,900,000 ($300,000)
- **Operating Expenses**: $38,000,000
- **Depreciation**: $5,000,000
- **Interest Expense**: $2,800,000
- **Total Expenses**: $51,900,000 ($200,000)
- **Net Assets Released from Restrictions**: $200,000
- **Change in Net Assets**: $12,180,000
- **Net Assets at beginning of year**: $15,270,000
- **Net Assets at end of year**: $15,190,000

**Ratios**

- **Primary Reserve Ratio**: \( \frac{20 + 12 + 21 + 0.8 + 18}{30} \) = $0.790,000 (0.188)
- **Equity Ratio**: \( \frac{25 + 10}{55 + 10} \) = $26,000,000 (0.430)
- **Net Income Ratio**: \( \frac{30}{55} \) = $55,740,000 (0.0015)

*In accounting statements, parentheses denote negative numbers (e.g., ($0,000) equals negative $0,000).

**Long Term Debt** (line 18) cannot exceed Property and Equipment, net (line 8) in this formula.
Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms

Example (for Private Non-Profit institutions)

Primary Reserve strength factor score = 10 x Primary Reserve ratio result:  
10 x 0.188 = 1.880

Equity strength factor score = 6 x Equity ratio result:  
6 x 0.350 = 2.100

Because the Net Income ratio result is negative, the algorithm for negative
net income is used -- Net Income strength factor score = 1 + (25 x Net Income ratio result):  
1 + (25 x -0.0015) = 0.963

(Note: If the Net Income ratio result is positive, the following algorithm is used,
Net Income strength factor score = 1 + (50 x Net Income ratio result) -- If the Net Income ratio result is 0, the Net
Income strength factor score is 1).

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score
for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the
strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 40% x Primary Reserve strength factor score:  
0.40 x 1.880 = 0.752

Equity weighted score = 40% x Equity strength factor score:  
0.40 x 2.100 = 0.840

Net Income weighted score = 20% x Net Income strength factor score:  
0.20 x 0.963 = 0.193

Composite score = sum of all weighted scores:  
0.752 + 0.840 + 0.193 = 1.785

Round the composite score to one digit after the decimal point to determine the final score:  
1.8

* The symbol "x" denotes multiplication.

Appendix A to Subpart N of Part 668—Sample Default Prevention Plan

This appendix is provided as a sample plan for those institutions developing a default prevention plan in accordance with § 668.217(a). It describes some measures you may find helpful in reducing the number of students that default on Federally funded loans. These are not the only measures you could implement when developing a default prevention plan.

I. Core Default Reduction Strategies

1. Establish your default prevention team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office. Consider including individuals and organizations independent of your institution that have experience in preventing title IV loan defaults.

2. Consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to you and your students.

3. Define evaluation methods and establish a data collection system for measuring and verifying relevant default prevention statistics, including a statistical analysis of the borrowers who default on their loans.

4. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default prevention plan.

5. Establish annual targets for reductions in your rate.

6. Establish a process to ensure the accuracy of your rate.

II. Additional Default Reduction Strategies

1. Enhance the borrower’s understanding of his or her loan repayment responsibilities through counseling and debt management activities.

2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.

4. Track the borrower’s delinquency status by obtaining reports from data managers and FFEL Program lenders.

5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.

6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

III. Statistics for Measuring Progress

1. The number of students enrolled at your institution during each fiscal year.

2. The average amount borrowed by a student each fiscal year.

3. The number of borrowers scheduled to enter repayment each fiscal year.

4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.

5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.

6. The number of borrowers at least 60 days delinquent each fiscal year.

7. The number of borrowers who defaulted in each fiscal year.

8. The type, frequency, and results of activities performed in accordance with the default prevention plan.
34 CFR 682
Integrated Regulations Incorporating
Program Integrity Final Rules
(published in October 29, 2010 Federal Register)
and
Foreign School Final Rules
(published in November 1, 2010 Federal Register)

Developed by the NCHELP Program Regulations Committee
Updated: December 6, 2010

Base document:
GPO Compilation through July 1, 2010

Regs Committee (RC) Editorial Notes:
1. 682.210(s)(6): The cites references (s)(6)(vi) needs to be changed to (s)(6)(iv).
2. 682.210(u)(5): The word “military” needs to be changed to “post-military”.
3. 682.211(h)(2)(ii)(C): The reference to 682.215 needs to be changed to 682.216.
4. 682.211(h)(2)(iii): Does not cover National Guard members that are called to Federal active duty where that active duty does not fall under a war, a military operation as defined in 10 U.S.C. 101(a)(13), nor a national emergency declared by the President due to a terrorist attack.
5. 682.211(h)(4)(iii): Both references to 682.215 should be 682.216.
6. 682.302(a): The removal of the “,” after the words “capitalized interest” should be retained. Otherwise, the next phrase modifies “capitalized interest” instead of “average principal balance.”
7. 682.404 (c): The first letter in the words “quarterly” and “guaranty” have been transposed. The text should read, “…quarterly report is due until the guaranty agency…”.
## Table of Contents

### Title 34—Education

#### Chapter VI—Office of Postsecondary Education, Department of Education

##### Part 682—Federal Family Education Loan (FFEL) Program

<table>
<thead>
<tr>
<th>Subpart A—Purpose and Scope</th>
<th>§682.100 The Federal Family Education Loan programs</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>§682.101 Participation in the FFEL programs</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>§682.102 Obtaining and repaying a loan</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>§682.103 Applicability of subparts</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Subpart B—General Provisions</td>
<td>§682.200 Definitions</td>
<td>6</td>
</tr>
<tr>
<td>§682.201 Eligible borrowers</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>§682.202 Permissible charges by lenders to borrowers</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>§682.203 Responsible parties</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>§682.204 Maximum loan amounts</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>§682.205 Disclosure requirements for lenders</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>§682.206 Due diligence in making a loan</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>§682.207 Due diligence in disbursing a loan</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>§682.208 Due diligence in servicing a loan</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>§682.209 Repayment of a loan</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>§682.210 Deferment</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>§682.211 Forbearance</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>§682.212 Prohibited transactions</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>§682.213 Prohibition against the use of the Rule of 78s</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>§682.214 Compliance with equal credit opportunity requirements</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>§682.215 Income-based repayment plan</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>§682.216 Teacher loan forgiveness program</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Subpart C—Federal Payments of Interest and Special Allowance</td>
<td>§682.300 Payment of interest benefits on Stafford and Consolidation loans</td>
<td>44</td>
</tr>
<tr>
<td>§682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>§682.302 Payment of special allowance on FFEL loans</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>§682.303 [Reserved]</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>§682.304 Methods of computing interest benefits and special allowance</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>§682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency</td>
<td>§682.400 Agreements between a guaranty agency and the Secretary</td>
<td>52</td>
</tr>
<tr>
<td>§682.401 Basic program agreement</td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>§682.403 Federal advances for claim payments</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>§682.404 Federal reinsurance agreement</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>§682.405 Loan rehabilitation agreement</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>§682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage</td>
<td>79</td>
<td></td>
</tr>
<tr>
<td>§682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>§682.408 Loan disbursement through an escrow agent</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>§682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>§682.410 Fiscal, administrative, and enforcement requirements</td>
<td>85</td>
<td></td>
</tr>
<tr>
<td>§682.411 Lender due diligence in collecting guaranty agency loans</td>
<td>90</td>
<td></td>
</tr>
<tr>
<td>§682.412 Consequences of the failure of a borrower or student to establish eligibility</td>
<td>92</td>
<td></td>
</tr>
<tr>
<td>§682.413 Remedial actions</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>§682.414 Records, reports, and inspection requirements for guaranty agency programs</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>§682.415 [Removed and Reserved]</td>
<td>96</td>
<td></td>
</tr>
</tbody>
</table>
§682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders .................................................................................................................................................................................................117

§682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school ...................................................................................................................................................................................................118

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations ..........................................................119

§682.800 Prohibition against discrimination as a condition for receiving special allowance payments ..................................................................................119

Appendices A-B to Part 682 [Reserved] ..................................................................................................................................................................................................................119

Appendix C to Part 682—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a] ..................................................................................................................................................................................................................................................119

Appendix D to Part 682—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay Interest Benefits, Special Allowance, and Reinsurance on Stafford, Plus, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138] ..................................................................................................................................................................................................................................................126

Authority: 20 U.S.C. 4070g, 1071 to 1087-2, unless otherwise noted.

Source: 57 FR 60323, Dec. 18, 1992, unless otherwise noted.
§682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as "the Federal Family Education Loan (FFEL) programs," in which lenders use their own funds to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools:

1. The Federal Stafford Loan (Stafford) Program, which encourages making loans to undergraduate, graduate, and professional students.

2. The Federal Supplemental Loans for Students (SLS) Program, as in effect for periods of enrollment that began prior to July 1, 1994, which encouraged making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

3. The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students. The PLUS Program also provides for making loans to graduate and professional students on or after July 1, 2006.

4. The Federal Consolidation Loan Program (Consolidation Loan Program), which encourages making loans to borrowers for the purpose of consolidating loans: under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS, and PLUS programs.

(b) (1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program as in effect for periods of enrollment that began prior to July 1, 1994; and

(D) Within the Consolidation Loan Program, on loans made under the Federal Consolidation Loan Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section collectively are referred to in these regulations as the "Federal Guaranteed Student Loan (GSL) programs."

(iii) The Federal GSL programs are authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS (as in effect for periods of enrollment that began prior to July 1, 1994) programs are authorized, under limited circumstances, to operate in States in which a guaranty agency program does not serve all eligible students.

(3) Within the Stafford Loan Program, on loans made under the Federal Stafford Loan Program, if the application for the consolidation loan was received on or after November 13, 1997, students may borrow under the PLUS Program. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, PLUS, or Nursing Student Loan Program loans may borrow under the Consolidation Loan Program. The PLUS Program also provides for making loans to graduate and professional students on or after July 1, 2006.

(Authority: 20 U.S.C. 1071 to 1087-2)


§682.102 Obtaining and repaying a loan.

(a) Stafford loan application. Generally, to obtain a Stafford loan a student requests a loan by completing the Free Application for Federal Student Aid (FAFSA), and contacting the school, lender or guarantor. The school determines and certifies the student's eligibility for the loan. Prior to loan disbursement, the student obtains a loan guarantee from a guaranty agency or the Secretary and the student completes a promissory note, unless the student has previously completed a Master Promissory Note (MPN) that the lender may use for the new loan.

(b) [Reserved]

(c) PLUS loan application. (1) For a parent to obtain a PLUS loan, the parent completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary. Prior to loan disbursement, the parent completes a PLUS MPN, unless the parent has previously completed a PLUS MPN that the lender may use for the new loan.

(2) For a graduate or professional student to obtain a PLUS loan, the student applies for a PLUS Loan by completing a Free Application for Federal Student Aid (FAFSA) and contacting the school, lender or guarantor. The school determines and certifies the student's eligibility for the PLUS loan. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary. Prior to loan disbursement, the student completes a PLUS MPN, unless the student has previously completed a PLUS MPN that the lender may use for the new loan.

(d) Consolidation loan application. Generally, to obtain a Consolidation loan, a borrower completes an application and submits it to a lender
participating in the Consolidation Loan Program. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(e) Repaying a loan

Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy. A parent borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's or student's obligation to repay all or a portion of his or her loan may be cancelled if the student is unable to complete his or her program of study because the school closed or the borrower's or student's eligibility to borrow was falsely certified by the school. The obligation to repay all or a portion of a loan may be forgiven for Stafford loan borrowers who enter certain areas of the teaching or child care professions.

(2) Stafford loan repayment. In the case of a subsidized Stafford loan, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. The Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. In the case of an unsubsidized Stafford loan, the borrower is responsible for interest during these periods. At the end of the grace period, the repayment period begins. During the repayment period, for the subsidized and unsubsidized Stafford loan, the borrower pays both the principal and the interest accruing on the loan.

(3) SLS loan repayment. Generally, the repayment period for an SLS loan begins immediately on the day of the last disbursement of the loan proceeds by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) Consolidation loan repayment.

Generally, the repayment period for a Consolidation loan begins on the day the loan is disbursed. The first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) Deferment of repayment.

Repayment of principal on a FFEL program loan may be deferred under the circumstances described in Sec. 682.210.

(7) Default.

If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1071 to 1087-2)

§682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the FFEL and Federal GSL programs.

(b) The administration of the FFEL programs by a guaranty agency is subject to subparts C, D, F, and G of this part.

(c) The Federal FFEL and Federal GSL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the FFEL and Federal GSL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087-2)

§682.200 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic Competitiveness Grant (ACG) Program

Academic year

Campus-based programs

Dependent student

Eligible program

Eligible student

Enrolled

Expected family contribution (EFC)

Federal Consolidation Loan Program

Federal Pell Grant Program

Federal Perkins Loan Program

Federal PLUS Program

Federal Work-Study (FWS) Program

Full-time student

Graduate and professional student

Half-time student

Independent student

Leveraging Educational Assistance Partnership (LEAP) Program

National of the United States (Referred to as U.S. Citizen or National in 34 CFR 682.2)

National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program

Payment period

Supplemental Educational Opportunity Grant (SEOG) Program

Supplemental Loans for Students (SLS) Program

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

TEACH Grant

Undergraduate student

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Clock hour

Correspondence course

Credit hour

Educational program

Federal Family Education Loan Program (formerly known as the Guaranteed Student Loan (GSL) Program)

Foreign institution

Institution of higher education (Sec. 600.4)

Nationally recognized accrediting agency

Postsecondary Vocational Institution

Preaccredited

Secretary

State

The definition for cost of attendance is set forth in section 472 of the Act, as amended.

(b) The following definitions also apply to this part:


Actual interest rate. The annual interest rate a lender charges on a loan, which
may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of FFEL loans. The term “Authority” also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a FFEL Program loan is made.

Co-Maker. One of two married individuals who jointly borrow a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan. The term co-maker also includes one of two parents who are joint borrowers as previously authorized in the PLUS Program.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS or Consolidation loan, to make an installment payment when due, or to meet other terms of the promissory note, the Act, or regulations as applicable, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 270 days for a loan repayable in monthly installments; or
(2) 330 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a holder, in the case of a Consolidation loan, or to a borrower, a school, or an escrow agent by issuance of an individual check, a master check or by electronic funds transfer that may represent loan amounts for borrowers.

Disposable income. That part of an individual’s compensation from an employer and other income from any source, including spousal income, that remains after the deduction of any amounts required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited, to Federal, State, and local taxes, Social Security contributions, and wage garnishment payments.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. Any guaranty agency or other eligible lender that receives the proceeds of a FFEL program loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower’s school.

Estimated financial assistance. (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as, scholarships, grants, the net earnings from need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);
(ii) Except as provided in paragraph (2)(vii) of this definition, veterans’ education benefits;
(iii) Any educational benefits paid because of enrollment in a postsecondary education institution, or to cover postsecondary education expenses;
(iv) Fellowships or assistantships, except non-need-based employment portions of such awards;
(v) Insurance programs for the student’s education; and
(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, Academic Competitiveness Grant, National SMART Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans or subsidized and unsubsidized Federal Direct Stafford/Ford Loans, and Federal PLUS or Federal Direct PLUS Loans.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution, including the amounts of any TEACH Grant, unsubsidized Federal Stafford or Federal Direct Stafford/Ford Loans, Federal PLUS or Federal Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student’s EFC exceeds the EFC, the excess amount must be treated as estimated financial assistance;
(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined;
(iii) For the purpose of determining eligibility for a subsidized Stafford loan, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);
(iv) Any portion of the estimated financial assistance described in paragraph (1) of this definition that is included in the calculation of the student’s expected family contribution (EFC);
(v) Non-need-based employment earnings;
(vi) Assistance not received under a title IV, HEA program, if that assistance is designated to offset all or a portion of a specific amount of the cost of attendance and that component is excluded from the cost of attendance as well. If that assistance is excluded from either estimated financial assistance or cost of attendance, it must be excluded from both;
(vii) Federal veterans’ education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers’ Training Corps);
(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);
(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);
(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);
(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the “Montgomery GI Bill— active duty”);
(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);
(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans’ Educational Assistance Program);
(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);
(I) Chapter 35 of title 38, United States Code (Survivors’ and Dependents’ Educational Assistance Program);
(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);
(K) Section 156(b) of the “Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes” (42 U.S.C. 402 note) (Restored Entitlement
Program for Survivors, also known as “Quayle benefits”;

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the Act.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Loan Program.

Federal Insured Student Loan Program. The loan program authorized by title IV-B of the Act under which the Secretary directly insures lenders against losses. Foreign school. A school not located in a State. Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an institution of higher education and ends on the day before the repayment period begins. See also “Post-deferment grace period.” For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an institution of higher education.

Guaranty agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Holder. An eligible lender owning an FFEL Program loan including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Legal guardian. An individual appointed by a court to be a “guardian” of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term “eligible lender” is defined in section 435(d) of the Act, and in paragraphs (2)-(5) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union—

(i) The phrase “subject to examination and supervision” in section 435(d) of the Act means “subject to examination and supervision in its capacity as a lender”;

(ii) The phrase “does not have as its primary consumer credit function the making or holding of loans made to students under this part” in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company’s wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender’s or subsidiaries’ combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries. For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender’s consumer credit function.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

(4) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(5)(i) The term “eligible lender” does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has, directly or through an agent or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments (including payments for referrals, finder fees or processing fees), or other inducements to any school, any employee of a school, or any individual or entity that makes, or placement on a school’s list of recommended or suggested lenders;

(B) Provided in §682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(C) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling as provided in §682.604(f) and exit counseling as provided in §682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(10) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling as provided in §682.604(f) and exit counseling as provided in §682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(11) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school

(6) Compensation to an employee of a school’s financial aid office or other employee who has responsibilities with respect to student loans or other financial aid provided by the school or compensation to a school-affiliated organization or its employees, to serve on a lender’s advisory board, commission or other group established by the lender, except that the lender may reimburse the employee for reasonable expenses incurred in providing the service;

(7) Payment of conference or training registration, travel, and lodging costs for an employee of a school or school-affiliated organization;

(8) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;

(9) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a school’s list of recommended or suggested lenders;

(10) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling as provided in §682.604(f) and exit counseling as provided in §682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(11) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school
under which the employee would provide services to the lender.

(B) Conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions or to family members of such students, except to a student or borrower who previously has received a FFEL loan from the lender;

(C) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Technical assistance to a school that is comparable to the kinds of technical assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the Federal Register;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, including in-person entrance and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

(C) Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(D) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(E) A reduced origination fee in accordance with §682.202(c);

(F) A reduced interest rate as provided under the Act;

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the Federal Register.

(iii) For the purposes of this paragraph (5)—

(A) The term “school-affiliated organization” is defined in §682.200.

(B) The term “applications” includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL Consolidation loan application and promissory notes.

(C) The term “other benefits” includes, but is not limited to, preferential rates for or access to the lender's other financial products, information technology equipment, or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

(6) The term eligible lender does not include any lender that—

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 34 CFR part 85) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4; or

(ii) Is an affiliate, as defined in 34 CFR part 85, of any person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

(7) An eligible lender may not make or hold a loan as trustee for a school, or for a school-affiliated organization as defined in this section, unless on or before September 30, 2006—

(i) The eligible lender was serving as trustee for the school or school-affiliated organization under a contract entered into and continuing in effect as of that date; and

(ii) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on that date.

(8) As of January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006, and which continues in effect with a school or a school-affiliated organization, must comply with the requirements of Sec. 682.601(a)(3), (a)(5), and (a)(7).

Master Promissory Note (MPN). A promissory note under which the borrower may receive loans for a single period of enrollment or multiple periods of enrollment.


Nonsubsidized Stafford loan. A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under Sec. 682.301(b) or special allowance payments under Sec. 682.302.

Origination relationship. A special business relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making FFEL program loans. In this situation, the school is considered to have “originated” a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower. The lender must pass this fee on to the SLS or PLUS borrower.

Participating school. A school that has in effect a current agreement with the Secretary under Sec. 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time, an academic year, or the length of the student’s program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years, or 25 years under an extended repayment schedule, from the date the first payment of principal is due from
the borrower, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Stafford loans, the period that begins on the day after the expiration of the applicable grace period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years or 25 years under an extended repayment schedule, from that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. The first payment of principal is due within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower but who, has not yet entered repayment on the Stafford loan requests that commencement of repayment on the SLS loan be delayed until the borrower’s grace period on the Stafford loan expires. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan. The borrower is responsible for paying interest on the loan during the grace period and periods of deferment, but the interest may be capitalized by the lender.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years, or 25 years under an extended repayment schedule, from that date, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 10, 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under Sec. 682.401(b)(4), the making of six (6) consecutive, on-time, voluntary full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For purposes of consolidating a defaulted loan under 34 CFR 682.201(c)(1)(i)(ii)(C), the making of three (3) consecutive, on-time voluntary full monthly payments on a defaulted loan.

(3) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower’s total financial circumstances. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution. On-time means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date.

School. (1) An “institution of higher education” as that term is defined in 34 CFR 600.4.

(2) For purposes of an in-school deferment, the term includes an institution of higher education, whether or not it participates in any title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

School-affiliated organization. A school-affiliated organization is any organization that is directly or indirectly related to a school and includes, but is not limited to, alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or, a similar agreement with a guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV-B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Subsidized Stafford Loan. A Stafford loan that qualifies for interest benefits under Sec. 682.301(b) and special allowance under Sec. 682.302.

Substantial gainful activity. A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Temporarily totally disabled. The condition of an individual who—

(i) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(ii) Can be expected to result in death

(iii) Has lasted for a continuous period of not less than 60 months; or

(iv) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

Unsubsidized Stafford Loan. A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under Sec. 682.301(b) but do qualify for special allowance under Sec. 682.302.

Write-off. Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

(Approved by the Office of Management and Budget under control number 1845-0020)


[57 FR 60323, Dec. 18, 1992]

Editorial Note: For Federal Register citations affecting §682.200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.
§682.201 Eligible borrowers.

(a) Student Stafford borrower. Except for a refinanced SLS/PLUS loan made under Sec. 682.209(e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an unsubsidized Stafford loan, if the student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or unsubsidized Stafford loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of $200, have made a request to a lender for a subsidized Stafford loan;

(3) For purposes of a dependent undergraduate student's eligibility for an additional unsubsidized Stafford loan amount, as described at Sec. 682.204(d), is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family's financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., denial of a PLUS loan to a parent based on adverse credit, the student's parent receives only public assistance or disability benefits, is incarcerated, or has whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount on which there has been a total cessation of collection activity, including all principal, interest, collection costs, court costs, attorney fees, and late charges that have accrued on that amount up to the date of reaffirmation.

(ii) For purposes of this section, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note that includes the same terms and conditions as the original note signed by the borrower or repayment schedule; or

(B) Making a payment on the loan.

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled.

(6) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the student must—

(i) Obtain certification from a physician that the borrower is able to engage in substantial gainful activity.

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and

(iii) If a borrower receives a new FFEL loan, other than a Federal Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with §682.402(c)(3)(ii), 34 CFR 674.61(b)(3)(ii), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resume repayment on the previously discharged loan in accordance with §§682.402(c)(5), 34 CFR 674.61(b)(5), or 34 CFR 685.213(b)(4), or acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(7) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010, the borrower must—

(i) Comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section; and

(ii) Sign a statement acknowledging that—

(A) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made unless that impairment substantially deteriorates; and

(B) Collection activity will resume on any loans in a conditional discharge period.

(8) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR part 668.32(e).

(9) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) Student PLUS borrower. A graduate or professional student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school is eligible to receive a PLUS Loan on or after July 1, 2006, if the student—

(1) Meets the requirements for an eligible student under 34 CFR 668;

(2) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of this section, if applicable;

(3) Has received a determination of his or her annual loan maximum eligibility under the Federal Subsidized and Unsubsidized Stafford Loan Program or under the Federal Direct Subsidized Stafford/Ford Loan Program and Federal Direct Unsubsidized Stafford/Ford Loan Program, as applicable; and

(4) Does not have an adverse credit history in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section, or obtains an endorser who has been determined not to have an adverse credit history, as provided for in paragraph (c)(1)(vii) of this section.

(c) Parent PLUS borrower. (1) A parent borrower, is eligible to receive a PLUS Program loan, other than a loan made under Sec. 682.209(e), if the parent—

(i) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(ii) Provides his or her and the student's social security number;

(iii) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.33;

(iv) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.35 and meets the requirements of judgment liens that apply to the student under 34 CFR 686.32(g)(3);

(v) Except for the completion of a Statement of Selective Service Registration Status, complies with the
requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 686.

(vi) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), and (a)(7) of this section, as applicable; and

(vii) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history or obtains an endorser who has been determined not to have an adverse credit history as provided in paragraph (c)(2)(ii) of this section.

(viii) Has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has not voluntarily repaid the loan, or has pled no contest or guilty to, or a crime involving fraud in obtaining title IV, HEA program assistance.

(2)(i) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(ii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt; or

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(iii) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(iv) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(v) The lender must retain a record of its basis for determining that extenuating circumstances existed. This record may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(3) For purposes of paragraph (c)(1) of this section, a “parent” includes the individuals described in the definition of “parent” in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating the dependent student's expected family contribution.

(d) Consolidation program borrower. (1) An individual is eligible to receive a Consolidation loan if the individual—

(i) On the loans being consolidated—

(A) Is, at the time of application for a Consolidation loan—

(1) In a grace period preceding repayment;

(2) In repayment status;

(3) In a default status and has either made satisfactory repayment arrangements as defined in applicable program regulations or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in Sec. 682.209(a)(6)(iii) or the income-based repayment plan described in §682.215;

(B) Not subject to a judgment secured by garnishment under section 488A of the Act, unless the judgment has been vacated;

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(D) Not in default status resulting from a claim filed under Sec. 682.412.

(ii) Certifies that no other application for a Consolidation loan is pending; and

(iii) Agrees to notify the holder of any changes in address.

(2) A borrower may not consolidate a loan under this section for which the borrower is wholly or partially ineligible.

(e) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan before or after the date a Consolidation loan is made may receive a subsequent Consolidation loan;

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated;

(4) If the consolidation loan is in default or has been submitted to the guaranty agency for default averse, the borrower may obtain a subsequent consolidation loan under the Federal Direct Consolidation Loan Program for purposes of obtaining an income contingent repayment plan or an income-based repayment plan; and

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using—

(i) The Public Service Loan Forgiveness Program; or

(ii) For FFEL Program loans first disbursed on or after October 1, 2008 (including Federal Consolidation Loans that repaid FFEL or Direct Loan program Loans first disbursed on or after October 1, 2008), the no accrual of interest benefit for active duty service members.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, and 1091)

§682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest. The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(1) Stafford Loan Program. (i) For loans made prior to July 1, 1994, if, the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on any FFEL Program loan, and the first disbursement is made—

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately.


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(a) Interest. The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(1) Stafford Loan Program. (i) For loans made prior to July 1, 1994, if, the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on any FFEL Program loan, and the first disbursement is made—

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately.
preceding the July 1-June 30 period, plus 3.10 percent; or

(2) 9 percent.

(iii) For a Stafford loan for which the first disbursement is made before October 1, 1992—

(A) If the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement is made on or after October 1, 1992, but before December 20, 1993, if the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 the interest rate is a variable rate applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after July 1, 1998, and prior to July 1, 2006, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

(ix) For a Stafford loan for which the first disbursement is made on or after July 1, 2006, the interest rate is 6.8 percent.

(x) For a subsidized Stafford loan made to an undergraduate student for which the first disbursement is made on or after:

(A) July 1, 2006 and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(B) July 1, 2008 and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(C) July 1, 2009 and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(D) July 1, 2010 and before July 1, 2011, the interest rate is 4.5 percent on the unpaid principal balance of the loan.

(E) July 1, 2011 and before July 2012, the interest rate is 3.4 percent on the unpaid balance of the loan.

(2) PLUS Program. (i) For a combined repayment schedule under Sec. 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under Sec. 682.209(e) or (f), the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 8.25 percent.

(iii) For a loan disbursed on or after October 1, 1992 and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 10 percent.

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 9 percent.

(vi) For a loan for which the first disbursement is made on or after July 1, 2001, and prior to July 1, 2006, the interest rate on the loans described in paragraphs (a)(2)(ii) through (iv) of this section is a variable rate applicable to each July 1-June 30, as determined on the preceding June 26, and is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus—

(j) 3.25 percent for loans described in paragraphs (a)(2)(ii) of this section; or

(2) 3.1 percent for loans described in paragraphs (a)(2)(iii) and (iv) of this section.

(B) The interest rates calculated under paragraph (a)(2)(vi)(A) of this section shall not exceed the limits specified in paragraphs (a)(2)(ii)(B), (a)(2)(iii)(B), and (a)(2)(iv)(B) of this section, as applicable.

(vii) For a PLUS loan first disbursed on or after July 1, 2006, the interest rate is 8.5 percent.

(3) SLS Program. (i) For a combined repayment schedule under Sec. 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under Sec. 682.209(e) or (f), the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992 and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1-
June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 11 percent.

(iv)(A) Beginning on July 1, 2001, the interest rate on the loans described in paragraphs (a)(3)(i) and (ii) of this section is a variable rate applicable to each July 1-June 30, as determined on the preceding June 26, and is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus—

(1) 3.25 percent for loans described in paragraph (a)(3)(ii) of this section; or

(2) 3.1 percent for loans described in paragraph (a)(3)(i) of this section.

(B) The interest rates calculated under paragraph (a)(3)(iv)(A) of this section shall not exceed the limits specified in paragraphs (a)(1)-(4) of this section, provided that the borrower's account was not more than 30 days delinquent on December 31. The amount of excess interest calculated shall be refunded to the Secretary; and

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section; provided that the borrower's account was not more than 30 days delinquent as of December 31; and

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii)(B), (C) and (D) of this section,
if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(7) Conversion to Variable Rate.

(i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6)(i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 preceding each 12-month period is equal to the sum of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii)(A) In connection with the conversion specified in paragraph (a)(6)(ii) of this section for any period prior to the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of—

(1) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(2) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv)(A) The holder of a loan being converted under paragraph (a)(6) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion, provide the borrower with—

(1) A notice informing the borrower that the loan is being converted to a variable interest rate;

(2) A description of the rate to the borrower;

(3) The current interest rate; and

(4) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(v) The notice may be provided as part of the disclosure requirement as specified under Sec. 682.205.

(vi) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

(b) Capitalization. (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with this section. This increase in the principal balance of a loan is called “capitalization.”

(2) Except as provided in paragraph (b)(4) and (b)(5) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period or, for a PLUS loan, for the period from the date the first disbursement was made to the date the repayment period begins;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(i) through (iv) of this section no more frequently than quarterly. Capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For Consolidation loans, the lender may capitalize interest as provided in paragraphs (b)(2) and (b)(3) of this section, except that the lender may capitalize the unpaid interest for a period of authorized in-school deferment only at the expiration of the deferment.

(6) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) Fees for FFEL Program loans.

(1)(i) For Stafford loans first disbursed prior to July 1, 2006, a lender may charge a borrower an origination fee not to exceed 3 percent of the principal amount of the loan.

(ii) For Stafford loans first disbursed on or after July 1, 2006, but before July 1, 2007, a lender may charge a borrower an origination fee not to exceed 2 percent of the principal amount of the loan.

(iii) For Stafford loans first disbursed on or after July 1, 2007, but before July 1, 2008, a lender may charge a borrower an origination fee not to exceed 1.5 percent of the principal amount of the loan.

(iv) For Stafford loans first disbursed on or after July 1, 2008, but before July 1, 2009, a lender may charge a borrower an origination fee not to exceed 1 percent of the principal amount of the loan.

(v) For Stafford loans first disbursed on or after July 1, 2009, but before July 1, 2010, a lender may charge a borrower an origination fee not to exceed .5 percent of the principal amount of the loan.

(vi) For Stafford loans first disbursed on or before July 1, 2010, a lender may charge a borrower an origination fee not to exceed .5 percent of the principal amount of the loan.

(vii) Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) A lender may charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected...
family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to a borrower who qualifies for a subsidized Stafford loan. A lender must charge all such borrowers the same origination fee.

(ii) With the approval of the Secretary, a lender may use a standard comparable to that defined in paragraph (c)(2)(i) of this section.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraph (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4)(i) For purposes of this paragraph (c), a lender is defined as:

(A) All entities under common ownership, including ownership by a common holding company, that make loans to borrowers in a particular state; and

(B) Any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf in a particular state.

(ii) If a lender as defined in paragraph(c)(4)(i) charges a lower origination fee to any borrower in a particular state under paragraphs (c)(1) or (c)(2) of this section, the lender must charge all such borrowers who reside in that state or attend school in that state the same origination fee.

(5) Shall charge a borrower an origination fee on a PLUS loan of 3 percent of the principal amount of the loan;

(6) Shall deduct a pro rata portion of the fee (if charged) from each disbursement; and

(7) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan—

(i) That is returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) That is repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with Sec. 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(iii) For which a loan check has not been negotiated within 120 days of disbursement; or

(iv) For which loan proceeds disbursed by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii)(B) and (C) have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) Insurance premium and Federal default fee.

(1) For loans guaranteed prior to July 1, 2006, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor (up to 1 percent of the principal amount of the loan) if that charge is provided for in the promissory note.

(2) For loans guaranteed on or after July 1, 2006, other than an SLS or PLUS loan refinanced under Sec. 682.209(e) or (f), a lender may charge the borrower the amount of the Federal default fee paid by the lender to the guarantor (up to 1 percent of the principal amount of the loan) if that charge is provided for in the promissory note.

(3) If the borrower is charged the insurance premium or the Federal default fee, the amount charged must be deducted proportionately from each disbursement of the borrower's loan proceeds, if the loan is disbursed in more than one installment.

(4) The lender shall refund the insurance premium or Federal default fee paid by the borrower in accordance with the circumstances and procedures applicable to the return of origination fees, as described in paragraph (c)(7) of this section.

(e) Administrative charge for a refinanced PLUS or SLS Loan. A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under Sec. 682.209(e) for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) Late charge. (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 15 days after it is due.

(g) Collection charges. (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs; and

(iii) Telegrams.

(2) The costs referred to in paragraph (g)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(h) Special allowance. Pursuant to Sec. 682.412(c), a lender may charge a borrower the amount of special allowance paid by the Secretary on behalf of the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1078-4, 1079, 1087-1, 1087-2, 1091a)


§682.203 Responsible parties.

(a) Delegation of functions. A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) Trustee responsibility. A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§682.204 Maximum loan amounts.

(a) Stafford Loan Program annual limits. (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) $2,625, or, for a loan disbursed on or after July 1, 2007, $3,500, for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625, or, for a loan disbursed on or after July 1, 2007, $3,500, as the—
For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625.

(ii) $3,500, or, for a loan disbursed on or after July 1, 2007, $4,500, for a program whose length is at least a full academic year in length.

(iii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iv) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(v) $5,500 for a program whose length is at least an academic year in length.

(vi) $5,500 for a program whose length is at least an academic year in length.

(vii) $5,500 for a program whose length is at least an academic year in length.

(viii) $5,500 for a program whose length is at least an academic year in length.

(ix) $5,500 for a program whose length is at least an academic year in length.

(x) $5,500 for a program whose length is at least an academic year in length.

(xi) $5,500 for a program whose length is at least an academic year in length.

(xii) $5,500 for a program whose length is at least an academic year in length.

(xiii) $5,500 for a program whose length is at least an academic year in length.

(xiv) $5,500 for a program whose length is at least an academic year in length.

(xv) $5,500 for a program whose length is at least an academic year in length.

(xvi) $5,500 for a program whose length is at least an academic year in length.

(xvii) $5,500 for a program whose length is at least an academic year in length.

(xviii) $5,500 for a program whose length is at least an academic year in length.

(xix) $5,500 for a program whose length is at least an academic year in length.

(xx) $5,500 for a program whose length is at least an academic year in length.

(1) $23,000 in the case of any student who has not successfully completed the first year of any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(2) An undergraduate student who is enrolled in a program of study that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

(b) Stafford Loan Program aggregate limits. The aggregate unpaid principal amount of all Stafford Loan Program loans in combination with loans received by the student under the Federal Direct Stafford/Ford Loan Program, but excluding the amount of capitalized interest may not exceed the following:

(i) $23,000 in the case of any student who has not successfully completed the program at the undergraduate level.
(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) Unsubsidized Stafford Loan Program. (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(ii) Except for a dependent undergraduate who qualifies for additional Unsubsidized Stafford Loan funds under paragraph (d) of this section in accordance with the conditions specified in §682.201(a)(3), for a loan first disbursed on or after July 1, 2008, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, plus

(A) $2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is at one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

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<tr>
<th>Number of semester, trimester, quarter, or clock hours enrolled</th>
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<td>Number of weeks in program</td>
<td>Number of semester, trimester, quarter, or clock hours enrolled</td>
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(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in Sec. 682.201(a)(3), the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Federal Direct Unsubsidized Stafford/Ford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) Additional eligibility under the Unsubsidized Stafford Loan Program. An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students under the conditions specified in §682.201(a)(3) may borrow additional amounts under the Unsubsidized Stafford Loan Program in addition to any amount borrowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section. The additional amount that such a student may borrow for any academic year of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (a) and (c) of this section except as provided in paragraph (d)(9) of this section for certain dependent undergraduate students—

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, as the—

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<td>Number of weeks in program</td>
<td>Number of semester, trimester, quarter, or clock hours enrolled</td>
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(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(i) $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, for a program of study of at least a full academic year in length.
(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, as the—

Number of semester, trimester, quarter, or clock hours enrolled

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) $5,000, or, for a loan first disbursed on or after July 1, 2008, $7,000, for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000, or, for a loan first disbursed on or after July 1, 2008, $7,000, as the—

Number of semester, trimester, quarter, or clock hours enrolled

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed $10,000, or, for a loan disbursed on or after July 1, 2007, $12,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,000, or, for a loan disbursed on or after July 1, 2007, $7,000, for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000, or, for a loan disbursed on or after July 1, 2007, $7,000.

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(2) of this section.

(9) A dependent undergraduate student who qualifies for the additional Unsubsidized Stafford Loan amounts under this section in accordance with the conditions specified in §682.201(a)(3) is not eligible to receive the additional Unsubsidized Stafford Loan amounts under paragraph (c)(1)(ii) of this section.

(e) Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits. The aggregate unpaid principal amount of Stafford Loans, Federal Direct Stafford/Ford Loans, Unsubsidized Stafford Loans, Federal Direct Unsubsidized Stafford/Ford Loans and SLS Loans, but excluding the amount of capitalized interest, may not exceed the following:

(1) $23,000, or, effective July 1, 2008, $31,000, for a dependent undergraduate student.

(2) $46,000, or, effective July 1, 2008, $57,500, for an independent undergraduate student or a dependent undergraduate student under the conditions specified in §682.201(a)(3).

(3) $138,500 for a graduate or professional student.

(f) SLS Program annual limit. (1) In the case of a loan for which the first disbursement is made prior to July 1, 1993, the total amount of all SLS loans that a student may borrow for any academic year may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to Sec. 682.603 by the school on or after January 1, 1990—

(i) $2,500 for a student enrolled in a program whose length is at least two-thirds of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program whose length is less than two-thirds of an academic year in length; and

(iii) $0 for a student enrolled in a program whose length is less than one-third of an academic year in length;

(2) In the case of a loan for which a first disbursement is made on or after July 1, 1993, the total amount a student may borrow for an academic year under the SLS program—

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed the following—

(A) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(B) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(C) $1,500 for enrollment in a program whose length is at least one-third but less than two-thirds of an academic year in length;

(ii) Except as provided in paragraph (f)(3) of this section, in the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed the following—

(A) $5,000 for enrollment in a program whose length is at least a full academic year;

(B) $3,325 for enrollment in a program whose length is at least two-thirds of an academic year.
program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program. (k) Maximum loan amounts. In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and
(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(l) In determining a Stafford loan amount in accordance with Sec. 682.204 (a), (c) and (d), the school must use the definition of academic year in 34 CFR 668.3.

(m) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against annual or any aggregate loan limits under paragraphs (c), (d), (e), and (f) of this section.


§682.205 Disclosure requirements for lenders.

(a) Initial disclosure statement. (1) A lender must disclose the information described in paragraph (a)(2) of this section to a borrower, in simple and understandable terms, before or at the time of first disbursement on a Federal Stafford or Federal PLUS loan. The information given to the borrower must prominently and clearly display, in bold type, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) The lender shall provide the borrower with—

(i) The lender's name;
(ii) A toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information;
(iii) The address to which correspondence with the lender and payments should be sent;
(iv) Notice that the lender may sell or transfer the loan to another party and, if it does, that the address and identity of the party to which correspondence and payments should be sent may change;
(v) The principal amount of the loan;
(vi) The amount of any charges, including the origination fee if applicable, and the Federal default fee, to be collected by the lender before or at the time of each disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower or paid by the lender;
(vii) The actual interest rate;
(viii) The annual and aggregate maximum amounts that may be borrowed;
(ix) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to each nationwide consumer reporting agency;
(x) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan, and a description of the types of repayment plans available;
(xi) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;
(xii) An explanation of any special options the borrower may have for consolidating or refinancing the loan;
(xiii) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;
(xiv) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;
(xv) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171;
(xvi) The definition of "default" found in Sec. 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to each nationwide consumer reporting agency, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that the borrower's wages may be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs;
(xvii) An explanation of the possible effects of accepting the loan on the student's eligibility for other forms of student financial assistance;
(xviii) An explanation of any costs the borrower may incur during repayment or in the collection of the loan including any fees the borrower may be charged;
(xix) In the case of a Stafford or student PLUS loan, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower;
A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of, or information that will allow the borrower to estimate, the projected monthly payment amount based on that cumulative outstanding balance; 

For unsubsidized Stafford or student PLUS borrowers, an explanation that the borrower may pay the interest while in school and, if the interest is not paid by the borrower while in school, when and how often the interest will be capitalized; 

For parent PLUS borrowers, an explanation that the parent may defer payment on the loan while the student on whose behalf the parent borrowed is enrolled at least half-time and, if the parent does not pay interest while the student is in school, when and how often interest will be capitalized, and that the parent may be eligible for a deferment on the loan if the parent is enrolled at least half-time; 

A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan; and 

A description of the options available for forgiveness of the loan and the requirements to obtain that forgiveness. 

With the exception of paragraphs (a)(2)(i) through (a)(2)(iii), (a)(2)(v) through (a)(2)(vii), and (a)(2)(xx) of this section, a lender’s disclosure requirements are met if it provides the borrower with either— 

(i) The borrower’s rights and responsibilities statement approved by the Secretary under paragraph (b) of this section; or 

(ii) The plain language disclosure approved by the Secretary under paragraph (g) of this section for subsequent loans made under a Master Promissory Note. 

(b) Separate statement of borrower rights and responsibilities. In addition to the disclosures required by paragraph (a) of this section, the lender must provide the borrower with a separate written statement, using simple and understandable terms, at or prior to the time of the first disbursement, that summarizes the rights and responsibilities of the borrower with respect to the loan. The statement must also warn the borrower about the consequences described in paragraph (a)(2)(xxvi) of this section if the borrower defaults on the loan, and that the default will be reported to each nationwide consumer reporting agency. The Borrower’s Rights and Responsibilities statement approved by the Secretary satisfies this requirement. 

(c) Disclosures at or prior to repayment. The lender must disclose the information described in paragraph (c)(2) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. 

For unsubsidized Stafford or Federal PLUS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 150 days before the first payment on the loan is due from the borrower. If the borrower enters the repayment period without the lender’s knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period. 

(2) The lender shall provide the borrower with— 

(i) The lender’s name, a toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent; 

(ii) The scheduled date the repayment period is to begin, or a deferment under §682.210(v), if applicable, is to end; 

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or a deferment under §682.210(v), if applicable, is to end, or the date of the disclosure, whichever is later; 

(iv) The actual interest rate on the loan; 

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period; 

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments based on the repayment schedule selected by the borrower; 

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options; 

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule, and if interest has been paid, the amount of interest paid; 

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty; 

(x) Information on any special loan repayment benefits offered on the loan, including benefits that are contingent on repayment behavior, and any other special loan repayment benefits for which the borrower may be eligible that would reduce the amount or length of repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower’s total payoff amount and time for repayment; 

(xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how the borrower may regain eligibility for the repayment benefit; 

(xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period at least annually; 

(xiii) A description of the options available to the borrower to avoid or be removed from default, as well as any fees associated with those options; and 

(xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education’s Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment. 

(3) Required disclosures during repayment. In addition to the disclosures required in paragraph (c)(1) of this section, the lender must provide the borrower of a FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms— 

(i) The original principal amount of the borrower’s loan; 

(ii) The borrower’s current balance, as of the time of the bill or statement; 

(iii) The interest rate on the loan; 

(iv) The total amount of interest for the preceding installment paid by the borrower; 

(v) The aggregate amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal; 

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period; 

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and the fees; 

(viii) The lender’s or servicer’s address and toll-free telephone number for repayment options, payments and billing error purposes; and 

(ix) A reminder that the borrower may change repayment plans, a list of all of the repayment plans that are available to the borrower, a link to the Department of Education’s Web site for repayment plan information, and
directions on how the borrower may request a change in repayment plans from the lender.

(4) **Required disclosures for borrowers having difficulty making payments.** The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with—

   (i) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

   (ii) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

   (iii) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(5) **Required disclosures for borrowers who are 60-days delinquent in making payments on a loan.** (i) The lender shall provide to a borrower who is 60-days delinquent in making required payments a notice of—

   (A) The date on which the loan will default if no payment is made;

   (B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

   (C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

   (D) Any options for discharging the loan that may be available to the borrower; and

   (E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education’s Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five days of the date the borrower becomes 60-days delinquent, unless the lender has sent such a notice within the previous 120 days.

(d) **Exception to disclosure requirement.** In the case of a Federal Unsubsidized Stafford loan or a Federal PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower or student on whose behalf the loan is made is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the Stafford and PLUS promissory notes and associated materials approved by the Secretary for purposes of complying with this section.

(e) **Borrower may not be charged for disclosures.** The lender must provide the information required by this section at no cost to the borrower.

(f) **Method of disclosure.** Any disclosure of information by a lender under this section may be through written or electronic means.

(g) **Plain language disclosure.** The plain language disclosure text, as approved by the Secretary, must be provided to a borrower in conjunction with subsequent loans taken under a previously signed Master Promissory Note. The requirements of paragraphs (a) and (b) of this section are satisfied for subsequent loans if the borrower is sent the plain language disclosure text and an initial disclosure containing the information required by paragraphs (a)(2)(i) through (iii), (a)(2)(v), (a)(2)(vi), (a)(2)(vii), and (a)(2)(xx) of this section.

(h) **Notice of availability of income-sensitive and income-based repayment options.** (1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

   (i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

   (ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

   (iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in paragraph (h)(1) of this section.

(i) **Separate disclosure for Consolidation loans.** At the time the lender provides a Consolidation loan application to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms—

   (1) Whether consolidation will result in a loss of loan benefits, including, but not limited to, loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

   (2) If a borrower is repaying a Federal Perkins Loan with the Consolidation loan, that the borrower will lose—

   (i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and

   (ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation loan.

(3) The repayment plans available to the borrower;

(4) The borrower’s options to prepay the Consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a Consolidation loan vary among lenders;

(6) The consequences of default on the Consolidation loan; and

(7) That applying for the Consolidation loan does not obligate the borrower to agree to take the Consolidation loan, and the process and deadline by which the borrower may cancel the Consolidation loan.

(j) **Disclosure procedures when a borrower’s address is not available.** If a lender receives information indicating it does not know the borrower’s current address, the lender is excused from providing disclosure information under this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1083(a))

§682.206 Due diligence in making a loan.

(a) **General.** (1) Loan-making duties include determining the borrower’s loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note
(except with respect to subsequent loans made under an MPN).

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school in regard to that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 688, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) Processing forms. Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) Approval of borrower and determination of loan amount. (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely on the information provided by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower’s eligibility for a loan.

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under Sec. 682.603, or the loan limits under Sec. 682.204.

(d)

(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower’s indebtedness.

(e) Security, endorsement, and co-makers. (f) A FFEL Program loan must be made without security or endorsement, except as provided in paragraph (e)(2) of this section.

(2) A Federal PLUS Program Loan may be made to an eligible borrower with an endorser who is secondarily liable for repayment of the loan.

(3) A Federal Consolidation loan, based on an application received prior to July 1, 2006, may be made to two eligible spouses provided both borrowers agree to be jointly and severally liable for repayment of the loan as co-makers.

(f) Additional requirements for Consolidation loans. (1) Prior to making any payments to pay off a loan with the proceeds of a Consolidation loan, the lender shall—

(i) Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(A) The loan is a legal, valid, and binding obligation of the borrower;

(B) The loan was made and serviced in compliance with applicable laws and regulations; and

(C) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect; and

(ii) Consistent with the requirements of §682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the Consolidation loan, of the borrower’s option to cancel the Consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel the loan. The lender must allow the borrower no less than 10 days from the date of the notice to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) of this section by the holder of a loan to be consolidated.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1083, 1085)


§682.207 Due diligence in disbursing a loan.

(a)

(1) This section prescribes procedures for lenders to follow in disbursing Stafford and PLUS loans. This section does not prescribe procedures for a refinanced SLS or PLUS Program loan made under Sec. 682.205 (e) or (f). With respect to FFEL and Federal PLUS loans, references to the “guaranty agency” in this section shall be understood to refer to the “Secretary.”

(2) The requirements of paragraphs (b)(1)(ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to Sec. 682.408. The lender shall comply with this section whether or not it disburses to an escrow agent.

(b)

(1) In disbursing a loan, a lender—

(i) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency’s prior approval; and

(B) Must disburse a Stafford or PLUS loan in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or that is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be cashed or deposited in an account of the borrower at a financial institution;

(B) If authorized by the guarantor, electronic funds transfer to an account maintained in accordance with Sec. 688.163 by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the approval of the borrower. A disbursement made by electronic funds transfer must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(C) If the school and the lender agree, a master check from the lender to the institution of higher education in an account maintained in accordance with Sec. 688.163 by the school as trustee for the lender. A disbursement made by a master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(iii) May not disburse loan proceeds earlier than is reasonably necessary to meet the student’s cost of attendance for the period for which the loan is made, and, in no case without the Secretary’s prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll.

(iv) Shall require an escrow agent to disburse loan proceeds no later than 10 days after the agent receives the proceeds from the lender.

(v) Shall disburse—

(A) Except as provided in paragraph (b)(1)(v) (C)(1) and (D) of this section, directly to the school;

(B) In the case of a Federal PLUS loan—

(1) By electronic funds transfer or master check from the lender in accordance with the disbursement schedule provided by the school to an account maintained in accordance with Sec. 688.163 by the school as trustee for the lender. A disbursement made by electronic funds transfer or master check must be accompanied by a list of the names, social security numbers,
and loan amounts for the parent or student borrowers who are receiving a portion of the disbursement and the names and social security numbers of the student. Whenever the parents are borrowing parent PLUS loans.

(2) By a check from the lender that is made co-payable to the institution and the parent borrower, for a parent PLUS loan, or student borrower, for a student PLUS loan, directly to the institution of higher education.

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests—

(1) A Stafford loan directly to the student only after verification of the student's enrollment with the home institution by the lender or guaranty agency; or

(2) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(D) In the case of a student enrolled in an eligible foreign school, if the foreign school requests, a Stafford loan directly to the student only after verification of the student's enrollment by the lender or guaranty agency.

(vi) Except as provided in paragraph (f) of this section, may not disburse a second or subsequent disbursement of a Federal Stafford loan to a student who has ceased to be enrolled; and

(vii) May disburse a second or subsequent disbursement of an FFEL loan, at the request of the school, even if the borrower or the school returned the prior disbursement, unless the lender has information that the student is no longer enrolled.

(ii) A lender or guaranty agency must verify a borrower's enrollment at the foreign school, or a borrower's enrollment in a study-abroad program, prior to each disbursement of Stafford loan funds directly to a student by—

(A) For a student enrolled at a foreign school—

(1) The guaranty agency accessing the Department's Postsecondary Education Participants System (PEPS) Database (or any successor system) and confirming that the foreign school the student is to attend is certified to participate in the FFEL program.

(2) For a new student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify the student's admission to the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.

(3) For a continuing student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify that the student is still enrolled at the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.

(b) For a student enrolled in a study-abroad program, contacting the home institution in which the student is enrolled by telephone, facsimile or e-mail to verify—

(1) For a new student, the student's admission to the study-abroad program for the period for which the loan is intended at the enrollment status for which the loan is certified.

(2) For a continuing student, that the student is still enrolled in the study-abroad program for the period for which the loan is intended at the enrollment status for which the loan is certified.

(ii) The lender or guaranty agency that is verifying enrollment at the institution the student is to attend must maintain the following information in the student's file:

(A) The name and telephone number of the school representative contacted;

(B) The date of the contact;

(C) The enrollment period;

(D) Whether enrollment was verified at the enrollment status for which the loan was certified; and

(E) Any other pertinent information received from the school.

(iii) Guaranty agencies and lenders must coordinate their activities to ensure that the requirements of this paragraph are met prior to making any direct disbursement to a student.

(iv) If a lender disburses a Stafford loan directly to the borrower for attendance at an eligible foreign school, or to a borrower enrolled in a study-abroad program approved for credit at the home institution, as provided in paragraphs (b)(1)(v)(D) and (b)(1)(v)(D)(1) of this section, the lender must, at the time of disbursement, notify the foreign school, for a borrower attending a foreign school, or the home institution in which the student is enrolled, for a borrower enrolled in a study-abroad program, of—

(A) The name and social security number of the student;

(B) The type of loan;

(C) The amount of the disbursement, including the amount of any fees assessed the borrower;

(D) The date of the disbursement; and

(E) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

(1) Disbursement must be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

(d) If one or more scheduled disbursements have elapsed before a lender makes a disbursement and the student is still enrolled, the lender may include in the disbursement loan proceeds for previously scheduled, but unmade, disbursements.

(e) A lender must disburse the loan in one installment if the school submits a schedule for disbursement of loan proceeds in one installment as authorized by Sec. 682.604(c)(8).

(f) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(1) The school certified the borrower's loan eligibility before the date the student became ineligible and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(2) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in Sec. 682.604(c)(5); and

(3) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.
§682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, establishing the terms of repayment, and reporting a borrower's enrollment and loan status information.

(b)(1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, no less frequently than every 90 days or quarterly after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)-(v) of this section within 90 days of its acquisition of the loan.

(3) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in Sec. 682.402(e)(4)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower or a student PLUS loan borrower is no longer enrolled at an institution of higher education on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(3)(i) If the borrower disputes the terms of the loan in writing and the lender does not resolve the dispute, the lender's response must provide the borrower with an appropriate contact at the guaranty agency for the resolution of the dispute.

(ii) If the guaranty agency does not resolve the dispute, the agency's response must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in Sec. 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule—

(1) To provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay; or

(2) To provide a single repayment schedule, as authorized and if practicable, for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment or transfer of ownership interest of a Stafford, PLUS, SLS, or Consolidation loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide, either jointly or separately, a notice to the borrower of—

(i) The assignment; and

(ii) The identity of the assignee;

(2) If the assignor and assignee separately provide the notice required by paragraph (e)(1) of this section, each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term "assigned" is defined in Sec. 682.401(b)(17)(ii).

(4) The assignee, or the assignor on behalf of the assignee, shall notify the guaranty agency that guaranteed the loan within 45 days of the date the assignee acquires a legally enforceable right to receive payment from the borrower on the loan of—

(i) The assignment; and

(ii) The name and address of the assignee, and the telephone number of the assignee that information furnished by the assignee can be substantiated that the borrower, or the student on whose behalf a parent or guardian has signed a Stafford, PLUS, or SLS loan application, is either jointly or separately, a notice to the assignor, and the telephone number of the assignor, and the telephone number of the guaranty agency that guaranteed the loan.

(5) The requirements of this paragraph (e), as to borrower notification, apply if the borrower is in a grace period or has entered the repayment period.

(f)(1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in Sec. 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has signed a Stafford, PLUS, or SLS loan application, is either jointly or separately, a notice to the assignor, and the telephone number of the assignor, and the telephone number of the guaranty agency that guaranteed the loan.

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under Sec. 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who—

(A) The school notifies the lender under 34 CFR 686.21(a)(2)(ii) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.
(2) For purposes of this section, the term “guaranty agency” in Sec. 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in Sec. 682.411(g).

(h) Notifying the borrower about a servicing change. If an FFEL Program loan has not been assigned, but there is a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loan, the holder of the loan shall, no later than 45 days after the date of the change, provide notice to the borrower of the name, telephone number, and address of the party to whom subsequent payments or communications must be sent. The requirements of this paragraph apply if the borrower is in a grace period or has entered the repayment period.

(i) A lender shall report enrollment and loan status information, or any Title IV loan-related data required by the Secretary, to the guaranty agency or to the Secretary, as applicable, by the deadline date established by the Secretary.

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(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1085)

times greater than any other installment. An agreement as specified in paragraph (c)(1)(iii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(iii) Not more than six months prior to the date that the borrower’s first payment is due, the lender must offer the borrower a choice of a standard, income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule.

(iv) Except in the case of an income-based repayment schedule, the repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower—

(A) Does not select an income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule within 45 days after being notified by the lender to choose a repayment schedule;

(B) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(vii)(C) of this section within the time period specified by the lender; or

(C) Chooses an income-based repayment schedule, but does not provide the income documentation requested by the lender under §682.215(e)(1)(i) within the time period specified by the lender.

(vi) Under a standard repayment schedule, the borrower is scheduled to pay either—

(A) The same amount for each installment payment made during the repayment period, except that the borrower’s final payment may be slightly more or less than the other payments; or

(B) An installment amount that will be adjusted to reflect annual changes in the loan’s variable interest rate.

(vii) Under a graduated repayment schedule—

(A) The amount of the borrower’s installment payment is scheduled to change (usually by increasing) during the course of the repayment period; or

(B) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

(B) An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(viii) Under an income-sensitive repayment schedule—

(A) The amount of the borrower’s installment payment is adjusted annually, based on the borrower’s expected total monthly gross income received by the borrower from employment and from other sources during the course of the repayment period; or

(B) If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that may have adjustments in the payment amount as provided under paragraph (a)(6)(i) of this section; and

(B) In general, the lender shall request the borrower to inform the lender of his or her income no earlier than 90 days prior to the due date of the borrower’s initial installment payment and subsequent annual payment adjustment under an income-sensitive repayment schedule. The income information must be sufficient for the lender to make a reasonable determination of what the borrower’s payment amount should be. If the lender receives late notification that the borrower has dropped below half-time enrollment status at a school, the lender may request that income information earlier than 90 days prior to the due date of the borrower’s initial installment payment;

(C) If the borrower reports income to the lender that the lender considers to be insufficient for establishing monthly installment payments that would repay the loan within the applicable maximum repayment period, the lender shall require the borrower to submit evidence showing the amount of the most recent total monthly gross income received by the borrower from employment and from other sources including, if applicable, pay statements from employers and documentation of any income received by the borrower from other parties;

(D) The lender shall grant a forbearance to the borrower (or endorser, if applicable) for a period of up to 5 years of payments in accordance with Sec. 682.211(i)(5) in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in a loan not being repaid within the maximum repayment term; and

(E) The lender shall inform the borrower that the loan must be repaid within the time limits specified under paragraph (a)(7) of this section.

(ix) Under an extended repayment schedule, a new borrower whose total outstanding principal and interest in FFEL loans exceeds $30,000 may repay the loan on a fixed annual repayment amount or a graduated repayment amount for a period that may not exceed 25 years. For purposes of this section, a “new borrower” is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of October 7, 1998, or on the date he or she obtains an FFEL Program loan after October 7, 1998.

(xi) Under an income-based repayment schedule, the borrower repays the loan in accordance with §682.215.

(xii) For purposes of this section, a lender shall, to the extent practicable require that all FFEL loans owed by a borrower to the lender be combined into one account and repaid under one repayment schedule. In that event, the word “loan” in this section shall mean all of the borrower’s loans that were combined by the lender into that account.

(xii) Subject to paragraphs (a)(7)(ii) through (iv) of this section, and except as provided in paragraph (a)(6)(ix) a lender shall allow a borrower at least 5 years, but not more than 10 years, or 25 years under an extended repayment plan to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in Sec. 682.210 or Sec. 682.211 respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15- and 25-year periods, and from the 10-, 12-, 15-, 20-, 25-, and 30-year periods for repayment of a Consolidation loan pursuant to Sec. 682.209(h).

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. For purposes of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.
If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, except in the case of payments made under an income-based repayment plan, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

Payment application and prepayment. (1) Except in the case of payments made under an income-based repayment plan, the lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(ii) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower’s coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower’s next scheduled payment due date advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower’s next scheduled payment due date.

Information related to next scheduled payment due date need not be provided to borrower’s making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

Minimum annual payment. (1) Subject to paragraph (c)(1)(ii) of this section and except as otherwise provided by a graduated, income-sensitive, extended, or income-based repayment plan selected by the borrower, during each year of the repayment period, a borrower’s total payments to all holders of the borrower’s FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in Sec. 682.211, or deferment described in Sec. 682.210, has been approved.

Combined repayment of a borrower’s student PLUS and SLS loans held by a lender. (1) A lender may, at the request of a student borrower, combine the borrower’s student PLUS and SLS loans held by it into a single repayment schedule.

(ii) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning of repayment of the most recent included loan.

(iii) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate. (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(ii) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in Sec. 682.202(a)(2)(ii) and (3)(ii) as appropriate; and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(iii) The lender may not charge an additional insurance premium or Federal default fee on the loan, but may charge the borrower an administrative fee pursuant to Sec. 682.202(e).

Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan. (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower’s fixed-rate PLUS or SLS loan, may obtain a loan from another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(ii) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in Sec. 682.202(a)(2)(ii) and (3)(ii) as appropriate;

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower’s obligation thereon.

The provisions of paragraphs (c)(1) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in Sec. 682.211, or deferment described in Sec. 682.210, has been approved.

Consolidation loans. (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within 60 days after the date of disbursement.
If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is less than $7,500, the borrower shall repay the Consolidation loan in not more than 10 years;
(ii) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;
(iii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;
(iv) Is equal to or greater than $20,000 but less than $40,000, the borrower shall repay the Consolidation loan in not more than 20 years;
(v) Is equal to or greater than $40,000 but less than $60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or
(vi) Is equal to or greater than $60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

For the purpose of paragraph (h)(2) of this section, the unpaid balance on other student loans—

(i) May not exceed the amount of the Consolidation loan; and
(ii) With the exception of the defaulted title IV loans on which the borrower has made satisfactory repayment arrangements with the holder of the loan, does not include the unpaid balance on any defaulted loans.

A repayment schedule for a Consolidation loan—

(i) Must be established by the lender;
(ii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

Upon receipt of the proceeds of a loan made under paragraph (h)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

Treatment by a lender of borrowers' title IV, HEA program funds received from schools if the borrower withdraws. (1) A lender shall treat a refund or a return of title IV, HEA program funds under Sec. 668.22 when a student withdraws from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2) If a lender receives a refund or a return of title IV, HEA program funds under Sec. 668.22 when a student withdraws from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under Sec. 682.209(f) or by a Consolidation loan, the lender must transmit the amount of the payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(i) Upon receipt of a refund or a return of title IV, HEA program funds transmitted under paragraph (a)(2)(i) of this section, the holder of the loan promptly must provide written notice to the borrower that has received the return of title IV, HEA program funds.

Certification on loans to be repaid through consolidation. Within 10 business days after receiving a written request for a certification from a lender under Sec. 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

Any lender holding a loan is subject to all claims and defenses that the borrower could assert against the school with respect to that loan if—

(1) The loan was made by the school or a school-affiliated organization;
(2) The lender who made the loan provided an improper inducement, as described in paragraph (a)(2)(i) of the definition of Lender in Sec. 682.200(b), to the school or any other party in connection with the making of the loan;
(3) The school refers borrowers to the lender; or
(4) The school is affiliated with the lender by common control, contract, or business arrangement.

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GPO Editorial Note: For Federal Register citations affecting §682.209, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§682.210 Deferment.

(a) General. (1)(i) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) and paragraphs (s) through (v) of this section.

(ii) The date when the condition establishing the borrower's eligibility for the deferment ends;
(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower’s eligibility for the deferment is expected to end; (iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment; (iv) In the case of an in-school deferment, the student’s anticipated graduation date as certified by an authorized official of the school; or (v) The date when the condition providing the basis for the borrower’s eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 270- or 330-day period required to establish default does not run during the deferment and post-deferment grace periods. Unless the lender has granted the borrower forbearance under Sec. 682.211, when the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment on that loan, unless the borrower has made payment arrangements acceptable to the lender prior to the payment of a default claim by a guaranty agency.

(9) The borrower promptly must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (s) of this section.

(11) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender shall grant a request for deferment if both individuals simultaneously meet the requirements of this section for receiving the same, or different deferments.

(b) Authorized deferments. (1) A deferral is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (c)(5) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State; (ii) Engaged in a course of study under an eligible graduate fellowship program; (iii) Engaged in a rehabilitation training program for disabled individuals; (iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years; or (v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section); (ii) A full-time volunteer under the Peace Corps Act, for up to three years; (iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years; (iv) A full-time volunteer for a tax-exempt organization, for up to three years; or (v) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(ii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an institution of higher education during the six months preceding the beginning of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) A Pregnant; (B) Caring for his or her newborn child; or (C) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and (ii) Not attending a school or gainfully employed.

(4) For a “new borrower,” as defined in paragraph (b)(7) of this section, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(ii) of this section); (ii) Up to three years of service as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (s) of this section.

(11) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender shall grant a request for deferment if both individuals simultaneously meet the requirements of this section for receiving the same, or different deferments.

(b) Authorized deferments. (1) A deferral is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (c)(5) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is
(i) The borrower submits a request and supporting documentation for a deferment; 
(ii) The lender receives information from the borrower's school about the borrower's eligibility in connection with a new loan; 
(iii) The lender receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower's enrollment status supports eligibility for a deferment; or 
(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending. 

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii), (iii), or (iv) of this section and that the borrower has the option to cancel the deferment and continue paying on the loan. 

(3) The lender must consider a deferment granted on the basis of a certified loan application or other information certified by the school to cover the period lasting until the anticipated graduation date appearing on the application, and as updated by notice or Student Status Confirmation Report update to the lender from the school or guaranty agency, unless and until it receives notice that the borrower has ceased the level of study (i.e., full-time or half-time) required for the deferment. 

(4) In the case of a FFEL borrower, the lender shall treat a certified loan application or other form certified by the school or for multiple holders of a borrower's loans, shared data from the Student Status Confirmation Report, as sufficient documentation for an in-school student deferment for any outstanding FFEL loan previously made to the borrower that is held by the lender. 

(5) A borrower serving in a medical internship or residency program, except for an internship in dentistry, is prohibited from receiving or continuing a deferment on a Stafford, or a PLUS (unless based on the dependent's status) SLS, or Consolidation loan under paragraph (c) of this section. 

(d) Graduate fellowship deferment. (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with an application or certification that— 
(i) The borrower holds at least a baccalaureate degree conferred by an institution of higher education; 
(ii) The borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and 
(iii) The borrower's anticipated completion date in the program. 

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that— 
(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months; 
(ii) Requires a reported statement from each applicant explaining the applicant's objectives before the award of that financial support; 
(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and 
(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program. 

(e) Rehabilitation training program deferment. (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrower's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals. 

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that— 
(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by— 
(A) A State agency with responsibility for vocational rehabilitation programs; 
(B) A State agency with responsibility for drug abuse treatment programs; 
(C) A State agency with responsibility for mental health services program; 
(D) A State agency with responsibility for alcohol abuse treatment programs; or 
(E) The Department of Veterans Affairs; and 
(ii) Provides or will provide the borrower with rehabilitation services under a written plan that— 
(A) Is individualized to meet the borrower's needs; 
(B) Specifies the date on which the services to the borrower are expected to end; and 
(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purposes of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months. 

(f) Temporary total disability deferment. (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled as defined in Sec. 682.200(b). 

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application. 

(g) Dependent's disability deferment. (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least 90 days, the borrower shall provide the lender with a statement— 
(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent requires continuous nursing or similar services for a period of at least 90 days; and 
(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months. 

(2) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification. 

(h) Unemployment deferment. (1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender. 

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification, or
an equivalent as approved by the Secretary, that—

(i) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower’s current address; and

(ii) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding 6-month period to secure full-time employment.

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to 6 months before the date the lender receives the borrower’s request, and may be granted for up to 6 months after that date.

(4) A lender may not grant an unemployment deferment beyond the date that is 6 months after the date the borrower provides evidence of the borrower’s eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (h)(2) of this section.

(i) Military deferment. (1) To qualify for a military deferment, a borrower or a borrower’s representative shall provide the lender with—

(A) A written statement from the borrower’s commanding or personnel officer certifying—

(1) That the borrower is on active duty in the Armed Forces of the United States;

(2) The date on which the borrower’s service began; and

(C) The date on which the borrower’s service is expected to end; or

(ii) (A) A copy of the borrower’s official military orders; and

(B) A copy of the borrower’s military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(5) A lender that grants a military service deferment based on a request from a borrower’s representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower’s representative of the outcome of the deferment request.

(i) Public Health Service deferment. To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS;

(2) The date on which the borrower’s service began; and

(3) The date on which the borrower’s service is expected to end.

(k) Peace Corps deferment. (1) To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(i) That the borrower has agreed to serve for a term of at least one year;

(ii) The date on which the borrower’s service began; and

(iii) The date on which the borrower’s service is expected to end.

(2) The lender must grant a deferment for the borrower’s full term of service in the Peace Corps, not to exceed three years.

(l) Full-time volunteer service in the ACTION programs. To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower’s service began; and

(m) Deferment for full-time volunteer service for a tax-exempt organization. To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year;

(2) The date on which the borrower’s service began; and

(3) The date on which the borrower’s service is expected to end.

(n) Internship or residency deferment. (1) To qualify for an internship or residency deferment under paragraphs (b)(2)(v) or (b)(9)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program; and

(2) The date on which the borrower’s service is expected to end.

(3) The date on which the borrower’s service is expected to end.
(iv) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires to be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) Parental-leave deferment. (1) To qualify for the parental-leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) NOAA deferment. To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(q) Targeted teacher deferment. (1) To qualify for a targeted teacher deferment under paragraph (b)(5)(ii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender—

(i) A statement from an official of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q)(5) through (7) of this section, as described in paragraph (q)(2)(v) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary, a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as provided for in paragraphs (q)(5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is—

(i) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(A) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6)(i) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.
(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section—

(i) The definition of the term school in Sec. 682.200(b) does not apply;

(ii) Elementary school means a day or residential school that provides elementary education, as determined under State law;

(iii) Secondary school means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) Chief State School Officer means the highest ranking educational official for elementary and secondary education for the State;

(vi) School year means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) Teacher shortage area means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) Full-time equivalent means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a pro rata basis corresponding to the percentage of his or her working hours spent in such a position.

(r) Working-mother deferment. (1) To qualify for the working-mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the beginning date of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of her child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(s) Deferments for new borrowers on or after July 1, 1993—(1) General. (i) A new borrower who receives an FFEL Program loan first disbursed on or after July 1, 1993 is entitled to receive deferments under paragraphs (s)(2) through (s)(6) of this section. For purposes of paragraphs (s)(2) through (s)(6) of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of July 1, 1993 or on the date he or she obtains a loan on or after July 1, 1993. This term also includes a borrower who obtains a Federal Consolidation Loan on or after July 1, 1993 if the borrower has no other outstanding FFEL Program loan when the Consolidation Loan was made.

(ii) As a condition for receiving a deferment, except for purposes of paragraph (s)(2) of this section, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment.

(iii) After receiving a borrower's written or verbal request, a lender may grant a deferment under paragraphs (s)(3) through (s)(6) of this section if the lender is able to confirm that the borrower has received a deferment on another FFEL loan or on a Direct Loan for the same reason and the same time period. The lender may grant the deferment based on information from the other FFEL loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(iv) A lender may rely in good faith on the information it receives under paragraph (s)(1)(iii) of this section when determining a borrower's eligibility for a deferment unless the lender, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. A lender must resolve any discrepant information before granting a deferment under paragraph (s)(1)(iii) of this section.

(v) A lender that grants a deferment under paragraph (s)(1)(iii) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL loan or to cancel the deferment and continue to make payments on the loan.

(2) In-school deferment. An eligible borrower is entitled to a deferment based on the borrower's at least half-time study in accordance with the rules prescribed in Sec. 682.210(c), except that the borrower is not required to obtain a Stafford or SLS loan for the period of enrollment covered by the deferment.

(3) Graduate fellowship deferment. An eligible borrower is entitled to a graduate fellowship deferment in accordance with the rules prescribed in Sec. 682.210(d).
(4) Rehabilitation training program deferment. An eligible borrower is entitled to a rehabilitation training program deferment in accordance with the rules prescribed in Sec. 682.210(e).

(5) Unemployment deferment. An eligible borrower is entitled to an unemployment deferment in accordance with the rules prescribed in Sec. 682.210(h) for periods that, collectively, do not exceed 3 years.

(6) Economic hardship deferment. An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(i) through (s)(6)(vi) of this section.

Editor's Note: The cites highlighted in the above paragraph need to be changed to (s)(6)(iv).

(i) Has been granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the period of time for which the borrower has requested an economic hardship deferment for his or her FFEL loan.

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance.

(iii) Is working full-time and has a monthly income that does not exceed the greater of (calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower’s family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(iv) Is serving as a volunteer in the Peace Corps.

(v) For an initial period of deferment granted under paragraph (s)(6)(iii) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income.

(vi) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (s)(6)(iii) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(vii) For purposes of paragraph (s)(6) of this section, a borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(viii) For purposes of paragraph (s)(6) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(ix) For purposes of paragraph (s)(6)(iii)(B) of this section, family size means the number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower’s family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive such support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(t) Military service deferments. (1) A borrower who receives a FFEL Program loan may receive a military service deferment for such loan for any period during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraph (t)(1)(i) and (t)(1)(ii) of this section.

(3) Serving on active duty during a war or other military operation or national emergency means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304 or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which member is normally assigned.

(4) Qualifying National Guard duty during a war or other operation or national emergency means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(5) Payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment are not refunded.

(6) As used in this paragraph—

(i) Active duty means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(ii) Military operation means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(iii) National emergency means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(7) To receive a military service deferment, the borrower, or the borrower's representative, must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military service deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

(8) A lender that grants a military service deferment based on a request from a borrower's representative must
notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower’s representative of the outcome of the deferment request.

(9) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower’s representative.

(u) Post-active duty student deferment.

(1) Effective October 1, 2007, a borrower who receives a FFEL Program loan and is serving on active duty on that date, or begins serving on or after that date, is entitled to receive a post-active duty student deferment for 13 months following the conclusion of the borrower’s active duty military service and any applicable grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled, on at least a half-time basis, in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (u)(1) of this section, “active duty” means active duty as defined in section 101(d)(1) of title 10, United States Code for at least a half-year period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (u)(2)(i) of this section or full-time National Guard duty under paragraph (u)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status, on at least a half-time basis, during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status, on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(5) To receive a military active duty student deferment, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military active duty student deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

Editor’s Note: Both instances of the the word “military” needs to be changed to “post-military.”

(v) In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008. (1)(1) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(i) If a lender grants an in-school deferment to a student PLUS borrower based on §682.210(c)(1)(i), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by §682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 —

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1845-0020)

[57 FR 60323, Dec. 18, 1992]

§682.211 Forbearance.

(a)(1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower’s or endorser’s repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. Forbearance means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (g) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under Sec. 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under Sec. 682.301.

(3) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender may grant forbearance on repayment of the loan only if the ability of both individuals to make scheduled payments has been impaired based on the same or differing conditions.

(4) Except as provided in paragraph (f)(10) of this section, if payments of interest are forborne, they may be capitalized as provided in Sec. 682.202(b).

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower’s file; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser
agree to the terms orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The terms of the forbearance agreement in this situation must include a new signed agreement to repay the debt.

(e) (1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

(iii) The fact that interest will accrue on the loan for the full term of the forbearance;

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

(vi) The borrower’s or endorser’s option to discontinue the forbearance at any time.

(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period under Sec. 682.210, or an administrative forbearance period as specified under paragraph (f)(1)(i) or (f)(2) of this section;

(3) For the period beginning when the borrower entered repayment without the lender’s knowledge until the first payment due date was established;

(4) For the period prior to the borrower’s filing of a bankruptcy petition as provided in Sec. 682.402(f);

(5) For the periods described in Sec. 682.402(c) in regard to the borrower’s total and permanent disability;

(6) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in Sec. 682.402(e)(14), for a period not to exceed 120 days necessary for the lender to determine the enforceability of the loan. If the lender determines that the loan does not qualify for discharge under Sec. 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must comply with Sec. 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(7) For a period not to exceed an additional 60 days after the lender has suspended collection activity for the initial 60-day period required pursuant to Sec. 682.211(i)(6) and Sec. 682.402(b)(3), when the lender receives reliable information that the borrower (or student on whose behalf a parent has borrowed a PLUS Loan) has died;

(8) For periods necessary for the Secretary or guaranty agency to determine the borrower’s eligibility for discharge of the loan because of an unpaid refund, attendance at a closed school or false certification of loan eligibility, pursuant to Sec. 682.402(d) or (e), or the borrower’s or, if applicable, endorser’s bankruptcy, pursuant to Sec. 682.402(f);

(9) For a period of delinquency at the time a loan is sold or transferred, if the borrower or endorser is less than 60 days delinquent on the loan at the time of sale or transfer;

(10) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory forbearance until the next due date, which can be no later than 60 days after the period ends;

(11) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower’s request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized;

(12) For a period not to exceed 3 months when the lender determines that a borrower’s ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization;

(13) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower’s eligibility for loan forgiveness under the income-based repayment program. The lender must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency;

(14) For a period of delinquency at the time a borrower makes a change to the repayment plan; or

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower’s PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under §682.209(a)(3).

The notice specified in paragraph (f) introductory text of this section must inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

(g) In granting a forbearance under this section, except for a forbearance under paragraph (i)(5) of this section, a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(h) Mandatory forbearance—

(1) Medical or dental interns or residents.

Upon receipt of a request and sufficient supporting documentation, as described in Sec. 682.210(n), from a borrower serving in a medical or dental internship or residency program, a lender shall grant forbearance to the borrower in yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) if the borrower has exhausted his or her eligibility for a deferment under Sec. 682.210(n), or the borrower’s promissory note does not provide for such a deferment—

(i) For the length of time remaining in the borrower’s medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(2) Borrowers who are not medical or dental interns or residents, and endorsers. Upon receipt of a request and sufficient supporting documentation from an endorser (if applicable), or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (h)(1) of this section), a lender shall grant forbearance—

(i) In increments up to one year, for periods that collectively do not exceed three years, if—

(A) The borrower or endorser is currently obligated to make payments on Title IV loans; and
(B) The amount of those payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower’s or endorser’s total monthly income;

(ii) In yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) for as long as a borrower—

(A) Is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

(B) Is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171; or

(C) Is performing the type of service that would qualify the borrower for loan forgiveness and associated forbearance under the requirements of the teacher loan forgiveness program in Sec. 682.215; and

Editor’s Note: This section needs a conforming change to 682.216.

(iii) In yearly increments (or a lesser period equal to the actual period for which the borrower is eligible) when a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service deferment or other deferment, is engaged in active State duty as defined in §682.210(u)(2)(i) and (ii) for a period of more than 30 consecutive days, beginning—

(A) On the day after the grace period expires for a Stafford loan that has not entered repayment; or

(B) On the day after the borrower ceases at least half-time enrollment, for a FFEL loan in repayment

Editorial Note: Does not cover National Guard members that are called to Federal active duty where that active duty does not fall under a war, a military operation as defined in 10 U.S.C. 101(a)(13), nor a national emergency declared by the President due to a terrorist attack.

(3) Forbearance agreement. After the lender determines the borrower’s or endorser’s eligibility, and the lender and the borrower or endorser agree to the terms of the forbearance granted under this section, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower’s file.

(4) Documentation. (i) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(i) of this section, the lender shall require the borrower or endorser to submit at least the following documentation:

(A) Evidence showing the amount of the most recent total monthly gross income received by the borrower or endorser from employment and from other sources; and

(B) Evidence showing the amount of the monthly payments owed by the borrower or endorser to other entities for the most recent month for the borrower’s or endorser’s Title IV loans.

(ii) Before granting a forbearance to a borrower or endorser under paragraph (h)(2)(ii)(B) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under the Student Loan Repayment Programs.

(iii) Before granting a forbearance to a borrower under paragraph (h)(2)(ii)(C) of this section, the lender must require the borrower to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and anticipated ending dates that the borrower is expected to perform, for that year, the type of service described in Sec. 682.215(c); and

(B) Certify the borrower’s intent to satisfy the requirements of Sec. 682.215(c).

Editorial Note: Both references to 682.215 should be 682.216.

(i) Mandatory administrative forbearance. (1) The lender shall grant a mandatory administrative forbearance for the periods specified in paragraph (i)(2) of this section until the lender is notified by the Secretary or a guaranty agency that the forbearance period no longer applies. The lender may not require a borrower who is eligible for a forbearance under paragraph (i)(2)(i) of this section to submit a request or supporting documentation, but shall require a borrower (or endorser, if applicable) who requests forbearance because of a military mobilization to provide documentation showing that he or she is subject to a military mobilization as described in paragraph (i)(4) of this section.

(2) The lender is not required to notify the borrower (or endorser, if applicable) at the time the forbearance is granted, but shall grant a forbearance to a borrower or endorser during a period, and the 30 days following the period, when the lender is notified by the Secretary that—

(i) Exceptional circumstances exist, such as a local or national emergency or military mobilization; or

(ii) The geographical area in which the borrower or endorser resides has been designated a disaster area by the president of the United States or Mexico, the Prime Minister of Canada, or by a Governor of a State.

(3) As soon as feasible, or by the date specified by the Secretary, the lender shall notify the borrower (or endorser, if applicable) that the lender has granted a forbearance and the date that payments should resume. The lender’s notification shall state that the borrower or endorser—

(i) May decline the forbearance and continue to be obligated to make scheduled payments; or

(ii) Consents to making payments in accordance with the lender’s notification if the forbearance is not declined.

(4) For purposes of paragraph (i)(2)(i) of this section, the term “military mobilization” shall mean a situation in which the Department of Defense orders members of the National Guard or Reserves to active duty under sections 688, 12301(a), 12301(g), 12302, 12304, and 12306 of title 10, United States Code. This term also includes the assignment of other members of the Armed Forces to duty stations at locations other than the locations at which they were normally assigned, only if the military mobilization involved the activation of the National Guard or Reserves.

(5) The lender shall grant a mandatory administrative forbearance to a borrower (or endorser, if applicable) during a period when the borrower (or endorser, if applicable) is making payments for a period of—

(i) Up to 3 years of payments in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term; or

(ii) Up to 5 years of payments in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in the loan not being repaid within the maximum repayment term.

(6) The lender shall grant a mandatory administrative forbearance to a borrower for a period not to exceed 60 days after the lender receives reliable information indicating that the borrower (or student in the case of a PLUS loan) has died, until the lender receives documentation of death pursuant to Sec. 682.402(b)(3).

(Approved by the Office of Management and Budget under control number 1845-0020)

[57 FR 60323, Dec. 18, 1992]

GPO Editorial Note: For Federal Register citations affecting 682.211, see the List of CFR Sections Affected, which appears in the
Finding Aids section of the printed volume and on GPO Access.

§682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or
(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.
(2) The maintaining of a compensating balance by or on behalf of a school with a lender.
(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.
(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does not own.
(5) Purchase by or on behalf of a school of stock of the lender.
(6) Payments ostensibly made for other purposes.

(c) Except when purchased by an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or
(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under Sec. 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and
(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than one year, or both.

(h) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school’s students or their parents, provided that such list complies with the requirements in 34 CFR 601.10 and 668.14(a)(28).

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1082-1, 1082, 1097)

(Approved by the Office of Management and Budget under control number 1845-0020)

§682.215 Income-based repayment plan.

(a) Definitions. As used in this section—

(1) Adjusted gross income (AGI) means the borrower’s adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower’s and spouse’s income. For a married borrower filing separately, AGI includes only the borrower’s income.

(2) Eligible loan means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to the parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

(3) Family size means the number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower’s family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and
(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(4) Partial financial hardship means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower’s eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower’s AGI and 150 percent of the poverty guideline for the borrower’s family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower’s eligible loans and, if
applicable, the spouse’s eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loan initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower’s and spouse’s AGI, and 150 percent of the poverty guideline for the borrower’s family size.

(5) Poverty guideline refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(b) Repayment plan. (1) A borrower may elect the income-based repayment plan only if the borrower has a partial financial hardship. The borrower’s aggregate monthly loan payments are limited to no more than 15 percent of the amount by which the borrower’s AGI exceeds 150 percent of the poverty line income applicable to the borrower’s family size, divided by 12. The loan holder adjusts the calculated monthly payment if—

(i) Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the total amount of the borrower’s eligible loans includes loans not held by the loan holder, in which case the loan holder determines the borrower’s adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

(ii) Both the borrower and the borrower’s spouse have eligible loans and filed a joint Federal tax return, in which case the loan holder determines—

(A) Each borrower’s percentage of the couple’s total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(1)(ii)(A) of this section; and

(C) If the borrower’s loans are held by multiple holders, the borrower’s adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

(iii) The calculated amount under paragraph (b)(1)(ii), or (b)(1)(ii) of this section is less than $5.00, in which case the borrower’s monthly payment is $0.00; or

(iv) The calculated amount under paragraph (b)(1), (b)(1)(i), or (b)(1)(ii) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower’s monthly payment is $10.00.

(2) A borrower with eligible loans held by two or more loan holders must request income-based repayment from each loan holder if the borrower wants to repay all of his or her eligible loans under an income-based repayment plan. Each loan holder must apply the payment calculation rules in paragraphs (b)(1)(iii) and (iv) of this section to loans they hold.

(3) If a borrower elects an income-based repayment plan, the loan holder must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that holder be repaid under the income-based repayment plan.

(4) If the borrower’s monthly payment amount is not sufficient to pay the accrued interest on the borrower’s subsidized Stafford Loans or the subsidized portion of the borrower’s Federal Consolidation loan, the Secretary pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on each loan repaid under the income-based repayment plan. On a Consolidation Loan that repays loans on which the Secretary has paid accrued interest under this section, the three-year period includes the period for which the Secretary paid accrued interest on the underlying loans. The three-year period does not include any period during which the borrower receives an economic hardship deferment.

(5) Except as provided in paragraph (b)(4) of this section, accrued interest is capitalized at the time the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(6) If the borrower’s monthly payment amount is not sufficient to pay any principal due, the payment of that principal is postponed until the borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

(7) The special allowance payment to a lender during the period in which the borrower has a partial financial hardship under an income-based repayment plan is calculated on the principal balance of the loan and any accrued interest unpaid by the borrower.

(8) The repayment period for a borrower under an income-based repayment plan may be greater than 10 years.

(c) Payment application and prepayment. (1) The loan holder shall apply any payment made under an income-based repayment plan in the following order:

(i) Accrued interest.

(ii) Collection costs.

(iii) Late charges.

(iv) Loan principal.

(2) The borrower may prepay the whole or any part of a loan at any time without penalty.

(3) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of §682.209(b)(2)(ii).

(4) If the prepayment amount exceeds the monthly payment amount of $0.00 under the repayment schedule established for the loan, the loan holder shall apply the prepayment consistent with the requirements of paragraph (c)(1) of this section.

(d) Changes in the payment amount. (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower’s monthly payment. The loan holder also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as a result of the recalculation—

(i) The maximum monthly amount that the loan holder may require the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower’s eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower’s repayment period based on the recalculated payment amount may exceed 10 years.

(2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the FFEL standard repayment plan and the loan holder recalculates the borrower’s monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower’s loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Consolidation Loan, the applicable repayment period remaining specified in §682.209(h)(2) for the total amount of that loan and the balance of other student loans that was outstanding at the time the borrower
discontinued paying under the income-based repayment plan.

(e) Eligibility documentation and verification. (1) The loan holder determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower elects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the loan holder requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the loan holder. The borrower provides consent by signing a consent form and returning it to the loan holder;

(B) If the borrower’s AGI is not available, or the loan holder believes that the borrower’s reported AGI does not reasonably reflect the borrower’s current income, the loan holder may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower’s family size. If the borrower fails to certify family size, the loan holder must assume a family size of one for that year.

(2) The loan holder designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) Loan forgiveness. (1) To qualify for loan forgiveness after 25 years, the borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period—

(i) Made reduced monthly payments under a partial financial hardship as provided under paragraph (b)(1) of this section. Monthly payments of $0.00 qualify as reduced monthly payments as provided in paragraph (b)(1)(ii) of this section;

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d)(1) of this section;

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the FFEL standard repayment plan described in §682.209(a)(6)(vi) with a 10-year repayment period;

(iv) Made monthly payments under the FFEL standard repayment plan described in §682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower’s loans that were outstanding at the time the borrower first selected the income-based repayment plan; or

(v) Received an economic hardship deferment on eligible FFEL loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary repays any outstanding balance of principal and accrued interest on FFEL loans for which the borrower qualifies for forgiveness if the guaranty agency determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly amount of $0.00 as provided in paragraph (b)(1)(ii) of this section; and

(ii) The borrower made those monthly payments each year for a 25-year period; or

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) For a borrower who has a FFEL Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(ii) For a borrower who has one or more other eligible FFEL loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(iii) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, the date the borrower made a payment under the income-based repayment plan on the loan; or

(iv) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the FFEL Consolidation Loan that met the conditions in (f)(1) after qualifying for the income-based repayment plan.

(4) If a borrower satisfies the loan forgiveness requirements, the Secretary repays the outstanding balance and accrued interest on the FFEL Consolidation Loan described in paragraph (f)(3)(i), (iii), or (iv) of this section or other eligible FFEL loans described in paragraph (f)(3)(ii) or (iv) of this section.

(5) A borrower repaying a defaulted loan is not considered to be repaying under a qualifying repayment plan for the purpose of loan forgiveness, and any payments made on a defaulted loan are not counted toward the 25-year forgiveness period.

(g) Loan forgiveness processing and payment. (1) No later than 60 days after the loan holder determines that a borrower qualifies for loan forgiveness under paragraph (f) of this section, the loan holder must request payment from the guaranty agency.

(2) If the loan holder requests payment from the guaranty agency later than the period specified in paragraph (g)(1) of this section, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder’s request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination.

(ii) If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period required under paragraph (g)(3)(i) of this section, pay the holder the amount of the forgiveness.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30 days, inform the borrower of the determination and, if appropriate, that the borrower’s repayment obligation on the loans for which income-based forgiveness was requested is satisfied. The lender must also provide the borrower with information on the required handling of the forgiveness amount.

(5)(i) The holder must apply the proceeds of the income-based repayment loan forgiveness amount to satisfy the outstanding balance on those loans for which income-based forgiveness was requested; or

(ii) If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the loan holder must refund the excess amount to the guaranty agency.

(6) If the guaranty agency does not pay the forgiveness claim, the lender will continue the borrower in repayment on the loan. The lender is deemed to have
exercised forbearance of both principal and interest from the date the borrower’s repayment obligation was suspended until a new payment due date is established. Unless the denial of the forgiveness claim was due to an error by the lender, the lender may capitalize any interest accrued and not paid during this period, in accordance with §682.202(b).

(7) The loan holder must promptly return to the sender any payment received on a loan after the guaranty agency pays the loan holder the amount of loan forgiveness.

(Authority: 20 U.S.C. 1098e)


§682.216 Teacher loan forgiveness program.

(a) General. (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower’s subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The loan forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching at an educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower’s eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower’s eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years.

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower’s fifth year of qualifying teaching service.

(b) Definitions. The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

Highly qualified means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) Borrower eligibility. (1) A borrower who has been employed at an elementary or secondary school or at an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school’s or educational service agency’s total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. If this directory is not available before May 1 of any year, the previous year’s directory may be used. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

(2) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower’s five consecutive complete academic years of teaching and fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower—

(A) Demonstrated knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum, as certified by the chief administrative officer of the eligible elementary school or educational service agency where the borrower was employed; or

(B) Taught in a subject area that is relevant to the borrower’s academic major as certified by the chief administrative officer of the eligible secondary school or educational service agency where the borrower was employed.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught...
mathematics or science to secondary school students on a full-time basis at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children’s disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(4) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower taught full time at an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency, and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children’s disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(5) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(6) For teacher loan forgiveness applications received by the loan holder on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements (unless otherwise applicable under State law) may qualify for loan forgiveness under paragraphs (c)(3)(ii) or (c)(4) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965, and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(7) The academic year may be counted as one of the borrower’s five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower’s employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, et seq.); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(8) A borrower’s period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(7) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the

schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(10) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in Sec. 682.200.

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990

(ii) 34 CFR 685.219; or

(iii) Section 428K of the Act.

(d) Forgiveness amount. (1) A qualified borrower is eligible for forgiveness of up to $5,000, or up to $17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower’s subsidized or unsubsidized Federal Stafford or Federal Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the consolidation loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of $5,000, or $17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 685.217.

(3) The holder does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) Authorized forbearance during qualifying teaching service and discharge processing. (1) A holder grants a forbearance—

(i) Under Sec. 682.211(h)(2)(ii)(C) and (h)(3)(iii), in annual increments for each of the years of qualifying teaching service, if the holder believes, at the time of the borrower’s annual request, that the expected cancellation amount will satisfy the anticipated remaining outstanding balance on the loan at the time of the expected cancellation;

(ii) For a period not to exceed 60 days while the holder is awaiting a completed teacher loan forgiveness application from the borrower; and
(iii) For the period beginning on the date the holder receives a completed loan forgiveness application to the date the holder receives either a denial of the request or the loan discharge, the holder must provide the borrower with information regarding any new repayment terms of remaining loan balances.

(5) Unless otherwise instructed by the borrower, the holder must apply the proceeds of the teacher forgiveness discharge first to any outstanding unsubsidized Federal Stafford loan balances, next to any outstanding subsidized Federal Stafford loan balances, then to any eligible outstanding Federal Consolidation loan balances.

(g) Claims for reimbursement from the Secretary on loans held by guaranty agencies. In the case of a teacher loan forgiveness discharge applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount discharged that is equal to the complement of the reinsurance percentage paid on the loan. The payment of up to $5,000, or up to $17,500, may also include interest that accrues on the discharged amount during the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the guaranty agency determined that the borrower is eligible for the teacher loan forgiveness discharge.

(3) Nothing in paragraph (e) of this section restricts holders from offering other forbearance options to borrowers who do not meet the requirements of paragraph (e)(1)(i) of this section.

(f) Application and processing. (1) A borrower, after completing the qualifying teaching service, requests loan forgiveness from the holder of the loan on a form approved by the Secretary.

(ii) The holder must file a request for payment with the guaranty agency on a teacher forgiveness discharge no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application.

(ii) When filing a request for payment on a teacher forgiveness discharge, the holder must provide the guaranty agency with the completed loan forgiveness application submitted by the borrower and any required supporting documentation.

(iii) If the holder files a request for payment later than 60 days after the receipt of the completed teacher loan forgiveness application form, interest that accrued on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Secretary under this paragraph.

(3)(i) Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness under this section and must notify the holder of its determination of the borrower's eligibility for loan forgiveness under this section.

(ii) If the guaranty agency approves the discharge, it must, within the same 45-day period, pay the holder the amount of the discharge, up to $17,500, subject to paragraphs (c)(11), (d)(1), (d)(2) and (f)(2)(iii) of this section.

(4) After being notified by the guaranty agency of its determination of the eligibility of the borrower for the discharge, the holder must, within 30 days, inform the borrower of the determination. If the discharge is approved, the holder must also provide the borrower with information regarding any new repayment terms of remaining loan balances.

(ii) During the period beginning on the date the borrower's loan is discharged, it must, within the same 45-day period, pay the holder the amount of the discharge, up to $17,500, subject to paragraphs (c)(11), (d)(1), (d)(2) and (f)(2)(iii) of this section.

(2) At the conclusion of a forbearance authorized under paragraph (e)(1) of this section, the holder must resume collection activities and may capitalize any interest accrued and not paid during the forbearance period in accordance with Sec. 682.202(b).

(2)(i) The holder must verify the teacher's eligibility for the teacher loan forgiveness discharge.

(ii) During the forbearance period in accordance with paragraph (f) of this section, the holder must also provide the borrower with information regarding any new repayment terms of remaining loan balances.

(iv) During a period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment, if the borrower's monthly payment amount under the plan is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

(ii) The holder must file a request for payment with the guaranty agency on a teacher forgiveness discharge no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application.

(iii) During the repayment period for loans described in paragraph (d)(2) of this section; and

(iii) The date the borrower's loan is repaid;

(ii) The date the disbursement is returned uncashed to the lender, or the 120th day after the date of that disbursement, except as provided in paragraph (c)(4) of this section if—

(A) The check for the disbursement has not been cashed on or before that date; or

(B) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii) (B) and (C) have not been released from the account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled;

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(viii) The date the lender determines that the borrower is eligible for loan discharge under Sec. 682.402(d), (e), or (l);

(ix) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under Sec. 682.208(b)(3); or

(x) The date the borrower's payment under the income-based repayment plan is sufficient to pay the accrued interest on the borrower's loan or the qualifying portion of the borrower's Consolidation Loan.
§682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) General. (1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) Directs the member to pursue the course of study; or

(b) Eligible loans. (1) Except for non-subsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2), (b)(3), or (e)(1) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 and prior to July 1, 1994, and for any Federal PLUS loan made on or after July 1, 1998 or on or after January 1, 2000 for any period prior to April 1, 2006, or under Sec. 682.209(e) or (f), no special allowance is paid for any period for which the interest rate calculated prior to applying the interest rate maximum for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992;

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992; or

(iv) 9 percent in the case of a Federal PLUS loan made on or after July 1, 1998.

(c) Use of loan proceeds to replace expected family contribution. A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.
electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

(c) Rate. (1) Except as provided in paragraph (c)(2), (c)(3), or (e) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of—

(A) The quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period for a loan for which the first disbursement is made on or after January 1, 2000; or

(B) The 91-day Treasury bills auctioned during the 3-month period for a loan for which the first disbursement is made prior to January 1, 2000;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A)(1) 2.34 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after January 1, 2000;

(2) 2.64 percent to the resulting percentage for a Federal PLUS loan for which the first disbursement is made on or after January 1, 2000;

(3) 2.64 percent to the resulting percentage for a Federal Consolidation Loan that was made based on an application received by the lender on or after January 1, 2000;

(4) 1.74 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after January 1, 2000 during the borrower’s in-school, grace, and authorized period of deferment;

(5) 2.8 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 and prior to January 1, 2000;

(6) 2.2 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 and prior to January 1, 2000, during the borrower’s in-school, grace, and authorized period of deferment;

(7) 2.5 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 for interest that accrues during the borrower’s in-school, grace, and authorized period of deferment;

(B) 3.1 percent to the resulting percentage for—

(1) A Federal Stafford Loan made on or after October 1, 1992 and prior to July 1, 1998, except as provided in paragraph (c)(1)(iii)(A)(7) of this section;

(2) A Federal SLS Loan made on or after October 1, 1992;

(3) A Federal PLUS Loan made on or after October 1, 1992 and prior to July 1, 1998;

(4) A Federal PLUS Loan made on or after July 1, 1998 and prior to October 1, 1998, except that no special allowance shall be paid any quarter unless the rate determined under Sec. 682.202(a)(2)(v)(A) exceeds 9 percent;

(5) A Federal PLUS Loan made on or after October 1, 1998 and prior to January 1, 2000, except that no special allowance shall be paid during any quarter unless the rate determined under Sec. 682.202(a)(2)(v)(A) exceeds 9 percent;

(6) A Federal Consolidation Loan for which the application was received by the lender prior to January 1, 2000, except that no special allowance shall be paid during any quarter for which the application was received on or after October 1, 1998 unless the average of the bond equivalent rate of the 91-day Treasury bills auctioned during that quarter, plus 3.1 percent, exceeds the rate determined under Section 682.202(a)(4)(iiv);

(C) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986, but prior to October 1, 1992;

(D) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but prior to November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(E) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section;

(F) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but prior to November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(E) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraphs (c)(3)(iii), (c)(3)(iv), and (e) of this section, the special allowance rate is that provided in paragraph (c)(3)(ii) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

(A) The proceeds of tax-exempt obligations originally issued prior to October 1, 1993;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(ii)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(ii)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(ii)(A) of this section;

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(ii)(A) of this section.

(ii) The special allowance rate for a loan described in paragraph (c)(3)(ii) is one-half of the rate calculated under paragraph (c)(1) of this section, except that in applying paragraph (c)(1)(iii), 3.5 percent is substituted for the percentages specified therein.

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(iv) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9.5 percent minus the applicable interest rate.
(4) Loans made or purchased with funds obtained by the holder from the issuance of tax-exempt obligations originally issued on or after October 1, 1993, and loans made with funds derived from default reimbursement collections, interest, or other income related to eligible loans made or purchased with those tax-exempt funds, do not qualify for the minimum special allowance rate specified in paragraph (c)(3)(ii) or (iv) of this section, and are not subject to the 50 percent limitation on the maximum rate otherwise applicable to loans made with tax-exempt funds.

(5) For purposes of paragraphs (c)(3) and (c)(4), a loan is purchased with funds described in those paragraphs when the loan is refinanced in consideration of those funds.

d) Termination of special allowance payments on a loan. (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of—

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsuranced under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, on or before the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been cashed on or before that date; or

(B) the loan proceeds disbursed by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school on or before that date;

(vii) The 30th day after the date the lender received a returned claim from the guaranty agency on a loan submitted by the deadline specified in (d)(1)(v) of this section for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day; or

(viii) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under Sec. 682.208(b)(3).

(2) In the case of a loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the account maintained by the school before that date.

(3) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

e) Limits on special allowance payments on loans made or purchased with funds derived from tax-exempt obligations.

(1) General. (i) The Secretary pays a special allowance on a loan described in paragraph (c)(3) or (c)(4) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of Sec. 682.800.

(ii) The Secretary pays a special allowance at the rate prescribed in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority in accordance with paragraphs (e)(2) through (e)(5) of this section, as applicable. References to "loan" or "loans" in paragraphs (e)(2) through (e)(5) include only loans described in paragraph (c)(3)(i).

(2) Effect of Refinancing on Special Allowance Payments. Except as provided in paragraphs (e)(3) through (e)(5) of this section—

(i) The Secretary pays a special allowance at the rate prescribed in paragraph (c)(3) of this section to an Authority that holds a legal or equitable interest in the loan that is pledged or otherwise transferred in consideration of funds other than those specified in paragraph (e)(2)(i) of this section either—

(A) At the rate prescribed in paragraph (c)(1) of this section, if—

(1) The prior tax-exempt obligation is retired; or

(2) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bears a yield that does not exceed the yield restrictions of section 148 of the Internal Revenue Code and the regulations there under, or

(B) At the rate prescribed in paragraph (c)(3) of this section.

(2) Loans affected by transactions or events after September 30, 2004. The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section if, after September 30, 2004—

(i) The loan is refinanced with funds other than those listed in paragraph (e)(2)(i) of this section;

(ii) The loan is sold or transferred to any other holder; or

(iii) (A) The loan is financed by a tax-exempt obligation included in the sources in paragraph (e)(2)(i), and

(B) That obligation matures, is refunded, is defeased, or is retired, whichever occurs earliest.

(4) Loans Affected by Transactions After February 7, 2006. Except as provided in paragraph (e)(5) or (f) of this section, the Secretary pays a special allowance at the rate prescribed in paragraph (c)(1) of this section on any loan—

(i) That was made or purchased on or after February 8, 2006, or

(ii) That was not earning, on February 8, 2006, a quarterly rate of special allowance determined under paragraph (c)(3) of this section.

(5) Loans affected by transactions after December 30, 2010. (i) The Secretary pays a special allowance to a holder described in paragraph (e)(5)(ii) of this section at the rate prescribed in paragraph (c)(3) of this section only on a loan—

(A) That was made or purchased prior to December 31, 2010, or

(B) That was earning, before December 31, 2010, a quarterly rate of special allowance determined under paragraph (c)(3) of this section.

(ii) A holder for purposes of this paragraph is an entity that—

(A) On February 8, 2006 and during the quarter for which special allowance is determined under this paragraph—
(1) Is a unit of State or local government or a private nonprofit entity, and
(2) Is not owned or controlled by, or under common ownership or control by, a for-profit entity; and
(B) In the most recent quarterly special allowance payment prior to September 30, 2005, held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal of $100,000,000 or less for which special allowance was determined and paid under paragraph (c)(3) of this section.
(f) Special allowance rates for loans made on or after October 1, 2007. With respect to any loan for which the first disbursement of principal is made on or after October 1, 2007, other than a loan described in paragraph (e)(5) of this section, the special allowance rate for an eligible loan made during a 3-month period is calculated according to the formulas described in paragraphs (f)(1) and (f)(2) of this section.
(1) Except as provided in paragraph (f)(2) of this section, the special allowance formula shall be computed by—
(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period;
(ii) Subtracting the applicable interest rate for that loan;
(iii) Adding—
(A) 1.34 percent to the resulting percentage for a Federal Stafford loan;
(B) 1.34 percent to the resulting percentage for a Federal Stafford Loan during the borrower’s in-school period, grace period and authorized period of deferment;
(C) 1.94 percent to the resulting percentage for a Federal PLUS loan; and
(D) 2.24 percent to the resulting percentage for a Federal Consolidation loan; and
(iv) Dividing the resulting percentage by 4.
(3) Eligible Not-for-Profit Holder. (i) For purposes of this section, the term “eligible not-for-profit holder” means an eligible lender under section 435(d) of the Act (except an eligible institution) that requests special allowance payments from the Secretary and that is—
(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103-1, or section 144(b) of the Internal Revenue Code of 1986;
(B) An entity described in section 150(d)(2) of the Internal Revenue Code of 1986 that has not made the election described in section 150(d)(3) of that Code;
(C) An entity described in section 501(c)(3) of the Internal Revenue Code of 1986; or
(D) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103-1, or section 144(b) of the Internal Revenue Code of 1986 that has not made the election described in section 150(d)(3) of that Code;
(ii) For purposes of paragraph (f)(3) of this section—
(A) The term “State or non-profit entity” means an entity described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, regardless of whether such entity is an eligible lender under section 435(d) of that Act.
(B) The term “special purpose entity” means an entity established for the limited purpose of financing the acquisition of loans from or at the direction of a State or non-profit entity, or servicing and collecting such loans, and that is—
(1) An entity established by such State or non-profit entity, or
(2) An entity established by an entity described in paragraph (f)(3)(i)(B)(1) of this section.
(C) A special purpose entity is a “related special purpose entity” with respect to a State or non-profit entity if it holds any interest in loans acquired from or at the direction of that State or non-profit entity or from a special purpose entity established by that State or non-profit entity.
(iii) An entity that otherwise qualifies under paragraph (f)(3)(i) of this section shall not be considered an eligible not-for-profit holder unless such entity—
(A) Was a State or non-profit entity and an eligible lender under section 435(d) of the Act, other than a school lender, and on or before September 27, 2007 had made or acquired a FFEL loan, unless the State waives this requirement under paragraph (f)(3)(iv) of this section; or
(B) Is acting as an eligible lender trustee on behalf of a State or non-profit entity that was the sole beneficial owner of a loan eligible for a special allowance payment on September 27, 2007.
(iv) Subject to the provisions of section 435(d)(1)(D) of the Act, a State may waive the requirement of paragraph (f)(3)(iii)(A) of this section to identify a new eligible not-for-profit holder pursuant to a written application filed in accordance with paragraph (f)(3)(x) of this section, for the purposes of carrying out a public purpose of the State, except that a State may not designate a trustee for this purpose.
(v) A State or non-profit entity, and a trustee to the extent acting on behalf of such an entity or its related special purpose entity, shall not be an eligible not-for-profit holder if the State or non-profit entity or its related special purpose entity is owned or controlled, in whole or in part, by a for-profit entity. For purposes of this paragraph, a for-profit entity has ownership and control of a State or non-profit entity, or its related special purpose entity, if—
(A) The for-profit entity is a member or shareholder of a State or non-profit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the State or non-profit entity or its special purpose entity;
(B) The for-profit entity employs or appoints individuals that together constitute a majority of the State, non-profit, or special purposes entity’s board of trustees or directors, or a majority of such board’s audit committee, executive committee, or compensation committee; or
(C) For a State, non-profit, or special purpose entity that has no board of trustees or directors and associated committees of such, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials, unless the Secretary determines that the particular authority to approve such decisions is not likely to affect the integrity of those decisions.
For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity or its related special purpose entity, if it possesses directly, or represents, either alone or together with other persons, under a voting agreement, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity or its related special purpose entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in §600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) “Beneficial owner” (including “beneficial ownership” and “owner of a beneficial interest”) means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from the loan, subject to any rights granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) “Sole owner” means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(vi) For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity or its related special purpose entity, if it possesses directly, or represents, either alone or together with other persons, under a voting agreement, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity or its related special purpose entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in §600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member’s employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) “Beneficial owner” (including “beneficial ownership” and “owner of a beneficial interest”) means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from the loan, subject to any rights granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) “Sole owner” means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(3) Includes documentation establishing its status as a State or non-profit entity.
(A) A certification on the State or non-profit entity’s letterhead signed by the State or non-profit entity’s Chief Executive Office (CEO) which—

(1) Includes the name and lender identification number(s) of the entities for which designation is being recertified;
(2) States that the State or non-profit entity has altered its status as a State or non-profit entity since its prior certification to the Secretary, or, if it has altered its status, describes any such alterations; and
(3) States that the State or non-profit entity continues to satisfy the requirements of an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee; and

(B) A copy of its IRS Form 990, if applicable, and of any related special purpose entity that holds an interest in loans on which it seeks to claim special allowance at the rate provided under paragraph (f)(2) of this section, at the same time these returns are filed with the Internal Revenue Service.

(xii) Not-for-Profit Holder Change of Status. Within 10 business days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must—

(A) Submit details of the change to the Secretary; and

(B) Cease billing for special allowance at the rate established under paragraph (f)(2) of this section for the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section to the date of the Secretary’s determination that such entity has not lost its eligibility as a result of such change; provided, however, that in the quarter following the Secretary’s determination that such eligible not-for-profit holder has not lost its eligibility, the eligible not-for-profit holder may submit a billing for special allowance during the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section and the amount it actually billed at the rate established under paragraph (f)(1) of this section.

(xiii) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

§682.303 [Reserved]

§682.304 Methods for computing interest benefits and special allowance.

(a) General. The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) Average daily balance method for interest benefits. (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds this result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) Actual accrual method for interest benefits. (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(d) Average daily balance method for special allowance. (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds this result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) To compute the average daily balance of unpaid accrued interest for
pursposes of special allowance on loans covered by §682.215(b)(7), the lender adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at the applicable interest rate.

(3) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraphs (d)(1) and (2) of this section.

(Authority: 20 U.S.C. 1082, 1087-1)


§682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

(a) General. (1) If a lender owes origination fees or loan fees under paragraph (a) of this section, it must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary, even if the lender is not owed, or does not wish to receive, interest benefits or special allowance from the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3)(ii)(A) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by—

(i) The amount of origination fees the lender was authorized to collect during the quarter under Sec. 682.202(c), whether or not the lender actually collected that amount; and

(ii) The amount of lender fees payable under paragraph (a)(1) of this section; and

(iii) The amount of excess interest, as calculated in accordance with paragraph (d) of this section.

(B) The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under Sec. 682.202(c).

(iii) For any FFEL loan made on or after October 1, 1993, a lender shall pay the Secretary a loan fee equal to 0.50% of the principal amount of the loan.

(B) For any FFEL loan made on or after October 1, 2007, a lender shall pay the Secretary a loan fee equal to 1.0 percent of the principal amount of the loan.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by—

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(i) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal Government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period—

(i) Beginning on the later of—

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary’s receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it—
requests payments to which the lender has directed that the lender will make, or originate or hold, a school loan under §682.601 or a lender with whom the school has a contract under §682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee for the purpose of originating loans.

(a) Borrowers whose Stafford and Consolidation loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf; and

(b) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have them used for administrative expenses in accordance with §682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee for the purpose of originating loans.

3. The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the borrower submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

4. Recovery of excess interest paid by the Secretary.

(a) For any loan for which the first disbursement of principal is made on or after April 1, 2006, the Secretary collects the amount of excess interest paid to a lender on a quarterly basis using the applicable interest rate on a loan for each quarter exceeds the special allowance support level in paragraph (d)(2) of this section for the loan. Excess interest is calculated and recovered each quarter by subtracting the special allowance support level from the applicable interest rate, multiplying the result by the average daily principal balance of the loan (not including unearned interest added to principal) during the quarter, and dividing by four.

(b) The term special allowance support level means a number expressed as a percentage equal to the sum of—

(i) The average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period; plus

(ii) 2.34 percent for a Federal Stafford loan in repayment;

(iii) 1.74 percent for a Federal Stafford loan during the in-school, grace, and deferment periods; or

(iv) 2.64 percent for a Federal PLUS or Consolidation Loan.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)


Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the FFEL programs and to receive the various payments and benefits related to that participation.

(b) There are four agreements:

1. Basic program agreement. In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford and Consolidation loans that consolidate only subsidized Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf; and

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have them used for administrative expenses in accordance with §682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee for the purpose of originating loans.

2. Federal advances for claim payments agreement. A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

3. Reinsurance agreement. A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

4. Loan Rehabilitation Agreement. A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a

(i) Requests payments to which the lender is not entitled under Sec. Sec. 682.300 through 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender either exclude from the request or
does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) Independent audits. (1)(i) A lender originating or holding more than $5 million in FFEL loans during its fiscal year must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(ii) Notwithstanding the dollar volume of loans originated or held, a school lender under §682.601 or a lender serving as trustee on behalf of a school or a school-affiliated organization for the purpose of originating loans must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(iii) The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender’s compliance with the Act and applicable regulations;

(ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO’s) Government Auditing Standards. The audit must contain an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender’s first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender’s activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity or a nonprofit organization, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR Sec. Sec. 74.26 and 80.26, as applicable;

(vi) With regard to a school that makes or originates loans, the audit requirements are in 34 CFR Sec. 682.601(a)(7); and

(vii) With regard to a lender serving as a trustee for the purpose of originating loans for a school or school-affiliated organization, the audit must include a determination that—

(A) Except as provided in paragraph (c)(2)(vii)(B) of this section, the school used all proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grant programs and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to be used to make need-based grants to its students; and

(B) The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses in accordance with §682.601(b)(viii); with all references to eligible school lender understood to mean a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans.

(3) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with §682.601(a)(7); and

The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses in accordance with §682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans.

(4) Recovery of excess interest paid by the Secretary.

(a) For any loan for which the first disbursement of principal is made on or after April 1, 2006, the Secretary collects the amount of excess interest paid to a lender on a quarterly basis using the applicable interest rate on a loan for each quarter exceeds the special allowance support level in paragraph (d)(2) of this section for the loan. Excess interest is calculated and recovered each quarter by subtracting the special allowance support level from the applicable interest rate, multiplying the result by the average daily principal balance of the loan (not including unearned interest added to principal) during the quarter, and dividing by four.

(b) The term special allowance support level means a number expressed as a percentage equal to the sum of—

(i) The average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period; plus

(ii) 2.34 percent for a Federal Stafford loan in repayment;

(iii) 1.74 percent for a Federal Stafford loan during the in-school, grace, and deferment periods; or

(iv) 2.64 percent for a Federal PLUS or Consolidation Loan.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§682.401 Basic program agreement.

(1) The Secretary's execution of an agreement, the guaranty agency shall enter into a basic agreement with the Secretary.

(b) Terms of agreement. In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) Aggregate loan limits. The aggregate guaranteed unpaid principal amount for all Stafford and SLS, loans made to a borrower may not exceed the amounts set forth in Sec. 682.204 (b), (e), and (g).

(2) Annual loan limits. (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in Sec. 682.204 (a), (c), (d), (f), and (h).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either:

(A) A period of not less than that attributable to the academic year, as defined in 34 CFR 668.3; or

(B) A period attributable to the academic year that is not less than the period specified in paragraph (b)(2)(ii)(A) of this section, in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either:

(A) A period of not less than that attributable to the academic year, as defined in 34 CFR 668.3; or

(B) A period attributable to the academic year that is not less than the period specified in paragraph (b)(2)(ii)(A) of this section, in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

(iii) The amount of a loan guaranteed may not exceed the amounts set forth in Sec. 682.204(k).

(3) Duration of borrower eligibility. (i) A student borrower under the Stafford Loan Program or the PLUS Loan Program and a parent borrower under the PLUS Program are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) Reinstatement of borrower eligibility. Except as provided in Sec. 668.35(b) for a borrower with a defaulted loan on which a judgment has been obtained and Sec. 668.35(i) for a borrower who fraudulently obtained title IV, HEA program assistance, reinstatement of Title IV eligibility for a borrower with a defaulted loan must be in accordance with this paragraph (b)(4). For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford the borrower a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as that term is defined in Sec. 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must—

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, utilities, food, medical costs, dependent care costs, work-related expenses and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to—

(1) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) A borrower may request that the loan origination process if he or she has such a preference.

(ii) The borrower must give the lender, as part of the promissory note or application process for a parent PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) A statement from the student authorizing the school to release information relevant to the student's eligibility to have a parent borrower on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(C) Information from the school providing the maximum amount that may be borrowed on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under Sec. 682.201(c); and

(B) A statement that the borrower does not currently have another application for a Consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(6) School eligibility— (i) General. A school that has a program participation agreement in effect with the Secretary
under Sec. 682.14(a) is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that—

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends that sanction to all guaranty agency programs under section 432(h)(3) of the Act or Sec. 682.713;

(C) The school is ineligible under section 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines, subject to the agreement of the Secretary, that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR part 668;

(G) The school fails to make timely refunds to students as required in Sec. 682.607(c);

(H) The school has not satisfied, within 30 days of issuance, a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) Limitation by a guaranty agency of a school's participation. For purposes of this paragraph, a school that is subject to limitation of participation in the guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy—

(A) The standards of financial responsibility defined in 34 CFR 668.5; or

(B) The standards of administrative capability defined in 34 CFR 668.16.

(iii) Limitation, suspension, or termination of school eligibility. A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) Condition for guaranteeing loans for students attending a school. The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

(7) Lender eligibility. (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 432(d)(3), or 432(d)(5) of the Act or Sec. 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(8) Out-of-State schools. The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under Sec. 682.404(h)(2) but who attend schools out of that State and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(9) Out-of-State residents. The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under Sec. 682.404(h)(2) but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and who are borrowing for students attending in-State schools.

(10) Insurance premiums and Federal default fees. (i) Except for a Consolidation Loan or SLS or PLUS loans refinanced under Sec. 682.209 (e) or (f), a guaranty agency:

(A) May charge the lender an insurance premium for Stafford, SLS, or PLUS loans it guarantees prior to July 1, 2006; and

(B) Must collect, either from the lender or by payment from any other non-Federal source, a Federal default fee for any Stafford or PLUS loans it guarantees on or after July 1, 2006, to be deposited into the Federal Fund under Sec. 682.419.

(ii) The guaranty agency may not use the Federal default fee for incentive payments to lenders, and may only use the insurance premium or the Federal default fee for costs incurred in guaranteeing loans or in the administration of the agency's loan guarantee program, as specified in Sec. 682.410(a)(2) or Sec. 682.419(c).

(iii) If a lender charges the borrower an insurance premium or Federal default fee, the lender must deduct the charge proportionately from each disbursement of the borrower's loan proceeds.

(iv) The amount of the insurance premium or Federal default fee, as applicable—

(A) May not exceed 3 percent of the principal balance for a loan disbursed on or before June 30, 1994;

(B) May not exceed 1 percent of the principal balance for a loan disbursed on or after July 1, 1994;

(C) Shall be 1 percent of the principal balance of a loan guaranteed on or after July 1, 2006.
(v) If the circumstances specified in paragraph (vi) exist, the guaranty agency shall refund to the lender any insurance premium or Federal default fee paid by the lender.

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance the insurance premium or Federal default fee paid by the borrower on a loan under the following circumstances:

(A) The insurance premium or Federal default fee attributable to each disbursement of a loan must be refunded if the loan check is returned uncashed to the lender.

(B) The insurance premium or Federal default fee, or an appropriate prorated amount of the premium or fee, must be refunded by application to the borrower's loan balance if—

(1) The loan or a portion of the loan is returned by the school to the lender in order to comply with the Act or with applicable regulations;

(2) Within 120 days of disbursement, the loan or a portion of the loan is repaid or returned, unless—

(i) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(ii) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with Sec. 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(3) Within 120 days of disbursement, the loan check has not been negotiated; or

(4) Within 120 days of disbursement, the loan proceeds disbursed by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

(11) Inquiries. The agency must be able to receive and respond to written, electronic, and telephone inquiries.

(12) Administrative fee for Consolidation loans. The guaranty agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it changes the fee, the agency must charge it for all loans made under the agency's Consolidation Loan program.

(13) Administrative fee for refinancing fixed-rate PLUS or SLS loans. The guaranty agency may require a lender to pay to the guaranty agency up to 50 percent of the fee the lender charges a borrower under Sec. 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate. If it charges the fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

(14) Guaranty liability. The guaranty agency shall guarantee—

(i) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993;

(ii) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after October 1, 1993 and before July 1, 2006; and

(iii) Not more than 97 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after July 1, 2006.

(15) Guaranty agency verification of default data. A guaranty agency must meet the requirements and deadlines provided for it in subpart M of 34 CFR part 668 for the cohort default rate process.

(16) Guaranty agency administration. In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, “supervision” includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(17) Loan assignment. (i) Except as provided in paragraph (b)(17)(iii) of this section, the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to—

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closed or a false certification claim;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsur ance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, “assigned” means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(17)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

(18) Transfer of guarantees. Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(19) Standards and procedures. (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of “eligible lender” in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, bankruptcy, closed school, false certification unpaid refunds, identity theft, and ineligible loan claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D, and F of this part.

(20) Monitoring student enrollment. The guaranty agency shall monitor the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum, reporting to the current holder of the loan within 35 days any change in the student's enrollment status reported that triggers—

(i) The beginning of the borrower's grace period; or

(ii) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(21) Submission of interest and special allowance information. Upon the
agency to complete the reports required by Sec. 682.414(b).

(23) Guaranty agency transfer of information. (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency shall provide—

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(23)(i) of this section must be paid by the guaranty agency making the request.

(24) Information on defaults. The guaranty agency shall, upon the request of a school, furnish information with respect to students, including the names and addresses of such students, who were enrolled at that school and who are in default on the repayment of any loan guaranteed by that agency.

(25) Information on loan sales or transfers. The guaranty agency must, upon the request of a school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower’s loan prior to the beginning of the repayment period, including—

(i) Notice of assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee or, if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

(26) Third-party servicers. The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under Sec. 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

(27) Consolidation of defaulted FFEL loans. (i) A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is paid off by a Federal Consolidation loan.

(ii) Prior to October 1, 2006, when returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount charged to the borrower pursuant to this paragraph.

(iii) On or after October 1, 2006, when returning proceeds to the Secretary from the consolidation of a defaulted loan, a guaranty agency that charged the borrower collection costs must remit an amount that equals the lesser of the actual collection costs charged or 8.5 percent of the outstanding principal and interest of the loan.

(iv) On or after October 1, 2009, when returning proceeds to the Secretary from the consolidation of a defaulted loan that is paid off with excess consolidation proceeds as defined in paragraph (b)(27)(v) of this section, a guaranty agency must remit the entire amount of collection costs repaid through the consolidation loan pursuant to paragraph (b)(27)(ii) of this section.

(v) The term excess consolidation proceeds means, for any Federal fiscal year beginning on or after October 1, 2009, the amount of Consolidation Loan proceeds received for defaulted loans under the FFEL Program that exceed 45 percent of the agency’s total collections on defaulted loans in that Federal fiscal year.

(28) Change in agency’s records system. The agency shall provide written notification to the Secretary at least 30 days prior to placing its new guaranty or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by, or otherwise under the control of, an entity that is different than the party that owns or controls the agency’s existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notification described in this paragraph must include a concise description of the agency’s conversion project and the actual or estimated cost of the project.

(29) Plans to Reduce Consolidation of defaulted loans. A guaranty agency shall establish and submit to the Secretary for approval, procedures to ensure that consolidation loans are not an excessive proportion of the guaranty agency’s recoveries on defaulted loans.

(c) Lender-of-last-resort. (1) The guaranty agency must ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender-of-last-resort in the State in which the guaranty agency is the designated guaranty agency. The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(2) of this section to be made by another eligible lender. As used in this paragraph, the term “designated guaranty agency” means the guaranty agency in the State for which the Secretary has signed a Basic Program Agreement under this section.

(2) The lender-of-last-resort must make subsidized Federal Stafford loans and unsubsidized Federal Stafford loans to any eligible student who—

(i) Qualifies for interest benefits pursuant to Sec. 682.301;

(ii) Qualifies for a combined loan amount of at least $200; and

(iii) Has been otherwise unable to obtain loans from another eligible lender for the same period of enrollment.

(3) The lender-of-last-resort may make unsubsidized Federal Stafford and Federal PLUS loans to borrowers who have been otherwise unable to obtain those loans from another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency’s lender-of-last-resort program must ensure that—

(i) The guaranty agency will serve eligible students attending any eligible school;

(ii) The program establishes operating hours and methods of application designed to facilitate application by students; and

(iii) Information about the availability of loans under the program is made available to schools in the State;

(iv) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation;

(v) The guaranty agency will respond to a student within 60 days after the student submits an original complete application; and

(vi) Borrowers are not required to obtain more than two objections from
eligible lenders prior to requesting assistance under the lender-of-last-resort program.

(5)(i) Upon request of the guaranty agency, the Secretary may advance Federal funds to the agency, on terms and conditions agreed to by the Secretary and the agency, to ensure the availability of loan capital for subsidized and unsubsidized Federal Stafford and Federal PLUS loans to borrowers who are otherwise unable to obtain those loans if the Secretary determines that—

(A) Eligible borrowers in a State who qualify for subsidized Federal Stafford loans are seeking and are unable to obtain subsidized Federal Stafford loans;

(B) The guaranty agency designated for that State has the capability for providing lender-of-last-resort loans in a timely manner, either directly or indirectly using a third party, in accordance with the guaranty agency's obligations under the Act, but cannot do so without advances provided by the Secretary; and

(C) It would be cost-effective to advance Federal funds to the agency.

(ii) If the Secretary determines that the designated guaranty agency does not have the capability to provide lender-of-last-resort loans, in accordance with paragraph (c)(5)(i) of this section, the Secretary may provide Federal funds to another guaranty agency, under terms and conditions agreed to by the Secretary and the agency, to make lender-of-last-resort loans in that State.

(d) Review of forms and procedures.

(1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency must use common application forms, promissory notes, Master Promissory Notes (MPN), and other common forms approved by the Secretary.

(4)(i) The Secretary authorizes the use of the multi-year feature of the MPN—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting criteria or otherwise designated at the sole discretion of the Secretary.

(ii) The Secretary may prohibit use of the multi-year feature of the MPN at specific schools described under paragraph (4)(i) of this section under circumstances including, but not limited to, the school being subject to an emergency action or a limitation, suspension, or termination action, or not meeting other performance criteria determined by the Secretary.

(iii) A student or parent borrower who is borrowing funds for attendance at a school for which the multi-year feature of the MPN has not been authorized must complete a new promissory note for each academic year.

(iv) Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

(v) A lender's ability to make additional loans under an MPN will automatically expire upon the earliest of—

(A) The date the lender receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(B) Twelve months after the date the borrower signed the MPN if no disbursements are issued by the lender under that MPN; or

(C) Ten years from the date the borrower signed the MPN or the date the lender receives the MPN. However, if a portion of a loan is made on or before 10 years from the signature date, remaining disbursements of that loan may be made.

(vi) The lender and school must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN.

(5) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in Sec. 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(6) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) Prohibited activities.

(1) A guaranty agency may not, directly or through an agent or contractor—

(A) For students and parents for attendance at four-year or graduate/professional schools; and

(B) For students and parents for attendance at other institutions meeting organization or an employee of a school or school-affiliated organization, or any individual or entity, to secure applications for FFEL loans. This includes, but is not limited to—

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for processing a loan using the agency's loan guarantee;

(B) Payments or other benefits, including prizes or additional financial aid funds under any Title IV or State or private program, to a school or school-affiliated organization based on the school's or organization's voluntary or coerced agreement to use the guaranty agency for processing loans, or to provide a specified volume of loans using the agency's loan guarantee;

(C) Payments or other benefits to a school or any school-affiliated organization, or to any individual in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders;

(D) Payment of travel or entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, or other gratuities related to any activity sponsored by the guaranty agency or a lender participating in the agency's program, for school employees or employees of school-affiliated organizations;

(E) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders; and

(F) Performance of, or payment to a third party to perform, any school function required under title IV, except that the guaranty agency may provide entrance counseling as provided in §682.604(f) and exit counseling as provided in §682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer.

(ii) Assess additional costs or deny benefits otherwise provided to schools and lenders participating in the agency's program on the basis of the lender's or school's failure to agree to participating in the agency's program, or to provide a specified volume of loan applications or loan volume to the agency's program or to place a lender
that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

(iii) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental;

(D) Offering to pay a lender that does not hold loans guaranteed by the agency a fee for each application forwarded for the agency's guarantee;

(E) Providing or reimbursing travel or entertainment expenses;

(F) Providing or reimbursing tuition payments or expenses; and

(G) Offering prizes, or providing payments of stocks or other securities.

(iv) Meals and refreshments that are reasonable in cost and provided in connection with guaranty agency approved training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Act;

(v) Meals, refreshments and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(vi) Reimbursement of reasonable expenses incurred by school employees to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

(vii) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission services for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(viii) Payment of Federal default fees in accordance with the Act;

(ix) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will;

(x) Loan forgiveness programs for public service and other targeted purposes approved by the Secretary, provided the programs are not marketed to secure loan applications or loan guarantees; and

(xi) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the Federal Register.

(2) Notwithstanding paragraph (e)(1)(i), (ii), and (iii) of this section, a guaranty agency is not prohibited from providing—

(i) Technical assistance to a school that is comparable to the technical assistance provided by the Secretary to a school under the Direct Loan Program, as identified by the Secretary in a public announcement, such as a notice in the Federal Register;

(ii) Default aversion activities approved by the Secretary under section 422(h)(4)(B) and 433A of the Act;

(iii) Student aid and financial-literacy related outreach activities, including in-person school-required entrance and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to participants and the guaranty agency does not promote its student loan or other products; but a guaranty agency may promote benefits provided under other Federal or State programs administered by the guaranty agency;

(iv) Meals and refreshments that are reasonable in cost and provided in connection with guaranty agency provided training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Act;

(v) Meals, refreshments and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(vi) Reimbursement of reasonable expenses incurred by school employees to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

(vii) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission services for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(viii) Payment of Federal default fees in accordance with the Act;

(ix) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will;

(x) Loan forgiveness programs for public service and other targeted purposes approved by the Secretary, provided the programs are not marketed to secure loan applications or loan guarantees; and

(xi) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the Federal Register.

(3) For the purposes of this section—

(i) The term "school-affiliated organization" is defined in Sec. 682.200.

(ii) The term "applications" includes the FAFSA, FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(iii) The term "other benefits" includes, but is not limited to, preferential rates for or access to a guaranty agency's products and services, information technology equipment or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, and the printing and distribution of college catalogs and other non-counseling or non-student financial aid-related materials at reduced or not costs.

(iv) The terms "premium," "incentive payment," and "other inducement" do not include services directly related to the enhancement of the administration of the FFEL Program that the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium," "incentive payment," and "inducement" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

(1) College Access Initiative. (1) A guaranty agency shall establish a plan to promote access to postsecondary education by—

(i) Providing the Secretary and the public with information on Internet web links and a comprehensive listing of postsecondary education opportunities, programs, publications and other services available in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(ii) Promoting and publicizing information for students and traditionally underrepresented populations on college planning, career preparation, and paying for college in coordination with other entities that provide or distribute such information in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(2) The activities required by this section may be funded from the guaranty agency's Operating Fund in accordance with Sec. 682.423(c)(1)(vii) or from funds remaining in restricted accounts established pursuant to section 422(h)(4) of the HEA.

(3) The guaranty agency shall ensure that the information required by this subsection is available to the public by November 5, 2006 and is—

(i) Free of charge; and

(ii) Available in print.

(1) A guaranty agency must work with schools that participate in its program to develop and make available high-quality educational materials and programs that provide training to students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

(i) The materials and programs described in paragraph (g)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families;
by the guaranty agency before, during, and after a student’s enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (g)(1) and (2) of this section.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

[57 FR 60323, Dec. 18, 1992]

GPO Editorial Note: For Federal Register citations affecting §682.401, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) General. (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower’s eligibility for a loan, and unpaid refunds by a school are set forth in this section.

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan, as of the date the borrower died or became totally and permanently disabled, attributable to any of that borrower’s loans that would have been eligible for discharge.

(3) If a PLUS loan was obtained by two parents as co-makers, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan unless that borrower would qualify for discharge of the loan under these regulations.

(4) Except for a borrower’s loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) or (iii) of this section, a loan qualifies for payment under this section and as provided in paragraph (h)(1)(iv) of this section, only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(5) For purposes of this section—

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally bars the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(5) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) Death. (1) If an individual borrower dies, or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(2) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation supporting the discharge request.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower and any endorser for up to 60 days and promptly request the documentation described in paragraph (b)(2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower’s estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower’s (or student’s) death.

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Federal Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent’s death.

(c)(1) Total and permanent disability. (i) A borrower’s loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the borrower’s loan discharge application is processed in accordance with paragraphs (c)(2) through (7) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the veteran’s loan discharge application is processed in accordance with paragraph (c)(8) of this section.

(2) Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). After being notified by the borrower or the borrower’s representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower’s representative submit a discharge application to the lender, on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim under the procedures described
in paragraph (c)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) Secretary's eligibility determination.

(i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(5)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).

As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) Conditions for reinstatement of a loan after a total and permanent disability discharge.

(i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) Borrower's responsibilities after a total and permanent disability discharge.

During the three-year period described in paragraph (c)(5)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(5)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) Lender and guaranty agency actions.

(i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §682.200(b).

Except as provided in paragraph (c)(7)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(7)(i) of this section, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).

(v) If the guaranty agency does not pay the disability claim, the guaranty agency
agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

1. Receives annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

2. Receives a new TEACH Grant or a new title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

3. Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

8. Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b)—

(i) General. After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(ii) Lender and guaranty agency actions. (A) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8)(i) of this section. Except as provided in paragraph (c)(8)(ii)(C) of this section, the lender will not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

(B) If the veteran submits a completed loan discharge application and the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must submit a disability claim to the guaranty agency.

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Department of Veterans Affairs determines that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(D) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(E) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(F) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim. Upon receipt of the claim payment from the guaranty agency, the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(G) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and
permanently disabled as described in paragraph (2) of the definition of that term in 682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (c)(8)(ii)(E) of this section.

(H) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(d) Closed school—(1) General. (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled, closed, or the borrower (or student) withdrew from the school not more than 90 days prior to the date the school closed. This 90-day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing would justify an extension.

(ii) For purposes of the closed school discharge authorized by this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) The term "borrower" includes all endorsers on a loan; and

(C) A "school" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(2) Relief available pursuant to discharge. (i) Discharge under paragraph (d) of this section relieves the borrower of an existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) Borrower qualification for discharge. Except as provided in paragraph (d)(5) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state—

(i) Whether the student has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) That the borrower (or the student for whom a parent received a PLUS loan) —

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or an approved leave of absence in accordance with Sec. 682.605(c), or the student withdrew from the school not more than 90 days before the school closed; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(iii) That the borrower agrees to provide, upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (d) of this section; and

(iv) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (d)(5) of this section.

(4) Cooperation by borrower in enforcement actions. (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (d) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (d) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) Transfer to the Secretary of borrower's right of recovery against third parties. (i) Upon discharge under paragraph (d) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (d) of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) Guaranty agency responsibilities— (i) Procedures applicable if a school closed on or after January 1, 1986, but prior to June 13, 1994.
(A) If a borrower received a loan for attendance at a school with a closure date on or after January 1, 1986, but prior to June 13, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's "Closed School Policy" as authorized by section IV of Bulletin 89-G-159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than August 13, 1994.

(C) A guaranty agency shall review its records and identify all schools that appear to have closed on or after January 1, 1986 and prior to June 13, 1994, and shall identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date.

(D) A guaranty agency shall notify the Secretary immediately if it determines that a school not previously known to have closed appears to have closed, and, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall—

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(E) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(H) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency—

(1) Made that determination based on information available to the guaranty agency;

(2) Was notified by the Secretary that the school had not closed;

(3) Was notified by the Secretary that the school had closed on a date that was more than 90 days after the borrower (or student) withdrew from the school;

(4) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(5) Received the borrower's completed application and sworn statement.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(J) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(ii) Procedures applicable if a school closed on or after June 13, 1994. (A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a school may have closed. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has closed and, within 30 days after receiving information indicating that the school may have closed, report the results of its investigation to the Secretary concerning the date of the school's closure and whether a teach-out of the closed school's program was made available to students.

(B) If a guaranty agency determines that a school appears to have closed, it shall, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall—

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(C) If a loan identified under paragraph (d)(6)(i)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.
loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(D) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, within one year after identifying the borrower, attempt to locate the borrower and further determine the borrower's potential eligibility for a discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(ii)(B) of this section.

(E) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency—

1. Made that determination based on information available to the guaranty agency;
2. Was notified by the Secretary that the school had not closed;
3. Was notified by the Secretary that the school had closed on a date that was more than 90 days after the borrower (or student) withdrew from the school;
4. Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or
5. Received the borrower's completed application and sworn statement.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's request and supporting sworn statement in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and shall take the following actions—

1. If the agency determines that the borrower satisfies the requirements for discharge under paragraph (d) of this section, it shall pay the claim in accordance with Sec. 682.402(h) not later than 90 days after the agency received the claim; or
2. If the agency determines that the borrower does not qualify for a discharge, the agency shall, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(H) If a borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender or guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The lender or guaranty agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(I) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(J) Lender responsibilities. (i) A lender shall comply with the requirements prescribed in paragraph (d) of this section. In the absence of specific instructions from a guaranty agency or the Secretary, if a lender receives information from a source it believes to be reliable indicating that an existing or former borrower may be eligible for a loan discharge under paragraph (d) of this section, the lender shall immediately notify the guaranty agency, and suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments).

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days after being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with Sec. 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (d)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all credit bureaus to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(B) Discharge without an application. A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the—

1. Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.213 under the William D. Ford Direct Loan Program; or
2. The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

(C) False certification by a school of a student's eligibility to borrow and unauthorized disbursements.

(G) General. (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. On or after July 1, 2006, the Secretary reimburses the holder of a loan, and discharges a borrower's obligation with respect to the loan in
accordance with the provisions of paragraph (e) of this section, if the borrower's eligibility to receive the loan was falsely certified as a result of a crime of identity theft. For purposes of a false certification discharge, the term “borrower” includes all endorsers on a loan. A student's or other individual’s eligibility to borrow shall be considered to have been falsely certified by the school if the school—

(A) Certified the student’s eligibility for a FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or

(B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.

(C) Certified the eligibility of an individual for an FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in Sec. 682.402(e)(14).

(ii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(iii) If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower—

(A) The Secretary does not pay reimbursement, and does not reimburse the holder, for any amount disbursed on the loan; and

(B) Any amounts received by a holder as interest benefits and special allowance payments with respect to the loan must be refunded to the Secretary, as provided in paragraphs (e)(8)(ii)(B)(4) and (e)(10)(ii)(D) of this section.

(2) Relief available pursuant to discharge. (i) Discharge under paragraph (e)(1)(i) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was, otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported to the credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse or inaccurate credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(ii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

(3) Borrower qualification for discharge. Except as provided in paragraph (e)(14) of this section, to qualify for a discharge of a loan under paragraph (e) of this section, the borrower must submit to the holder of the loan a written request and a sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower must—

(i) State whether the student has made a claim with respect to the school’s false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) In the case of a borrower requesting a discharge based on defective testing of the student's ability to benefit, state that the borrower (or the student for whom a parent received a PLUS loan) —

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school; and

(B) Was admitted to that school on the basis of ability to benefit from its training and did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(13) of this section;

(iii) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note—

(A) State that the signature on either of those documents was not the signature of the borrower; and

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature;

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower’s name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower shall—

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so;

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature; and

(C) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student;

(v) In the case of an individual who is requesting a discharge of a loan because the individual's eligibility was falsely certified as a result of a crime of identity theft committed against the individual—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft by a perpetrator named in the verdict or judgment;

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime, provide—

(f) Authentic specimens of the signature of the individual, as provided in paragraph (e)(3)(iii)(B), or other means of identification of the individual, as applicable, corresponding to the
means of identification falsely used to obtain the loan; and

(2) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(vi) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(vii) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

(4) Cooperation by borrower in enforcement actions. (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (e) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in any agreement to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) Transfer to the Secretary of borrower's right of recovery against third parties. (i) Upon discharge under paragraph (e) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (e) of this section apply notwithstanding any provision of state law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) Guaranty agency responsibilities—general. (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under paragraph (e) of this section, the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(iii) If the guaranty agency fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(iv) Upon receipt of a discharge claim filed by a lender or a request submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the borrower's request and supporting sworn statement in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations.

(v) A borrower's request for discharge and sworn statement may not be denied solely on the basis of failing to meet any time limits set by the lender, the Secretary or the guaranty agency.

(7) Guaranty agency responsibilities with respect to a claim filed by a lender based on the borrower's assertion that he or she did not sign the loan application or the promissory note that he or she was a victim of the crime of identity theft, or that the school failed to test, or improperly tested, the student's ability to benefit. (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(7) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with Sec. 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(7)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must—

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the
loan, so as to delete all adverse credit history assigned to the loan; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(7)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(7)(iii)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(7)(iii)(B) of this section.

8 Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check. (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(8) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must—

(1) Immediately terminate any collection efforts against the borrower with respect to the contested disbursement of the loan has been discharged, and the lender must—

(A) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(B) Notify the borrower that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(ii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(I) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iv)(B)(1) of this section, the agency shall return the claim file to the lender related to the discharged loan amount; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with Sec. 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(I) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is
submitted by a borrower based on the borrower's assertion that he or she did not sign the loan application or the promissory note, that he or she was a victim of the crime of identity theft, or that the school failed to test, or improperly tested, the student's ability to benefit. (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(3) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower—

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

10 Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check. (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(10) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(10)(ii)(D)(2) of this section, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(9) (ii) through (v) if the agency determines that the borrower does not qualify for a discharge.

11 Guaranty agency responsibilities if a borrower requests a review by the Secretary. (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(7)(iii)(B)(2), (e)(9)(iv)(B)(2), (e)(9)(iii)(B), or (e)(10)(v) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (e) of this section, within 30 days after being so
informed, the agency shall take the actions described in paragraphs (e)(8) (iv) through (vii) or (e)(9)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(7)(ii), (e)(8)(ii), (e)(8)(iii), (e)(9)(ii), (e)(10)(ii), or (e)(10)(iii) of this section, as applicable.

(12) Lender Responsibilities. (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under paragraph (e) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a claim with the guaranty agency in accordance with Sec. 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under paragraph (e) of this section.

(v) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(8)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(iii). If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan, and may file a claim with the guaranty agency for reimbursement on that ground, but shall not report the loan to credit bureaus as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following—

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(8)(ii)(B) of this section.

(vi) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(13) Requirements for certifying a borrower's eligibility for a loan. (i) For periods of enrollment beginning between July 1, 1987 and June 30, 1996, achievement of a passing grade on a test—

(1) Approved by the Secretary, for periods of enrollment beginning on or after July 1, 1991, or by the accrediting agency for other periods; and

(2) Administered substantially in accordance with the requirements for use of the test;

(C) Successfully completed a program of developmental or remedial education provided by the school; or

(D) For periods of enrollment beginning on or after July 1, 1996 through June 30, 2000—

(1) Obtained, within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of 34 CFR part 668; or

(2) Enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of 34 CFR part 668.

(E) For periods of enrollment beginning on or after July 1, 2000—

(1) Met either of the conditions described in paragraph (e)(13)(ii)(D) of this section; or

(2) Was home schooled and met the requirements of 34 CFR 688.32(e)(4).

(iii) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if—

(A) The school certified the eligibility of the student for a FFEL Program loan; and

(B) At the time of certification, the student would not meet the requirements for employment (in the student's State of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary.

(iv) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student has the ability to benefit from the training offered by the school if—

(A) The student has the ability to benefit from the training offered by the school if the student received a high school diploma or its recognized equivalent prior to enrollment at the school.

(14) Identity theft. (i) The unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1029, or 1030, or substantially comparable State or local law.
Chapter 7 or 11 of the Bankruptcy Code.

(3) Determination of filing. The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor’s attorney or the bankruptcy court.

(4) Proof of claim. (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—
   (A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or
   (B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—
   (A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and
   (B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

(5) Filing of bankruptcy claim with the guaranty agency. (I) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (g) of this section, if—
   (A) The borrower has filed a petition for relief under chapters 12 or 13 of the Bankruptcy Code; or
   (B) The borrower has filed a petition for relief under chapters 7 or 11 of the Bankruptcy Code before October 8, 1998 and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the repayment period) from the due date of the first payment until the due date of the filing of the petition for relief; or
   (C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (f)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower’s filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(g) Claim procedures for a loan held by a lender— (1) Documentation. A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:
   (i) The original or a true and exact copy of the promissory note.
   (ii) The loan application, if a separate loan application was provided to the lender.
   (iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.
   (iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.
   (v) In the case of a bankruptcy claim—
      (A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
      (B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower’s loan obligation in bankruptcy and all documents supporting those facts.
   (vi) In the case of a closed school claim, the documentation described in paragraph (d)(3) of this section, or any other documentation as the Secretary may require;
   (vii) In the case of a false certification claim, the documentation described in paragraph (e)(3) of this section.

(2) Filing deadlines. A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:
   (i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died, or the lender determines that the borrower is totally and permanently disabled.
   (ii) In the case of a closed school claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (d)(3) of this section or after the lender is notified by the Secretary or the Secretary’s designee or by the guaranty agency to do so.
   (iii) In the case of a false certification claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the guaranty agency the documentation described in paragraph (d)(3) of this section.

(h) Suspension of collection. (1) General. If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraph (h) through (k) of this section.

(2) Suspension of collection activity. (i) If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—
   (A) Must suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or
   (B) May suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

(ii) If the lender is notified that a co-maker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the co-maker or endorser and—
   (A) Must suspend collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or
   (B) May suspend any collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.
lender the written request and sworn statement described in paragraph (e)(3) of this section or after the lender is notified by the Secretary or the Secretary’s designee or by the guaranty agency to do so.

(iv) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (f)(3) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(h) Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency—(1) General. (i) Except as provided in paragraph (h)(1)(v) of this section, the guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (i) of this section to oppose the discharge of the loan by the bankruptcy court.

(iii) In the case of a closed school claim or a false certification claim based on the determination that the borrower did not sign the loan application, the promissory note, or the authorization for the electronic transfer of loan funds, or that the school failed to test, or improperly tested, the student’s ability to benefit, the guaranty agency shall document its determination that the borrower is eligible for discharge under paragraphs (d) or (e) of this section and pay the borrower or the holder the amount determined under paragraph (h)(2) of this section.

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

(v) In the case of a disability claim based on a veteran’s discharge request processed in accordance with § 682.402(c)(8), the guaranty agency shall—

(A) Review the claim promptly and not later than 45 days after the claim was filed by the lender submit the veteran’s discharge application and supporting documentation to the Secretary or return the claim to the lender in accordance with §682.402(c)(8)(ii)(D) or (E), as applicable; and

(B) Not later than 45 days after receiving notification from the Secretary of the veteran’s eligibility or ineligibility for discharge, pay the claim or return the claim to the lender in accordance with § 862.402(c)(8)(ii)(F) or (G), as applicable.

(2)(i) The amount of loss payable—

(A) On a death or disability claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower’s account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim.

(B) On a bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (h)(3) of this section.

(ii) The amount of loss payable to a lender on a closed school claim or on a false certification claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower’s account within 30 days of the date those costs were actually incurred, and unpaid interest determined in accordance with paragraph (h)(3) of this section.

(iii) In the case of a closed school or false certification claim filed by a lender on an outstanding loan owed by the borrower, on the same date that the agency pays a claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(iv) In the case of a claim filed by a lender based on a request received from a borrower whose loan had been repaid in full by, or on behalf of the borrower to the lender, on the same date that the agency notifies the lender that the borrower is eligible for a closed school or false certification discharge, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(v) In the case of a loan that has been included in a Consolidation Loan, the agency shall pay to the holder of the borrower’s Consolidation Loan, an amount equal to—

(A) The amount paid on the loan by or on behalf of the borrower at the time the loan was paid through consolidation;

(B) The amount paid by the consolidating lender to the holder of the loan when it was repaid through consolidation; minus

(C) Any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source if those refunds or payments were—

(1) Received by the borrower or received by the holder and applied to the borrower’s loan balance before the date the loan was repaid through consolidation; or

(2) Received by the borrower or received by the Consolidation Loan holder on or after the date the consolidating lender made a payment to the former holder to discharge the borrower’s obligation to that former holder.

(3) Payment of interest. If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the receipt date by the lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.

(i) Guaranty agency participation in bankruptcy proceedings—(1) Undue hardship claims. (i) In response to a petition filed prior to October 8, 1998 with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on
the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim.

(ii) In all other cases, the guaranty agency must determine whether repayment under either the current repayment schedule or any adjusted repayment schedule authorized under this part would impose undue hardship on the borrower and his or her dependents.

(iii) If the guaranty agency determines that repayment would not constitute an undue hardship, the guaranty agency must then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs. If the guaranty agency has determined that the expected costs of opposing the discharge petition will exceed one-third of the total amount of the loan, it may, but is not required to, engage in the activities described in paragraph (i)(1)(iv) of this section.

(iv) The guaranty agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and
(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, the guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13. The guaranty agency shall take the following actions when a petition for relief in bankruptcy under Chapters 11, 12, or 13 is filed:

(i) The agency is not required to respond to a proposed plan that—
(A) Provides for repayment of the full outstanding balance of the loan;
(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;
(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and
(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and
(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of the litigation of the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan or seeks but does not demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge or move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(j) Mandatory purchase by a lender of a loan subject to a bankruptcy claim. (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender, unless the guaranty agency sells the loan to another lender, promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.
(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8) or other applicable law.
(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

(2) The lender may capitalize all outstanding interest accrued on a loan purchased under paragraph (j) of this section to cover any periods of delinquency prior to the bankruptcy action through the date the lender purchases the loan and receives the supporting loan documentation from the guaranty agency.

(k) Claims for reimbursement from the Secretary on loans held by guaranty agencies. (1) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or
(B) A ruling in a proceeding under chapter 11 or 12 that the loan is dischargeable under 11 U.S.C. 523(a)(8).

(2) The Secretary shall refund to the Secretary the full amount of reimbursement received from the guaranty agency in a loan that a lender repurchases under this section.

(i) The guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures in paragraphs (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the “lender” and “guaranty agency” in paragraphs (b), (c), or (f) of this section mean the guaranty agency and the Secretary respectively.

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or
the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

(iii) In the case of a Consolidation loan, the borrower (or one of the co-makers) has died, is determined to be totally and permanently disabled under Sec. 682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in Sec. 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under Sec. 682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under Sec. 682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy, or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

(3) [Reserved]

(4) Within 30 days of receiving reimbursement for a closed school or false certification claim, the guaranty agency shall pay—

(i) The borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder, guaranty agency, or the borrower from a tuition recovery fund, performance bond, or other third-party source; or

(ii) The amount determined under paragraph (h)(2)(iv) of this section to the holder of the borrower's Consolidation Loan.

(5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during—

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the guaranty agency makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

(iii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

(l) Unpaid refund discharge—

(1) Unpaid refunds in closed school situations. In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed, in whole or in part on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.

(2) Unpaid refunds in open school situations. In the case of a school that is open, the guarantor discharges—

(a) A former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed, in whole or in part on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—

(i) The borrower (or the student on whose behalf a parent borrowed) is not attending the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the guarantor receives a complete application in accordance with paragraph (l)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.

(b) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(c) Borrower qualification for discharge. To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the holder or guaranty agency except as provided in paragraph (l)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires—

(i) State that the borrower (or the student on whose behalf a parent borrowed) —

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school; and

(B) Did not attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(ii) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(d) State whether the borrower has any other application for discharge pending for this loan; and

(e) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d) of this section.

(5) Unpaid refund discharge procedures. (i) Except for the requirements of paragraph (l)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of
loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan.

(ii) If the borrower returns the application, specified in paragraph (l)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower’s last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with Sec. 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with Sec. 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency’s possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge) —

(A) Within 30 days of the guarantor’s determination, the agency must notify the borrower in writing of the reason for the determination and of the borrower’s right to request a review of the agency’s determination. The guaranty agency must make a determination within 30 days of the borrower’s submission of additional documentation supporting the borrower’s eligibility that was not considered in any prior determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for any period during which collection activities were suspended under this section. The holder may capitalize any interest accrued and not paid during these periods in accordance with Sec. 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school’s failure to pay the unpaid refund to the Secretary.

(m) Unpaid refund discharge procedures for a loan held by a lender. In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower’s qualification for discharge as specified in paragraph (l)(4) of this section.

(n) Payment of an unpaid refund discharge request by a guaranty agency—

(1) General. The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (o)(1) and (o)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) Determination of the unpaid refund discharge amount to the lender. The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) Determination of amount eligible for discharge. The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student’s last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student’s last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.
(iii) In the case of a student who completes 60 percent or more of the loan period, the guaranty agency does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(p) Requests for reimbursement from the Secretary on loans held by guaranty agencies. The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) Payments received after the guaranty agency’s payment of an unpaid refund request. (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower’s representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

(r) Payments received after the Secretary’s payment of a death, disability, closed school, false certification, or bankruptcy claim (1) If the guaranty agency receives any payments from or on behalf of the borrower or on attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency must return 100 percent of those payments to the sender. The guaranty agency must promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it must notify the borrower that there is no obligation to repay a loan discharged on the basis of death, bankruptcy, false certification, or closing of the school.

(2) If the guaranty agency receives any payments from or on behalf of the borrower or on attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the guaranty agency must forward those payments to the Secretary for crediting to the borrower’s account. At the same time that the agency forwards the payments, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(3) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(4) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

(5) If the guaranty agency has returned a payment to the borrower, or the borrower’s representative, with the notice described in paragraphs (r)(1) or (r)(2) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

(s) Applicable suspension of the repayment period. For purposes of this section and 11 U.S.C. 523(a)(8)(A) with respect to loans guaranteed under the FFEL Program, an applicable suspension of the repayment period—

(1) Includes any period during which the lender does not require the borrower to make a payment on the loan.

(2) Begins on the date on which the borrower qualifies for the requested deferment as provided in Sec. 682.210(a)(5) or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended;

(4) Includes the period between the end of the borrower’s grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender;

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

(Approved by the Office of Management and Budget under control number 1845-0020)

[Authority: 20 U.S.C. 1070g, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087]

[57 FR 60323, Dec. 18, 1992]

GPO Editorial Note: For Federal Register citations affecting §682.403, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guaranty agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency—

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an institution of higher education and that it does not have any substantial affiliation with an institution of higher education.

(b) A guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2) (i) A guaranty agency may request that the initial advance be made on a
specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guaranty agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance to a guaranty agency—

(1) On terms and conditions specified in an agreement between the Secretary and the guaranty agency;

(2) To ensure that the agency will fulfill its lender-of-last-resort obligation; and

(3) To meet the agency’s immediate cash needs and to ensure the uninterrupted payment of claims when the Secretary has terminated the agency’s agreement and assumed its functions.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of section 422 of the Act.


§682.404 Federal reinsurance agreement.

(a) General. (1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guaranty agency for—

(i) 95 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998;

(ii) 98 percent of its losses on default claim payments to lenders for loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 100 percent of its losses on default claim payments to lenders—

(A) For loans for which the first disbursement is made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For loans that meet the definition of exempt claims in paragraph (a)(2)(iii) of this section;

(E) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

(2) For purposes of this section—

(i) Losses means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) Default aversion assistance means the activities of a guaranty agency that are designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender.

(iii) Exempt claims means claims with respect to loans for which it is determined that the borrower (or student on whose behalf a parent has borrowed), without the lender’s or the institution’s knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the borrower or the student to be ineligible for all of a portion of the loan or for interest benefits on the loan.

(3) A guaranty agency’s loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(4) If a lender has requested default aversion assistance as described in paragraph (a)(2)(ii) of this section, the agency must, upon request of the school at which the borrower received the loan, notify the school of the lender’s request. The guaranty agency may not charge the school or the school’s agent for providing this notification and must accept a blanket request from the school to be notified whenever any of the school’s current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request.

(b) Reduction in reinsurance rate. (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary’s reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 80 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency;

(ii) 78 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 75 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 8 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary’s reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 90 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(ii) 88 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1993, and before October 1, 1998; or

(iii) 85 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency—

(i) On loans considered in default under Sec. 682.412(e);

(ii) Under a policy established by the agency that is consistent with Sec. 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary;

(iv) On loans made under a guaranty agency’s approved lender-of-last-resort program.

(4) For purposes of this section, amount of loans in repayment means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;
(ii) Minus the original principal amount of all loans on which—
(A) The loan guarantee was canceled;
(B) The loan guarantee was transferred to another agency;
(C) The borrower has not yet reached the repayment period;
(D) Payment in full has been made by the borrower;
(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;
(F) Reinsurance coverage has been lost and cannot be regained; and
(G) The agency paid claims, excluding the amount of those claims—
(1) Paid under Sec. 682.412(e);
(2) Paid under a policy established by the agency that is consistent with Sec. 682.509(a)(1); or
(3) Paid at the direction of the Secretary.
(c) Submission of reinsurance rate base data. The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency after the date the quarterly report is due until the guaranty agency submits a complete and accurate report.

Editorial Note: The first letter in the words “quarterly” and “guaranty” have been transposed. The text should read, “...quarterly report is due until the guaranty agency...”

(d) Reinsurance fee. (1) Except for loans made under Sec. 682.209(e), (f) and (h), and all loans guaranteed on or after October 1, 1993, a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to—
(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or
(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency’s reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.
(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 30 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.
(e) Initiation or extension of agreements. In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—
(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by Sec. 682.410(b) (6) or (7), and Sec. 682.411;
(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and
(3) Other relevant aspects of the guaranty agency’s program operations.
(f) Application of borrower payments. A payment made to a guaranty agency by a borrower on a defaulted loan must be applied first to the collection costs incurred to collect that amount and then to other incidental charges, such as late charges, then to accrued interest and then to principal.
(g) Share of borrower payments returned to the Secretary. (1) After an agency pays a default claim to a holder using assets of the Federal Fund, the agency must pay to the Secretary the portion of payments received on those defaulted loans remaining after—
(i) The agency deposits into the Federal Fund the amount of those payments equal to the applicable complement of the reinsurance percentage that was in effect at the time the claim was paid; and
(ii) The agency has deducted an amount equal to—
(A) 30 percent of borrower payments received before October 1, 1993;
(B) 27 percent of borrower payments received on or after October 1, 1993, and before October 1, 1998;
(C) 24 percent of borrower payments received on or after October 1, 1998, and before October 1, 2003; and
(D) 23 percent of borrower payments received on or after October 1, 2003.
(2) Unless the Secretary approves otherwise, the guaranty agency must pay to the Secretary the Secretary’s share of borrower payments within 45 days of its receipt of the payments.
(h) Nondiscrimination. (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower’s access to FFEL loans because of the borrower’s race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular participating school within any State served by the guaranty agency, length of the borrower’s educational program, or the borrower’s academic year in school.
(2) For purposes of this section a guaranty agency is deemed to be serving a State if it guarantees a loan that is—
(i) Made by a lender located in a State not served by the agency;
(ii) Made to a borrower who is a resident of a State not served by the agency; and
(iii) Made for attendance at a school located in the State.
(i) Account maintenance fee. A guaranty agency is paid an account maintenance fee based on the original principal amount of outstanding FFEL Program loans insured by the agency. For fiscal years 1999 and 2000, the fee is 0.12 percent of the original principal amount of outstanding loans. For fiscal years 2000 through 2007, the fee is 0.10 percent of the original principal amount of outstanding loans. After fiscal year 2007, the fee is 0.06 percent of the original principal amount of outstanding loans.
(j) Loan processing and issuance fee. A guaranty agency is paid a loan processing and issuance fee based on the principal amount of FFEL Program loans originated during a fiscal year that are insured by the agency. The fee is paid quarterly. No payment is made for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed. For fiscal years 1999 through 2003, the fee is 0.65 percent of the principal amount of loans originated. Beginning October 1, 2003, the fee is 0.40 percent.
(k) Default aversion fee— (1) General. If a guaranty agency performs default aversion activities on a delinquent loan in response to a lender’s request for default aversion assistance on that loan, the agency receives a default aversion fee. The fee may not be paid more than once on any loan. The lender’s request for assistance must be submitted to the guaranty agency no earlier than the 60th day and no later than the 120th day of the borrower’s delinquency. A guaranty agency may not restrict a lender’s choice of the date during this period on which the lender submits a request for default aversion assistance.
(2) Amount of fees transferred. No more frequently than monthly, a guaranty agency may transfer default
aversion fees from the Federal Fund to its Operating Fund. The amount of the fees that may be transferred is equal to—

(i) One percent of the unpaid principal and accrued interest owed on loans that were submitted by lenders to the agency for default aversion assistance; minus

(ii) One percent of the unpaid principal and accrued interest owed by borrowers on default claims that—

(A) Were paid by the agency for the same time period for which the agency transferred default aversion fees from its Federal Fund; and

(B) For which default aversion fees have been received by the agency.

(3) Calculation of fee. (i) For purposes of calculating the one percent default aversion fee described in paragraph (k)(2)(i) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the default aversion assistance request is submitted by the lender.

(ii) For purposes of paragraph (k)(2)(ii) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the agency paid the default claim.

(4) Prohibition against conflicts. If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—

(i) Hold or service the loan; or

(ii) Perform collection activities on the loan in the event of default within 3 years of the claim payment date.

(I) Other terms. The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Approved by the Office of Management and Budget under control number 1845-0020)

Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082


§682.405 Loan rehabilitation agreement.

(a) General. (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans, except for loans for which a judgment has been obtained, loans on which a default claim was filed under Sec. 682.412, and loans on which the borrower has been convicted of, or has pled no contest or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(ii) One loan is considered to be rehabilitated only after—

(i) The borrower has made and the guaranty agency has received nine of the ten payments required under a monthly repayment agreement.

(A) Each of which payments is—

(1) Made voluntarily;

(2) In the full amount required; and

(3) Received within 20 days of the due date for the payment, and

(B) All nine payments are received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month, and

(ii) The loan has been sold to an eligible lender.

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation. Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot re rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(b) Terms of agreement. In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request rehabilitation of the borrower’s defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least nine of the ten payments required under a monthly repayment agreement.

(i) Each of which payment is—

(A) Made voluntarily,

(B) In the full amount required, and

(C) Received within 20 days of the due date for the payment; and

(ii) All nine payments are received within a ten-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.

(iii) For the purposes of this section, the determination of reasonable and affordable by the guaranty agency or its agents must—

(A) Include a consideration of the borrower’s and spouse’s disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g., $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower’s total financial circumstances. The agency must include documentation in the borrower’s file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50 or the monthly accrued interest on the loan, whichever is greater. However, $50 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans’ benefits, Supplemental Security Income, Workmen’s Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower’s monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(iv) The agency must include any payment made under Sec. 682.401(b)(4) in determining whether the nine out of ten payments required under paragraph (b)(1) of this section have been made.

(v) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower’s total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii)(C) of this section.

(vi) A guaranty agency must provide the borrower with a written statement confirming the borrower’s reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower’s account can be
considered for repurchase by an eligible lender. The statement must inform borrowers of the effects of having their loans rehabilitated (e.g., credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(vii) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

(2) For the purposes of this section, payment in the full amount required means payment of an amount that is reasonable and affordable, based on the borrower's total financial circumstances, as agreed to by the borrower and the agency. Voluntary payments are those made directly by the borrower and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the 9- or 10-month payment period as applicable.

(3) Upon the sale of a rehabilitated loan to an eligible lender—

(i) The guaranty agency must, within 45 days of the sale—

(A) Provide notice to the prior holder of such sale, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

(4) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans of the same loan type as the rehabilitated loan and must permit the borrower to choose any statutorily available repayment plan for that loan type. The lender must treat the first payment made under the nine payments as the first payment under the applicable maximum repayment term, as defined under Sec. 682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

(c) A guaranty agency must make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan in accordance with paragraph (a)(2) of this section.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078-6)


§682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii) (B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of Sec. 682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon with the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 30 days following payment of a default claim to the lender;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with Sec. 682.410(b)(6);

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all default aversion assistance requirements in Sec. 682.404(a)(2)(ii).

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of Sec. 682.409; and

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under Sec. 682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.
(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in appendix D to this part.

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under or reinsurance, the issue of

In evaluating a claim for insurance (c)

require. The Secretary's waiver policy

(a)(5) of this section is set forth in

for violations of paragraph (a)(3) or

repayment of a reinsurance payment if, his right to refuse to make or require

(b) September 11 survivors discharge. (1) The obligation of a borrower and any endorser to make any further payments on an eligible FFEL Program Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The obligation of a borrower to make any further payments towards the portion of a joint FFEL Consolidation Loan incurred on behalf of an eligible victim is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The obligation of a borrower and any endorser to make any further payments on a FFEL PLUS Loan incurred on behalf of an eligible victim is discharged. (ii) The obligation of the borrower to make any further payments towards the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim is discharged.

(4) The parent of an eligible public servant may qualify for a discharge of a FFEL PLUS Loan incurred on behalf of the eligible public servant, or the portion of a FFEL Consolidation Loan that
repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) Applying for discharge. (1) In accordance with the procedures in paragraphs (c)(2) through (c)(13) of this section, a discharge may be granted on—

(i) A FFEL Program Loan owed by the spouse of an eligible public servant;

(ii) A FFEL PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a FFEL Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Consolidation Loan incurred on behalf of an eligible victim.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the lender shall suspend collection activity on the borrower's eligible FFEL Program Loan and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the lender determines that the borrower does not qualify for a discharge under this section, or the lender does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the lender that the borrower claims to qualify for a discharge, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender was notified by the borrower. The lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the next payment due date. The lender may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during this period.

(4) If the guaranty agency determines that the borrower qualifies for a discharge, the guaranty agency pays the lender on an approved claim the amount of loss required under paragraph (c)(9) of this section. The guaranty agency shall pay the claim not later than 90 days after the claim was filed by the lender.

(5) The amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed 60 days from the date the lender determines that the borrower qualifies for a discharge under this section.

(ii) During a period not to exceed 30 days following the date the lender receives a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation, not to exceed 90 days.

(6) The guaranty agency must review a discharge claim under this section promptly.

(7) If the guaranty agency determines that the borrower does not qualify for a discharge under this section, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan.

(8) If the guaranty agency determines that the borrower qualifies for a discharge, the guaranty agency pays the lender on an approved claim the amount of loss required under paragraph (c)(9) of this section. The guaranty agency shall pay the claim not later than 90 days after the claim was filed by the lender.

(9) The amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed 60 days from the date the lender determines that the borrower qualifies for a discharge.

(ii) During a period not to exceed 30 days following the date the lender receives a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation, not to exceed 90 days.

(10) The amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed 60 days from the date the lender determines that the borrower qualifies for a discharge under this section.

(ii) During a period not to exceed 30 days following the date the lender receives a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation, not to exceed 90 days.

(11) After being notified that the guaranty agency has paid a discharge claim, the lender shall notify the borrower that the loan has been discharged or, in the case of a partial discharge of a Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Consolidation Loan, the lender shall return to the sender any payments received by the lender after the date the guaranty agency paid the discharge claim.

(12) The Secretary reimburses the guaranty agency for a discharge claim paid to the lender under this section after the agency pays the lender. Any failure by the lender to satisfy due diligence requirements prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default are waived by the Secretary, provided the loan was held by an eligible loan holder at all times.

(13) Except in the case of a partial discharge of a Consolidation Loan, the guaranty agency shall promptly return to the sender any payment on a discharged loan made by the sender and received after the Secretary pays a discharge claim. At the same time that the agency returns the payment it shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan.

(14) A FFEL Program Loan owed by an eligible public servant or an eligible victim may be discharged under the procedures in Sec. 682.402 for a discharge based on the death or total and permanent disability of the eligible public servant or eligible victim.

(d) Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001. (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;
(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii) or (d)(3), and (d)(2)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant or an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief executive officer of the guaranty agency.

(e) Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001. (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) Additional information. (1) A lender or guaranty agency may require the borrower to submit additional information that the lender or guaranty agency deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; and

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint Consolidation Loan applications or approved FFEL or Direct Loan PLUS loan applications.

(g) Limitations on discharge. (1) Only outstanding Federal Direct Loans, Federal Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans for which amounts were owed on September 11, 2001, or outstanding Federal Consolidation Loans incurred
to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(ii) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower’s loan prior to the date the loan was discharged.

(iii) A borrower may apply for a discharge of a PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in Sec. 682.402(b). If a borrower is granted a discharge under the procedures in Sec. 682.402(b), the borrower may qualify for a refund of payments in accordance with Sec. 682.402(b)(5) or Sec. 682.402(c)(1)(i).

(iii) A borrower may apply for a discharge of a PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in Sec. 682.402(b). If a borrower is granted a discharge under the procedures in Sec. 682.402(b), the borrower may qualify for a refund of payments in accordance with Sec. 682.402(b)(5).

(3) A determination by a lender or a guaranty agency that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under Sec. 682.402.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a FFEL PLUS Loan or on a Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. [71 FR 78080, Dec. 28, 2006, as amended at 72 FR 55053, Sept. 28, 2007]

§682.408 Loan disbursement through an escrow agent.

(a) General. (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, and transmitting those proceeds to the borrower’s school if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and Sec. 682.207(b)(1)(iv); (ii) The lender shall promptly notify the borrower’s school when funds are escrowed for the borrower; and (iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan; (B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement; (C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and (D) Retain for its own use interest or other earnings on those investments.

(b) Disbursement by the lender. Subject to Sec. 682.207(b)(b)(i)(ii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) Transmittal of FFEL loan proceeds by an escrow agent. The escrow agent shall transmit Stafford and PLUS loan proceeds received from a lender under this section to a school in accordance with the requirements of Sec. 682.207(b)(1)(ii) and (iv), or Stafford Loan proceeds to a borrower in accordance with the requirements of Sec. 682.207(b)(1)(i) and (ii), not later than 10 days after the agent receives the funds from the lender.

(d) Return of untransmitted proceeds. The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased receiving information indicating that the student was enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended. (Authority: 20 U.S.C. 1078, 1082) [57 FR 60323, Dec. 18, 1992, as amended at 64 FR 18980, Apr. 16, 1999; 71 FR 45708, Aug. 9, 2006; 71 FR 64399, Nov. 1, 2006]
loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) Non-achievement of loan type recovery rate standards. (A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section that protection of the Federal fiscal interest requires a lesser amount to be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency’s fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) Calculation of loan type recovery rate standards. The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing these rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) Determination that the protection of the Federal fiscal interest requires assignments. Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency’s petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of the loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary determines information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency demonstrates that its compliance with Sec. 682.401(b)(4) and Sec. 682.405 has reduced substantially its fiscal year loan type recovery rate or rates or if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(ii)(A) and (B) of this section may include, but is not limited to the following:

(1) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies.

(2) The fiscal year loan type recovery rate for loans for the agency and for all agencies categorized by age of the loans as the Secretary may determine.

(3) The performance of the agency, and all agencies, in default aversion.

(4) The agency’s performance on judgment enforcement.

(5) The existence and use of any state or guaranty agency-specific collection tools.

(6) The agency’s level of compliance with Sec. Sec. 682.409 and 682.410(b)(6).

(7) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) Denial of an agency’s petition. If the Secretary does not accept the agency’s petition, the Secretary provides, in writing, to the agency the Secretary’s reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

(b)(1) A guaranty agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency’s previous collection costs.

(c)(1) A guaranty agency must assign to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency’s submission to include the required information and documentation in the specified form and format; or

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of that activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency’s submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The original or a true and exact copy of the promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application, if a separate application was provided to the lender.

(v) A payment history for the loan, as described in Sec. 682.414(a)(1)(ii)(C).

(vi) A collection history for the loan, as described in Sec. 682.414(a)(1)(ii)(D).

(vii) The record of the lender’s disbursement of Stafford and PLUS
loan funds to the school for delivery to the borrower.

(viii) If the MPN or promissory note was signed electronically, the name and location of the entity in possession of the original electronic MPN or promissory note.

(5) The agency may submit copies of required documents in lieu of originals.

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under Sec. 682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(5) The agency may maintain a reserve fund to be used solely for its activities as a guaranty agency under the FFEL Program ("guaranty activities"). The guaranty agency shall credit the reserve fund—

(i) The total amount of insurance premiums and Federal default fees collected;

(ii) Funds received from a State for the agency's guaranty activities, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death, disability, closed schools, and false certification claims;

(v) Supplemental claims assistance payments;

(vi) Transitional support payments received under section 458(a) of the Act;

(vii) Funds collected by the guaranty agency on FFEL Program loans on which a claim has been paid;

(viii) Investment earnings on the reserve fund; and

(ix) Other funds received by the guaranty agency from any source for the agency's guaranty activities.

(2) Uses of reserve fund assets. A guaranty agency may not use the assets of the reserve fund established under paragraph (a)(1) of this section to pay costs prohibited under Sec. 682.418, but shall use the assets of the reserve fund to pay only—

(i) Insurance claims;

(ii) Costs that are reasonable, as defined under Sec. 682.410(a)(11)(iii), and that are ordinary and necessary for the agency to fulfill its responsibilities under the HEA, including costs of collecting loans, providing preclaims assistance, monitoring enrollment and repayment status, and carrying out any other guaranty activities. Those costs must be—

(A) Allocable to the FFEL Program;

(B) Not higher than the agency would incur under established policies, regulations, and procedures that apply to any comparable non-Federal activities of the guaranty agency;

(C) Not included as a cost or used to meet cost sharing or matching requirements of any other federally supported activity, except as specifically provided by Federal law;

(D) Net of all applicable credits; and

(E) Documented in accordance with applicable legal and accounting standards.

(iii) The Secretary's equitable share of collections;

(iv) Federal advances and other funds owed to the Secretary;

(v) Reinsurance fees;

(vi) Insurance premiums and Federal default fees related to cancelled loans;

(vii) Borrower refunds, including those arising out of student or other borrower claims and defenses;

(viii)(A) The repayment, on or after December 29, 1993, of amounts credited under paragraphs (a)(1)(ii) or (a)(1)(ix) of this section, if the agency demonstrates that—

(1) These amounts were originally received by the agency under appropriate contemporaneous documentation specifying that receipt was on a temporary basis only; and

(2) The objective for which these amounts were originally received by the agency has been fully achieved; and

(3) Repayment of these amounts would not cause the agency to fail to comply with the minimum reserve levels provided by paragraph (a)(10) of this section, except that the Secretary may, for good cause, provide written permission for a payment that meets the other requirements of this paragraph (a)(2)(ix)(A).

(B) The repayment, prior to December 29, 1993, of amounts credited under paragraphs (a)(1)(ii) or (a)(1)(ix) of this section, if the agency demonstrates that—

(1) These amounts were originally received by the agency under appropriate contemporaneous documentation specifying that receipt was on a temporary basis only; and

(2) The objective for which these amounts were originally received by the agency has been fully achieved.

(ix) Any other costs or payments ordinary and necessary to perform functions directly related to the agency's responsibilities under the HEA and for their proper and efficient administration;

(x) Notwithstanding any other provision of this section, any other payment that was allowed by law or regulation at the time it was made, if the agency acted in good faith when it made the payment or the agency would otherwise be unfairly prejudiced by the nonallowability of the payment at a later time; and

(xi) Any other amounts authorized or directed by the Secretary.

(3) Accounting basis. Except as approved by the Secretary, a guaranty agency shall credit the items listed in paragraph (a)(1) of this section to its reserve fund upon their receipt, without any deferral for accounting purposes, and shall deduct the items listed in paragraph (a)(2) of this section from its reserve fund upon their payment, without any accrual for accounting purposes.

(4) Accounting records. (i) The accounting records of a guaranty agency must reflect the correct amount of sources and uses of funds under paragraph (a) of this section.
(ii) A guaranty agency may reverse prior credits to its reserve fund if—
(A) The agency gives the Secretary prior notice setting forth a detailed justification for the action;
(B) The Secretary determines that such credits were made erroneously and in good faith; and
(C) The Secretary determines that the action would not unfairly prejudice other parties.

(iii) A guaranty agency shall correct any other errors in its accounting or reporting as soon as practicable after the errors become known to the agency.

(iv) If a general reconstruction of a guaranty agency’s historical accounting records is necessary to make a change under paragraphs (a)(4)(ii) and (a)(4)(iii) of this section or any other retroactive change to its accounting records, the agency may make this reconstruction only upon prior approval by the Secretary and without any deduction from its reserve fund for the cost of the reconstruction.

(5) Investments. The guaranty agency shall exercise the level of care required of a fiduciary charged with the duty of investing the money of others when it invests the assets of the reserve fund described in paragraph (a)(1) of this section. It may invest these assets only in low-risk securities, such as obligations issued or guaranteed by the United States or a State.

(6) Development of assets. (i) If the guaranty agency uses in a substantial way for purposes other than the agency’s guaranty activities any funds required to be credited to the reserve fund under paragraph (a)(1) of this section or any assets derived from the reserve fund to develop an asset of any kind and does not in good faith allocate a portion of the cost of developing and maintaining the developed asset to funds other than the reserve fund, the Secretary may require the agency to—
(A) Correct this allocation under paragraph (a)(4)(iii) of this section; or
(B) Correct the recorded ownership of the asset under paragraph (a)(4)(iii) of this section so that—
(1) If, in a transaction with an unrelated third party, the agency sells or otherwise derives revenue from uses of the asset that are unrelated to the agency’s guaranty activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a fair percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use.
(ii) If the agency uses funds or assets described in paragraph (a)(6)(i) of this section in the manner described in that paragraph and makes a cost and maintenance allocation erroneously and in good faith, it shall correct the allocation under paragraph (a)(4)(iii) of this section.

(7) Third-party claims. If the guaranty agency has any claim against any other party to recover funds or other assets for the reserve fund, the claim is the property of the United States.

(8) Related-party transactions. All transactions between a guaranty agency and a related organization or other person that involve funds required to be credited to the agency’s reserve fund under paragraph (a)(1) of this section or assets derived from the reserve fund must be on terms that are not less advantageous to the reserve fund than would have been negotiated on an arm’s-length basis by unrelated parties.

(9) Scope of definition. The provisions of this Sec. 682.410(a) define reserve funds and assets for purposes of sections 422 and 428 of the Act. These provisions do not, however, affect the Secretary’s authority to use all funds and assets of the agency pursuant to section 428(c)(9)(F)(vi) of the Act.

(10) Minimum reserve fund level. The guaranty agency must maintain a current minimum reserve level of not less than—
(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;
(ii) 7 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1994;
(iii) 9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and
(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(11) Definitions. For purposes of this section—
(i) Reserve fund level means—
(A) The total of reserve fund assets as defined in paragraph (a)(1) of this section;
(B) Minus the total amount of the reserve fund assets used in accordance with paragraphs (a)(2) and (a)(3) of this section; and
(ii) Amount of loans outstanding means—
(A) The sum of—
(1) The original principal amount of all loans guaranteed by the agency; and
(2) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;
(B) Minus the original principal amount of all loans on which—
(1) The loan guarantee was cancelled;
(2) The loan guarantee was transferred to another agency;
(3) Payment in full has been made by the borrower;
(4) Reinsurance coverage has been lost and cannot be regained; and
(5) The agency paid claims.

(iii) Reasonable cost means a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The burden of proof is upon the guaranty agency, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. In determining reasonableness of a given cost, consideration must be given to—
(A) Whether the cost is of a type generally recognized as ordinary and necessary for the proper and efficient performance and administration of the guaranty agency’s responsibilities under the HEA;
(B) The restraints or requirements imposed by factors such as sound business practices, arm’s-length bargaining, Federal, State, and other laws and regulations, and the terms and conditions of the guaranty agency’s agreements with the Secretary; and
(C) Market prices of comparable goods or services.

(b) Administrative requirements— (1) Independent audits. The guaranty agency shall arrange for an independent financial and compliance audit of the agency’s FFEL program as follows:
(i) With regard to a guaranty agency that is an agency of a State government, an audit must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.
(ii) With regard to a guaranty agency that is a nonprofit organization, an audit must be conducted in accordance with OMB Circular A-133, Audits of Institutions of Higher Education and
Other Nonprofit Organizations and 34 CFR 74.61(h)(3). If a nonprofit guaranty agency meets the criteria in Circular A-133 to have a program specific audit, and chooses that option, the program specific audit must meet the following requirements:

(A) The audit must examine the agency’s compliance with the Act, applicable regulations, and agreements entered into under this part.
(B) The audit must examine the agency’s financial management of its FFEL program activities.
(C) The audit must be conducted in accordance with the standards for audits issued by the United States General Accounting Office’s (GAO) Government Auditing Standards.

Procedures for audits are contained in an audit guide developed by, and available from, the Office of the Inspector General of the Department.

(D) The audit must be conducted annually and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency’s activities for a period that includes July 23, 1992, unless the agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992. Under these circumstances, the agency shall submit a biennial audit that includes July 23, 1992 and submit its next audit as an annual audit.

(2) Collection charges. Whether or not provided for in the borrower’s promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney’s fees, collection agency charges, and court costs. Except as provided in Sec. Sec. 682.401(b)(27) and 682.405(b)(1)(iv), the amount charged a borrower must equal the lesser of—

(i) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or
(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) Interest charged by guaranty agencies. The guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(i) The rate established by the terms of the borrower’s original promissory note; or
(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) Capitalization of unpaid interest. The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) Reports to consumer reporting agencies. (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(v) of this section, and on a regular basis, to all nationwide consumer reporting agencies—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;
(B) The date of default;
(C) Information concerning collection of the loan, including the repayment status of the loan;
(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and
(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower’s death, bankruptcy, total and permanent disability, or closed school or false certification.

(ii) The guaranty agency, after it pays a default claim on a loan but before it reports the default to a consumer reporting agency or assesses collection costs against a borrower, shall, within the timeframe specified in paragraph (b)(6)(v) of this section, provide the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;
(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;
(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and
(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20-30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(i) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to consumer reporting agencies until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(iii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or
(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;
(B) Identify the lender that made the loan and the school for attendance at which the loan was made;
(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;
(D) Demand that the borrower immediately begin repayment of the loan;
(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;
(F) Notify the borrower that the agency will report the default to all nationwide consumer reporting agencies to the detriment of the borrower’s credit rating;
(G) Explain the opportunities available to the borrower under agency rules to request access to the agency’s records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to consumer reporting agencies and provide deadlines and method for requesting this relief;
(H) Unless the agency uses a separate notice to advise the borrower regarding
other proposed enforcement actions, describe specifically any other enforcement action, such as offset against Federal or state income tax refunds or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation;

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for the filing of a lawsuit against the borrower by the Federal Government; and

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

(vii) As part of the guaranty agency’s response to a borrower who appeals an adverse decision resulting from the agency’s administrative review of the loan obligation, the agency must provide the borrower with information on the availability of the Student Loan Ombudsman’s office.

(6) Collection efforts on defaulted loans.

(i) A guaranty agency must engage in reasonable and documented collection activities on a loan on which it pays a default claim filed by a lender. For a non-paying borrower, the agency must perform at least one activity every 180 days to collect the debt, locate the borrower (if necessary), or determine if the borrower has the means to repay the debt.

(ii) Within 45 days after paying a lender’s default claim, the agency must send a notice to the borrower that contains the information described in paragraph (b)(5)(ii) of this section. During this time period, the agency also must notify the borrower, either in the notice containing the information described in paragraph (b)(5)(ii) of this section, or in a separate notice, that if he or she does not make repayment arrangements acceptable to the agency, the agency will promptly initiate procedures to collect the debt. The agency’s notification to the borrower must state that the agency may administratively garnish the borrower’s wages, file a civil suit to compel repayment, offset the borrower’s State and Federal income tax refunds and other payments made by the Federal Government to the borrower, assign the loan to the Secretary in accordance with Sec. 682.409, and take other lawful collection means to collect the debt, at the discretion of the agency. The agency’s notification must include a statement that borrowers may have certain legal rights in the collection of debts, and that borrowers may wish to contact counselors or lawyers regarding those rights.

(iii) Within a reasonable time after all of the information described in paragraph (b)(6)(i) of this section has been sent, the agency must send at least one notice informing the borrower that the default has been reported to all nationwide consumer reporting agencies and that the borrower’s credit rating may thereby have been damaged.

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent within a reasonable time after the end of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

(v) A guaranty agency must attempt an annual Federal offset against all eligible borrowers. If an agency initiates proceedings to offset a borrower’s State or Federal income tax refunds and other payments made by the Federal Government to the borrower, it may not initiate those proceedings sooner than 60 days after sending the notice described in paragraph (b)(5)(ii)(A) of this section.

(vi) A guaranty agency must initiate administrative wage garnishment proceedings against all eligible borrowers, except as provided in paragraph (b)(6)(vii) of this section, by following the procedures described in paragraph (b)(9) of this section.

(vii) A guaranty agency may file a civil suit against a borrower to compel repayment only if the borrower has no wages that can be garnished under paragraph (b)(9) of this section, or the agency determines that the borrower has sufficient other assets or income that is not subject to administrative wage garnishment that can be used to repay the debt, and the use of litigation would be more effective in collection of the debt.

(7) Special conditions for agency payment of a claim. (i) A guaranty agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in Sec. 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(7)(i) of this section, the guaranty agency shall—

(A) Perform the loan servicing functions required of a lender under Sec. 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under Sec. 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender or becomes delinquent while the agency holds the loan, exercise due diligence in accordance with Sec. 682.411 in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(8) Preemption of State Law. The provisions of paragraphs (b)(2), (5), and (6) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.

(9) Administrative Garnishment. (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it shall do so in accordance with the following procedures:

(A) The employer shall deduct and pay to the agency from a borrower’s wages an amount that does not exceed the lesser of 15 percent of the borrower’s disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term “disposable pay” means that part of the borrower’s compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(B) At least 30 days before the initiation of garnishment proceedings, the guaranty agency shall mail to the borrower’s last known address, a written notice of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower’s rights.
(C) The guaranty agency shall offer the borrower an opportunity to inspect and copy agency records related to the debt. (D) The guaranty agency shall offer the borrower an opportunity to enter into a written repayment agreement with the agency, on terms agreeable to the agency.

(E) The guaranty agency shall offer the borrower an opportunity for a hearing in accordance with paragraph (b)(9)(i)(J) of this section concerning the existence or the amount of the debt and, in the case of a borrower whose proposed repayment schedule under the garnishment order is established otherwise than by a written agreement under paragraph (b)(9)(i)(D) of this section, the terms of the repayment schedule. (F) The guaranty agency shall sue any employer for any amount that the borrower, after receipt of the garnishment notice provided by the agency under paragraph (b)(9)(i)(H) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(G) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. (H) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, 20 days after a final decision is made by the agency to proceed with garnishment. (I) The notice given to the employer under paragraph (b)(9)(i)(H) of this section must contain only the information as may be necessary for the employer to comply with the withholding order. (J) The guaranty agency shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The time and location of the hearing shall be established by the agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. All telephonic charges must be the responsibility of the guaranty agency.

(K) If the borrower's written request is received by the guaranty agency on or before the 15th day following the borrower's receipt of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(9)(i)(B) of this section 5 days after it was mailed by the agency. The guaranty agency shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days. (L) If the borrower's written request is received by the guaranty agency after the 15th day following the borrower's receipt of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(9)(i)(B) of this section 5 days after it was mailed by the agency. (M) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge, not under the supervision or control of the head of the guaranty agency. (N) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request. (O) As specified in section 488A(a)(8) of the HEA, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) References to “the borrower” in this paragraph include all endorsers on a loan. (10) Conflicts of interest. (i) A guaranty agency shall maintain and enforce written standards of conduct governing the performance of its employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements. The standards of conduct must, at a minimum, require disclosure of financial or other interests and must mandate disinterested decision-making. The standards must provide for appropriate disciplinary actions to be applied for violations of the standards by employees, officers, directors, trustees, or agents of the guaranty agency, and must include provisions to— (A) Prohibit any employee, officer, director, trustee, or agent from participating in the selection, award, or decision-making related to the administration of a contract or agreement supported by the reserve fund described in paragraph (a) of this section, if that participation would create a conflict of interest. Such a conflict would arise if the employee, officer, director, trustee, or agent, or any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of those parties has a financial or ownership interest in the organization selected for an award or would benefit from the decision made in the administration of the contract or agreement. The prohibitions described in this paragraph do not apply to employees of a State agency covered by codes of conduct established under State law; (B) Ensure sufficient separation of responsibility and authority between its lender claims processing as a guaranty agency and its lending or loan servicing activities, or both, within the guaranty agency or between that agency and one or more affiliates, including independence in direct reporting requirements and such management and systems controls as may be necessary to demonstrate, in the independent audit required under Sec. 682.410(b)(1), that claims filed by another arm of the guaranty agency or by an affiliate of that agency receive no more favorable treatment than that accorded the claims filed by a lender or servicer that is not an affiliate or part of the guaranty agency; and (C) Prohibit the employees, officers, directors, trustees, and agents of the guaranty agency, his or her partner, or any member of his or her immediate family, from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to agreements, except that nominal and unsolicited gratuities, favors, or items may be accepted. (ii) Guaranty agency restructuring. If the Secretary determines that action is necessary to protect the Federal fiscal interest because of an agency's failure to meet the requirements of Sec. 682.410(b)(10)(i), the Secretary may require the agency to comply with any additional measures that the Secretary believes are appropriate, including the total divestiture of the agency's non-FFEL functions and the agency's interests in any affiliated organization. (c) Enforcement requirements. A guaranty agency shall take such measures and establish such controls
as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of FFEL loans made or held by the lender and guaranteed by the agency in the preceding year—

(1) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency; or
(2) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or
(3) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D) or (J) of the Act that is located in any State in which the agency is the principal guarantor, and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1)(A)-(C) of this section if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any case in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation, any correspondence, and any other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking or arranging with State or local law enforcement agencies for the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to nationally recognized accrediting agencies and associations for investigation information received by the guaranty agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the FFEL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing potential solvency problems, and

(i) Conducting on-site program reviews;

(ii) Providing training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1091a, and 1099)


§682.411 Lender due diligence in collecting guaranty agency loans.

(a) General. In the event of delinquency on an FFEL Program loan, the lender must engage in at least the collection efforts described in paragraphs (c) through (n) of this section, except that in the case of a loan made to a borrower who is incarcerated, residing outside a State, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forcible collection letter instead of each telephone effort required by this section.

(b) Delinquency. (1) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment that is not later made. The due date of the first payment is established by the lender but must occur by the deadlines specified in Sec. 682.209(a) or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns, except as provided in Sec. 682.209(a)(2)(v) and (a)(3)(ii)(E). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment that is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.
At no point during the periods specified in paragraphs (c), (d), and (e) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (j) of this section, of more than 45 days (60 days in the case of a transfer).

As part of one of the collection activities provided for in this section, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman’s office.

1-15 days delinquent. Except in the case in which a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender’s receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period must send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, information informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

16-180 days delinquent (16-240 days delinquent for a loan repayable in installments less frequently than monthly). (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender must engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur on or before, and another one must occur after, the 90th day of delinquency. Collection letters sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment, income-based repayment and loan consolidation, and other available options to avoid default. (2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that, if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower’s State and Federal income tax refunds and other payments made by the Federal Government to the borrower or to garnish the borrower’s wages, or to assign the loan to the Federal Government for litigation against the borrower.

Following the lender’s receipt of a payment on the loan or a correct address for the borrower, the lender’s receipt from the drawee of a dishonored check received as a payment on the loan, the lender’s receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone during this period if the loan is 91-120 days delinquent (121-180 days delinquent for a loan repayable in installments less frequently than monthly) following the lender’s receipt of—

(i) A payment on the loan; (ii) A correct address or correct telephone number for the borrower; (iii) A dishonored check received from the drawee as a payment on the loan; or (iv) The expiration of an authorized deferment or forbearance.

181-270 days delinquent (241-330 days delinquent for a loan repayable in installments less frequently than monthly). During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding default options to avoid default and the consequences of defaulting on the loan.

Final demand. On or after the 241st day of delinquency, the lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

Collection procedures when borrower’s telephone number is not available. Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (m) of this section, the lender is excused from any further efforts to contact the borrower by telephone, unless the borrower’s number is obtained before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly). (h) Skip-tracing. (1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower’s current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, reference, individual, and entity, identified in the borrower’s loan file, including the schools the student attended. For this purpose, a lender’s contact with a school official who might reasonably be expected to know the borrower’s address may be with someone other than the financial aid administrator, and may be in writing or by phone calls. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

Upon receipt of information indicating that it does not know the borrower’s current address, the lender must discontinue the collection efforts described in paragraphs (c) through (f) of this section.

If the lender is unable to ascertain the borrower’s current address despite its performance of the activities described in paragraph (h)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (f) and paragraph (j)(1) through (j)(3) and (j)(5) of this section unless it receives communication indicating the borrower’s address before the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

The activities specified by paragraph (m)(1)(i) or (ii) of this section (with references to the “borrower” understood to mean endorser, reference, relative, individual, or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower’s loan file.

Default aversion assistance. Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan.

Gap in collection activity. For purposes of this section, the term gap
in collection activity means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower’s address on that date;
(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;
(iii) The day on which the lender receives the correct address for a delinquent borrower;
(iv) The day on which the lender completes a collection activity;
(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;
(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or
(vii) The day the lender receives information indicating it does not know the borrower’s current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;
(ii) The day on which the lender begins the first subsequent collection activity;
(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or
(iv) Default.

(k) Transfer. For purposes of this section, the term transfer with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(l) Collection activity. For purposes of this section, the term collection activity with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower’s current address a collection letter or final demand letter that information furnished to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or
(2) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account’s past-due status.

(m) Diligent effort for telephone contact. (1) For purposes of this section, the term diligent effort with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;
(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower’s correct telephone number; or
(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower’s telephone number, and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower’s address or telephone number.

(2) If the lender is unable to ascertain the borrower’s correct telephone number despite its performance of the activities described in paragraph (m)(1)(i) or (ii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication indicating the borrower’s correct telephone number before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(3) The activities specified by paragraph (m)(1)(i) or (ii) of this section (with references to “the borrower” understood to mean endorser, reference, relative, or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative, or individual identified on the borrower’s most recent loan application or most recent school certification.

(n) Due diligence for endorser. (1) Before filing a default claim on a loan with an endorser, the lender must—

(i) Make a diligent effort to contact the endorser by telephone; and
(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to “the borrower” understood to mean the endorser).

(2) On or after the 241st day of delinquency (the 301st day for loans repayable in less frequent installments than monthly) the lender must send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender must allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (n)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser’s current address or telephone number, the lender must diligently attempt to locate the endorser through the use of effective commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(o) Preemption. The provisions of this section—

(1) Preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section; and
(2) Do not preempt provisions of the Fair Credit Reporting Act that provide relief to a borrower while the lender determines the legal enforceability of a loan when the lender receives a valid identity theft report or notification from a credit bureau that information furnished is a result of an alleged identity theft as defined in Sec. 682.402(e)(14).

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§682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of Sec. 682.411(f) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school’s knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower—

(1) To be ineligible for all or a portion of a loan made under this part;
(2) To receive a Stafford loan subject to payment of Federal interest benefits as
provided under Sec. 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under Sec. 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under Sec. 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in Sec. 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§682.413 Remedial actions.

(a)(1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section—

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet with the requirements of Sec. 682.406(a)(1)-(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary’s obligation to pay special allowance on the loan terminates under Sec. 682.302(d).

(b) The Secretary may require a guaranty agency to repay reinsurance payments received on a loan to or assign FFEL loans to the Department if the agency fails to meet the requirements of Sec. 682.410.

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency’s continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine on a third-party servicer, a repeated mechanical systemic unintentional error shall be counted as one violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans for which the certification required under Sec. 682.206(f)(1) is not available.

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender’s FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) A The lender has not repaid in full the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability;

(B) The lender has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the lender by offsetting the lender’s bill to the Secretary for interest benefits or special allowance, if—

(1) The bill is submitted after the 30 day period specified in paragraph (a)(3)(ii)(A) of this section has passed; and

(2) The lender has not paid, or made satisfactory arrangements to pay, the liability.

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency failed to meet the requirements of Sec. 682.406(a).
The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

The guaranty agency has not repaid in full the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability;

The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability; or

The Secretary is unable to collect the liability from the guaranty agency by offsetting the guaranty agency’s first reinsuance claim to the Secretary, if—

The claim is submitted after the 30-day period specified in paragraph (c)(2)(A) of this section has passed; and

The guaranty agency has not paid, or made satisfactory arrangements to pay, the liability.

The guaranty agency may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

The guaranty agency follows the notice and show cause procedures described in Sec. 682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

The Secretary follows the procedures in 34 CFR 30.20-30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

The Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary’s judgment the best interests of the United States so require. The Secretary’s waiver policy for violations of Sec. 682.401(e), (f), or (g) is set forth in appendix D to this part.

The guaranty agency’s final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of Sec. 682.401(e), if the Secretary finds that the guaranty agency provided or offered the payments or activities listed in Sec. 682.401(e)(1), the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the guaranty agency must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

Note to Sec. 682.413: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond these minimum periods.

§682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) Records. (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan’s current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower’s address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of collection communication between the agency and the borrower or servicer relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for default aversion assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond these minimum periods.

(3) A guaranty agency shall retain a copy of the audit report required under Sec. 682.410(b) for not less than five years after the report is issued.

(4)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(4)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan’s current status.

(ii) The lender shall keep—
(A) A copy of the loan application if a separate application was provided to the lender;
(B) A copy of the signed promissory note;
(C) The repayment schedule;
(D) A record of each disbursement of loan proceeds;
(E) Notices of changes in a borrower’s address and status as at least a half-time student;
(F) Evidence of the borrower’s eligibility for a deferment;
(G) The documents required for the exercise of forbearance;
(H) Documentation of the assignment of the loan;
(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;
(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for default aversion assistance on the loan;
(K) Documentation of any MPN confirmation process or processes; and
(L) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report required under Sec. 682.305(c) for not less than five years after the report is issued.

(5)(i) A guaranty agency or lender may store the records specified in paragraphs (a)(4)(ii)(C)-(L) of this section in accordance with 34 CFR 682.24(a)(3)(i) through (iv).

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it electronically and it must be retrievable in a coherent format.

(iii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

(iv) If a lender made a loan based on an electronically signed promissory note, the holder of the original electronically signed MPN must retain that original MPN for at least 3 years after all the loans made on the MPN have been satisfied.

(6)(i) Upon the Secretary’s request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the guaranty agency and the lender that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan or loans. The guaranty agency or lender must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This affidavit or certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the guaranty agency or lender, if necessary to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The affidavit or certification described in paragraph (a)(6)(i)(A) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flow chart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when the borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that is has not been altered after it was executed;

(E) Documentation supporting the lender’s authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The guaranty agency must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by the lender is not satisfied, the holder of the original electronically signed promissory note is responsible for ensuring that all parties entitled to access to the electronic loan record, including the guaranty agency and the Secretary, have full and complete access to the electronic record.

(b) Reports. A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency’s reserve fund and the operation of the agency’s loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on—

(I) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency’s program; and
(iv) The steps the agency has taken to ensure its compliance with Sec. 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) A report to the Secretary of the borrower’s enrollment and loan status information, or any Title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) Inspection requirements. (1) For purposes of examination of records, references to an institution in 34 CFR 682.24(f) (1) through (3) shall mean a guaranty agency or its agent.

(2) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary’s designee and the guaranty agency access to the lender’s records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to Sec. 682.401(b) (21) and (22), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

§682.415 [Reserved]

§682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

(a) Standards for administrative capability. A third-party servicer is considered administratively responsible if it—

(1) Provides the services and administrative resources necessary to fulfill its contract with a lender or guaranty agency, and conducts all of its contractual obligations that apply to the FFEL programs in accordance with FFEL programs regulations;

(2) Has business systems including combined automated and manual systems, that are capable of meeting the requirements of part B of Title IV of the Act and with the FFEL programs regulations; and

(3) Has adequate personnel who are knowledgeable about the FFEL programs.

(b) Standards of financial responsibility. The Secretary applies the provisions of 34 CFR 682.15(b) (1)-(4) and (6)-(9) to determine that a third-party servicer is financially responsible under this part. References to “the institution” in those provisions shall be understood to mean the third-party servicer, for this purpose.

(c) Special review of third-party servicer. (1) The Secretary may review a third-party servicer to determine that it meets the administrative capability and financial responsibility standards in this section.

(2) In response to a request from the Secretary, the servicer shall provide evidence to demonstrate that it meets the administrative capability and financial responsibility standards in this section.

(3) The servicer may also provide evidence of why administrative action is unwarranted if it is unable to demonstrate that it meets the standards of this section.

(4) Based on the review of the materials provided by the servicer, the Secretary determines if the servicer meets the standards in this part. If the servicer does not, the Secretary may initiate an administrative proceeding under subpart G.

(d) Past performance of third-party servicer or persons affiliated with servicer. Notwithstanding paragraphs (b) and (c) of this section, a third-party servicer is not financially responsible if—

(1) The servicer, its owner, majority shareholder, or chief executive officer; any person employed by the servicer in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds; any person, entity, or officer or employee of the entity acts in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(2) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1) of this section, the servicer does not promptly remove the person, agency, or organization from any involvement in the administration of the servicer’s participation in Title IV, HEA programs, including, as applicable, the removal or elimination of any substantial control, as determined under 34 CFR 689.15, over the servicer.

(e) Independent audits. (1) A third-party servicer shall arrange for an independent audit of its administration of the FFELP loan portfolio unless—

(1)(i) The servicer contracts with only one lender or guaranty agency; and

(2) The audit must—

(i) Examine the servicer’s compliance with the Act and applicable regulations;

(ii) Examine the servicer’s financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office’s (GAO’s) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Procedures for audits are contained in an audit guide developed by and available from the Office of Inspector General of the Department of Education; and

(iv) Except for the initial audit, be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be an annual audit.
of the servicer's first full fiscal year beginning on or after July 1, 1994, and include any period from the beginning of the first full fiscal year. The audit report must be submitted to the Secretary within six months of the end of the audit period. Each subsequent audit must cover the servicer's activities for the one-year period beginning no later than the end of the period covered by the preceding audit.

(3) With regard to a third-party servicer that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(4) With regard to a third-party servicer that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with Office of Management and Budget (OMB) Circular A-133, “Audit of Institutions of Higher Education and Other Nonprofit Institutions,” as incorporated in 34 CFR 74.61(h)(3).

(f) Contract responsibilities. A lender that participates in the FFEL programs may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the requirements of this section. The lender must provide the Secretary with the name and address of any third-party servicer with which the lender enters into a contract and, upon request by the Secretary, a copy of that contract. A third-party servicer that is under contract with a lender to perform any activity for which the records in Sec. 682.414(a)(4)(ii) are relevant to perform the services for which the servicer has contracted shall maintain current, complete, and accurate records pertaining to each loan that the servicer is under contract to administer on behalf of the lender. The records must be maintained in a system that allows ready identification of each loan's current status.

(Approved by the Office of Management and Budget under control number 1840-0537)


§682.417 Determination of Federal funds or assets to be returned.

(a) General. The procedures described in this section apply to a determination by the Secretary that—

(1) A guaranty agency must return to the Secretary a portion of its Federal Fund that the Secretary has determined is unnecessary to pay the program expenses and contingent liabilities of the agency; and

(2) A guaranty agency must require the return to the agency or the Secretary of Federal funds or assets within the meaning of section 422(g)(1) of the Act held by or under the control of any other entity that the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency or that are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(b) Return of unnecessary Federal funds. (1) The Secretary may initiate a process to recover unnecessary Federal funds under paragraph (a)(1) of this section if the Secretary determines that a guaranty agency's Federal Fund ratio under Sec. 682.410(a)(10) for each of the two preceding Federal fiscal years exceeded 2.0 percent.

(2) If the Secretary initiates a process to recover unnecessary Federal funds, the Secretary requires the return of a portion of the Federal funds held by or under the control of another entity, the guaranty agency to—

(i) Have a Federal Fund ratio of at least 2.0 percent under Sec. 682.410(a)(10) at the time of the determination; and

(ii) Meet the minimum Federal Fund requirements under Sec. 682.410(a)(10) and retain sufficient additional Federal funds to perform its responsibilities as a guaranty agency during the current Federal fiscal year and the four succeeding Federal fiscal years.

(3)(i) The Secretary makes a determination of the amount of Federal funds needed by the guaranty agency under paragraph (b)(2) of this section on the basis of financial projections for the period described in that paragraph. If the agency provides projections for a period longer than the period referred to in that paragraph, the Secretary may consider those projections. (ii) The Secretary may require a guaranty agency to provide financial projections in a form and on the basis of assumptions prescribed by the Secretary. If the Secretary requests the agency to provide financial projections, the agency must provide the projections within 60 days of the Secretary's request. If the agency does not provide the projections within the specified time period, the Secretary determines the amount of Federal funds needed by the agency on the basis of other information.

(c) Notice. (1) The Secretary or an authorized Departmental official begins a proceeding to order a guaranty agency to return a portion of its Federal funds, or to direct the return of Federal funds or assets subject to return, by sending the guaranty agency a notice by certified mail, return receipt requested.

(2) The notice—

(i) Informs the guaranty agency of the Secretary's determination that Federal funds or assets must be returned;

(ii) Describes the basis for the Secretary's determination and contains sufficient information to allow the guaranty agency to prepare and present an appeal;

(iii) States the date by which the return of Federal funds or assets must be completed;

(iv) Describes the process for appealing the determination, including the time for filing an appeal and the procedure for doing so; and

(v) Identifies any actions that the guaranty agency must take to ensure that the Federal funds or assets that are the subject of the notice are maintained and protected against use, expenditure, transfer, or other disbursement after the date of the Secretary's determination and the basis for requiring those actions. The actions may include, but are not limited to, directing the agency to place the Federal funds in an escrow account. If the Secretary has directed the guaranty agency to require the return of Federal funds or assets held by or under the control of another entity, the guaranty agency must ensure that the agency's claims to those funds or assets and the collectability of the agency's claims will not be compromised or jeopardized during an appeal. The guaranty agency must also comply with all other applicable regulations relating to the use of Federal funds and assets.

(d) Appeal. (1) A guaranty agency may appeal the Secretary's determination that Federal funds or assets must be returned by filing a written notice of appeal within 20 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination. If the agency files a notice of appeal, the requirement that the return of Federal funds or assets be completed by a particular date is suspended pending completion of the appeal process. If the agency does not file a notice of appeal within the period specified in this paragraph, the Secretary's determination is final.

(2) A guaranty agency must submit the information described in paragraph (d)(4) of this section within 45 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination unless the Secretary agrees to extend the period at the agency's request. If the agency does not submit that information within the prescribed period, the Secretary's determination is final.

(3) A guaranty agency's appeal of a determination that Federal funds or assets must be returned is considered and decided by a Departmental official other than the official who issued the appeal.
to the evidence described in the notice of the Secretary’s determination that is adverse to the guaranty agency’s position on appeal, the deciding official informs the agency and provides it a reasonable opportunity to respond to the information without regard to the period referred to in paragraph (d)(2) of this section.

(g) Decision. (1) The deciding official issues a written decision on the guaranty agency’s appeal within 45 days of the date on which the information described in paragraphs (d)(4) and (d)(5)(ii) of this section is received, or the oral argument referred to in paragraph (d)(5) of this section is held, whichever is later. The deciding official mails the decision to the guaranty agency by certified mail, return receipt requested. The decision of the deciding official becomes the final decision of the Secretary 30 days after the deciding official issues it. In the case of a determination that a guaranty agency must return Federal funds, if the deciding official does not issue a decision within the prescribed period, the agency is no longer required to take the actions described in paragraph (c)(2)(v) of this section.

(2) A guaranty agency may not seek judicial review of the Secretary’s determination to require the return of Federal funds or assets until the deciding official issues a decision.

(3) The deciding official’s written decision includes the basis for the decision. The deciding official bases the decision only on evidence described in the notice of the Secretary’s determination and on information properly submitted and considered by the deciding official under this section. The deciding official is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(h) Collection of Federal funds or assets. (1) If the deciding official’s final decision requires the guaranty agency to return Federal funds, or requires the guaranty agency to require the return of Federal funds or assets to the agency or to the Secretary, the decision states a new date for compliance with the decision. The new date is no earlier than the date on which the decision becomes the final decision of the Secretary.

(2) If the guaranty agency fails to comply with the decision, the Secretary may recover the Federal funds from any funds due the agency from the Department without any further notice or procedure and may take any other action permitted or authorized by law to compel compliance.

(Approved by the Office of Management and Budget under control number 1845-0020) [64 FR 58632, Oct. 29, 1999]

§682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating Fund contains transferred funds owed to the Federal Fund.

(a) General. (1) During periods in which the Operating Fund contains transferred funds owed to the Federal Fund, a guaranty agency may not use the assets of the Operating Fund to pay costs prohibited under paragraph (b) of this section and may not use the assets of the Operating Fund to pay for goods, property, or services provided by an affiliated organization unless the agency applies and demonstrates to the Secretary, and receives the Secretary’s approval, that the payment would be in the Federal fiscal interest and would not exceed the affiliated organization’s actual and reasonable cost of providing those goods, property, or services.

(2) All guaranty agency contracts with respect to its Operating Fund or assets must include a provision stating that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that the contract includes an impermissible transfer of the Operating Fund or assets or is otherwise inconsistent with the terms and purposes of section 422 of the HEA.

(b) Prohibited uses of Operating Fund assets. A guaranty agency may use the assets of the Operating Fund established under Sec. 682.410(a)(1) only as prescribed in Sec. 682.410(a)(2). Uses of the Operating Fund that are not allowable under Sec. 682.410(a)(2) include, but are not limited to—

(1) Compensation for personnel services, including wages, salaries, pension plan costs, post-retirement health benefits, employee life insurance, unemployment benefit plans, severance pay, costs of leave, and other benefits, to the extent that total compensation to an employee, officer, director, trustee, or agent of the guaranty agency is not reasonable for the services rendered. Compensation is considered reasonable to the extent that it is comparable to that paid in the labor market in which the guaranty agency competes for the kind of employees involved. Costs that are otherwise unallowable may not be considered allowable solely on the basis that they constitute personnel compensation. In no case may the Operating Fund be used to pay any compensation, whether calculated on an hourly basis or otherwise, that would be proportionately greater than 118.05 percent of the total salary paid (as calculated on an hourly basis) under section 5312 of title 5, United States Code (relating to Level I of the Executive Schedule).
(2) Contributions and donations, including cash, property, and services, by the guaranty agency to others, regardless of the recipient or purpose, unless pursuant to written authorization from the Secretary;

(3) Entertainment, including amusement, diversion, hospitality suites, and social activities, and any costs associated with those activities, such as tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, and gratuities;

(4) Fines, penalties, damages, and other settlements resulting from violations or alleged violations of the guaranty agency's failure to comply with Federal, State, or local laws and regulations that are unrelated to the FFEL Program, unless specifically approved by the Secretary. This prohibition does not apply if a non-criminal violation or alleged violation has been assessed against the guaranty agency, the payment does not reimburse an agency employee, and the payment does not exceed $1,000, or if it occurred as a result of compliance with specific requirements of the FFEL Program or in accordance with written instructions from the Secretary. The use of the Operating Fund in any other case must be requested by the agency and specifically approved in advance by the Secretary;

(5) Legal expenses for prosecution of claims against the Federal Government, unless the guaranty agency substantially prevails on those claims. In that event, the Secretary approves the reimbursement of reasonable legal expenses incurred by the guaranty agency;

(6) Lobbying activities, as defined in section 501(h) of the Internal Revenue Code, including dues to membership organizations to the extent that those dues are used for lobbying;

(7) Major expenditures, including those for land, buildings, equipment, or information systems, whether singly or as a related group of expenditures, that exceed 5 percent of the guaranty agency's Operating Fund balance at the time the expenditures are made, unless the agency has provided written notice of the intended expenditure to the Secretary 30 days before the agency makes or commits itself to the expenditure. For those expenditures involving the purchase of an asset, the term “major expenditure” applies to costs such as the cost of purchasing the asset and making improvements to it, the cost to put it in place, the net invoice price of the asset, ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation costs, and the costs of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the asset usable for the purpose for which it was acquired, whether the expenditures are classified as capital or operating expenses;

(8) Public relations, and all associated costs, paid directly or through a third party, to the extent that those costs are used to promote or maintain a favorable image of the guaranty agency. The term “public relations” does not include any activity that is ordinary and necessary for the fulfillment of the agency's FFEL guaranty responsibilities under the HEA, including appropriate and reasonable advertising designed specifically to communicate with the public and program participants for the purpose of facilitating the agency's ability to fulfill its FFEL guaranty responsibilities under the HEA. Ordinary and necessary public relations activities include training of program participants and secondary school personnel and customer service functions that disseminate FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents. In providing that training at workshops, conferences, or other ordinary and necessary forums customarily used by the agency to fulfill its responsibilities under the HEA, the agency may provide light meals and refreshments of a reasonable nature and amount to the participants;

(9) Relocation of employees in excess of an employee's actual or reasonably estimated expenses or for purposes that do not benefit the administration of the guaranty agency's FFEL program. Except as approved by the Secretary, reimbursement must be in accordance with an established written policy; and

(10) Travel expenses that are not in accordance with a written policy approved by the Secretary or a State policy. If the guaranty agency does not have such a policy, it may not use the assets of the Operating Fund to pay for travel expenses that exceed those allowed for lodging and subsistence under subchapter I of Chapter 57 of title 5, United States Code, or in excess of commercial airfare costs for standard coach airfare, unless those accommodations would require circuitous routing, travel during unreasonable hours, excessively prolonged travel, would result in increased cost that would offset transportation savings, or would offer accommodations not reasonably adequate for the medical needs of the traveler.

(c) Cost allocation. Each guaranty agency that shares costs with any other program, agency, or organization shall develop a cost allocation plan consistent with the requirements described in OMB Circular A-87 and maintain the plan and related supporting documentation for audit. A guaranty agency is required to submit its cost allocation plans for the Secretary's approval if it is specifically requested to do so by the Secretary. (Approved by the Office of Management and Budget under control number 1840-0726) (Authority: 20 U.S.C. 1078)

§682.419 Guaranty agency Federal Fund.

(a) Establishment and control. A guaranty agency must establish and maintain a Federal Student Loan Reserve Fund (referred to as the “Federal Fund”) to be used only as permitted under paragraph (c) of this section. The assets of the Federal Fund and the earnings on those assets are, at all times, the property of the United States. The guaranty agency must exercise the level of care required of a fiduciary charged with the duty of protecting, investing, and administering the money of others.

(b) Deposits. The agency must deposit into the Federal Fund—

(1) All funds, securities, and other liquid assets of the reserve fund that existed under Sec. 682.410;

(2) The total amount of insurance premiums or Federal default fees collected;

(3) Federal payments for default, bankruptcy, death, disability, closed school, false certification, and other claims;

(4) Federal payments for supplemental preclaims assistance activities performed before October 1, 1998;

(5) 70 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) All funds received by the guaranty agency from any source on FFEL Program loans on which a claim has been paid, within 48 hours of receipt of those funds, minus the portion the agency is authorized to deposit in its Operating Fund;

(7) Investment earnings on the Federal Fund;

(8) Revenue derived from the Federal portion of a nonliquid asset, in accordance with Sec. 682.420; and

(9) Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

(c) Uses. A guaranty agency may use the assets of the Federal Fund only—

(1) To pay insurance claims;

(2) To transfer default aversion fees to the agency's Operating Fund;
§682.420 Federal nonliquid assets.

(a) General. The Federal portion of a nonliquid asset developed or purchased in whole or in part with Federal reserve funds, regardless of who held or controlled the Federal reserve funds or assets, is the property of the United States. The ownership of that asset must be prorated based on the percentage of the asset developed or purchased with Federal reserve funds. In maintaining and using the Federal portion of a nonliquid asset under this section, the guaranty agency must exercise the level of care required of a fiduciary charged with protecting, investing, and administering the property of others.

(b) Treatment of revenue derived from a nonliquid Federal asset. If a guaranty agency derives revenue from the Federal portion of a nonliquid asset, including its sale or lease, the agency must promptly deposit the percentage of the net revenue received into the Federal Fund equal to the percentage of the asset owned by the United States.

(c) Guaranty agency use of the Federal portion of a nonliquid asset.

(i) If a guaranty agency uses the Federal portion of a nonliquid asset in the performance of its guaranty activities (other than an intangible or intellectual property asset or a tangible asset of nominal value), the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(ii) If a guaranty agency uses the Federal portion of a nonliquid asset for purposes other than the performance of its guaranty activities, the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

§682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.

(a) General. In accordance with this section, a guaranty agency may request the Secretary's permission to transfer a limited amount of funds from the Federal Fund to the Operating Fund. Upon receiving the Secretary's approval, the agency may transfer the requested funds at any time within the 6-month period beginning on the 31st day after the Secretary received the agency's request. The transferred funds may be used only as permitted by Sec. Sec. 682.410(a)(2) and 682.418.

(b) Transferring the principal balance of the Federal Fund—(1) Amount that may be transferred. Upon receiving the Secretary's approval, an agency may transfer an amount up to the equivalent of 180 days of cash expenses for purposes allowed by Sec. Sec. 682.410(a)(2) and 682.418 (not including claim payments) for normal operating expenses to be deposited into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses for purposes allowed by Sec. Sec. 682.410(a)(2) and 682.418 (not including claim payments), or 45 percent of the balance in the Federal reserve fund that existed under Sec. 682.410 as of September 30, 1998.

(2) Requirements for requesting a transfer. A guaranty agency that wishes to transfer principal from the Federal Fund must provide the Secretary with a proposed repayment schedule and evidence that it can repay the transfer according to its proposed schedule. The agency must provide the Secretary with the following:

(i) A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment;

(ii) A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency; and

(iii) Certifications by the agency that during the period while the transferred funds are outstanding—

(A) Sufficient funds will remain in the Federal Fund to pay lender claims during the period the transferred funds are outstanding;

(B) The agency will be able to meet the reserve recall requirements of section 422 of the Act;

(C) The agency will be able to meet the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the Act; and

(D) No legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

(c) Transferring interest earned on the Federal Fund—(1) Amount that may be transferred. The Secretary may permit an agency that owes the Federal Fund the maximum amount allowable under paragraph (b) of this section to transfer the interest income earned on the
Federal Fund during the 3-year period following October 7, 1998. The combined amount of transferred interest and the amount of principal transferred under paragraph (b) of this section may exceed 180 days cash expenses for purposes allowed by Sec. Sec. 682.410(a)(2) and 682.418 (not including claim payments), but may not exceed 45 percent of the balance in the Federal reserve fund that existed under Sec. 682.410 as of September 30, 1998.

(2) Requirements for requesting a transfer. To be allowed to transfer the interest income, in addition to the items in paragraph (b)(2) of this section, the agency must demonstrate to the Secretary that the cash flow in the Operating Fund will be negative if the agency is not authorized to transfer the interest, and, by transferring the interest, the agency will substantially improve its financial circumstances.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1072-1)

[64 FR 58635, Oct. 29, 1999]

§682.423 Guaranty agency Operating Fund.

(a) Establishment and control. A guaranty agency must establish and maintain an Operating Fund in an account separate from the Federal Fund. Except for funds that have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency. During periods in which the Operating Fund contains funds transferred from the Federal Fund, the Operating Fund may be used only as permitted by Sec. Sec. 682.410(a)(2) and 682.418.

(b) Deposits. The guaranty agency must deposit into the Operating Fund—

(1) Amounts authorized by the Secretary to be transferred from the Federal Fund;

(2) Account maintenance fees;

(3) Loan processing and issuance fees;

(4) Default aversion fees;

(5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;

(7) The agency's share of the payoff amounts received from the consolidation or rehabilitation of defaulted loans; and

(8) Other receipts as authorized by the Secretary.

(c) Uses. A guaranty agency may use the Operating Fund for—

(1) Guaranty agency-related activities, including—

(i) Application processing;

(ii) Loan disbursement;

(iii) Enrollment and repayment status management;

(iv) Default aversion activities;

(v) Default collection activities;

(2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency.

(3) With the approval of the guaranty agency, a student who has previously received from the same lender a FSL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that—

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school

§682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guaranty agency has in effect an agreement with the Secretary under Sec. 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association and Federal Consolidation loans made by any other lender that has applied for and has been denied guarantee coverage on Consolidation loans by the guaranty agency that guarantees the largest dollar volume of FFEL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guaranty agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FSL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guaranty agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guaranty agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guaranty agency, a student who has previously received from the same lender a FSL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that—

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school...
would significantly increase the access of students at that school to FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guaranty agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans but are not recognized as eligible under the guaranty agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal FFEL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under Sec. 682.600, the Secretary denies loan guarantees on the basis of the section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

Authority: 20 U.S.C. 1071, 1073, 1078-1, 1078-2, 1078-3, 1082

§682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) General. Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under Sec. 682.512, accrued interest.

(b) Special provisions for State lenders.

(1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of Sec. 682.412(e) or Sec. 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

(A) The original principal amount of loans on which—

(B) Payment in full has been made by the borrower;

(C) The borrower was in default status at the time repayment of principal was scheduled to begin and remains in default status; or

(D) The Secretary has paid a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under Sec. 682.412(e) or Sec. 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

Authority: 20 U.S.C. 1071, 1078-1, 1078-2, 1078-3, 1082

§682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d) of the Act and the definition of "lender" in Sec. 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d) (1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial or grant the lender an opportunity to appeal if the lender submits its application within six months of a previous denial.

Authority: 30 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082

§682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the
agreement and the number or amount of Federal GSL loans the lender may make or hold.

(b) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;
(ii) In attendance at other schools under the same ownership as that school; or
(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may on a school-by-school basis impose limits under paragraph (b)(1)(ii) of this section on a school lender that makes loans to students or to parents of students in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

§682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and of the amount of the guarantee. No disbursement on a loan made prior to the Secretary’s approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in Sec. 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

§682.505 Insurance premium.

(a) General. The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under Sec. 682.209(f).

(b) Rate. The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) FISL loans—insurance premium calculation. (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower’s anticipated graduation from the school for attendance at which the loan is sought; and
(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and
(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) Federal PLUS and SLS Loans—insurance premium calculation. The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;
(2) Amortizing the loan in equal monthly installments over the repayment period;
(3) Determining one-fourth of one percent of each monthly declining principal balance; and
(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) Collection from lenders. (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary’s guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. However, the Secretary may excuse late payment of an insurance premium and reinstate the guarantee coverage on a loan if the Secretary is satisfied that at the time the premium is paid—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or
(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) Collection from borrowers. The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement’s contribution to the premium amount.

(g) Refund provisions. The insurance premium is not refundable by the Secretary and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1082)


§682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would—

(1) Result in an annual loan amount in excess of the student’s estimated cost of attendance for the period of enrollment for which the loan is intended less—

(i) The student’s estimated financial assistance; and
(ii) The student's expected family contribution for that period, in the case of a FISL loan; or
(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in Sec. 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under Sec. 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078-1, 1078-2, 1079, 1082, 1089)

§682.507 Due diligence in collecting a loan.

(a) General. (1) Except as provided in paragraph (a)(4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an authorized endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS or Federal Consolidation loan as co-makers, the lender must follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the
day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender’s knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in Sec. 682.411 in collecting a Federal GSL loan.

(b) Initial delinquency. If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower—

(1) At last six more times at regular intervals during the remainder of the six-month period that started on the date of delinquency for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period that started on the date of delinquency for loans repayable in installments less frequent than monthly.

(c) Skip-tracing assistance. (1) If a lender does not know the borrower's current address, the lender promptly shall attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender promptly shall attempt to learn the borrower's current address through use of the Department's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower’s address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower’s address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) Preclaims assistance. When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) Final demand letter. A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) Litigation. (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys’ fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that unless the borrower or endorser makes payments sufficient to bring the account out of default the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys’ fees, collection agency charges, court costs, and other reasonable collection costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys’ fees, court costs, collection agency charges, and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Approved by the Office of Management and Budget under control number 1845-0020) (Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1080, 1082)


§682.508 Assignment of a loan.

(a) General. A Federal GSL loan may not be assigned except to another eligible lender. For the purpose of this paragraph, “assigned” means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(b) (1) Procedure. If the assignment of a FISL Program loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notices to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee shall provide the notice required by paragraph (b)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(c) The Secretary’s approval. The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under Sec. 682.503.

(d) Warranty. (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may cover only reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Approved by the Office of Management and Budget under control number 1845-0020) (Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1080, 1082)


§682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in Sec. 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that while the student was enrolled at the school the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not as a result of a claim filed with the Secretary under this section report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)
§682.510 Determination of the borrower’s death, total and permanent disability, or bankruptcy.

(a) The procedures in Sec. 682.402(a)-(d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition apply to the Federal GSL programs.

(b) For purposes of this section, references to the “guaranty agency” in Sec. 682.402(d)(5) shall be understood to refer to the Secretary.

[Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1082, 1087]

§682.511 Procedures for filing a claim.

(a) Filing a claim application. (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in Sec. 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in Sec. 682.412(e)(2) or Sec. 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with Sec. 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makkers, or a Federal Consolidation loan was obtained jointly by a married couple, the reason for filing a claim must hold true for both applicants, or each applicant must have satisfied a claimable criterion at the time of the request for discharge of the loan.

(b) Documentation required for claims. (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument.

(iv) A payment history, as described in Sec. 682.414(a)(3)(ii)(I).

(v) A collection history, as described in Sec. 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter if required by Sec. 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department for skip-tracing assistance under Sec. 682.507(c) and for preclaims assistance under Sec. 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in Sec. 682.402(g)(1) apply to the Federal GSL programs. For purposes of this section, references to the “guaranty agency” in Sec. 682.402(e)(1) mean the Secretary.

(c) Assignment of note. The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) Bankruptcy subsequent to default. If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) Claim filing deadlines. To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) Default claims. Unless the lender has already filed suit against the borrower in accordance with Sec. 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed by a lender pursuant to Sec. 682.402(e)(2) as directed in Sec. 682.208(f)(2), the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to Sec. 682.411(e) if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) Death, total and permanent disability, or bankruptcy claims. The claim filing deadlines in Sec. 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the “guaranty agency” in Sec. 682.402(e)(2) mean the Secretary.

(3) Special condition claims. In the case of a special condition claim filed pursuant to Sec. 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in Sec. 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to Sec. 682.509(a)(2).

(Approved by the Office of Management and Budget under control number 1845-0020)
§682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary’s guarantee, the Secretary considers matters affecting the enforceability of the loan obligation and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in Sec. 682.509, the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in Sec. 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in Sec. 682.511(b).

(b) Except as provided in Sec. 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary’s determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

§682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary’s judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

§682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) Records. (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in Sec. 682.414(a)(3)(i). The records must be maintained in a system that allows ready identification of each loan’s current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in Sec. 682.414(a)(3)(ii)- (K) on microfilm, optical disk, or other machine readable format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) Reports. A lender shall submit reports to the Secretary at the time and in the manner that the Secretary reasonably may require.

(c) Inspections. Upon request, a lender or its agent shall cooperate with the Secretary, the Department’s Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender’s administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by the lender.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1087)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§682.600 [Reserved]

§682.601 Rules for a school that makes or originates loans.

(a) General. To make or originate loans under the FFEL program, a school—

(1) Must employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending the school;

(2) Must not be a home study school;

(3) Must not—

(i) Make a loan to any undergraduate student;

(ii) Make a loan other than a Federal Stafford loan to a graduate or professional student; or

(iii) Make a loan to a borrower who is not enrolled at that school;

(4) Must award any contract for financing, servicing, or administration of FFEL loans on a competitive basis;

(5) Must offer loans that carry an origination fee or an interest rate, or both, that are less than the fee or rate authorized under the provisions of the Act;

(6) Must not have a cohort default rate, as calculated under subpart M of 34 CFR part 668, greater than 10 percent;
Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(i) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with Sec. 682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A-133, Appendix B, Compliance Supplement) is not audited as a “Major Program” (as defined under 31 U.S.C. 133, Appendix B, Compliance Supplement) is not audited as a “Major Program” (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school’s lending activities as a Major Program.

(ii) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with Sec. 682.305(c)(2)(i) through (iii);

(iii) With regard to any school, the audit must include a determination that—

(A) Except as provided in paragraphs (a)(8) and (b) of this section, the school used all payments and proceeds from the loans for need-based grant programs;

(B) The school met the requirements of paragraph (c) of this section in making the need-based grants; and

(C) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

(8) Must use any proceeds from special allowance payments and interest payments from borrowers, interest subsidy payments, and any proceeds from the sale or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized under the HEA) for need-based grants; and

(9) Must have met the requirements to be an eligible lender as of February 7, 2006, and must have made one or more FFEL program loans on or before April 1, 2006.

An eligible school lender may use a portion of the proceeds described in paragraph (a)(8) of this section for reasonable and direct administrative expenses. Reasonable and direct administrative expenses are those that are incurred by the school and are directly related to the school’s performance of actions required of the school under the Act or the regulations in this part. Reasonable and direct administrative expenses do not include financing and similar costs such as costs paid by the school to obtain funding to make FFEL loans, the cost of paying Federal default fees on behalf of borrowers, or the cost of providing origination fees or interest rates at less than the fee or rate authorized under the provisions of the Act.

(c) An eligible school lender must ensure that the proceeds described in paragraph (a)(8) of this section are used to supplement, and not to supplant, non-Federal funds that would otherwise be used for need-based grant programs.


§682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.

(a) A school or school-affiliated organization may not contract with an eligible lender to serve as trustee for the school or school-affiliated organization unless—

(1) The school or school-affiliated organization originated and continues or renews a contract made on or before September 30, 2006 with the eligible lender; and

(2) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on September 30, 2006.

(b) As of January 1, 2007, and for loans first disbursed on or after that date, the school must—

(1) Notify the graduate or professional student borrower of the maximum Stafford loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(i) The maximum interest rate for a Stafford loan and the maximum interest rate for a PLUS loan;

(ii) Periods when interest accrues on a Stafford loan and periods when interest accrues on a PLUS loan; and

(iii) The point at which a Stafford loan enters repayment and the point at which a PLUS loan enters repayment; and

(2) Give the graduate or professional student borrower the opportunity to request the maximum Stafford loan amount for which the borrower is eligible.

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower’s request or the loan limits determined under Sec. 682.204.

(d) Before certifying a PLUS loan application for a graduate or professional student borrower, the school must determine the borrower’s eligibility for a Stafford loan. If the borrower is eligible for a Stafford loan but has not requested the maximum Stafford loan amount for which the borrower is eligible, the school must—

(1) Notify the graduate or professional student borrower of the maximum Stafford loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(i) The maximum interest rate for a Stafford loan and the maximum interest rate for a PLUS loan;

(ii) Periods when interest accrues on a Stafford loan and periods when interest accrues on a PLUS loan; and

(iii) The point at which a Stafford loan enters repayment and the point at which a PLUS loan enters repayment; and

(2) Give the graduate or professional student borrower the opportunity to request the maximum Stafford loan amount for which the borrower is eligible.

(e) A school may not certify a Stafford or PLUS loan, or a combination of loans, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in Sec. 682.204; or

(2) Exceeds the student’s estimated cost of attendance for the period of enrollment, less—

(i) The student’s estimated financial assistance for that period; and

(ii) In the case of a Subsidized Stafford loan, the borrower’s expected family contribution for that period.
(f)(1)(i) The minimum period of enrollment for which a school may certify a loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single term (e.g., a semester or quarter); or

(B) Except as provided in paragraphs (f)(1)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(1) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 688.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school certified or originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may certify a loan for the remaining portion of the program or academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may certify a loan for the remainder of the academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit associated with the new program.

(2) May not, for first-time borrowers, assign through award packaging or other methods, a borrower's loan to a particular lender;

(3) May refuse to certify a Stafford or PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided that—

(i) The determination is made on a case-by-case basis; and

(ii) The documentation supporting the determination is retained in the student's file; and

(4) May not, under paragraph (f)(1), (2), and (3) of this section, engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(g)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

(h)(1) The minimum period of enrollment for which a school may certify a loan application is—

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 688.3.

(2) The maximum period for which a school may certify a loan application is—

(i) Generally an academic year, as defined by 34 CFR 688.3, except that a guaranty agency may allow a school to use a longer period of time, corresponding to the period to which the agency applies the annual loan limits under Sec. 682.401(b)(2)(ii); or

(ii) For a defaulted borrower who has regained eligibility under Sec. 682.401(b)(4), the academic year in which the borrower regained eligibility.

(3) In certifying a Stafford or SLS loan amount in accordance with Sec. 682.204—

(i) A program of study must be considered at least one full academic year if—

(A) The number of weeks of instruction time is at least 30 weeks; and

(B) The number of clock hours is at least 900, the number of semester or trimester hours is at least 24, or the number of quarter hours is at least 36.

(ii) A program of study must be considered two-thirds 12/3 of an academic year if—

(A) The number of weeks of instruction time is at least 20 weeks; and

(B) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24.

(iii) A program of study must be considered one-third 1/3 of an academic year if—

(A) The number of weeks of instruction time is at least 10 weeks; and

(B) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12.

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(i) 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate,
calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs; or

(ii) October 1, 2002.

(2) A school must cease certifying loans based on the exceptions in Sec. 682.604(c)(5)(ii) and Sec. 682.604(c)(8)(ii) no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs.

(i) A school may not assess the borrower, or the student in the case of a parent PLUS loan, a fee for the completion or certification of any FFEL Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

(ii) Requesting loan proceeds. Pursuant to paragraph (b)(3) of the section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in Sec. 668.167.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)


GPO Editorial Note: At 72 FR 62003, Nov. 1, 2007, § 682.603 was amended by redesignating paragraph (i) as paragraph (j), although there already exists a paragraph (i).

§682.604 Processing the borrower’s loan proceeds and counseling borrowers.

(a) General. (1) This section establishes rules governing a school's processing of a borrower's Stafford or PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(2) Prior to a school delivering or crediting an FFEL loan account by EFT or master check, the school must provide the student or parent borrower with the notice as described under Sec. 668.165.

(3) Except as provided in Sec. 668.167, if the school is placed under the reimbursement payment method, a school shall not disburse a loan.

(b) Releasing loan proceeds. (1)(i) Except as provided in Sec. 682.207(b)(1)(v)(C)(1) and (D), the proceeds of a Stafford or PLUS loan disbursed using electronic transfer of funds must be sent directly to the school by the lender.

(ii) Upon notification by a lender under Sec. 682.207(b)(2)(iv) that it has disbursed a loan directly to a borrower as provided under Sec. 682.207(b)(1)(v)(C)(1) and (D), the institution must immediately notify the lender if the student is no longer eligible to receive the disbursement.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student, or a parent in the case of a PLUS loan, if the school determines the student has continuously maintained eligibility in accordance with the provisions of Sec. 682.201 from the beginning of the loan period for which the loan was intended.

(ii) [Reserved]

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by Sec. 688.26.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the student subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) Processing of the loan proceeds by the school. (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended and then follow the procedures in paragraph (c)(2) of this section.

(ii) Except as provided in Sec. 682.207(b)(1)(v)(C)(1) and (D), after the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement of the student only, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 30 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the borrower and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf and, after the student has registered, deliver it to the student subject to paragraph (d)(2) of this section, within 30 days of the school's receipt of the check;

(B) Obtain the borrower's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, as specified in Sec. 668.164(e).

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school in accordance with Sec. 682.207(b)(1)(ii)(B), or by master check in accordance with Sec. 682.207(b)(1)(ii)(C), the school must, unless authorization was provided in the loan application or MPN, obtain the student's, or in the case of parent a PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

(i) Deliver the proceeds to the student or parent borrower as specified in Sec. 668.164; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section and Sec. 668.164, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds not later than the timeframe specified in 668.164.

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in Sec. 668.22(d).

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) Except as provided in paragraph (c)(5)(ii) of this section, the school in which the student is enrolled has a cohort default rate, calculated under subpart M of 34 CFR part 668, of less
34 CFR 682.604

than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(iii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

(6) Unless the provision of Sec. 682.207(d) applies—

(i) If a loan period is more than one payment period, the school must deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two deliveries of loan proceeds during that payment period.

(A) For a loan certified under Sec. 682.603(f)(1)(i)(A), the school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) For a loan certified under Sec. 682.603(f)(1)(i)(B), the school may not make the second delivery until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

(7) The school must deliver loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(8) Notwithstanding the requirements of paragraph (c)(2)(i) through (c)(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(B)(f) Except as provided in paragraph (c)(8)(i)(B)(2) of this section, the school in which the student is enrolled has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(2) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

(9) A school may deliver loan proceeds in accordance with paragraphs (c)(5) and (c)(10) of this section, if the school certified the loan prior to the deadline as provided for in Sec. 682.603(h).

(d) Applying the loan proceeds. (1)(i) For purposes of paragraphs (c)(2)(i)(B) and (c)(3)(i) of this section, a school may not credit a registered student's account earlier than the period specified in Sec. 682.164.

(ii) (A) The school may credit a registered student's account with only those loan proceeds covering costs specified in Sec. 682.164.

(B) The school, as a fiduciary for the benefit of the guaranty agency, the Secretary, and the student, may hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall maintain these funds, as provided in Sec. 682.165(b)(5).

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3) of this section, a school may not deliver loan proceeds earlier than the timeframe specified in Sec. 682.164.

(3) If a student does not begin attendance in the period of enrollment—

(i) Disbursed loan proceeds must be handled in accordance with 34 CFR 682.21; and

(ii) Undelivered loan funds held by the school must be handled in accordance with 34 CFR 682.167.

(e) Processing a late disbursement. (1) A school may process a late disbursement received from a lender under Sec. 682.207(f) in accordance with Sec. 682.164(g).

(2) If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's educational charges, the school shall return the balance of the borrower's loan proceeds to the lender with a notice certifying—

(i) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period or payment period; and

(ii) The borrower's corrected financial need for the loan for that period of enrollment or payment period.

(f) Entrance counseling. (1) A school must ensure that entrance counseling is conducted with each Stafford loan borrower prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan.

(2) A school must ensure that entrance counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan.

(3) Entrance counseling for Stafford and graduate or professional student PLUS Loan borrowers must provide comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the entrance counseling, which may include completion of any interactive program that tests the borrower’s understanding of the terms and conditions of the borrower’s loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, prior to releasing the proceeds of a loan, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials.

(6) Entrance counseling for Stafford Loan borrowers must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the...
(7) Entrance counseling for graduate or professional student PLUS Loan borrowers must—
(i) Inform the student borrower of sample monthly repayment amounts based on—
(A) A range of student levels of indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and 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;
(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 §682.603(d)(1)(i) through §682.603(d)(1)(iii); and
(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f)(6)(i) through (f)(6)(xii) of this section.
(8) A school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(g) Exit counseling. (1) A school must ensure that exit counseling is conducted with each Stafford loan borrower and graduate or professional student PLUS Loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.
(2) The 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 Stafford loans, PLUS Loans, or student borrowers who have obtained both Stafford and 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 standard, graduated, extended, income-sensitive, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated 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) Include the matters described in paragraph (f)(6)(i), (f)(6)(ii), and (f)(6)(iv) of this section;
(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;
(viii) 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, including forgiveness benefits or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program; 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;

(ix) 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). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(x) Review for the student borrower information on the availability of the 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; and,

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

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(4) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(h) Treatment of excess loan proceeds. Except as provided under paragraph (i) of this section if, before the delivery of any Stafford, SLS or PLUS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's SLS, PLUS, nonsubsidized or unsubsidized Stafford, or State-sponsored or private loan to cover the expected family contribution, if not already done;

(2)(i) Returning the entire undelivered disbursement to the lender or escrow agent; and

(ii) Providing the lender with a written statement—

(A) Describing the reason for the return of the funds, if any;

(B) Setting forth the student's revised financial need; and

(C) Directing the lender to re-disburse a revised amount and, if necessary, revise subsequent disbursements to eliminate the overaward; or

(3) Returning to the lender any portion of the disbursement for which the student is ineligible and providing the lender with a written statement explaining the return of the funds.

(i) For purposes of paragraph (h) of this section, funds obtained from any Federal College Work-Study employment that do not exceed the borrower's financial need by more than $300 may not be considered as excess loan proceeds.

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(1) Must provide simultaneous written notice to the borrower if the school makes a payment of a refund or return of title IV, HEA funds to a lender on behalf of that student.

(b) Allocation of a refund or return of title IV, HEA program funds. In determining the portion of a refund or the return of title IV, HEA program funds upon a student's withdrawal for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school must follow the procedures established in part 668 for allocating a refund or return of title IV, HEA program funds.

(c) Timely payment. A school must pay a refund or a return of title IV, HEA program funds that is due in accordance with the timeframe in Sec. 668.22(j).

(1) Must pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) Any subsequent holder, if the loan has not been transferred and the school knows the new holder's identity; and

(2) Must provide simultaneous written notice to the borrower if the school makes a payment of a refund or a return of title IV, HEA program funds to a lender on behalf of that student.

§682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term or terms in which classes are offered but students are not generally required to attend, a school must follow the procedures in Sec. 682.84(b) or (c), as applicable, for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in Sec. 682.84(b) or (c), as applicable, except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school must use the withdrawal date determined under Sec. 682.84(b) or (c), as applicable for the purpose of reporting to the lender the date that the student has withdrawn from the school.

(c) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day and year of the withdrawal date.

(Approved by the Office of Management and Budget under control number 1845-0020)

(1) The original principal amount of all loans the school has ever made including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all FFEL loans made by the school whether the loans are held by the school or by a subsequent holder.

§682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.

(a) General. By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan upon the borrower's withdrawal. A school—
(c) Exception based on hardship. The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or
(ii) Employing increased collection staff; or
(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide educational opportunities to economically disadvantaged students as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the “low-income family” category used by the Bureau of the Census;
(B) Would not be able to enroll or continue their enrollment at that school without a loan from the school; and
(C) Would not be able to obtain a comparable education at another school;
(ii) The extent to which the school offers educational programs that—

(A) Are unique in the geographical area that the school serves; and
(B) Would not be available to some students if they or their parents could not obtain loans from the school; and
(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and
(B) Conformance with sound business practices.

(d) Termination procedures. (1) The Secretary notifies the school of the proposed termination of its lending eligibility and provides an opportunity for a hearing before the Secretary terminates the school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed date the termination becomes effective; and
(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or
(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;
(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and
(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) Effects of termination. A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or
(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) Schools under the same ownership. If a school makes loans to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by—

(1) Treating all of the schools as one school; or
(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

§682.610 Administrative and fiscal requirements for participating schools.

(a) General. Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;
(2) Follow the record retention and examination provisions in this part and in 34 CFR 688.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) Loan record requirements. In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under Sec. 682.604(c)(3), if applicable, to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any MPN confirmation process or processes the school may have used.

(c) Student status confirmation reports. A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who is enrolled and who has received a Stafford or SLS loan has changed his or her permanent address.

(3) To administrative action by the Department of Education based on any alleged violation of—


(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

§682.700 Purpose and scope.

This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. The regulations in this subpart apply to a lender or third-party servicer that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the Higher Education Act of 1965 (the HEA) prescribed under the FFEL programs. These regulations apply to lenders that participate only in FFEL programs or the eligibility of otherwise eligible lenders to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under section 432(h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1)(i) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in Sec. 682.200, for any reason other than a violation of the prohibitions in section 435(d)(5) of the Act, or (ii) To a determination that an organization fails to meet the standards in Sec. 682.416;

(2) To a school's loss of lending eligibility under Sec. 682.608; or

Subpart G—Limitation, Suspension, or Termination of Lender or Third-Party Servicer Eligibility and Disqualification of Lenders and Schools

§682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental Official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification: The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guaranty agency.

Limitation: The continuation of a lender's or third-party servicer's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency, as applicable, or imposed as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility, or a third-party servicer's eligibility to contract with a lender or guaranty agency, for a specified period of time or until the lender or servicer fulfills certain requirements.

Termination: (1) The removal of a lender's or school's eligibility for an indefinite period of time—

(i) By a guaranty agency; or

(ii) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under Sec. 682.706; or

(2) The removal of a third-party servicer's eligibility to contract with a
lender or guaranty agency for an indefinite period of time by the Secretary based on an action taken by the Secretary, or a designated Departmental official under Sec. 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)


§682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender’s responsibilities or rights to benefits and claim payments that are based on the lender’s prior participation in the program, except as provided in paragraph (d) of this section and in Sec. 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the FFEL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the FFEL programs; or

(3) Other reasonable requirements or conditions, including those described in Sec. 682.709.

(c) A limitation imposes on a third-party servicer—

(1) A limit on the number of loans or accounts or total amount of loans that the servicer may service;

(2) A limit on the number of loans or accounts or total amount of loans that the servicer is administering under its contract with a lender or guaranty agency; or

(3) Other reasonable requirements or conditions, including those described in Sec. 682.709.

(d) After the date the termination of a lender’s eligibility becomes effective, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guaranty agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)


§682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender or third-party servicer may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) Under the informal compliance procedure, the Secretary gives the lender or servicer a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the FFEL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)


§682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to withhold payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender or a third-party servicer with which the lender contracts is in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA pertaining to the lender’s portfolio of loans;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender or third-party servicer, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The action becomes effective on the date the notice is mailed to the lender or third-party servicer.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)


§682.705 Suspension proceedings.

(a) Scope. (1) A suspension by the Secretary removes a lender’s eligibility under the FFEL programs or a third-party servicer’s ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or reinsure a new loan made by the lender or new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) Notice. (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary’s intent to suspend the lender’s or servicer’s eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date, except as provided in paragraph (c)(9) of this section, if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why
the suspension should not take effect; and
(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(c) In any action to suspend a lender based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official, or hearing official finds that the lender provided or offered the payments or activities listed in paragraph (5)(i) of the definition of lender in Sec. 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§682.706 Limitation or termination proceedings.

(a) Notice. (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice—
(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;
(ii) Describes the consequences of a limitation or termination;
(iii) Identifies the alleged violations on which the proposed limitation or termination is based;
(iv) States the limits which may be imposed, in the case of a limitation proceeding;
(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;
(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;
(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and
(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) Hearing. (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—
(i) Dismisses the proposed limitation or termination; or
(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—
(i) Ensures that a written record of the hearing is made;
(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and
(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure (28 U.S.C. appendix), is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) If a termination action is brought against a lender or third-party servicer based on a debarment under Executive Order 12549 or under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 that does not meet the standards described in 34 CFR 85.201(c), the presiding official finds that the debarment constitutes prima facie evidence that cause for debarment and termination under this subpart exists.

(8) The initial decision of the presiding officer is mailed to the lender or servicer.

(9) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(10) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled nolo contendere or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(d) In any action to limit or terminate a lender's eligibility based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official or hearing official finds that the lender provided or offered the payments or activities described in paragraph (5)(i) of the definition of lender in Sec. 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or securing FFEL loan volume.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)
[59 FR 22458, Apr. 29, 1994, as amended at 60 FR 33058, June 26, 1995; 72 FR 62009, Nov. 1, 2007]

§682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with Sec. 682.706(b)(10)—

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party.
within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's or servicer's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.


§682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

(b) If a lender or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender or servicer refuses to accept the notice.


§682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, has improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in Sec. 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in Sec. 682.413(a)(2).

(Authority: 20 U.S.C. 1080, 1082, 1094) [59 FR 22459, Apr. 29, 1994]

§682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (d)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.


§682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the procedures of this subpart may request reinstatement of its eligibility after the later of—

(1) Eighteen months from the effective date of the termination; or

(2) The expiration of the period of debarment under Executive Order 12459 or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

(b) The request must be in writing and must show that—

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(59 FR 22459, Apr. 29, 1994)

§682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.
§682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary’s review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender’s eligibility to participate in the agency’s program.

(e) The Secretary reviews an agency’s limitation, suspension, or termination of a lender’s eligibility only when the guaranty agency’s action is final, e.g., the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency’s action does not by itself affect the timing of the Secretary’s review.

(f) The guaranty agency’s notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency’s letter initiating the action.

(2) The lender’s response.

(3) The transcript of the agency’s hearing.

(4) The decision of the agency’s hearing officer.

(5) The decision of the agency on appeal from the hearing officer’s decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency’s referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) Within 60 days of the Secretary’s receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency’s record, as to whether the agency’s action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency’s action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency’s action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary’s review of the guaranty agency’s action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender’s eligibility to participate in the agency’s program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency’s decision not to terminate the lender’s eligibility to participate in the agency’s program.

(2) The school will comply with the Secretary; or

(3) The guaranty agency’s letter initiating the action.

The record must include certified copies of the following documents:

(1) The guaranty agency’s letter initiating the action.

(2) The school’s response.

(3) The transcript of the agency’s hearing.

(4) The guaranty agency’s action is final, e.g., a lender’s eligibility only when the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(5) If the Secretary concludes that the agency’s action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency’s action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary’s review of the guaranty agency’s action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender’s eligibility to participate in the agency’s program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency’s decision not to terminate the lender’s eligibility to participate in the agency’s program.

(2) The school will comply with the Secretary; or

(3) The guaranty agency’s action is final, e.g., a lender’s eligibility only when the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(5) If the Secretary concludes that the agency’s action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency’s action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary’s review of the guaranty agency’s action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender’s eligibility to participate in the agency’s program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency’s decision not to terminate the lender’s eligibility to participate in the agency’s program.

(2) The school will comply with the Secretary; or

(3) The guaranty agency’s action is final, e.g., a lender’s eligibility only when the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(5) If the Secretary concludes that the agency’s action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency’s action to determine whether to disqualify the lender from further participation in the FFEL programs and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary’s review of the guaranty agency’s action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender’s eligibility to participate in the agency’s program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency’s decision not to terminate the lender’s eligibility to participate in the agency’s program.
The decision of the agency's hearing officer.

The decision of the agency on appeal from the hearing officer's decision, if any.

The regulations and written procedures of the agency under which the action was taken.

The audit or program review report or documented basis that led to the action.

All other documents relevant to the action.

The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

1. The documents described in paragraph (f) of this section; and
2. Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

Within 60 days of the Secretary's receipt of a referral notice described in paragraph (j) of this section.

The documents described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

To waive the review and be disqualified immediately; or

To request a review.

The Secretary's review of the guaranty agency's action is limited to—

1. A review of the written record of the agency's proceedings; and
2. Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

1. The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;
2. The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or
3. The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

The regulations and written procedures of the agency under which the action was taken.

The decision of the agency's hearing officer.

The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

1. The documents described in paragraph (f) of this section; and
2. Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

Within 60 days of the Secretary's receipt of a referral notice described in paragraph (j) of this section.

The documents described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed—

To waive the review and be disqualified immediately; or

To request a review.

The Secretary's review of the guaranty agency's action is limited to—

1. A review of the written record of the agency's proceedings; and
2. Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

1. The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;
2. The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or
3. The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

The regulations and written procedures of the agency under which the action was taken.

The decision of the agency's hearing officer.

The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

1. The documents described in paragraph (f) of this section; and
2. Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

Within 60 days of the Secretary's receipt of a referral notice described in paragraph (j) of this section.

The regulations and written procedures of the agency under which the action was taken.

The decision of the agency's hearing officer.

The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

1. The documents described in paragraph (f) of this section; and
2. Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

Within 60 days of the Secretary's receipt of a referral notice described in paragraph (j) of this section.

The regulations and written procedures of the agency under which the action was taken.

The decision of the agency's hearing officer.

The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include—

1. The documents described in paragraph (f) of this section; and
2. Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.
appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

INTRODUCTION
This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings on loans evidencing such violations. See 34 CFR 682.507, 682.511. These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, defeating the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5), (6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

DUE DILIGENCE
Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (see 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

NOTE: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

TIMELY FILING
The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120/day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before the 90th day.

Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit the lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. CURE PROCEDURES

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

Reinstatement with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.
reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "receipt" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations only of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied solely for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. Treatment of Accrued Interest on "Cured" Claims–a. Due Diligence Violations. For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct the capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct the capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not restate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

6. Documents to be Submitted with "Cured" Claims. The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new ED Form 1207; and
- All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request preclaims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures
described below for obtaining reinstatement of insurance coverage on the loan. After the date of the bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g., copies of the checks) with the claim.

2. Borrower's Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims—a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period. If the lender then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

b. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) A completed “Certification of Borrower Location” form (Attachment B).

(ii) A completed “Certification of Borrower Location” form (Attachment B). In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period. If the lender then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.51(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender knows...
involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1968. A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).
NOTICE

_________________________
Date

TO:

_________________________
Social Security Number

You have previously been notified that you are severely delinquent in repaying your Federal Family Education Loan. This notice is our final effort to remedy this delinquency. You must contact us at __________________________ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

_________________________
Official of Lender

_________________________
Title
Certificate of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:
1. On (Date), I spoke with or received written communication from (copy attached):
   (Circle a or b)
   (a) the borrower on the loan underlying the default claim, or
   (b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower’s address and telephone number are

   Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

   Name of Borrower

   Borrower’s SSN

   Signature of Employee or Agent

   Typed Name of Employee or Agent

   Title of Employee or Agent

   Date

   Lender Identification Number
Appendix D to Part 682–Policy for Waiving the Secretary's Right To Recover or Refuse To Pay Interest Benefits, Special Allowance, and Reinsurance on Stafford, Plus, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138]

Note: The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1988, the policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1988, the policy applies until 3 years after the default claim filing deadline. The purpose of determining the 3-year deadline, reinsurance is lost on the later of (a) 3 years from the last date the claim could have been filed for claim payment with the guaranty agency for a claim that was not filed; or (b) 3 years from the date the guaranty agency rejected the claim, for a claim that was filed. These deadlines are extended by periods during which collection activities are suspended due to the filing of a bankruptcy petition.

Introduction

(1) This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a)(5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of the Secretary's rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Program.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 1, 1988 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

(2) The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Program. As a part of this effort, the Secretary published final regulations on November 10, 1986, requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 1, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. See 34 CFR 682.406(a)(3), (a)(5), (a)(6), and 682.413(b). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. See 34 CFR 682.300(b)(2)(vii), 682.302(d)(1)(iv), 682.413(a)(1).

(3) The Department has received inquiries regarding the procedures by which a lender may cure a violation of § 682.411 regarding diligent loan collection, or of the 90-day deadline for the filing of default claims found in § 682.406(a)(3) and (a)(5), in order to reinstate the agency's right to reinsurance and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under § § 682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See § § 682.406(a)(7) and 682.413(b). As § § 682.406(a)(7) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only if they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all those requirements must be submitted to the Secretary for review and approval under 34 CFR 682.401(d).

(4) References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency To Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guaranty agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective...
enforcement policy outlined in section I.C.1. However, for any violation of an agency’s due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency’s rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 270 days for loans payable in monthly installments, or for 330 days for loans payable in less frequent installments. The 270/330-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment 3 months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on December 27th, when the April payment becomes 270 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

(1) The 90-day filing period applicable to FFEL Program default claims is described in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 270/330-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 360th day of delinquency (270-day default period plus 90-day filing period) if the borrower brings the account less than 270 days delinquent before the 360th day. Thus, in the above example, if the borrower makes the April 1st payment on December 28th, that payment makes the loan 241 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 270 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 270 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if those payments are sufficient to make the loan less than 270 days delinquent.

(2) Section I of this letter outlines the Secretary’s waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary’s authority to waive the Secretary’s rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower’s behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a full payment would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a full payment only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Earliest unexcused violation means:

(a) In cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established.

(b) In cases when reinsurance is lost due to a gap of 46 days, the earliest unexcused violation date would be the 46th day following the last collection activity.

(c) In cases when reinsurance is lost due to three or more due diligence violations of 6 days or more, the earliest unexcused violation would be the day after the default date.

(d) In cases when reinsurance is lost due to a timely filing violation, the earliest unexcused violation would be the day after the filing deadline.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency’s right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. Reinstatement with respect to reinsurance on a loan also includes reinstatement of the lender’s right to receive interest and special allowance payments on that loan.

Gap in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default;

(d) The period between the date a lender discovers a borrower has “skipped” and the lender’s first skip-tracing activity.

NOTE: The concept of “gap” is used herein simply as one measure of collection activity. This definition applies to loans subject to the FFEL and PLUS programs regulations published on or after November 10, 1986. For those loans, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in § 682.411 means the failure to timely complete a
required diligent phone contact effort, the failure to timely send a required letter (including a request for preclearance assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary’s Right to Strict Enforcement. While this letter describes the Secretary’s general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary’s judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules and in cases where the best interests of the United States otherwise require strict enforcement. More generally, this bulletin states the Secretary’s general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary’s Waiver Authority. The Secretary’s waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

a. The guaranty agency and lender must ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the “retrospective period” described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1., by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency’s responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

b. The guaranty agency, on or before October 1, 1988, must repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the “retrospective period” described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any unpaid interest accruing in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans. The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day or 270/330-day default period (as applicable) that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence or timely filing requirements or both. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until 3 years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations. Except as noted in section II, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. Guaran tors must review the due diligence for the 180/240 or 270/330-day period (as applicable) prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency’s Cure Procedures. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender’s timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on “Cured” Claims. For any loan involving any violation of the due diligence or timely filing rules for which a “cure” is required under section I.C. or I.E., for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize accrued interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not restate coverage. For treatment of accrued interest in those cases, see section I.E.1.c.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made. The special provisions for transfers apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A.

1. Retrospective Period. For one or more due diligence violations occurring during the period March 10, 1987-April 30, 1988—

   a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

   b. If a gap of 46-60 days (61-75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for
the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (See section I.E.1.d., for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment as evidenced by the signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period. For due diligence violations occurring on or after May 1, 1988 based on due dates prior to October 6, 1998–

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer) each (21 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirements outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

3. Post 1998 Amendments. For due diligence violations based on due dates on or after October 6, 1998–

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) occurs, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 270 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations.

1. Cures. In the case of a loan involving violations described in section I.C.2.d. or I.C.3.d., the lender may utilize either of the two procedures described in section I.D.1.a or I.D.1.b. for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the repayment period limitations set out in 34 CFR 682.209(a)(8) and 682.209(h)(2); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. Borrower Deemed Current as of Date of Cure. On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., reinsurance coverage on the loan is reinstated, and the borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender must then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims.

a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in
section I.C.2.c., or I.C.3.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1986, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower’s delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed. If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5-10 days after completing these efforts, the lender must again diligently attempt to contact the borrower by telephone. Finally, within 5-10 days after completing these efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender must deem the borrower to be in default. The lender must then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d.), within 30 days after the end of the 30-day period. Reinsurance coverage, and therefore the lender’s right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of those loans, on unpaid interest as provided in section I.B.7., and for reimbursement of eligible supplemental preclaims assistance costs. In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender’s failure to meet the 60-day timely filing requirement (See 34 CFR 682.402(g)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period. The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(g)(2)(iv)) causes irreparable harm to the guaranty agency’s ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender must return the borrower to the appropriate status that existed prior to the filing of the bankruptcy claim unless the status has changed due solely to passage of time. In the latter case, the lender must return the borrower in the status that would exist had no bankruptcy claim been filed. If the borrower is delinquent after the loan is determined nondischargeable, the lender should grant administrative forbearance to bring the borrower’s account current as provided in § 682.211(f)(4) and § 682.402(f)(5)(i)(A) and (f)(6). The Secretary will not reimburse the guaranty agency for interest for the period beginning on the filing deadline for the bankruptcy claim and ending on the date the loan becomes eligible again for reinsurance. Reinsurance is reinstated on the date the bankruptcy action concludes and the loan is not discharged or on the date a previous discharge is reversed.

II. Due Date of First Payment. Section 682.411(b)(1) refers to the “due date of the first missed payment not later made” as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on an FFEL Program loan begins some
number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender’s knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)).

1. In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun (“the notice”) as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)). In keeping with the 5-day tolerance permitted under section I.C.2.a., for the “prospective period,” or section I.C.3.a., for the “post 1998 amendment period,” a lender that sends the above-described material on or before the 60th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 30 days of delinquency and will thus have committed two violations of more than five days of that rule.

2. If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., that only violations occurring during the most recent 180 or 270 days (as applicable) of the delinquency period on a loan are relevant to the Secretary’s examination of due diligence.

Please Note: References to the “65th day after receipt of the notice” and “66th day” in the preceding paragraphs should be amended to read “95th day” and “96th day” respectively for lenders subject to § 682.209(a)(3)(ii)(E).

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guaranty agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary’s responses to these questions follow.

Note: The answer to questions 1 and 4 are applicable only to loans subject to § 682.411 of the FFEL and PLUS program regulations published on or after November 10, 1986.

1. Q: Section 682.411 of the program regulations requires the lender to make “diligent efforts to contact the borrower by telephone” during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the “diligent efforts” requirement for any of the 30-day delinquency periods described in the rule. However, the “diligent efforts” requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower’s actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

2. Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower’s in-school status by making inquiries of appropriate parties, including the borrower’s school. Pending reconciliation, the lender may rely on the most recent credible information it has.

3. Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower’s status that is received by the transferee but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferee has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferee as to the nature and substance of that information.

4. Q: What are a lender’s due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender must treat the payment as having never been made for purposes of determining the number of days that the borrower is delinquent at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result occurs when the lender successfully obtains a delinquent borrower’s correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

34 CFR 685

Integrated Regulations Incorporating
Program Integrity Final Rules
(published in October 29, 2010 Federal Register)
and
Foreign School Final Rules
(published in November 1, 2010 Federal Register)

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Editorial Notes:
2. 685. 304(b)(4)(ii): The October 28, 2009 Final Rules language included duplicate “plans”; i.e., “(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, ...” [emphasis added] (from October 28, 2009 Final Rules, pg, 55666).
## Table of Contents

### Subpart A—Purpose and Scope

- § 685.100 The William D. Ford Federal Direct Loan Program ................................................................. 3
- § 685.101 Participation in the Direct Loan Program ........................................................................... 3
- § 685.102 Definitions ......................................................................................................................... 3
- § 685.103 Applicability of subparts .................................................................................................. 5

### Subpart B—Borrower Provisions

- § 685.200 Borrower eligibility ........................................................................................................... 6
- § 685.201 Obtaining a loan .............................................................................................................. 7
- § 685.202 Charges for which Direct Loan Program borrowers are responsible .................................. 7
- § 685.203 Loan limits ....................................................................................................................... 9
- § 685.204 Deferment ....................................................................................................................... 12
- § 685.205 Forbearance .................................................................................................................... 14
- § 685.206 Borrower responsibilities and defenses ........................................................................... 15
- § 685.207 Obligation to repay .......................................................................................................... 15
- § 685.208 Repayment plans ............................................................................................................. 16
- § 685.209 Income contingent repayment plan .................................................................................... 18
- § 685.210 Choice of repayment plan ............................................................................................... 19
- § 685.211 Miscellaneous repayment provisions ................................................................................. 19
- § 685.212 Discharge of a loan obligation .......................................................................................... 20
- § 685.213 Total and permanent disability discharge ........................................................................ 21
- § 685.214 Closed school discharge ................................................................................................. 22
- § 685.215 Discharge for false certification of student eligibility or unauthorized payment .............. 23
- § 685.216 Unpaid refund discharge .................................................................................................. 24
- § 685.217 Teacher loan forgiveness program .................................................................................... 25
- § 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks ................................................................................................................................... 27
- § 685.219 Public Service Loan Forgiveness Program ........................................................................ 30
- § 685.220 Consolidation .................................................................................................................. 31
- § 685.221 Income-based repayment plan .......................................................................................... 32

### Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

- § 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program ................................................................................................................ 34
- § 685.301 Origination of a loan by a Direct Loan Program school ..................................................... 34
- § 685.302 [Reserved] ....................................................................................................................... 37
- § 685.303 Processing loan proceeds ................................................................................................. 37
- § 685.304 Counseling borrowers ...................................................................................................... 38
- § 685.305 Determining the date of a student’s withdrawal ............................................................... 39
- § 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary ........... 39
- § 685.307 Withdrawal procedure for schools participating in the Direct Loan Program ................. 40
- § 685.308 Remedial actions ............................................................................................................ 40
- § 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program ................................................................. 40

### Subpart D—School Participation and Loan Origination in the Direct Loan Program

- § 685.400 School participation requirements .................................................................................... 40
- § 685.401 [Reserved] ....................................................................................................................... 40
- § 685.402 Criteria for schools to originate loans ............................................................................. 40
§ 685.100 The William D. Ford Federal Direct Loan Program (formerly known as the Federal Direct Student Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student’s attendance at a postsecondary school. This part governs the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

1. Federal Direct Stafford/Ford Loan Program (formerly known as the Federal Direct Stafford/Ford Loan Program), which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

2. Federal Direct Unsubsidized Stafford/Ford Loan Program (formerly known as the Federal Direct Unsubsidized Stafford Loan Program), which provides loans to undergraduate, graduate, and professional students. The borrower is responsible for the interest that accrues during any period.

3. Federal Direct PLUS Program, which provides loans to parents of dependent students and to graduate or professional students. The borrower is responsible for the interest that accrues during any period.

4. Federal Direct Consolidation Loan Program, which provides loans to borrowers to consolidate certain Federal educational loans.

The Secretary makes a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

The Secretary makes a Direct Consolidation Loan only to—

1. A borrower with a loan made under the Direct Loan Program; or

2. A borrower with a loan made under the Federal Family Education Loan Program who—

i. Is not able to obtain a Federal Consolidation Loan;

ii. Is not able to obtain a Federal Consolidation Loan with income-sensitivity repayment terms that are satisfactory to the borrower; or

iii. Has a Federal Consolidation Loan that has been submitted by the lender to the guaranty agency for default aversion, and wishes to consolidate the Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan.

(Authority: 20 U.S.C. 1087a et seq.)


§ 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student’s cost of attendance at the school.

(b) The Secretary may permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR part 600, and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loan applications under the FFEL Program according to the terms of its agreement with the Secretary.

An eligible undergraduate student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/ Ford Loan, and Federal Direct PLUS Programs. An eligible graduate or professional student enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford/Ford Loan, Federal Direct Unsubsidized Stafford/ Ford Loan, and Federal Direct PLUS Programs. An eligible parent of an eligible dependent student enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1087a et seq.)


§ 685.102 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic Competitiveness Grant (ACG) Program

Academic year

Campus-based programs

Dependent student

Disburse

Eligible program

Eligible student

Enrolled

Expected family contribution (EFC)

Federal Consolidation Loan Program

Federal Direct Student Loan Program

Direct Loan Program

Federal Pell Grant Program

Federal Perkins Loan Program

Federal PLUS Program

Federal Supplemental Educational Opportunity Grant Program

Federal Work-Study Program

Full-time student

Graduate or professional student

Half-time student

Independent student

Leveraging Educational Assistance Partnership Program

National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program

One-third of an academic year

Parent

Payment period

State

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

TEACH Grant

Two-thirds of an academic year

Undergraduate student

U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Clock hour

Credit hour

Educational program

Eligible institution

Federal Family Education Loan (FFEL) Program

Foreign institution

Institution of higher education

Nationally recognized accrediting agency or association

Preaccredited

Program of study by correspondence

Secretary
(3) The following definitions are set forth in the regulations for the Federal Family Education Loan (FFEL) Program, 34 CFR part 682:

Act

Endorser

Federal Insured Student Loan (FISL) Program

Federal Stafford Loan Program

Guaranty agency

Holder

Legal guardian

Lender

Totally and permanently disabled

(b) The following definitions also apply to this part:

Alternative originator: An entity under contract with the Secretary that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not originate loans.

Consortium: For purposes of this part, a consortium is a group of two or more schools that interacts with the Secretary in the same manner as other schools, except that the electronic communication between the Secretary and the schools is channeled through a single point. Each school in a consortium shall sign a Direct Loan Program participation agreement with the Secretary and be responsible for the information it supplies through the consortium.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 270 days.

Estimated financial assistance. (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, net earnings from need-based employment, or loans, including but not limited to—

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(ii) Except as provided in paragraph 2(vii) of this definition, veterans’ educational benefits;

(iii) Any educational benefits paid because of enrollment in a postsecondary education institution, or to cover postsecondary education expenses;

(iv) Fellowships or assistantships, except non-need-based employment portions of such awards;

(v) Insurance programs for the student’s education; and

(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, Academic Competitiveness Grant, National SMART Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans or subsidized and unsubsidized Direct Stafford Loans and Federal PLUS or Direct PLUS Loans.

(2) Estimated financial assistance does not include—

(i) Those amounts used to replace the expected family contribution (EFC), including the amounts of any TEACH Grant unsubsidized Federal Stafford Loans or Direct Stafford Loans, Federal PLUS or Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student’s EFC exceed the EFC, the excess amount must be treated as estimated financial assistance;

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined;

(iii) For the purpose of determining eligibility for a Direct Subsidized Loan, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(iv) Any portion of the estimated financial assistance described in paragraph (1) of this definition that is included in the calculation of the student’s EFC;

(v) Non-need-based employment earnings;

(vi) Assistance not received under a title IV, HEA program, if that assistance is designated to offset all or a portion of a specific amount of the cost of attendance and that component is excluded from the cost of attendance as well. If that assistance is excluded from either estimated financial assistance or cost of attendance, it must be excluded from both;

(vii) Federal veterans’ education benefits paid under —

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers’ Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the “Montgomery GI Bill—active duty”);

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans’ Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors’ and Dependents’ Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the “Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes” (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as “Quayle benefits”);

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

Federal Direct Consolidation Loan Program:

(1) A loan program authorized by title IV, part D of the Act that provides loans to borrowers who consolidate certain Federal educational loan(s), and one of the components of the Direct Loan Program. Loans made under this program are referred to as Direct Consolidation Loans.

(2) The term “Direct Subsidized Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to certain subsidized title IV education loans that were repaid by the consolidation loan. Interest is not charged to the borrower during deferment periods, or, for a borrower whose consolidation application was received before July 1, 2006, during in-school and grace periods.

(3) The term “Direct Unsubsidized Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to unsubsidized title IV education loans, certain subsidized title IV education loans, and certain other Federal education loans that were repaid by the consolidation loan. The borrower is responsible for the interest that accrues during any period.
The term “Direct PLUS Consolidation Loan” refers to the portion of a Direct Consolidation Loan attributable to Direct PLUS Loans. Federal PLUS Consolidation Loans, Parent Loans for Undergraduate Students that were repaid by the consolidation loan. The borrower is responsible for the interest that accrues during any period.

**Federal Direct PLUS Program:** A loan program authorized by title IV, part D of the Act that is one of the components of the Federal Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct PLUS Loans.

**Federal Direct Stafford/Ford Loan Program:** A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Loans made under this program are referred to as Direct Subsidized Loans.

**Federal Direct Unsubsidized Stafford/Ford Loan Program:** A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct Unsubsidized Loans.

**Grace period:** A six-month period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

**Interest rate:** The annual interest rate that is charged on a loan, under title IV, part D of the Act. Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program. Master Promissory Note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower’s written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower’s first anticipated disbursement if no disbursement is made during that twelve-month period;

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower’s written notice that no further loans may be made;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN;

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

**Payment data:** An electronic record that is provided to the Secretary by an institution showing student disbursement information.

**Period of enrollment:** The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time; an academic year; or the length of the program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

**Satisfactory repayment arrangement.** (1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under 34 CFR 685.220(d)(1)(ii)(C), the making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan.

(3) The required monthly payment amount may not be more than is reasonable and affordable based on the borrower’s total financial circumstances. “On-time” means a payment made within 15 days of the scheduled due date, and voluntary payments are those payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

**School origination option 1:** In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer,prepares the promissory note, obtains a completed and signed promissory note from a borrower,transmits the promissory note to the Servicer,receives the funds electronically,disburses a loan to a borrower,creates a disbursement record,transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may modify the functions performed by a particular school.

**School origination option 2:** In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer,prepares the promissory note, obtains a completed and signed promissory note from a borrower,transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer may modify the functions performed by a particular school.

Servicer: An entity that has contracted with the Secretary to act as the Secretary’s agent in providing services relating to the origination or servicing of Direct Loans.

**Standard origination:** In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, receives funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination. The Secretary may modify the functions performed by a particular school.


**GPO Editorial Note:** For Federal Register citations affecting §685.102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 685.103 Applicability of subparts.

(a) Subpart A contains general provisions regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions regarding borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements regarding schools in the Direct Loan Program.

(d) Subpart D contains provisions regarding school eligibility for participation and origination in the Direct Loan Program.

(Authority: 20 U.S.C. 1067a et seq.)
Subpart B—Borrower Provisions
§ 685.200 Borrower eligibility.

(a) Student Direct Subsidized or Direct Unsubsidized borrower. (1) A student is eligible to receive a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a combination of these loans, if the student meets the following requirements:

(i) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(ii) The student meets the requirements for an eligible student under 34 CFR part 668.

(iii) In the case of an undergraduate student who seeks a Direct Subsidized Loan or a Direct Unsubsidized Loan at a school that participates in the Federal Pell Grant Program, the student has received a determination of Federal Pell Grant eligibility for the period of enrollment for which the loan is sought.

(iv) In the case of a borrower whose previous loan or TEACH Grant service obligation was cancelled due to total and permanent disability, the borrower—

(A) In the case of a borrower whose prior loan under title IV of the Act or TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and

(3) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with §685.213(b)(4), 34 CFR 674.61(b)(3)(i), 34 CFR 682.402(c), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with §685.213(b)(3)(ii)(A), 34 CFR 674.61(b)(5), or 34 CFR 682.402(c)(5), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(B) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010—

(1) The suspension of collection activity on the prior loan has been lifted;

(2) The borrower complies with the requirements in paragraphs (a)(1)(iv)(A)(1) and (2) of this section;

(3) The borrower signs a statement acknowledging that the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made, unless that impairment substantially deteriorates; and

(4) The borrower signs a statement acknowledging that the suspension of collection activity on the prior loan will be lifted.

(v) In the case of a student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR 668.32(e)(2), (3) or (4).

(b) A Direct Subsidized Loan borrower must demonstrate financial need in accordance with title IV, part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C) Directs the member to pursue the course of study; or

(2) Provides subsistence support to its members.

(b) Student PLUS borrower.

(1) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(2) The student meets the requirements for an eligible student under 34 CFR part 668.

(3) The student meets the requirements of paragraphs (a)(1)(iv) and (a)(1)(v) of this section, if applicable.

(4) The student has received a determination of his or her annual loan maximum eligibility under the Federal Direct Stafford/Ford Loan Program and the Federal Direct Unsubsidized Stafford/Ford Loan Program or under the Federal Subsidized and Unsubsidized Stafford Loan Program, as applicable; and

(5) The student meets the requirements of paragraph (c)(1)(vii) of this section.

(c) Parent PLUS borrower. (1) A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR part 668.

(ii) The parent provides his or her and the student’s social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.33.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.32(g).

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii)(A) The parent—

(1) Does not have an adverse credit history;

(2) Has an adverse credit history but has obtained an endorser who does not have an adverse credit history; or

(3) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist.

(B) For purposes of paragraph (c)(1)(vii)(A) of this section, an adverse credit history means that as of the date of the credit report, the applicant—

(1) Is 90 or more days delinquent on any debt; or

(2) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) For the purposes of (c)(1)(vii)(A) of this section, the Secretary does not consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(2) For purposes of paragraph (c)(1) of this section, a “parent” includes the individuals described in the definition of “parent” in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse’s income and assets would have been taken into account when calculating a dependent student’s expected family contribution.

(3) Has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime.
involving fraud in obtaining title IV, HEA program assistance.

(d) Defaulted FFEL Program and Direct Loan borrowers. Except as noted in § 685.220(d)(1)(ii)(D), in the case of a student or parent borrower who is currently in default on an FFEL Program or a Direct Loan Program Loan, the borrower shall make satisfactory repayment arrangements, as described in paragraph (2) of the definition of that term under § 685.102(b), on the defaulted loan.

(e) Use of loan proceeds to replace expected family contribution. The amount of a Direct Unsubsidized Loan, a Direct PLUS loan, or a non-federal non-need based loan, including a private, state-sponsored, or institution loan, obtained for a loan period may be used to replace the expected family contribution for that loan period.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.201 Obtaining a loan.

(a) Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan. (1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled must perform specific functions. Unless a school’s agreement with the Secretary specifies otherwise, the school must perform the following functions:

(i) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed Master Promissory Note (MPN), draw down funds, and disburse the funds to the student.

(ii) A school participating under school origination option 1 must create a loan origination record, ensure that the loan is supported by a completed MPN, and transmit the record and MPN (if required) to the Servicer. The Servicer initiates the drawdown of funds. The school must disburse the funds to the student.

(iii) If the student is attending a school participating under standard origination, the school must create a loan origination record and transmit the record to the alternative originator, which either confirms that a completed MPN supports the loan or prepares an MPN and sends it to the student. The Servicer receives the completed MPN from the student (if required) and initiates the drawdown of funds. The school must disburse the funds to the student.

(b) Application for a Direct PLUS Loan. (1) For a parent to obtain a Direct PLUS Loan, the parent must complete the Direct PLUS MPN and submit it to the school at which the student is enrolled.

(2) For a graduate or professional student to apply for a Direct PLUS Loan, the student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application. The graduate or professional student must also complete the PLUS MPN and submit it to the school.

(3) For either a parent or student PLUS borrower, as applicable, the school must complete its portion of the PLUS MPN and submit it to the Servicer, which makes a determination as to whether the parent or graduate or professional student has an adverse credit history. Unless a school’s agreement with the Secretary specifies otherwise, the school must perform the following functions: A school participating under school origination option 2 must draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburse the funds.

(c) Application for a Direct Consolidation Loan. (1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Servicer makes the Direct Consolidation Loan under the procedures specified in § 685.220.

(Authority: 20 U.S.C. 1087a et seq., 1091a)

[64 FR 58965, Nov. 1, 1999, as amended at 65 FR 65629, Nov. 1, 2000; 71 FR 45711, Aug. 9, 2006]

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) Interest—(1) Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans. (i) Loans first disbursed before July 1, 1995. Except as noted in § 685.220(d)(1)(ii)(D), the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(ii) Loans first disbursed on or after July 1, 1995 and before July 1, 1998. (A) During the in-school, grace, and deferment periods. The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(B) During all other periods. The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(iii) Loans first disbursed on or after July 1, 1998 and before July 1, 2006. (A) During the in-school, grace, and deferment periods. The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(iv) Loans first disbursed on or after July 1, 2006. The interest rate is 6.8 percent.

(v) For a subsidized Stafford loan made to an undergraduate student for which the first disbursement is made on or after:

(A) July 1, 2006 and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(B) July 1, 2008 and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(C) July 1, 2009 and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(D) July 1, 2010 and before July 1, 2011, the interest rate is 4.5 percent on the unpaid principal balance of the loan.

(E) July 1, 2011 and before July 1, 2012, the interest rate is 3.4 percent on the unpaid principal balance of the loan.

(2) Interest rate for Direct PLUS Loans. (i) Loans first disbursed before July 1, 1998. (A) Interest rates for periods ending before July 1, 2001. During all periods, the interest rate during any twelve-month period
beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.  

(B) Interest rates for periods beginning on or after July 1, 2001. During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before that June 26 plus 3.1 percentage points, but does not exceed 9 percent.  

(ii) Loans first disbursed on or after July 1, 1998 and before July 1, 2006. During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.  

(iii) Loans first disbursed on or after July 1, 2006. The interest rate is 7.9 percent.  

(3) Interest rate of Direct Consolidation Loans—(i) Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans. (A) Loans first disbursed before July 1, 1995. The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.  

(B) Loans first disbursed on or after July 1, 1995 and before July 1, 1998. The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.  

(C) Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998. The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(i) of this section.  

(D) Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999, and loans for which the disbursement is made on or after February 1, 1999. The interest rate established for Direct PLUS Loans is 7.9 percent.  

(ii) Interest rate for Direct PLUS Consolidation Loans. (A) Loans first disbursed before July 1, 1998. The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(i) of this section.  

(B) Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998. The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.  

(C) Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999, and loans for which the disbursement is made on or after February 1, 1999. The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.  

(3) Notwithstanding § 685.208(l)(5) and § 685.209(d)(3), for a Direct Loan not eligible for interest subsidies during periods of deferment, and for all Direct Loans during periods of forbearance, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment or forbearance.  

(4) Except as provided in paragraph (b)(3) of this section and in § 685.208(l)(5), and § 685.209(d)(3), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative or income contingent repayment plans and the borrower’s scheduled payments do not cover the interest that has accrued on the loan.  

The Secretary may capitalize unpaid interest when the borrower defaults on the loan.  

(c) Loan fee for Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans. The Secretary—  

(1)(i) For a Direct Subsidized or Direct Unsubsidized loan first disbursed prior to February 8, 2006, charges a borrower a loan fee not to exceed 3 percent of the principal amount of the loan;  

(ii) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after February 8, 2006, but before July 1, 2007, charges a borrower a loan fee not to exceed 2.5 percent of the principal amount of the loan;  

(iii) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2007, but before July 1, 2008, charges a borrower a loan fee not to exceed 2 percent of the principal amount of the loan;  

(iv) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2008, but before July 1, 2009, charges the borrower a loan fee not to exceed 1.5 percent of the principal amount of the loan;  

(v) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2009, but before July 1, 2010, charges the borrower a loan fee not to exceed 1 percent of the principal amount of the loan;  

(vi) For a Direct Subsidized or Direct Unsubsidized loan first disbursed on or after July 1, 2010, charges the borrower a loan fee not to exceed 0.5 percent of the principal amount of the loan;  

(vii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS loan.  

(2) Deducts the loan fee from the proceeds of the loan;  

(3) In the case of a loan disbursed in multiple installments, deducts a prorated portion of the fee from each disbursement; and...
(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to any portion of the loan that is—
(i) Repaid or returned within 120 days of disbursement, unless—
(A) The borrower has no Direct Loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or
(B) The borrower has a Direct Loan in repayment status, in which case the payment is applied in accordance with § 685.211(a) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan; or
(ii) Returned by a school in order to comply with the Act or with applicable regulations.
(d) Late charge. (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.
(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 30 days after it is due.
(e)(1) Collection charges before default. Notwithstanding any provision of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or the Secretary's agents in collecting installments not paid when due. These charges do not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).
(2) Collection charges after default. If a borrower defaults on a Direct Loan, the Secretary assesses collection costs on the basis of 34 CFR 30.60.
(State to State Law). (Authority: 20 U.S.C. 1087a et seq., 1091a)

§ 685.203 Loan limits.
(a) Direct Subsidized Loans. (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:
(i) $2,625, or, for a loan disbursed on or after July 1, 2007, $3,500, for a program of study of at least a full academic year in length.
(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $2,625, or, for a loan disbursed on or after July 1, 2007, $3,500, as the—

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<td>(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,625, or, for a loan disbursed on or after July 1, 2007, $3,500, as the lesser of the—</td>
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(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:
(i) $3,500, or, for a loan disbursed on or after July 1, 2007, $4,500, for a program of study of at least a full academic year in length.
(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $3,500, or, for a loan disbursed on or after July 1, 2007, $4,500, as the—

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<td>(i) $3,500, or, for a loan disbursed on or after July 1, 2007, $4,500, for a program of study of at least a full academic year in length.</td>
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(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:
(i) $5,500 for a program of study of at least an academic year in length.
(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,500 as the—

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<td>(i) $5,500 for a program of study of at least an academic year in length.</td>
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(4) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.
(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.
(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) $5,500 for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $5,500.

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

(b) Direct Unsubsidized Loans. (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Stafford loan Program and the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program.

(ii) Except as provided in paragraph (c)(3) of this section, for a loan first disbursed on or after July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Stafford/Ford Loan Program in combination with the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, plus—

(A) $2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the —

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(C) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the —

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<th>Number of semester, trimester, quarter, or clock hours enrolled</th>
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(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Federal Direct Unsubsidized Stafford/Ford Loan and Federal Unsubsidized Stafford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, in combination with the amounts determined under paragraph (c) of this section.

(c) Additional eligibility for Direct Unsubsidized Loans. (1)(i) An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow amounts under the Federal Direct Unsubsidized Loan Program in addition to any amount borrowed under paragraph (b) of this section, except as provided in paragraph (c)(3) for certain dependent undergraduate students.

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student’s parent likely will be precluded by exceptional circumstances from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student’s family is otherwise unable to provide the student’s expected family contribution. The financial aid administrator shall base the determination on a review of the family financial information provided by the student and consideration of the student’s debt burden and shall document the determination in the school’s file.

(iii) “Exceptional circumstances” under paragraph (c)(1)(ii) of this section include but are not limited to circumstances in which the student’s parent receives only public assistance or disability benefits, the parent is incarcerated, the parent has an adverse credit history, or the parent’s whereabouts are unknown. A parent’s refusal to borrow a Federal PLUS Loan or Direct PLUS Loan does not constitute “exceptional circumstances.”

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program...
and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first year of a program of undergraduate education—

(A) $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, for a program of study of at least a full academic year in length.

(B) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, as the—

| Number of semester, trimester, quarter, or clock hours enrolled |
| Number of weeks in academic year. |

| Number of semester, trimester, quarter, or clock hours enrolled |
| Number of weeks in academic year. |

(C) For a program of study that is less than a full academic year in length, an amount that is the same ratio to $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, as the lesser of the—

| Number of semester, trimester, quarter, or clock hours enrolled |
| Number of weeks in academic year. |

(ii) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education—

(A) $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, as the—

| Number of semester, trimester, quarter, or clock hours enrolled |
| Number of weeks in academic year. |

(iii) In the case of a student who has successfully completed the second year of a program of undergraduate education but has not completed the remainder of the program of study—

(A) $5,000, or, for a loan first disbursed on or after July 1, 2008, $7,000, for a program of study of at least a full academic year in length.

(B) For a program of study with less than a full academic year remaining, an amount that is the same ratio to $5,000, or, for a loan first disbursed on or after July 1, 2008, $7,000, as the—

| Number of semester, trimester, quarter, or clock hours enrolled |
| Number of weeks in academic year. |

(iv) In the case of a student who has an associate or baccalaureate degree which is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (c)(2)(i) of this section.

(v) In the case of a graduate or professional student, $10,000, or, for a loan disbursed on or after July 1, 2007, $12,000.

(vi) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate—

(A) $4,000, or, for a loan first disbursed on or after July 1, 2008, $6,000, for coursework necessary for enrollment in an undergraduate degree or certificate program.

(B) $5,000, or, for a loan disbursed on or after July 1, 2007, $7,000, for coursework necessary for enrollment in a graduate or professional degree or certification program for a student who has obtained a baccalaureate degree.

(vii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, $5,000, or, for a loan disbursed on or after July 1, 2007, $7,000.

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

(A) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(B) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.
program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(ii) of this section.

(3) A dependent undergraduate student who qualifies for additional Direct Unsubsidized Loan amounts under this section in accordance with paragraph (c)(1)(ii) is not eligible to receive the additional Direct Unsubsidized Loan amounts provided under paragraph (b)(1)(ii) of this section.

(d) Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits. The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500 in the case of a graduate or professional student, including loans for undergraduate study.

(e) Aggregate limits for unsubsidized loans. The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans but excluding the amount of capitalized interest may not exceed the following:

(1) $23,000, or, effective July 1, 2008, $31,000, minus any Direct Subsidized Loan and Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility or qualified for that additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, $46,000, or, effective July 1, 2008, $57,500, minus any Direct Subsidized Loan and Federal Stafford Loan amounts.

(3) For a graduate or professional student, $138,500 including any loans for undergraduate study, minus any Direct Subsidized Loan, Federal Stafford Loan, and Federal SLS Program loan amounts.

(f) Direct PLUS Loans annual limit. The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student, or that a graduate or professional student may borrow, for any academic year of study may not exceed the student’s cost of attendance minus other estimated financial assistance for that student for the entire period of enrollment.

(h) Loan limit period. The annual loan limits apply to an academic year, as defined in 34 CFR 668.3.

(i) Treatment of Direct Consolidation Loans and Federal Consolidation Loans. The percentage of the outstanding balance on Direct Consolidation Loans or Federal Consolidation Loans counted against a borrower’s aggregate loan limits is calculated as follows:

(1) For Direct Subsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Subsidized and Federal Stafford Loans.

(2) For Direct Unsubsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Unsubsidized, Federal SLS, and Federal Unsubsidized Stafford Loans.

(j) Maximum loan amounts. In no case may a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan amount exceed the student’s estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student’s estimated financial assistance for that period; and

(2) In the case of a Direct Subsidized Loan, the borrower’s expected family contribution for that period.

(k) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.


§ 685.204 Deferment.

(a)(1) A Direct Loan borrower whose loan is eligible for interest subsidies and who meets the requirements described in paragraphs (b) and (e) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Loan borrower whose loan is not eligible for interest subsidies and who meets the requirements described in paragraphs (b) and (e) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower.

(b)(ii) For purposes of paragraph (b)(2)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to the inability to find full-time employment using the standards and procedures set forth in 34 CFR 682.210(h)
with references to the lender understood to mean the Secretary.

(3)(i) The borrower has experienced or will experience an economic hardship.

(3)(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) with references to the lender understood to mean the Secretary.

(3)(c) No deferment under paragraphs (b)(2) or (3) of this section may exceed three years.

(3)(d) If, at the time of application for a borrower’s first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraphs (b) and (e) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a “new borrower” as that term is defined in 34 CFR 682.210(b)(7).

(e) Military service deferment (1) A borrower who receives a Direct Loan Program loan, may receive a military service deferment for such loan for any period during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of the service described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(3) Serving on active duty during a war or other military operation or national emergency means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

(4) Qualifying National Guard duty during a war or other operation or national emergency means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(5) These provisions do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(6) As used in this paragraph—

(i) Active duty means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(ii) Military operation means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(iii) National emergency means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(7) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower’s representative.

(f) Post-active duty student deferment. (1) A borrower who receives a Direct Loan Program loan is entitled to receive a military active duty student deferment for 13 months following the conclusion of the borrower’s active duty military service if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled on at least a half-time basis in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (f)(1) of this section, “Active Duty” means active duty as defined in section 101(d)(1) of title 10, United States Code, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (f)(2)(i) of this section or full-time National Guard duty under paragraph (f)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status on at least a half-time basis during the grace period or the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization deferment period and the 13-month post-active duty student deferment period apply concurrently.

(g) In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008. (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on §682.204(b)(1)(iii)(A), (2), (3), or (4), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower will receive a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(h) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(i)(1) To receive a deferment, except as provided under paragraph (b)(1)(i)(A) of this section.
section, the borrower must request the deferment and provide the Secretary with all information and documents required to establish eligibility for the deferment. In the case of a deferment under paragraph (e)(1) of this section, a borrower’s representative may request the deferment and provide the required information and documents on behalf of the borrower.

(2) After receiving a borrower’s written or verbal request, the Secretary may grant a deferment under paragraphs (b)(1)(i)(B), (b)(1)(i)(C), (b)(2)(i), (b)(3)(i), (e)(1), and (f)(1) of this section if the Secretary confirms that the borrower has received a deferment on a Perkins or FFEL Loan for the same reason and the same time period.

(3) The Secretary relies in good faith on the information obtained under paragraph (i)(2) of this section when determining a borrower’s eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary resolves any discrepant information before granting a deferment under paragraph (i)(2) of this section.

(4) If the Secretary grants a deferment under paragraph (i)(2) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(5) If the Secretary grants a military service deferment based on a request from a borrower’s representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower’s representative of the outcome of the deferment request.

(Approved by the Office of Management and Budget under control number 1845-0021)

(Authority: 20 U.S.C. 1087a et seq.)


§ 685.205 Forbearance.

(a) General. “Forbearance” means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. Except as provided in paragraph (b)(5) of this section, if payments of interest are forbore, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and—

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower’s payments of principal are deferred under § 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower;

(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower is receiving a national service education award under title I of the National and Community Service Act of 1990; or

(5) The borrower—

(i) Is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in § 685.217; and

(ii) Is required, by the Secretary, before a forbearance is granted under § 685.205(a)(5)(i) to—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower’s intent to satisfy the requirements of § 685.217(c).

(6) For not more than three years during which the borrower or endorser—

(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower’s or endorser’s total monthly gross income.

(7) The borrower is a member of the National Guard who qualifies for a post-active duty student deferment, but does not qualify for a military service or other deferment, and is engaged in active State duty for a period of more than 30 consecutive days, beginning—

(i) On the day after the grace period expires for a Direct Subsidized Loan or Direct Unsubsidized Loan that has not entered repayment; or

(ii) On the day after the borrower ceases enrollment on at least a half-time basis, for a Direct Loan in repayment.

(b) Administrative forbearance. In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to—

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment period;

(3) The period beginning when the borrower entered repayment without the Secretary’s knowledge until the first payment due date was established;

(4) The period prior to a borrower’s filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan obtained by a parent borrower) has died, or the borrower has become totally permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower’s eligibility for discharge—

(i) Under § 685.214;

(ii) Under § 685.215;

(iii) Under § 685.216;

(iv) Under § 685.217; or

(v) Due to the borrower’s or endorser’s (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated repayment schedule causes the extension of the maximum repayment term;

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency;

(9) A period of up to 60 days necessary for the Secretary to collect and process documentation supporting the borrower’s request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower’s Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

(c) Period of forbearance. (1) The Secretary grants forbearance for a period of up to one year.
The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance. (Approved by the Office of Management and Budget under control number 1845-0021)

Authority: 20 U.S.C. 1087a et seq.


§ 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student’s attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student’s eligibility to borrow or to have a parent borrower on the student’s behalf (e.g., the student’s enrollment status, financial assistance, and employment records).

(b)(1) The borrower shall promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer’s address; and

(2) The borrower shall promptly notify the school of any change in address during enrollment.

(c) Borrower defenses. (1) In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. These proceedings include, but are not limited to, the following:

(i) Tax refund offset proceedings under 34 CFR 30.33.

(ii) Wage garnishment proceedings under section 488A of the Act.

(iii) Salary offset proceedings for Federal employees under 34 CFR part 31.

(iv) Credit bureau reporting proceedings under 31 U.S.C. 3711(f).

(2) If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

(i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(iii) Updating reports to credit bureaus to which the Secretary previously made adverse credit reports with regard to the borrower’s Direct Loan.

(3) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower’s successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in §685.309(c) unless the school received actual notice of the claim during that period. (Approved by the Office of Management and Budget under control number 1845-0021)

Authority: 20 U.S.C. 1087a et seq.


§ 685.207 Obligation to repay.

(a) Obligation of repayment in general. (1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under §685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower’s repayment of a Direct Loan may also be subject to the deferment provisions in §685.204, the forbearance provisions in §685.205, and the discharge provisions in §685.212.

(b) Direct Subsidized Loan repayment. (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) AAny borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (b)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii)(A) Any borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code and is called or ordered to active duty for a period of more than 30 days is entitled to have the active duty period excluded from the six-month grace period. The excluded period includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any single excluded period may not exceed 3 years.

(B) Any borrower who is in a grace period when called or ordered to active duty as specified in paragraph (c)(2)(ii)(A) of this section is entitled to a full six-month grace period upon completion of the excluded period.

(iii) During a grace period, the borrower is not required to make any principal payments on a Direct Subsidized Loan.
(3) A borrower is responsible for the interest that accrues on a Direct Unsubsidized Loan during in-school and grace periods. Interest begins to accrue on the day the first installment is disbursed. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Direct Unsubsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) Direct PLUS Loan repayment. The repayment period for a Direct PLUS Loan begins on the day the loan is fully disbursed. Interest begins to accrue on the day the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(e) Direct Consolidation Loan repayment. (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, the repayment period for a Direct Consolidation Loan begins and interest begins to accrue on the day the loan is made. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(2) In the case of a borrower whose consolidation application was received before July 1, 2006, a borrower who obtains a Direct Subsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (b) of this section.

(3) In the case of a borrower whose consolidation application was received before July 1, 2006, a borrower who obtains a Direct Unsubsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (c) of this section.

(f) Determining the date on which the grace period begins for a borrower in a correspondence program. For a borrower of a Direct Subsidized or Direct Unsubsidized Loan who is a correspondence student, the grace period specified in paragraphs (b)(2) and (c)(2) of this section begins on the earliest of—

(1) The day after the borrower completes the program;

(2) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(3) 60 days following the last day for completing the program as established by the school.

Authority: 20 U.S.C. 1087a et seq.


§ 685.208 Repayment plans.

(a) General. (1) Borrowers who entered repayment before July 1, 2006. (i) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (d), (f), (k) and (m) of this section, respectively.

(ii) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (d), and (f) of this section, respectively.

(ii) Borrowers entering repayment on or after July 1, 2006. (i) A borrower may repay a Direct Subsidized Loan or a Direct Unsubsidized Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k) and (m) of this section, respectively.

(ii) A Direct PLUS Loan that was made to a graduate or professional student borrower may be repaid under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or the income-based repayment plan, in accordance with paragraphs (b), (e), (g), (k) and (m) of this section, respectively.

(ii) A Direct PLUS Loan that was made to a parent borrower may be repaid under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan, in accordance with paragraphs (b), (e), (g), and (k) of this section, respectively.

(iii) A borrower may repay a Direct Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, the income contingent repayment plan, or, unless the Direct Consolidation Loan repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan, the income-based repayment plan, in accordance with paragraphs (c), (e), (h), (k) and (m) of this section, respectively. A Direct Consolidation Loan that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan may not be repaid under the income-based repayment plan.

(iv) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income contingent repayment plan, the income-based repayment plan, or an alternative repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (1) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under the income-contingent repayment plan or the income-based repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(5) Except as provided in §685.209 and §685.221 for the income contingent or income-based repayment plan, the repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

(b) Standard repayment plan for all Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers, regardless of when they entered repayment, and for Direct Consolidation Loan borrowers who entered repayment before July 1, 2006.

(1) Under this repayment plan, a borrower must repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) A borrower’s payments under this repayment plan are at least $50 per month, except that a borrower’s final payment may be less than $50.

(3) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(c) Standard repayment plan for Direct Consolidation Loan borrowers entering repayment on or after July 1, 2006.

(1) Under this repayment plan, a borrower must repay a loan in full by making fixed monthly payments over a repayment period that varies with the total amount of the borrower’s student loans, as described in paragraph (j) of this section.

(2) A borrower’s payments under this repayment plan are at least $50 per month, except that a borrower’s final payment may be less than $50.

(d) Extended repayment plan for all Direct Loan borrowers who entered repayment before July 1, 2006.

(1) Under this repayment plan, a borrower must repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower’s loans, as described in paragraph (j) of this section.

(2) A borrower makes fixed monthly payments of at least $50, except that a borrower’s final payment may be less than $50.
(3) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(e) Extended repayment plan for all Direct Loan borrowers entering repayment on or after July 1, 2006.

(1) Under this repayment plan, a new borrower with more than $30,000 in outstanding Direct Loans accumulated on or after October 7, 1998 must repay either a fixed annual or graduated repayment amount over a period not to exceed 25 years from the date the loan entered repayment. For this repayment plan, a new borrower is defined as an individual who has no outstanding principal or interest balance on a Direct Loan as of October 7, 1998, or on the date the borrower obtains a Direct Loan on or after October 7, 1998.

(2) A borrower’s payments under this plan are at least $50 per month, and will be more if necessary to repay the loan within the required time period.

(3) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(f) Graduated repayment plan for all Direct Loan borrowers who entered repayment before July 1, 2006.

(1) Under this repayment plan, a borrower must repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower’s loans, as described in paragraph (i) of this section.

(2) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) No scheduled payment under this repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50 percent of the payment amount that would be required under the standard repayment plan described in paragraph (b) of this section, or more than 150 percent of the payment amount that would be required under the standard repayment plan described in paragraph (b) of this section.

(g) Graduated repayment plan for Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers entering repayment on or after July 1, 2006.

(1) Under this repayment plan, a borrower must repay a loan in full by making payments at two or more levels over a period of time not to exceed ten years from the date the loan entered repayment.

(2) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) A borrower’s payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

(h) Graduated repayment plan for Direct Consolidation Loan borrowers entering repayment on or after July 1, 2006.

(1) Under this repayment plan, a borrower must repay a loan in full by making monthly payments that gradually increase in stages over the course of a repayment period that varies with the total amount of the borrower’s student loans, as described in paragraph (j) of this section.

(2) A borrower’s payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

(i) Repayment period for the extended and graduated plans described in paragraphs (d) and (f) of this section, respectively. Under these repayment plans, if the total amount of the borrower’s Direct Loans is—

(1) Less than $10,000, the borrower must repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower must repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower must repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower must repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower must repay the loans within 30 years of entering repayment.

(j) Repayment period for the standard and graduated repayment plans described in paragraphs (c) and (h) of this section, respectively. Under these repayment plans, if the total amount of the Direct Consolidation Loan and the borrower’s other student loans, as defined in § 685.220(i), is—

(1) Less than $7,500, the borrower must repay the Consolidation Loan within 10 years of entering repayment;

(2) Equal to or greater than $7,500 but less than $10,000, the borrower must repay the Consolidation Loan within 12 years of entering repayment;

(3) Equal to or greater than $10,000 but less than $20,000, the borrower must repay the Consolidation Loan within 15 years of entering repayment;

(4) Equal to or greater than $20,000 but less than $40,000, the borrower must repay the Consolidation Loan within 20 years of entering repayment;

(5) Equal to or greater than $40,000 but less than $60,000, the borrower must repay the Consolidation Loan within 25 years of entering repayment; and

(6) Equal to or greater than $60,000, the borrower must repay the Consolidation Loan within 30 years of entering repayment.

(k) Income contingent repayment plan.

(1) Under the income contingent repayment plan, a borrower’s monthly repayment amount is generally based on the total amount of the borrower’s Direct Loans, family size, and Adjusted Gross Income (AGI) reported by the borrower for the most recent year for which the Secretary has obtained income information. The borrower’s AGI includes the income of the borrower’s spouse. A borrower must make payments on a loan until the loan is repaid in full or until the loan has been in repayment through the end of the income contingent repayment period.

(2) The regulations in effect at the time a borrower enters repayment and selects the income contingent repayment plan or changes into the income contingent repayment plan from another plan govern the method for determining the borrower’s monthly repayment amount for all of the borrower’s Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower’s monthly repayment amount under the income contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower’s Direct Loans.

(3) Provisions governing the income contingent repayment plan are in § 685.209.

(l) Alternative repayment. (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary’s satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (h) of this section are not adequate to accommodate the borrower’s exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower’s exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) A borrower must repay a loan under an alternative repayment plan within 30 years of the date the loan entered repayment, not including periods of deferment and forbearance.

(5) If the amount of a borrower’s monthly payment under an alternative repayment...
(except Alaska and Hawaii) and the District of Columbia as published by the United States Department of Health and Human Services on an annual basis.1 For residents of Alaska and Hawaii, discretionary income is defined as a borrower’s AGI minus the amounts in the “HHS Poverty Guidelines for Alaska” and the “HHS Poverty Guidelines for Hawaii” respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower’s family, the Secretary applies the HHS Poverty Guidelines for the borrower’s family size.

1The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

§ 685.209 Income contingent repayment plan.

(a) Repayment amount calculation. (1) The amount the borrower would repay is based upon the borrower’s Direct Loan debt when the borrower’s first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower’s spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower’s spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers’ Direct Loan debts at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of—

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower’s adjusted gross income (AGI) as shown in the income percentage factor table in a notice published annually by the Secretary in the Federal Register; or

(ii) 20 percent of discretionary income.

(b) Treatment of married borrowers. (1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse’s written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers’ payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower’s debt is the proportion of the payments that equals the same proportion as that borrower’s debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) Other features of the income contingent repayment plan—(1) Alternative documentation of income. If a borrower’s AGI is not available or if, in the Secretary’s opinion, the borrower’s reported AGI does not reasonably reflect the borrower’s current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower’s monthly repayment amount.

(2) First and second year borrowers. The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary’s opinion, the borrower’s reported AGI does not reasonably reflect the borrower’s current income.

(3) Adjustments to repayment obligations. The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower’s spouse, warrant an adjustment to the borrower’s repayment obligations.

(4) Repayment period. (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes—

(A) Periods in which the borrower makes payments under the income-contingent repayment plan on loans that are not in default;

(B) Periods in which the borrower makes reduced monthly payments under the income-based repayment plan or a recalculated reduced monthly payment after the borrower no longer has a partial financial hardship or stops making income-based payments, as provided in §685.221(d)(1)(i);

(C) Periods in which the borrower made monthly payments under the standard repayment plan after leaving the income-
(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower’s withdrawal of consent.

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower’s new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan or the income-based repayment plan, the repayment period is calculated as described in § 685.209(c)(4) or § 685.221(b)(6), respectively.

Authority: 20 U.S.C. 1087a et seq.


§ 685.211 Miscellaneous repayment provisions.

(a) Payment application and prepayment. (1) Except as provided for the income-based repayment plan under § 685.221(c)(1), the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower’s repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) Repayment incentives. To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

(c) Refunds and returns of title IV, HEA program funds from schools. The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under § 686.22 against the borrower’s outstanding principal and notifies the borrower of the refund or return.
(d) Default—(1) Acceleration. If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) Collection charges. If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with § 685.202(e).

(3) Collection of a defaulted loan. (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower’s Federal income tax refund, and garnishing the borrower’s wages.

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Consolidation Loan, or a student Direct PLUS Loan, the Secretary may designate the income contingent repayment plan or the income-based repayment plan for the borrower.

(e) Ineligible borrowers. (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school’s or the Secretary’s knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information, has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program funds, or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (e)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days from the date the letter is mailed, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (e)(2) of this section, the borrower is in default on the entire loan.

(4) A borrower may not consolidate a loan under § 685.220 for which the borrower is wholly or partially ineligible.

(f) Rehabilitation of defaulted loans. (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes nine voluntary, reasonable, and affordable monthly payments within 20 days of the due date during ten consecutive months. The amount of such a payment is determined on the basis of the borrower’s total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any consumer reporting agency to which the default was reported to remove the default from the borrower’s credit history.

(2) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(3) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(4) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(Authority: 20 U.S.C. 1087a et seq.)


§ 685.212 Discharge of a loan obligation.

(a) Death. (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on an original or certified copy of the borrower’s (or student’s in the case of a Direct PLUS loan obtained by a parent borrower) death certificate, or an accurate and complete photocopy of the original or certified copy of the borrower’s (or student’s in the case of a Direct PLUS loan obtained by a parent borrower) death certificate.

(2) If an original or certified copy of the death certificate or an accurate and complete photocopy of the original or certified copy of the death certificate is not available, the Secretary discharges the loan only if other reliable documentation establishes, to the Secretary’s satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate only under exceptional circumstances and on a case-by-case basis.

(3) In the case of a Direct PLUS Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan obtained on behalf of a student who dies, the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the student’s death, attributable to that Direct PLUS Loan or Federal PLUS Loan.

(b) Total and permanent disability. If a borrower meets the requirements in § 685.213(c), the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(c) Bankruptcy. If a borrower’s obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower to make any further payments on the loan.

(d) Closed schools. If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(e) False certification and unauthorized disbursement. If a borrower meets the requirements in § 685.215, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the discharge applicable to any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(f) Unpaid refunds. If a borrower meets the requirements in § 685.216, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the amount of the loan equal to the unpaid refund and any accrued interest and other charges associated with the unpaid refund. In the case of a Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the unpaid refund owed on any loan disbursed, in whole or in part, on or after January 1, 1986 that was included in the consolidation loan.

(g) Payments received after eligibility for discharge—(1) For the discharge conditions in paragraphs (a), (c), (d), and (e) of this section. Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower’s estate, any payments received after the date that the eligibility requirements for discharge were met.

(2) For the discharge condition in paragraph (b) of this section. Upon making a final determination of eligibility for discharge based on total and permanent disability, the Secretary returns to the sender any payments received after the date the borrower became totally and permanently disabled, as certified under § 685.213(b).

(3) For the discharge condition in paragraph (f) of this section. Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to
the sender payments received in excess of the amount owed on the loan after applying the unpaid refund.

(h) Teacher loan forgiveness program. If a new borrower meets the requirements in § 685.217, the Secretary repays up to $5,000, or up to $17,500, of the borrower’s Direct Subsidized Loans, Direct Unsubsidized Loans, and, in certain cases, Direct Consolidation Loans.

(i) Public Service Loan Forgiveness Program. If a borrower meets the requirements in §685.219, the Secretary cancels the remaining principal and accrued requirements in §685.219, the Secretary cancels the remaining principal and accrued interest of the borrower’s eligible Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS Loan, and Direct Consolidation Loan.

(j) September 11 survivors discharge. If a borrower meets the requirements in § 685.218, the Secretary discharges the obligation of the borrower and any endorser to make any further payments—

(1) On an eligible Direct Loan if the borrower qualifies as the spouse of an eligible public servant;

(2) On the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim, if the borrower qualifies as the spouse of an eligible victim;

(3) On a Direct PLUS Loan incurred on behalf of an eligible victim if the borrower qualifies as an eligible parent; and

(4) On the portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim, if the borrower qualifies as an eligible parent.

(Approved by the Office of Management and Budget under control number 1845-0021)

Authority: 20 U.S.C. 1087a et seq.


§ 685.213 Total and permanent disability discharge.

(a) General. (1) A borrower’s Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower’s loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran’s loan discharge application is processed in accordance with paragraph (c) of this section.

(b) Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). (1) Borrower application for discharge. To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower’s application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower’s eligibility for discharge.

(2) Determination of eligibility. (i) If, after reviewing the borrower’s application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower’s application.

(ii) Upon making a determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary discharges the borrower’s obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower’s loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower’s obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower’s application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary’s review of the borrower’s discharge application, the Secretary may arrange for an additional review of the borrower’s condition by an independent physician at no expense to the borrower.

(3) Treatment of disbursements made during the period from the date of the physician’s certification until the date of discharge. If a borrower received a title IV loan or TEACH Grant prior to the date the physician certified the borrower’s discharge application and a disbursement of that loan or grant is made during the period from the date of the physician’s certification until the date the Secretary grants a discharge under this section, the processing of the borrower’s loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(4) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates a borrower’s obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower’s obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower’s obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower’s obligation to repay the loan was reinstated.

(iii) The Secretary’s notification under paragraph (b)(4)(ii)(A) of this section will
include—
(A) The reason or reasons for the reinstatement;
(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and
(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(5) Borrower's responsibilities after a total and permanent disability discharge. During the three-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative must—
(i) Promptly notify the Secretary of any changes in address or phone number;
(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(4)(ii)(A) of this section; and
(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).

(1) Veteran's application for discharge. To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) Determination of eligibility. (i) If the Secretary determines, based on review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.
(ii)(A) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.
(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.
(C) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(2) In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall—
(i) State that the borrower (or the student on whose behalf a parent borrowed)—
(ii) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;
(iii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and
(iv) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;
(2) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and
(3) State that the borrower (or student)—
(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and
(ii) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) Cooperation by borrower in enforcement actions. (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall—
(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;
(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) Transfer to the Secretary of borrower’s right of recovery against third parties. (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any rights the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents money that is borrowed to fund the training program supported by the loan.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary’s ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower’s (or student’s) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) Discharge procedures. (1) After confirming the date of a school’s closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(2) If the borrower’s current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower’s current address is unknown, the Secretary attempts to locate the borrower and determines the borrower’s potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school’s licensing agency, the school’s accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(2) Unauthorized payment. The Secretary discharges a borrower’s (and any endorser’s) obligation to repay a Direct Loan if the school, without the borrower’s authorization, endorsed the borrower’s loan check or signed the borrower’s authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) Relief pursuant to discharge. (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section discharges the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) Borrower qualification for discharge. In order to qualify for discharge under this section, the borrower shall submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall meet the requirements in paragraphs (c)(1) through (6) of this section.

(1) Ability to benefit. In the case of a borrower requesting a discharge based on defective testing of the student’s ability to benefit, the borrower shall state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received a disbursement of a loan, in whole or in part, on or after January 1, 1986 to attend a school; and

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school’s training and did not meet the eligibility requirements described in 34 CFR...
part 688 and section 484(d) of the Act, as applicable;

(2) Unauthorized loan. In the case of a borrower requesting a discharge because the school signed the borrower’s name on the loan application or promissory note without the borrower’s authorization, the borrower shall—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) Unauthorized payment. In the case of a borrower requesting a discharge because the school, without the borrower’s authorization, endorsed the borrower’s loan check or signed the borrower’s authorization for electronic funds transfer, the borrower shall—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) Identity theft. In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual shall—

(i) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(ii) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(iii) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(iv) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide—

(A) Authentic specimens of the signature of the individual, as provided in paragraph (c)(2)(i), or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(B) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(5) Claim to third party. The borrower shall state whether the borrower (or student) has made a claim with respect to the school’s false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower’s loan obligation.

(6) Cooperation with Secretary. The borrower shall state that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in §685.214(d) and to transfer any right to recovery against a third party to the Secretary as described in §685.214(e).

(7) Discharge without an application. The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary’s possession, that the borrower qualifies for a discharge.

(d) Discharge procedures. (1) If the Secretary determines that a borrower’s Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary’s mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary’s records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Approved by the Office of Management and Budget under control number 1845-0021)

(Authority: 20 U.S.C. 1087a et seq.)


§ 685.216 Unpaid refund discharge.

(a)(1) Unpaid refunds in closed school situations. In the case of a school that has closed, the Secretary discharges a former or current borrower’s (and any endorser’s) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) Unpaid refunds in open school situations. (i) In the case of a school that is open, the Secretary discharges a former or current borrower’s (and any endorser’s) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower (or the student on whose behalf a parent borrowed) is not attending the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (a)(2)(i)(C) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) Relief to borrower following discharge. (1) If the borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest and
other charges) owed by the borrower at the
time of discharge.

(2) The Secretary reports the discharge of a portion of a loan under this section to all
credit reporting agencies to which the Secretary previously reported the status of the
loan.

(c) Borrower qualification for discharge. (1) Except as provided in paragraph (c)(2) of
this section, to receive a discharge of a portion of a loan under this section, a
borrower must submit a written application to the Secretary. The application requests
the information required to calculate the amount of the discharge and requires the
borrower to sign a statement swearing to the accuracy of the information in the
application. The statement need not be notarized but must be made by the borrower
under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on
whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in
whole or in part, on or after January 1, 1986
to attend a school;

(B) Did not attend, withdrew, or was
terminated from the school within a
timeframe that entitled the borrower to a
refund; and

(C) Did not receive the benefit of a refund to
which the borrower was entitled either from
the school or from a third party, such as the
holder of a performance bond or a tuition
recovery program;

(ii) State whether the borrower (or student)
has any other application for discharge
pending for this loan; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon
request other documentation reasonably
available to the borrower that demonstrates
that the borrower meets the qualifications for
discharge under this section; and

(B) Agrees to cooperate with the Secretary
in enforcement actions as described in §
685.214(d) and to transfer any right to
recovery against a third party to the
Secretary as described in §685.214(e).

(2) The Secretary may discharge a portion
of a loan under this section without an
application if the Secretary determines,
based on information in the Secretary’s
possession, that the borrower qualifies for a
discharge.

(d) Determination of amount eligible for
discharge. (1) The Secretary determines the
amount eligible for discharge based on
information showing the refund amount or by
applying the appropriate refund formula to
information that the borrower provides or
that is otherwise available to the Secretary.
For purposes of this section, all unpaid
refunds are considered to be attributed to
loan proceeds.

(2) If the information in paragraph (d)(1) of
this section is not available, the Secretary
uses the following formulas to determine the
amount eligible for discharge:

(i) In the case of a student who fails to
attend or whose withdrawal or termination
date is before October 7, 2000 and who
completes less than 60 percent of the loan
period, the Secretary discharges the lesser
of the institutional charges unearned or the
loan amount. The Secretary determines the
amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of
time remaining in the loan period after the
student’s last day of attendance to the actual
length of the loan period; and

(B) Multiplying the resulting factor by the
institutional charges assessed the student
for the loan period.

(ii) In the case of a student who fails to
attend or whose withdrawal or termination
date is on or after October 7, 2000 and who
completes less than 60 percent of the loan
period, the Secretary discharges the loan
amount unearned. The Secretary determines the
loan amount unearned by—

(A) Calculating the ratio of the amount of
time remaining in the loan period after the
student’s last day of attendance to the actual
length of the loan period; and

(B) Multiplying the resulting factor by the
total amount of title IV grants and loans
received by the student, or, if unknown, the
loan amount.

(iii) In the case of a student who completes
60 percent or more of the loan period, the
Secretary does not discharge any amount
because a student who completes 60
percent or more of the loan period is not
entitled to a refund.

(e) Discharge procedures. (1) Except as
provided in paragraph (c)(2) of this section,
if the Secretary learns that a school did not
make a refund of loan proceeds owed under
applicable law and regulations, the
Secretary sends the borrower a discharge
application and an explanation of the
qualifications and procedures for obtaining a
discharge. The Secretary also promptly
suspending any efforts to collect from the
borrower on any affected loan. The
Secretary may continue to receive borrower
payments.

(2) If a borrower who is sent a discharge
application fails to submit the application
within 60 days of the Secretary’s sending
the discharge application, the Secretary
resumes collection and grants forbearance
of principal and interest for the period in
which collection activity was suspended.
The Secretary may capitalize any interest
accrued and not paid during that period.

(3) If a borrower qualifies for a discharge,
the Secretary notifies the borrower in writing.
The Secretary resumes collection and
grants forbearance of principal and interest
on the portion of the loan not discharged for
the period in which collection activity was
suspected. The Secretary may capitalize
any interest accrued and not paid during that
period.

(4) If a borrower does not qualify for a
discharge, the Secretary notifies the
borrower in writing of the reasons for the
determination. The Secretary resumes
collection and grants forbearance of
principal and interest for the period in which
collection activity was suspended. The
Secretary may capitalize any interest
accrued and not paid during that period.

(Approved by the Office of Management and
Budget under control number 1845-0021)

(Authority: 20 U.S.C. 1087a et seq.)

(§ 685.217 Teacher loan forgiveness
program.

(a) General. (1) The teacher loan
forgiveness program is intended to
encourage individuals to enter and continue
in the teaching profession. For new
borrowers, the Secretary repays the amount
specified in this paragraph (a) on the
borrower’s subsidized and unsubsidized
Federal Stafford Loans, Direct Subsidized
Loans, Direct Unsubsidized Loans, and in
certain cases, Federal Consolidation Loans
or Direct Consolidation Loans. The
forgiveness program is only available to a
borrower who has no outstanding loan
balance under the FFEL Program or the
Direct Loan Program on October 1, 1998 or
who has no outstanding loan balance on the
date he or she obtains a loan after October
1, 1998.

(2)(i) The borrower must have been
employed at an eligible elementary or
secondary school that serves low-income
families or by an educational service agency
that serves low-income families as a full-
time teacher for five consecutive complete
academic years. The required five years of
teaching may include any combination of
qualifying teaching service at an eligible
elementary or secondary school or an
eligible educational service agency.

(ii) Teaching at an eligible elementary or
secondary school may be counted toward
the required five consecutive complete
academic years only if at least one year of
teaching was after the 1997-1998 academic
year.

(iii) Teaching at an eligible educational
service agency may be counted toward the
required five consecutive complete
academic years only if the consecutive five-
year period includes qualifying service at an
eligible educational service agency
performed after the 2007-2008 academic
year.

(3) All borrowers eligible for teacher loan
forgiveness may receive loan forgiveness of
up to a combined total of $5,000 on the
borrower’s eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower’s eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an elementary secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower’s fifth year of qualifying teaching service.

(b) Definitions. The following definitions apply to this section:

Academic year means one complete school year at the same school, or two complete and consecutive half years at different schools, or two complete and consecutive half years from different school years at either the same school or different schools. Half years exclude summer sessions and generally fall within a twelve-month period. For schools that have a year-round program of instruction, a minimum of nine months is considered an academic year.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Elementary school means a public or nonprofit private school that provides elementary education as determined by State law or the Secretary if that school is not in a State.

Full-time means the standard used by a State in defining full-time employment as a teacher. For a borrower teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

Highly qualified means highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

Secondary school means a public or nonprofit private school that provides secondary education as determined by State law or the Secretary if the school is not in a State.

Teacher means a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including Special Education teachers.

(c) Borrower eligibility. (1) A borrower who has been employed at an elementary or secondary school or an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

(i) Is in a school district that qualifies for funds under title I of the Elementary and Secondary Education Act of 1965, as amended;

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school’s or educational service agency’s total enrollment is made up of children who qualify for services provided under title I; and

(iii) Is listed in the Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. If this directory is not available before May 1 of any year, the previous year’s directory may be used. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

(2) If the school or educational service agency at which the borrower is employed meets the requirements specified in paragraph (c)(1) of this section for at least one year of the borrower’s five consecutive complete academic years of teaching and fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that borrower.

(3) In the case of a borrower whose five consecutive complete years of qualifying teaching service began before October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children’s disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science to children with disabilities at an eligible elementary or secondary school and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children’s disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(4) In the case of a borrower whose five consecutive years of qualifying teaching service began on or after October 30, 2004, the borrower—

(i) May receive up to $5,000 of loan forgiveness if the borrower taught full time at an eligible elementary or secondary school or educational service agency and was a highly qualified elementary or secondary school teacher.

(ii) May receive up to $17,500 of loan forgiveness if the borrower—

(A) Taught mathematics or science on a full-time basis at an eligible secondary school, or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency and was a highly qualified mathematics or science teacher; or

(B) Taught as a special education teacher on a full-time basis to children with disabilities at an eligible elementary or secondary school or educational service agency and was a highly qualified special education teacher whose special education training corresponded to the children’s disabilities and who has demonstrated knowledge and teaching skills in the content areas of the elementary or secondary school curriculum.

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.

(5) To qualify for loan forgiveness as a highly qualified teacher, the teacher must have been a highly qualified teacher for all five years of eligible teaching service.

(6) For teacher loan forgiveness applications received by the Secretary on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is
exempt from State certification requirements unless otherwise applicable under State law may qualify for loan forgiveness under paragraphs (c)(3)(ii) or (c)(4) of this section if—

(i) The private school teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in applicable grade levels and subject areas;

(ii) The competency tests are recognized by 5 or more States for the purposes of fulfilling the highly qualified teacher requirements under section 9101 of the Elementary and Secondary Education Act of 1965; and

(iii) The private school teacher achieves a score on each test that equals or exceeds the average passing score for those 5 states.

(7) The academic year may be counted as one of the borrower’s five consecutive complete academic years if the borrower completes at least one-half of the academic year and the borrower’s employer considers the borrower to have fulfilled his or her contract requirements for the academic year for the purposes of salary increases, tenure, and retirement if the borrower is unable to complete an academic year due to—

(i) A return to postsecondary education, on at least a half-time basis, that is directly related to the performance of the service described in this section;

(ii) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, et seq.); or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code.

(8) If a borrower meets the requirements of paragraph (c)(7) of this section, the borrower’s period of postsecondary education, active duty, or qualifying FMLA condition including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

(10) A borrower is not eligible for teacher loan forgiveness on a defaulted loan unless the borrower has made satisfactory repayment arrangements to re-establish title IV eligibility, as defined in § 685.200(b).

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428k of the Act.

(d) Forgiveness amount. (1) A qualified borrower is eligible for forgiveness of up to $5,000, or up to $17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower’s Direct Subsidized Loan or Direct Unsubsidized Loan or Direct Consolidation Loan obligation that is outstanding after the borrower completes her or his fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the Direct Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness under this section.

(2) A borrower may not receive more than a total of $5,000, or $17,500 if the borrower meets the requirements of paragraphs (c)(3)(ii) or (c)(4)(ii) of this section, in loan forgiveness for outstanding principal and accrued interest under both this section and under section 34 CFR 682.216.

(3) The Secretary does not refund payments that were received from or on behalf of a borrower who qualifies for loan forgiveness under this section.

(e) Application. (1) A borrower, after completing the qualifying teacher service, must request loan forgiveness from the Secretary on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Unless otherwise instructed by the borrower, applies the proceeds of the loan forgiveness first to any outstanding Direct Unsubsidized Loan balances, next to any outstanding Direct Subsidized Loan balances, next to any qualifying Direct Unsubsidized Consolidation Loan balances, and last to any qualifying outstanding Direct Subsidized Consolidation Loan balances.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary notifies the borrower of this determination.

(Approved by the Office of Management and Budget under control number 1845-0021)


(a) Definition of terms. As used in this section—

(1) Eligible public servant means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii) (A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Eligible victim means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) Eligible parent means the parent of an eligible victim if—

(i) The parent owes a Direct PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a Direct Consolidation Loan that was used to repay a Direct PLUS Loan or a FFEL PLUS Loan incurred on behalf of an eligible victim.

(4) Died due to injuries suffered in the terrorist attacks on September 11, 2001 means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(5) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(6) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the...
injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual’s medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) Immediate aftermath means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) September 11 survivors discharge. (1) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on an eligible Direct Loan if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The Secretary discharges the obligation of a borrower and any endorser to make any further payments towards the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on a Direct PLUS Loan incurred on behalf of an eligible victim.

(ii) The Secretary discharges the obligation of the borrower and any endorser to make any further payments towards the portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim.

(4) The parent of an eligible public servant may qualify for a discharge of a Direct PLUS Loan incurred on behalf of the eligible public servant, or the portion of a Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) Applying for discharge. (1) In accordance with the procedures in paragraphs (c)(2) through (c)(4) of this section, the Secretary discharges—

(i) A Direct Loan owed by the spouse of an eligible public servant;

(ii) A Direct PLUS Loan incurred on behalf of an eligible victim.

(iii) The portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the Secretary suspends collection activity on the borrower’s eligible Direct Loans and requests that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the Secretary determines that the borrower does not qualify for a discharge under this section, or the Secretary does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the Secretary that the borrower claims to qualify for a discharge, the Secretary resumes collection and grants forbearance of payment of both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application for the discharge has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection on the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(4) If the Secretary determines that the borrower qualifies for a discharge under this section, the Secretary notifies the borrower that the loan has been discharged or, in the case of a partial discharge of a Direct Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Direct Consolidation Loan, the Secretary returns to the sender any payments received by the Secretary after the date the loan was discharged.

(5) The Secretary discharges a Direct Loan owed by an eligible victim or an eligible public servant under the procedures in § 685.212 for a discharge based on death or under the procedures in § 685.213 for a discharge based on a total and permanent disability.

(d) Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001. (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual’s death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual’s loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist
attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(i) or (d)(3), and (d)(2)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Perkins Loan, a FFEL Program loan or another Direct Loan because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan or another Direct Loan because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) The Secretary may discharge the loan based on other reliable documentation that establishes, to the Secretary’s satisfaction, that the eligible public servant or the eligible victim died due to injuries suffered in the September 11, 2001 attacks. The Secretary discharges a loan based on documentation other than the documentation specified in paragraphs (d)(1) through (d)(5) of this section only under exceptional circumstances and on a case-by-case basis.

(e) Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001. (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; or

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan, or another Direct Loan because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan, or another Direct Loan because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) To establish the borrower’s relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Direct Loan Consolidation Loan applications or an approved Direct PLUS Loan application.

(g) Limitations on discharge. (1) Only outstanding Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans and Direct Consolidation Loans for which amounts were owed on September 11, 2001, or outstanding Direct Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2)(i) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower’s Direct Loans prior to the date the loan was discharged.

(ii) A borrower may apply for a partial discharge of a joint Direct Consolidation loan due to death or total and permanent disability under the procedures in § 685.212(a) or § 685.213. If the borrower is granted a partial discharge under the procedures in § 685.212(a) or § 685.213 the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1) or § 685.212(g)(2).

(iii) A borrower may apply for a discharge of a Direct PLUS loan due to the death of the student for whom the borrower received the PLUS loan under the procedures in § 685.212(a). If a borrower is granted a discharge under the procedures in § 685.212(a), the borrower may qualify for a refund of payments in accordance with § 685.212(g)(1).

(iii) A determination that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.
September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 685.213.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a Direct PLUS Loan or on a Direct Consolidation Loan that was used to repay a Direct Loan or FFEL Program PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.


§ 685.219 Public Service Loan Forgiveness Program.

(a) General. The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) Definitions. The following definitions apply to this section:

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Eligible Direct loan means a Direct Subsidized Loan, Direct Unsubsidized Loan, Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual who is hired and paid by a public service organization.

Full-time (1) means working in qualifying employment in one or more jobs for the greater of—

(i)(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time.

(2) Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2612(a)(1) and (3) is not considered in determining the average hours worked on an annual or contract basis.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government, but does not include a member of the U.S. Congress.

Law enforcement means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means “active duty” service or “full-time National Guard duty” as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, “Military service” means service on behalf of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service organization means:

(1) A Federal, State, local, or Tribal government organization, agency, or entity;

(2) A public child or family service agency;

(3) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(4) A Tribal college or university; or

(5) A private organization that—

(i) Provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated child care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services; and

(ii) is not a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.

(c) Borrower eligibility. (1) A borrower may obtain loan forgiveness under this program if he or she—

(i) Is not in default on the loan for which forgiveness is requested;

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(ii) of this section;

(B) At the time of application for loan forgiveness, and

(C) At the time the remaining principal and accrued interest are forgiven;

(iii) Makes 120 separate monthly payments after October 1, 2007, on eligible Direct loans for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps or Peace Corps position, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and

(iv) Makes the required 120 monthly payments under one or more of the following repayment plans—

(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with §685.221;

(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with §685.209;

(C) A standard repayment plan, as determined in accordance with §685.208(b);

(D) Any other repayment plan if the monthly payment amount paid is not less than what would have been paid under the Direct Loan standard repayment plan described in §685.208(b).

(2) If a borrower makes a lump sum payment on an eligible loan for which the borrower is seeking forgiveness by using all or part of a Segal Education Award received after a year of AmeriCorps service, or by using all or part of a Peace Corps transition payment if the lump sum payment is made no later than six months after leaving the Peace Corps, the Secretary will consider the borrower to have made qualifying payments equal to the lesser of—

(i) The number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have made under paragraph (c)(1)(iv) of this section; or

(ii) Twelve payments.

(d) Forgiveness Amount. The Secretary forgives the principal and accrued interest that remains on all eligible loans for which loan forgiveness is requested by the borrower. The Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section.

(e) Application. (1) After making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request loan
forgiveness on a form provided by the Secretary.

(2) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary
(i) Notifies the borrower of this determination; and
(ii) Forges the outstanding balance of the eligible loans.

(3) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary resumes collection of the loan and grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(Authority: 20 U.S.C. 1087e(m))


§ 685.220 Consolidation.

(a) Direct Consolidation Loans. A borrower may consolidate education loans made under certain Federal programs into a Direct Consolidation Loan. Loans consolidated into a Direct Consolidation Loan are discharged when the Direct Consolidation Loan is originated.

(b) Loans eligible for consolidation. The following loans may be consolidated into a Direct Consolidation Loan:

(1) Federal Subsidized Stafford Loans.
(2) Guaranteed Student Loans.
(3) Federal Insured Student Loans (FISL).
(4) Direct Subsidized Loans.
(5) Direct Subsidized Consolidation Loans.
(6) Federal Perkins Loans.
(7) National Direct Student Loans (NDSL).
(8) National Defense Student Loans (NDSL).
(9) Federal PLUS Loans.
(10) Parent Loans for Undergraduate Students (PLUS).
(11) Direct PLUS Loans.
(12) Direct PLUS Consolidation Loans.
(13) Federal Unsubsidized Stafford Loans.
(14) Federal Supplemental Loans for Students (SLS).
(15) Federal Consolidation Loans.
(16) Direct Unsubsidized Loans.
(17) Direct Unsubsidized Consolidation Loans.
(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.

(20) Health Education Assistance Loans (HEAL).

(21) Nursing loans made under subpart II of part B of title VIII of the Public Health Service Act.

(c) Subsidized, unsubsidized, and PLUS components of Direct Consolidation Loans.

(1) The portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(1) through (5) of this section, and attributable to the portion of Federal Consolidation Loans under paragraph (b)(15) of this section that is eligible for interest benefits during a deferment period under Section 428C(b)(4)(C) of the Act, is referred to as a Direct Subsidized Consolidation Loan.

(2) Except as provided in paragraph (c)(1) of this section, the portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(6) through (8) and (b)(13) through (21) of this section is referred to as a Direct Unsubsidized Consolidation Loan.

(3) The portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(9) through (12) of this section is referred to as a Direct PLUS Consolidation Loan.

(d) Eligibility for a Direct Consolidation Loan.

(1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:

(i) At the time the borrower applies for a Direct Consolidation Loan, the borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and—

(1) The borrower is unable to obtain a FFEL consolidation loan;

(2) The borrower is unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

(3) The borrower wishes to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service;

(4) The borrower has an FFEL Consolidation Loan that is in default or has been submitted to the guaranty agency by the lender for default aversion, and the borrower wants to consolidate the FFEL Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan or an income-based repayment plan; or

(5) The borrower has a FFEL Consolidation Loan and the borrower wants to consolidate that loan into the Direct Loan Program for purposes of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service.

(ii) At the time the borrower applies for the Direct Consolidation Loan, the borrower is—

(A) In the grace period;

(B) In a repayment period but not in default;

(C) In default but has made satisfactory repayment arrangements, as defined in applicable program regulations, on the defaulted loan; or

(D) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in § 685.208(k) or the income-based repayment plan described in § 685.208(m), and signs the consent form described in § 685.209(d)(5) or § 685.221(e).

(E) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(F) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

(iii) On the loans being consolidated, the borrower is—

(A) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(B) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

(iv) The borrower certifies that no other application to consolidate any of the borrower's loans listed in paragraph (b) of this section is pending with any other lender.

(v) The borrower agrees to notify the Secretary of any change in address.

(2) A borrower may not consolidate a Direct Consolidation Loan into a new consolidation loan under this section or under § 682.201(c) unless at least one additional eligible loan is included in the consolidation.

(3) Eligible loans received before or after the date a Direct Consolidation Loan is made may be added to a subsequent Direct Consolidation Loan.

(e) Application for a Direct Consolidation Loan. To obtain a Direct Consolidation Loan, a borrower shall submit a completed application to the Secretary. A borrower may add eligible loans to a Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Direct Consolidation Loan is originated.

(f) Origination of a consolidation loan. (1)(i) The holder of a loan that a borrower wishes to consolidate into a Direct Loan shall complete and return the Secretary's request for certification of the amount owed within 10
business days of receipt or, if it is unable to provide the certification, provide to the Secretary a written explanation of the reasons for its inability to provide the certification.

(ii) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation the amount necessary to discharge the loan.

(iii) For a Direct loan or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to no more than those authorized under the FFEL Program.

(2) Upon receipt of the proceeds of a Direct Consolidation Loan, the holder of a consolidated loan shall promptly apply the proceeds to fully discharge the borrower's obligation on the consolidated loan. The holder of a consolidated loan shall notify the borrower that the loan has been paid in full.

(3) The principal balance of a Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge that loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge that loan, the holder shall notify the Secretary in writing of the remaining amount due on the loan. The Secretary promptly pays the remaining amount due.

(g) Interest rate. The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established in § 685.202(a)(3)(i). The interest rate on a Direct PLUS Consolidation Loan is the rate established in § 685.202(a)(3)(i).

(h) Repayment plans. A borrower may choose a repayment plan for a Direct Consolidation Loan in accordance with § 685.208, except that a borrower who became eligible to consolidate a defaulted loan under paragraphs (d)(1)(i)(D) of this section must repay the consolidation loan under the income contingent repayment plan unless—

(1) Repayment period. (1) Except as noted in paragraph (i)(4) of this section, the repayment period for a Direct Consolidation Loan begins on the day the loan is disbursed.

(2) (i) Borrowers who entered repayment before July 1, 2006. The Secretary determines the repayment period under § 685.208(i) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraphs (i)(3)(i), (ii), and (iii) of this section.

(ii) Borrowers entering repayment on or after July 1, 2006. The Secretary determines the repayment period under § 685.208(j) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraphs (i)(3)(i) and (ii) of this section.

(iii) The total amount of outstanding balances on the other education loans used to determine the repayment period under § 685.208(i) and (j) may not exceed the amount of the Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(4) Borrowers whose consolidation application was received before July 1, 2006. A Direct Consolidation Loan receives a grace period if it includes a Direct Loan or FFEL Program loan for which the borrower is in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

(i) Repayment schedule. (1) The Secretary provides a borrower of a Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (e) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) Refunds and returns of title IV, HEA program funds received from schools. If a lender receives a refund or return of title IV, HEA program funds from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender shall transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

(i) Special provisions for joint consolidation loans. The provisions of paragraphs (k)(1) through (3) of this section apply to a Direct Consolidation Loan obtained by two married borrowers in accordance with the regulations that were in effect for consolidation applications received prior to July 1, 2006.

(1) Deferral. To obtain a deferment on a joint Direct Consolidation Loan under § 685.204, both borrowers must meet the requirements of that section.

(2) Forbearance. To obtain forbearance on a joint Direct Consolidation Loan under § 685.205, both borrowers must meet the requirements of that section.

(3) Discharge. (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the borrower’s death, attributable to any of that borrower’s loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date the borrower became totally and permanently disabled, attributable to any of that borrower’s loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

(Approved by the Office of Management and Budget under control number 1845-0021)

[Authority: 20 U.S.C. 1078-8, 1087a et seq.]


GPO Editorial Note: At 73 FR 63257, Oct. 23, 2008, §685.220 was amended; however, in paragraph (d)(1)(ii)(D), there was no reference to “685.220(k)”. The amendment could not be incorporated due to inaccurate amendatory instruction.

§685.221 Income-based repayment plan.

(a) Definitions. As used in this section—
Adjust gross income (AGI) means the borrower’s adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower’s and spouse’s income. For a married borrower filing separately, AGI includes only the borrower’s income.

Eligible loan means any outstanding loan made to a borrower under the FFEL or Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.

Family size means the number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower’s family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(i) Live with the borrower; and

(ii) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size.

Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

Partial financial hardship means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual federal tax return, the annual amount due on all of the borrower’s eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower’s AGI and 150 percent of the poverty guideline for the borrower’s family size; or

(ii) For a married borrower who files a joint federal tax return with his or her spouse, the annual amount due on all of the borrower’s eligible loans and, if applicable, the spouse’s eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower’s and spouse’s AGI, and 150 percent of the poverty guideline for the borrower’s family size.

Poverty guideline refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

Terms of the repayment plan. (1) A borrower may select the income-based repayment plan only if the borrower has a partial financial hardship. The borrower’s aggregate monthly loan payments under the income-based repayment plan are limited to no more than 15 percent of the amount by which the borrower’s AGI exceeds 150 percent of the poverty guideline applicable to the borrower’s family size, divided by 12.

The Secretary adjusts the calculated monthly payment if—

(i) Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the total amount of the borrower’s eligible loans are not Direct Loans, in which case the Secretary determines the borrower’s adjusted monthly payment by multiplying the calculated payment by the percentage of the total amount of eligible loans that are Direct Loans;

(ii) Both the borrower and borrower’s spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

(A) Each borrower’s percentage of the couple’s total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(2)(ii)(A) of this section; and

(C) If the borrower’s loans are held by multiple holders, the borrower’s adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (b)(2)(ii)(B) of this section by the percentage of the outstanding principal amount of eligible loans that are Direct Loans;

(iii) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section is less than $5.00, in which case the borrower’s monthly payment is $0.00; or

(iv) The calculated amount under paragraph (b)(1), (b)(2)(i), or (b)(2)(ii) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower’s monthly payment is $10.00.

If the borrower’s monthly payment amount is not sufficient to pay the accrued interest on the borrower’s Direct Subsidized loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the income-based repayment plan.

On a Direct Consolidation Loan that repays loans on which the Secretary has not charged the borrower accrued interest, the three-year period includes the period for which the Secretary did not charge the borrower accrued interest on the underlying loans. This three-year period does not include any period during which the borrower receives an economic hardship deferment.

Except as provided in paragraph (b)(3) of this section, accrued interest is capitalized at the time a borrower chooses to leave the income-based repayment plan or no longer has a partial financial hardship.

The repayment period for a borrower under the income-based repayment plan may be greater than 10 years.

Payment application and prepayment. The Secretary applies any payment made under an income-based repayment plan in the following order:

(1) Accrued interest.

(2) Collection costs.

(3) Late charges.

(4) Loan principal.

Changes in the payment amount. (1) If a borrower no longer has a partial financial hardship, the borrower may continue to make payments under the income-based repayment plan, but the Secretary recalculates the borrower’s monthly payment. The Secretary also recalculates the monthly payment for a borrower who chooses to stop making income-based payments. In either case, as result of the recalculation—

(i) The maximum monthly amount that the Secretary requires the borrower to repay is the amount the borrower would have paid under the standard repayment plan based on the amount of the borrower’s eligible loans that were outstanding at the time the borrower began repayment on the loans under the income-based repayment plan; and

(ii) The borrower’s repayment period based on the recalculated payment amount may exceed 10 years.

If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must pay under the standard repayment plan and the Secretary recalculates the borrower’s monthly payment based on—

(i) The time remaining under the maximum ten-year repayment period for the amount of the borrower’s loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan; or

(ii) For a Direct Consolidation Loan, the applicable repayment period specified in

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October 29, 2010 Final Rules (Program Integrity Issues); November 1, 2010 Final Rules (Foreign Schools Issues)
§685.208(i) for the amount of that loan and the balance of other student loans that was outstanding at the time the borrower discontinued paying under the income-based repayment plan.

(e) Eligibility documentation and verification. (1) The Secretary determines whether a borrower has a partial financial hardship to qualify for the income-based repayment plan for the year the borrower selects the plan and for each subsequent year that the borrower remains on the plan. To make this determination, the Secretary requires the borrower to—

(i)(A) Provide written consent to the disclosure of AGI and other tax return information by the Internal Revenue Service to the Secretary. The borrower provides consent by signing a consent form and returning it to the Secretary;

(B) If a borrower’s AGI is not available, or the Secretary believes that the borrower’s reported AGI does not reasonably reflect the borrower’s current income, the Secretary may use other documentation provided by the borrower to verify income; and

(ii) Annually certify the borrower’s family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(2) The Secretary designates the repayment option described in paragraph (d)(1) of this section for any borrower who selects the income-based repayment plan but—

(i) Fails to renew the required written consent for income verification; or

(ii) Withdraws consent and does not select another repayment plan.

(f) Loan forgiveness. (1) To qualify for loan forgiveness after 25 years, a borrower must have participated in the income-based repayment plan and satisfied at least one of the following conditions during that period:

(i) Made reduced monthly payments under a partial financial hardship as provided in paragraph (b)(1) or (2) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(i) of this section.

(ii) Made reduced monthly payments after the borrower no longer had a partial financial hardship or stopped making income-based payments as provided in paragraph (d) of this section.

(iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in §685.208(b).

(iv) Made monthly payments under the Direct Loan standard repayment plan described in §685.208(b) based on the amount of the borrower’s loans that were outstanding at the time the borrower first selected the income-based repayment plan.

(v) Paid Direct Loans under the income-contingent repayment plan.

(vi) Received an economic hardship deferment on eligible Direct Loans.

(2) As provided under paragraph (f)(4) of this section, the Secretary cancels any outstanding balance of principal and accrued interest on Direct loans for which the borrower qualifies for forgiveness if the Secretary determines that—

(i) The borrower made monthly payments under one or more of the repayment plans described in paragraph (f)(1) of this section, including a monthly payment amount of $0.00, as provided under paragraph (b)(2)(ii) of this section; and

(ii)(A) The borrower made those monthly payments each year for a 25-year period, or

(B) Through a combination of monthly payments and economic hardship deferrals, the borrower has made the equivalent of 25 years of payments.

(3) For a borrower who qualifies for the income-based repayment plan, the beginning date for the 25-year period is—

(i) If the borrower made payments under the income contingent repayment plan, the date the borrower made a payment on the loan under that plan at any time after July 1, 1994;

(ii) If the borrower did not make payments under the income contingent repayment plan—

(A) For a borrower who has a Direct Consolidation Loan, the date the borrower made a payment or received an economic hardship deferment on that loan, before the date the borrower qualified for income-based repayment. The beginning date is the date the borrower made the payment or received the deferment, but no earlier than July 1, 2009;

(B) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a payment or received an economic hardship deferment on that loan. The beginning date is the date the borrower made that payment or received the deferment on that loan, but no earlier than July 1, 2009;

(C) For a borrower who did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(ii)(A) or (B) of this section, the date the borrower made a payment under the income-based repayment plan on the loan;

(D) If the borrower consolidates his or her eligible loans, the date the borrower made a payment on the Direct Consolidation Loan after qualifying for the income-based repayment plan; or

(E) If the borrower did not make a payment or receive an economic hardship deferment on the loan under paragraph (f)(3)(i) or (ii) of this section, determining the date the borrower made a payment under the income-based repayment plan on the loan.

(4) If the Secretary determines that a borrower satisfies the loan forgiveness requirements, the Secretary cancels the outstanding balance and accrued interest on the Direct Consolidation Loan described in paragraph (f)(3)(i), (ii) or (iv) of this section or other eligible Direct Loans described in paragraph (f)(3)(ii) or (iv) of this section. (Authority: 20 U.S.C. 1098e)


Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

§685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) General. (1) Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school shall—

(i) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(ii) Enter into a written program participation agreement with the Secretary that identifies the loan program or programs in which the school chooses to participate.

(2) The chief executive officer of the school shall sign the program participation agreement on behalf of the school.

(b) Program participation agreement. In the program participation agreement, the school shall promise to comply with the Act and applicable regulations and shall agree to—

(1) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(2) Estimate the need of each of these students as required by part F of the Act for an academic year. For purposes of estimating need, a Direct Unsubsidized Loan, a Direct PLUS Loan, or any loan obtained under any State-sponsored or private loan program may be used to offset the expected family contribution of the student for that year;

(3) Certify that the amount of the loan for any student under part D of the Act is not in excess of the annual limit applicable for that loan program and that the amount of the loan, in combination with previous loans received by the borrower, is not in excess of the aggregate limit for that loan program;

(4) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act;

(5) Provide timely and accurate information to the Secretary for the servicing and collecting of loans—
(i) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school;

(ii) Upon request by the Secretary, concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(iii) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(6) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(7) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(8) Provide that eligible students at the school and their parents may participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that—

(i) A student may not receive a Direct Subsidized Loan and/or a Direct Unsubsidized Loan under part D of the Act and a subsidized and/or unsubsidized Federal Stafford Loan under part B of the Act for the same period of enrollment;

(ii) A graduate or professional student or a parent borrowing for the same dependent student may not receive a Direct PLUS Loan under part D of the Act and a Federal PLUS Loan under part B of the Act for the same period of enrollment;

(9) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(10) Provide that the school will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act or any benefits associated with such a loan; and

(11) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) Origination. (1) If a school or consortium originates loans in the Direct Loan Program, it shall enter into a supplemental agreement that—

(i) Provides that the school or consortium will originate loans to eligible students and parents in accordance with part D of the Act; and

(ii) Provides that the note or evidence of obligation on the loan is the property of the Secretary.

(2) The chief executive officer of the school shall sign the supplemental agreement on behalf of the school.

(Authority: 20 U.S.C. 1087a et seq., 1094)

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) Determining eligibility and loan amount.

(1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school shall originate a Direct Loan while the student meets the borrower eligibility requirements of § 685.200. Except as provided in 34 CFR part 686, subpart E, a school may rely in good faith upon statements made by the borrower and, in the case of a parent PLUS loan borrower, the student and the parent borrower.

(2) A school shall provide to the Secretary borrower information that includes but is not limited to—

(i) The borrower’s eligibility for a loan, as determined in accordance with § 685.200 and § 685.203;

(ii) The student’s loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) Before originating a Direct PLUS Loan for a graduate or professional student borrower, the school must determine the borrower’s eligibility for a Direct Subsidized and a Direct Unsubsidized Loan. If the borrower is eligible for a Direct Subsidized or Direct Unsubsidized Loan, but has not requested the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible, the school must—

(i) Notify the graduate or professional student borrower of the maximum Direct Subsidized or Direct Unsubsidized Loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

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

(ii) Give the graduate or professional student borrower the opportunity to request the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible.

(4) A school may not originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.203; or

(ii) Exceeds the student’s estimated cost of attendance less—

(A) The student’s estimated financial assistance for that period; and

(B) In the case of a Direct Subsidized Loan, the borrower’s expected family contribution for that period.

(5)(i) A school determines a Direct Subsidized or Direct Unsubsidized Loan amount in accordance with § 685.203.

(ii) When prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school originates the loan.

(6) The date of loan origination is the date a school creates the electronic loan origination record.

(7) If a student has received a determination of need for a Direct Subsidized Loan that is $200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

(8) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower’s determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, and if—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student’s file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower’s access to Direct Loans because of the borrower’s race, gender, color, religion, national origin, age, disability status, or income.

(9) A school may not assess a fee for the completion or certification of any Direct Loan Program forms or information or for the origination of a Direct Loan.

(10)(i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a
single academic term (e.g., a semester or quarter); or
(B) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—
   (1) The length of the student’s program at the school; or
   (2) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) The maximum period for which a school may originate a Direct Loan is—
   (A) Generally an academic year, as defined by the school in accordance with 34 CFR 668.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or
   (B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

(b) Determining disbursement dates and amounts. (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

   (2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 685.3.4(b).

   (3) Unless paragraphs (b)(4) or (b)(8) of this section applies—
      (i) If a loan period is more than one payment period, the school must disburse loan proceeds at least once in each payment period; and
      (ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

   (A) For a loan originated under § 685.301(a)(9)(i)(A), the school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period; or
   (B) For a loan originated under § 685.301(a)(9)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

   (4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods; or
   (ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

   (5) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

   (6)(i) A school is not required to make more than one disbursement if—
      (A)(1) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and
      (2) Except as provided in paragraph (b)(6)(i)(A)(2)(ii) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available;
      (ii) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than 15 percent for the single most recent fiscal year for which data are available.

   (B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

   (C) The school is not in a State.

   (ii) Paragraphs (b)(6)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (A) or (B), as applicable.

   (iii) Paragraph (b)(6)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

   (c) Annual loan limit progression based on completion of an academic year. (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

   (2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—
      (i) The student’s completion of the weeks of instructional time in the student’s academic year; or
      (ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student’s academic year.

   (3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—
      (i) The student’s completion of the weeks of instructional time in the student’s academic year; or
      (ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student’s academic year.

   (4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

   (d) Promissory note handling. (1) The Secretary provides promissory notes for use in the Direct Loan Program. A school may not modify, or make any additions to, the promissory note without the Secretary’s prior written approval.

   (2) A school that originates a loan must ensure that the loan is supported by a completed promissory note as proof of the borrower’s indebtedness.

   (e) Reporting to the Secretary. (1) The Secretary accepts a student’s Payment Data that is submitted in accordance with procedures established through publication in the Federal Register, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

   (2) A school that participates under school origination option 1 or standard origination must submit the initial disbursement record
for a loan to the Secretary no later than 30 days following the date of the initial disbursement. The school must submit subsequent disbursement records, including adjustment and cancellation records, to the Secretary no later than 30 days following the date the disbursement, adjustment, or cancellation is made.

(Approved by the Office of Management and Budget under control number 1845-0021)

which the loan was intended that exceeds the amount of assistance for which the student is eligible (except for Federal Work-Study Program funds up to $300), the school shall reduce or eliminate the overaward by either—

(1) Using the student’s Direct Unsubsidized, Direct PLUS, or State-sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

(Approved by the Office of Management and Budget under control number 1840-0672)

§ 685.304 Counseling borrowers.

(a) Entrance counseling. (1) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan.

(3) Entrance counseling for Direct Subsidized Loan, Direct Unsubsidized Loan, and graduate or professional student Direct PLUS Loan borrowers must provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session; conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the entrance counseling, which may include completion of any interactive program that tests the borrower’s understanding of the terms and conditions of the borrower’s loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower’s questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(b) Entrance counseling for Direct Subsidized Loan and Direct 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 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)(iii) of this section.

(b) A school may adopt an alternative approach for entrance counseling as part of the school’s quality assurance plan described in §685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1) through (a)(7) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to entrance counseling under paragraph (a)(1) or (a)(2) of this section is provided written counseling materials that contain the information described in paragraphs (a)(6)(i) through (a)(6)(v) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide...
them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school’s alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(9) The school must maintain documentation substantiating the school’s compliance with this section for each student borrower.

(b) Exit counseling. (1) A school must ensure that exit counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower and graduate or professional student Direct PLUS Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower’s questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school’s prior knowledge or fails to complete the exit counseling as required, exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower’s last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) The 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;

Editorial Note: The first instance of “plans” needs to be deleted (from the October 28, 2009 Final Rule, pg. 55666)

(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;

(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).

(5) The school must ensure that the information required in paragraph (b)(4)(xiii) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(7) The school must maintain documentation substantiating the school’s compliance with this section for each student borrower.

(Approved by the Office of Management and Budget under control number 1845-0021) (Authority: 20 U.S.C. 1087a et seq.)

[74 FR 55666, Oct. 28, 2009]

§ 685.305 Determining the date of a student’s withdrawal.

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in § 686.22(b) or (c), as applicable, for determining the student’s date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in § 686.22(b) or (c), as applicable, for determining the student’s date of withdrawal except that the school must determine the student’s date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student’s date of withdrawal and for determining when a refund or return of title IV, HEA program funds must be paid under § 685.306.

(Authority: 20 U.S.C. 1087 et seq.)

[64 FR 59044, Nov. 1, 1999]

§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.

(a) General. By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student’s refund or return of title IV, HEA program funds that is allocable to a Direct Loan to the Secretary; and...
§ 685.390 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) General. A participating school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) Determination, allocation, and payment of a refund or return of title IV, HEA program funds. In determining the portion of a student’s refund or return of title IV, HEA program funds that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund or return of title IV, HEA program funds that is due.

(Authority: 20 U.S.C. 1087a et seq.)

[64 FR 59044, Nov. 1, 1999; 65 FR 37045, June 13, 2000]

§ 685.307 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may withdraw from the program by providing written notice to the Secretary.

(b) A participating school that intends to withdraw from the Direct Loan Program shall give at least 60 days notice to the Secretary.

(c) Unless the Secretary approves an earlier date, the withdrawal is effective on the later of—

(1) 60 days after the school notifies the Secretary; or

(2) The date designated by the school.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.308 Remedial actions.

(a) General. The Secretary may require the repayment of funds and the purchase of loans by the school if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible, resulted in whole or in part from—

(1) The school’s violation of a Federal statute or regulation; or

(2) The school’s negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school’s participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.402 Criteria for schools to originate loans.

(a) Initial determination of origination status—(1) Standard origination. Any school eligible to participate in the Direct Loan Program under § 685.400 is eligible to participate under standard origination.

(2) School Originat[ion. To be eligible to originate loans, a school must meet the following criteria:

(i) Have participated in the Federal Perkins Loan Program, the Federal Pell Grant Program, or, for a graduate and professional school, a similar program for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(ii) If participating in the Federal Pell Grant Program, not be on the reimbursement system of payment.

(iii) In the opinion of the Secretary, have had no severe performance deficiencies for any of the programs under title IV of the Act.

Subpart D—School Participation and Loan Origination in the Direct Loan Program

§ 685.400 School participation requirements.

(a)(1) In order to qualify for initial participation in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the Act, including the requirement that it have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available unless the school is exempt from this requirement under section 435(a)(2)(C) of the Act.

(2) In order to continue to participate in the Direct Loan Program, a school must continue to meet the requirements of paragraph (a)(1) of this section for years for which cohort default rate data represent the years prior to the school’s participation in the Direct Loan Program.

(b) In order to qualify for initial participation, the school must not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 422(b)(1)(T), 432(h), or 487(c) of the Act.

(c) If schools apply as a consortium, each school in the consortium must meet the requirements in paragraphs (a) and (b) of this section.

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

(Authority: 20 U.S.C. 1087a et seq.)


§ 685.401 [Reserved]

§ 685.402 Criteria for schools to originate loans.

(a) Initial determination of origination status—(1) Standard origination. Any school eligible to participate in the Direct Loan Program under § 685.400 is eligible to participate under standard origination.

(2) School Originat[ion. To be eligible to originate loans, a school must meet the following criteria:

(i) Have participated in the Federal Perkins Loan Program, the Federal Pell Grant Program, or, for a graduate and professional school, a similar program for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(ii) If participating in the Federal Pell Grant Program, not be on the reimbursement system of payment.

(iii) In the opinion of the Secretary, have had no severe performance deficiencies for any of the programs under title IV of the Act.

Subpart D—School Participation and Loan Origination in the Direct Loan Program

§ 685.400 School participation requirements.

(a)(1) In order to qualify for initial participation in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the Act, including the requirement that it have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available unless the school is exempt from this requirement under section 435(a)(2)(C) of the Act.

(2) In order to continue to participate in the Direct Loan Program, a school must continue to meet the requirements of paragraph (a)(1) of this section for years for which cohort default rate data represent the years prior to the school’s participation in the Direct Loan Program.

(b) In order to qualify for initial participation, the school must not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 422(b)(1)(T), 432(h), or 487(c) of the Act.

(c) If schools apply as a consortium, each school in the consortium must meet the requirements in paragraphs (a) and (b) of this section.

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

(Authority: 20 U.S.C. 1087a et seq.)

including deficiencies demonstrated by the most recent audit or program review.

(iv) Be financially responsible in accordance with the standards of 34 CFR 668.15.

(v) Be current on program and financial reports and audits required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program.

(vi) Be current on Federal cash transaction reports required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program and have no final determination of cash on hand that exceeds immediate title IV program needs.

(vii) Have no material findings in any of the annual financial audits submitted for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(viii) Provide an assurance that the school has no delinquent outstanding debts to the Federal Government, unless—

(A) Those debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government; or

(B) The Secretary determines that the existence or amount of the debts has not been finally determined by the cognizant Federal agency.

(3) A school that meets the criteria to originate loans may participate under school origination option 1 or 2 or under standard origination.

(b) Change in origination status. (1) After the initial determination of a school's origination status, the Secretary may allow a school that does not qualify to originate loans under either origination option 1 or origination option 2 to do so if the Secretary determines that the school is fully capable of originating loans under one of those options.

(2)(i) At any time after the initial determination of a school's origination status, a school participating under origination option 2 may request to change to origination option 1 or standard origination, and a school participating under origination option 1 may request to change to standard origination.

(ii) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(3)(i) A school participating under origination option 1 may apply to participate under option 2, and a school participating in standard origination may apply to participate under either origination option 1 or 2 after one full year of participation in its initial origination status.

(ii) Applications to participate under another origination option are considered on an annual basis.

(iii) An application to participate under another origination option is evaluated on the basis of criteria and performance standards established by the Secretary, including but not limited to—

(A) Eligibility under paragraph (a)(2) of this section;

(B) Timely submission of accurate origination and disbursement records;

(C) Successful completion of reconciliation on a monthly basis; and

(D) Timely submission of completed and signed promissory notes, if applicable.

(iv) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(c) Secretarial determination of change in origination status. (1) At any time after a school has been approved to originate loans, the Secretary may require a school participating under origination option 2 to convert to option 1 or to standard origination and may require a school participating under origination option 1 to convert to standard origination.

(2) The Secretary may require a school to change origination status if the Secretary determines that such a change is necessary to ensure program integrity or if the school fails to meet the criteria and performance standards established by the Secretary, including but not limited to—

(i) For an origination option 1 school, eligibility under paragraph (a)(2) of this section, the timely submission of completed and signed promissory notes and accurate origination and disbursement records, and the successful completion of reconciliation on a monthly basis; and

(ii) For an origination option 2 school, the criteria and performance standards required of origination option 1 schools and accurate and timely drawdown requests.

(3) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(d) Origination by consortia. A consortium of schools may participate under origination options 1 or 2 if all members of the consortium are eligible to participate under paragraph (a)(2) of this section. All provisions of this section that apply to an individual school apply to a consortium.

(e) School determination of change of Servicer. (1) The Secretary assigns one or more Servicers to work with a school to perform certain functions relating to the origination and servicing of Direct Loans.

(2) A school may request the Secretary to designate a different Servicer. Documentation of the unsatisfactory performance of the school's current Servicer must accompany the request. The Servicer requested must be one of those approved by the Secretary for participation in the Direct Loan Program.

(3) The Secretary grants the request if the Secretary determines that—

(i) The claim of unsatisfactory performance is accurate and substantial; and

(ii) The Servicer requested by the school can accommodate such a change.

(4) If the Secretary denies the school's request based on a determination under paragraph (e)(3)(ii) of this section, the school may request another Servicer.

(5) The change in Servicer is effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(f) Determination of eligibility for multi-year use of the Master Promissory Note. (1) A school must be authorized by the Secretary to use a single Master Promissory Note (MPN) as the basis for all loans borrowed by a student or parent borrower for attendance at that school. A school that is not authorized by the Secretary for multi-year use of the MPN must obtain a new MPN from a student or parent borrower for each academic year.

(2) To be authorized for multi-year use of the MPN, a school must—

(i) Be a four-year or graduate/professional school, or other institution meeting criteria or otherwise designated at the sole discretion of the Secretary; and

(ii) Not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act; and

(B) Meet other performance criteria determined by the Secretary.

(3) A school that is authorized by the Secretary for multi-year use of the MPN must develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of the MPN. (Authority: 20 U.S.C. 1087a et seq.) [62 FR 35602, July 1, 1997, as amended at 64 FR 58972, Nov. 1, 1999]
34 CFR 686

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## Table of Contents

**Subpart A—Scope, Purpose, and General Definitions**

- § 686.1 Scope and purpose. ................................................................. 3
- § 686.2 Definitions. .................................................................................. 3
- § 686.3 Duration of student eligibility. ...................................................... 4
- § 686.4 Institutional participation. .............................................................. 5
- § 686.5 Enrollment status for students taking regular and correspondence courses. ................................................................. 5
- § 686.6 Payment from more than one institution. .................................................. 6

**Subpart B—Application Procedures**

- § 686.10 Application. ................................................................................. 6
- § 686.11 Eligibility to receive a grant. ....................................................... 6
- § 686.12 Agreement to serve. ................................................................. 7

**Subpart C—Determination of Awards**

- § 686.20 Submission process and deadline for a SAR or ISIR. ......................... 7
- § 686.21 Calculation of a grant. ................................................................. 7
- § 686.22 Calculation of a grant for a payment period. .................................... 8
- § 686.23 Calculation of a grant for a payment period that occurs in two award years. ........................................................................... 9
- § 686.24 Transfer student: attendance at more than one institution during an award year. ................................................................. 10
- § 686.25 Correspondence study. ............................................................... 10

**Subpart D—Administration of Grant Payments**

- § 686.30 Scope. .......................................................................................... 10
- § 686.31 Determination of eligibility for payment and cancellation of a TEACH Grant. ................................................................. 10
- § 686.32 Counseling requirements. ............................................................ 11
- § 686.33 Frequency of payment. ............................................................... 12
- § 686.34 Liability for and recovery of TEACH Grant overpayments. ................. 12
- § 686.35 Recalculation of TEACH Grant award amounts. .............................. 13
- § 686.36 Fiscal control and fund accounting procedures. .................................. 13
- § 686.37 Institutional reporting requirements. .............................................. 13
- § 686.38 Maintenance and retention of records. ............................................ 13

**Subpart E—Service and Repayment Obligations**

- § 686.40 Documenting the service obligation. ............................................. 13
- § 686.41 Periods of suspension. ................................................................. 14
- § 686.42 Discharge of agreement to serve. .................................................... 14
- § 686.43 Obligation to repay the grant. ........................................................ 15
Subpart A—Scope, Purpose, and General Definitions

§ 686.1 Scope and purpose.
The TEACH Grant program awards grants to students who intend to teach, to help meet the cost of their postsecondary education. In exchange for the grant, the student must agree to serve as a full-time teacher in a high-need field, in a school serving low-income students for at least four academic years within eight years of completing the program of study for which the student received the grant. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan) and must be repaid with interest.

(Authority: 20 U.S.C. 1070g, et seq., unless otherwise noted.)

§ 686.2 Definitions.
(a) Definitions for the following terms used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, (HEA) 34 CFR part 600:
- Award year
- Clock hour
- Correspondence course
- Credit hour

Eligible institution
- Institution of higher education
- (institution)
- Regular student
- Secretary
- State
- Title IV, HEA program

(b) Definitions for the following terms used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:
- Academic year
- Enrolled
- Expected family contribution (EFC)
- Full-time student
- Graduate or professional student
- Half-time student
- HEA
- Payment period
- Three-quarter-time student
- Undergraduate student
- William D. Ford Federal Direct Loan (Direct Loan) Program

(c) Definitions for the following terms used in this part are in 34 CFR part 77:
- Local educational agency (LEA)
- State educational agency (SEA)

(d) Other terms used in this part are defined as follows:
- Academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year):
  (1) One complete school year, or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period.
  (2) If a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

- Agreement to serve (ATS): An agreement under which the individual receiving a TEACH Grant commits to meet the service obligation described in § 686.12 and to comply with notification and other provisions of the agreement.

- Annual award: The maximum TEACH Grant amount a student would receive for enrolling as a full-time, three-quarter-time, half-time, or less-than-half-time student and remaining in that enrollment status for a year.

- Bilingual education: An educational program in which two languages are used to provide content matter instruction.

- Elementary school: A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

- English language acquisition: The process of acquiring English as a second language.

- Full-time teacher: A teacher who meets the standard used by a State in defining full-time employment as a teacher. For an individual teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

- High-need field: Includes the following:
  (1) Bilingual education and English language acquisition.
  (2) Foreign language.
  (3) Mathematics.
  (4) Reading specialist.

- Science.

- Special education.

- Another field documented as high need by the Federal Government, a State government or an LEA, and approved by the Secretary and listed in the Department’s annual Teacher Shortage Area Nationwide Listing (Nationwide List) in accordance with 34 CFR 682.210(a).

- Highly-qualified: Has the meaning set forth in section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) or in section 602(10) of the Individuals With Disabilities Education Act.

- Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant’s—
  (1) Personal identification information;
  (2) Application data used to calculate the applicant’s EFC; and
  (3) EFC.

- Numeric equivalent: (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing TEACH Grant eligibility. The institution’s equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.25 GPA on a 4.0 scale in that program.
  (2) A grading policy that includes only “satisfactory/unsatisfactory”, “pass/fail”, or other similar nonnumeric assessments qualifies as a numeric equivalent only if—
    (i) The institution demonstrates that the “pass” or “satisfactory” standard has the numeric equivalent of at least a 3.25 GPA on a 4.0 scale awarded in that program, or that a student’s performance for tests and assignments yielded a numeric equivalent of a 3.25 GPA on a 4.0 scale; and
    (ii) For an eligible institution, the institution’s equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance.
certifications, to the extent such standards distinguish among various levels of a student’s academic performance.

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Post-baccalaureate program: A program of instruction for individuals who have completed a baccalaureate degree, that—

(1) Does not lead to a graduate degree;

(2) Consists of courses required by a State in order for a student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that it does not include any program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education; and

(3) Is treated as an undergraduate program of study for the purposes of title IV of the HEA.

Retiree: An individual who has decided to change his or her occupation for any reason and who has expertise, as determined by the institution, in a high-need field.

Scheduled Award: The maximum amount of a TEACH Grant that a fulltime student could receive for a year.

School serving low-income students (low-income school): An elementary or secondary school that—

(1) Is in the school district of an LEA that is eligible for assistance pursuant to title I of the ESEA;

(2) Has been determined by the Secretary to be a school in which more than 30 percent of the school’s total enrollment is made up of children who qualify for services provided under title I of the ESEA; and

(3) Is listed in the Department’s Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian tribal groups under contract or grant with the BIE to qualify as schools serving low-income students.

Secondary school: A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

TEACH Grant-eligible institution: An eligible institution as defined in 34 CFR part 686 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 and—

(1) Provides a high-quality teacher preparation program at the baccalaureate or master’s degree level that—

(i) Is accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs; or

(B) Is approved by a State and includes a minimum of 10 weeks of fulltime pre-service clinical experience, or its equivalent, and provides either pedagogical coursework or assistance in the provision of such coursework; and

(ii) Provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(2) Provides a two-year program that—

(i) Is acceptable for full credit in a baccalaureate teacher preparation program of study offered by an institution described in paragraph (1) of this definition, as demonstrated by the institutions; or

(ii) Is acceptable for full credit in a baccalaureate degree program in a high-need field at an institution described in paragraph (3) of this definition, as demonstrated by the institutions;

(3) Offers a baccalaureate degree that, in combination with other training or experience, will prepare an individual to teach in a high-need field as defined in this part and has entered into an agreement with an institution described in paragraphs (1) or (4) of this definition to provide courses necessary for its students to begin a career in teaching; or

(4) Provides a post-baccalaureate program of study.

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 688.8, is a program of study that is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master’s degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

Teacher: A person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including special education teachers and reading specialists.

Teacher preparation program: A State approved course of study, the completion of which signifies that an enrollee has met all the State’s educational or training requirements for initial certification or licensure to teach in the State’s elementary or secondary schools. A teacher preparation program may be a regular program or an alternative route to certification, as defined by the State. For purposes of a TEACH Grant, the program must be provided by an institution of higher education.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.3 Duration of student eligibility.

(a) An undergraduate or post-baccalaureate student enrolled in a TEACH Grant-eligible program may receive the equivalent of up to four Scheduled Awards during the period required for the completion of the first undergraduate baccalaureate program of study and first post-baccalaureate program of study combined.

(b) A graduate student is eligible to receive the equivalent of up to two Scheduled Awards during the period required for the completion of a TEACH Grant-eligible master’s degree program of study.

(Authority: 20 U.S.C. 1070g, et seq.)
§ 686.4 Institutional participation.

(a) A TEACH Grant-eligible institution that offers one or more TEACH Grant-eligible programs may elect to participate in the TEACH Grant program.

(b) If an institution begins participation in the TEACH Grant program during an award year, a student enrolled at and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(c) If an institution ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program during an award year, a student who was attending the institution and who submitted a SAR with an official EFC to the institution, or for whom the institution obtained an ISIR with an official EFC before it ceased to participate in the TEACH Grant program or became ineligible to participate;

1. The payment periods that the student completed before the institution ceased participation or became ineligible to participate; and

2. The payment period in which the institution ceased participation or became ineligible to participate.

(d) An institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program must, within 45 days after the effective date of the loss of eligibility, provide to the Secretary—

1. The name and other student identifiers as required by the Secretary of each eligible student under § 686.11 who, during the award year, submitted a SAR with an official EFC to the institution or for whom it obtained an ISIR with an official EFC before it ceased to participate in the TEACH Grant program or became ineligible to participate;

2. The amount of funds paid to each student for that award year;

3. The amount due each student eligible to receive a grant through the end of the payment period during which the institution ceased to participate in the TEACH Grant program or became ineligible to participate; and

4. An accounting of the TEACH Grant program expenditures for that award year to the date of termination.

Authority: 20 U.S.C. 1070g, et seq.

§ 686.5 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an arrangement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work that—

1. Applies toward a student's degree or post-baccalaureate program of study or is remedial work taken by the student to help in his or her TEACH Grant-eligible program;

2. Is completed within the period of time required for regular coursework; and

3. Does not exceed the amount of a student's regular coursework for the payment period for which enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than halftime.

2. A student who would be a less than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular coursework is considered a less-than-half-time student.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution defines fulltime enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

<table>
<thead>
<tr>
<th>Under § 686.5</th>
<th>No. of credit hours regular work</th>
<th>No. of credit hours correspondence</th>
<th>Total course load in credit hours to determine enrollment status</th>
<th>Enrollment status</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>6</td>
<td>3</td>
<td>9</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>6</td>
<td>6</td>
<td>12</td>
<td>Full-time.</td>
</tr>
<tr>
<td>(b)(3) and (c)</td>
<td>2</td>
<td>6</td>
<td>6</td>
<td>Half-time.</td>
</tr>
</tbody>
</table>

* Any combination of regular and correspondence work that is greater than zero, but less than six hours.

Authority: 20 U.S.C. 1070g, et seq.
§ 686.6 Payment from more than one institution.

A student may not receive grant payments under this part concurrently from more than one institution.

(Authority: 20 U.S.C. 1070g, et seq.)

Subpart B—Application Procedures

§ 686.10 Application.

(a) To receive a grant under this part, a student must—

(1) Complete and submit an approved signed application, as designated by the Secretary. A copy of this application is not acceptable;

(2) Complete and sign an agreement to serve and promise to repay; and

(3) Provide any additional information and assurances requested by the Secretary.

(b) The student must submit an application to the Secretary by—

(1) Sending the completed application to the Secretary; or

(2) Providing the application, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically.

(c) The student must provide the address of his or her residence.

(d) For each award year, the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting to the Department the application and additional information and for making corrections to the information provided.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.11 Eligibility to receive a grant.

(a) Undergraduate, post-baccalaureate, and graduate students. (1) Except as provided in paragraph (b) of this section, a student who meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(i) Has submitted a completed application;

(ii) Has signed an agreement to serve as required under § 686.12;

(iii) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program;

(iv) Is completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating; and

(v) Has—

(A) If the student is in the first year of a program of undergraduate education as determined by the institution—

(1) A final cumulative secondary school grade point average (GPA) upon graduation of at least 3.25 on a 4.0 scale, or the numeric equivalent; or

(2) A cumulative GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, based on courses taken at the institution through the most-recently completed payment period;

(B) If the student is beyond the first year of a program of undergraduate education as determined by the institution, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most recently completed payment period;

(C) If the student is a graduate student during the first payment period, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent;

(D) If the student is a graduate student beyond the first payment period, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most recently completed payment period; or

(E) A score above the 75th percentile of scores achieved by all students taking the test during the period the student took the test on at least one of the batteries from a nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test, except that such test may not include a placement test.

(2) (i) An institution must document the student’s secondary school GPA under § 686.11(a)(1)(v)(A) using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency; or

(C) A public or private secondary school.

(iii) A home-schooled student’s parent or guardian is the cognizant authority for purposes of providing the documentation of a home-schooled student’s secondary school GPA.

(iv) If an institution has reason to believe the documentation provided by a student under paragraph (a)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student’s grades by using documentation provided directly to the institution by the cognizant authority.

(b) Current or former teachers or retirees. A student who has submitted a completed application and meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(1) Has signed an agreement to serve as required under § 686.12;

(2) Is a current teacher or retiree who is applying for a grant to obtain a master’s degree or is or was a teacher who is pursuing certification through a high-quality alternative certification route; and

(3) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program during the period required for the completion of a master’s degree.

(c) Transfer students. If a student transfers from one institution to the current institution and does not qualify under § 686.11(a)(1)(v)(E), the current institution must determine that student’s eligibility for a TEACH Grant for the first payment period using either the method described in paragraph (c)(1) of this section or the method described in paragraph (c)(2) of this section, whichever method coincides with the current institution’s academic policy. For an eligible student who transfers to an institution that—

(1) Does not incorporate grades from coursework that it accepts on transfer into the student’s GPA at the current institution, the current institution, for the courses accepted upon transfer—

(i) Must calculate the student’s GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts; and

(ii) Must, for all subsequent payment periods, apply its academic policy...
and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(2) Incorporates grades from the coursework that it accepts on transfer into the student’s GPA at the current institution, the current institution must use the grades assigned to the coursework accepted by the current institution as the student’s cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.12 Agreement to serve.

(a) General. A student who meets the eligibility requirements in § 686.11 may receive a TEACH Grant only after he or she signs an agreement to serve provided by the Secretary and receives counseling in accordance with § 686.32.

(b) Contents of the agreement to serve. The agreement provides that, for each TEACH Grant-eligible program for which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by performing creditable teaching service by—

(1) Serving as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after completing the program or otherwise ceasing to be enrolled in the program for which the recipient received the TEACH Grant—

(i) In a low-income school;

(ii) As a highly-qualified teacher; and

(iii) In a high-need field in the majority of classes taught during each elementary and secondary academic year.

(2) Submitting, upon completion of each year of service, documentation of the service in the form of a certification by a chief administrative officer of the school; and

(3) Complying with the terms, conditions, and other requirements consistent with §§ 686.40–686.43 that the Secretary determines to be necessary.

(c) Completion of more than one service obligation.

(1) A grant recipient must complete a service obligation for each program of study for which he or she received TEACH Grants. Each service obligation begins following the completion or other cessation of enrollment by the student in the TEACH Grant-eligible program for which the student received TEACH Grant funds. However, creditable teaching service, a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2) may apply to more than one service obligation.

(2) A grant recipient may request a suspension, in accordance with § 686.41, of the eight-year time period in paragraph (b)(1) of this section.

(d) Majoring and serving in a high-need field. A grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List cannot satisfy his or her service obligation to teach in that high-need field unless the high-need field in which he or she has prepared to teach is listed in the Nationwide List for the State in which the grant recipient begins teaching at the time the recipient begins teaching in that field.

(e) Repayment for failure to complete service obligation. If a grant recipient fails or refuses to carry out the required service obligation described in paragraph (b) of this section, the TEACH Grants received by the recipient must be repaid and will be treated as a Federal Direct Unsubsidized Loan, with interest accruing from the date of each TEACH Grant disbursement, in accordance with applicable sections of subpart B of 34 CFR part 685.

(Authority: 20 U.S.C. 1070g, et seq.)


Subpart C—Determination of Awards

§ 686.20 Submission process and deadline for a SAR or ISIR.

(a) Submission process.

(1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a TEACH Grant to a student who is eligible under § 686.11 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a SAR with an official EFC to the institution; or

(ii) The institution obtains an ISIR with an official EFC for the student.

(2) In determining a student’s eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 686.16(f).

(b) SAR or ISIR deadline. Except as provided in 34 CFR 686.16(g), for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the SAR with an official EFC to his or her institution or the institution must obtain an ISIR with an official EFC by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.21 Calculation of a grant.

(a)(1)(i) The Scheduled Award for a TEACH Grant for an eligible student is $4,000.

(ii) Each Scheduled Award remains available to an eligible student until the $4,000 is disbursed.

(2)(i) The aggregate amount that a student may receive in TEACH Grants for undergraduate and post-baccalaureate study may not exceed $16,000.

(ii) The aggregate amount that a student may receive in TEACH Grants for a master’s degree may not exceed $8,000.

(b) The annual award for—

(1) A full-time student is $4,000;

(2) A three-quarter-time student is $3,000;

(3) A half-time student is $2,000; and

(4) A less-than-half-time student is $1,000.

(c) Except as provided in paragraph (d) of this section, the amount of a student’s grant under this part, in combination with the other student financial assistance available to the student, including the amount of a Federal Pell Grant for which the student is eligible, may not exceed the student’s cost of attendance at the TEACH Grant-eligible institution. Other student financial assistance is estimated financial assistance, as defined in 34 CFR 673.5(c).

(d) A TEACH Grant may replace a student’s EFC, but the amount of the grant that exceeds the student’s EFC is considered estimated financial
§ 686.22 Calculation of a grant for a payment period.

(a) Eligibility for payment formula—

(1) Programs using standard terms with at least 30 weeks of instructional time. A student’s grant for a payment period is calculated under paragraph (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;
(B) Is offered in semesters, trimesters, or quarters; and
(C)(i) For an undergraduate student, requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; or
(ii) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and
(D) Is not offered with overlapping terms; and
(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and
(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(i)(A) of this section.

(2) Programs using standard terms with less than 30 weeks of instructional time. A student’s payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;
(B) Is offered in semesters, trimesters, or quarters;
(C)(i) For a student of any level other than those described in paragraphs (a)(1)(ii) and (2) of this section.

(f) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(2) The program is offered exclusively in semesters, trimesters, or quarters; and

(3) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and reenroll in a subsequent term.

(2) Programs using standard terms with less than 30 weeks of instructional time. A student’s payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;
(B) Is offered in semesters, trimesters, or quarters;

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and
(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(i)(A) of this section.

(3) Other programs using terms and credit hours. A student’s payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (2) of this section.

(4) Programs not using terms or using clock hours. A student’s payment for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3. If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student’s payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of meeting the requirements in paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program’s academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms.

(b) Programs using standard terms with at least 30 weeks of instructional time. The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Dividing the amount described in paragraph (b)(2) of this section by—

(ii) The number of terms over which the institution chooses to distribute the student’s annual award if—

(A) An institution chooses to distribute all of the student’s annual award determined under paragraph
(b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms equals the weeks of instructional time in the program's academic year.

(c) Programs using standard terms with less than 30 weeks of instructional time. The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;
(2) Based upon that enrollment status, determining his or her annual award;
(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

(i) In a program using semesters or trimesters—

The number of weeks of instructional time in the program in the fall and spring semesters or trimesters

The number of weeks in the program's academic year

(ii) In a program using quarters—

The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters

The number of weeks in the program's academic year

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms equals the weeks of instructional time in the program's academic year definition.

(d) Other programs using terms and credit hours. The payment for a payment period, i.e., an academic term, for a student in a program using terms and credit hours, other than those described in paragraph (a)(1) or (2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;
(2) Based upon that enrollment status, determining his or her annual award; and
(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

The number of weeks of instructional time in the term

The number of weeks of instructional time in the program's academic year

(e) Programs using credit hours without terms or clock hours. The payment for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by multiplying the Scheduled Award by the lesser of—

(1) The number of credit or clock hours in the payment period

; or

(2) The number of weeks of instructional time in the payment period

The number of weeks of instructional time in the program's academic year

(f) Maximum disbursement. A single disbursement may not exceed 50 percent of an award determined under paragraph (d) of this section. If a payment for a payment period calculated under paragraph (d) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution must make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student’s annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program’s academic year.

(g) Minimum payment. No payment for a payment period as determined under this section or § 686.25 may be less than $25.

(h) Definition of academic year. For purposes of this section and § 686.25, an institution must define an academic year—

(1) For each of its TEACH Grant-eligible undergraduate programs of study, including post-baccalaureate programs of study, in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3, and

(2) For each of its TEACH Grant-eligible master's degree programs of study in terms of the number of weeks of instructional time in accordance with the requirements of 34 CFR 668.3 and the minimum number of credit or clock hours a full-time student would be expected to complete in the weeks of instructional time of the program’s academic year.

(i) Payment period completing a Scheduled Award. In a payment period, if a student is completing a Scheduled Award, the student’s payment for the payment period—

(1) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(2) Is the remaining amount of the Scheduled Award being completed plus an amount from the next Scheduled Award, if available, up to the payment for the payment period.

Authority: 20 U.S.C. 1070g, et seq. [73 35495, June 23, 2008, as amended at 74 FR 20221, May 1, 2009]

§ 686.23 Calculation of a grant for a payment period that occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b) The institution must determine for each TEACH Grant recipient the
award year in which the payment period will be placed subject to the restriction set forth in paragraph (c) of this section;

(c) The institution must place a payment period with more than six months scheduled to occur within one award year in that award year;

(d) If the institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(e) If the institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.24 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a TEACH Grant at one institution subsequently enrolls at a second institution, the student may receive a grant at the second institution only if—

(1) The student submits a SAR with an official EFC to the second institution; or

(2) The second institution obtains an ISIR with an official EFC.

(b) The second institution must calculate the student’s award in accordance with § 686.22 or 686.25.

(c) The second institution may pay a TEACH Grant only for that period in which a student is enrolled in a TEACH Grant-eligible program at that institution.

(d) The student’s TEACH Grant for each payment period is calculated according to the procedures in § 686.22 or 686.25 unless the remaining balance of the Scheduled Award at the second institution is the balance of the student’s last Scheduled Award and is less than the amount the student would normally receive for that payment period.

(e) A transfer student must repay any amount received in an award year that exceeds the amount which he or she was eligible to receive.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.25 Correspondence study.

(a) An institution calculates a TEACH Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Using the half-time annual award; and

(2) Multiplying the half-time annual award by the lesser of—

(i) The number of credit or clock hours in the payment period

(ii) The number of weeks of instructional time in the payment period

(b) For purposes of paragraph (a) of this section—

(1) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution must make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least six credit hours that commence and are completed in that term, the half-time annual award is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than six credit hours that commence and are completed in that term, the less-than-half-time annual award is used to calculate the payment for the payment period;

(3) A payment for a payment period is calculated using the formula in § 686.22(d) except that paragraphs (c)(1) and (2) of this section are used in lieu of § 686.22(d)(1) and (2), respectively; and

(d) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 686.22(d) if the residential training is offered using terms and credit hours or under § 686.22(e) if the residential training is offered using credit hours without terms or clock hours.

(Authority: 20 U.S.C. 1070g, et seq.)

[73 35495, June 23, 2008, as amended at 74 FR 20221, May 1, 2009]

Subpart D—Administration of Grant Payments

§ 686.30 Scope.

This subpart deals with TEACH Grant program administration by a TEACH Grant-eligible institution.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.31 Determination of eligibility for payment and cancellation of a TEACH Grant.

(a) For each payment period, an institution may pay a grant under this part to an eligible student only after it determines that the student—

(1) Is eligible under § 686.11;

(2) Has completed the relevant initial or subsequent counseling as required in § 686.32;

(3) Has signed an agreement to serve as described in § 686.12;

(4) Is enrolled in a TEACH Grant-eligible program; and

(5) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period, as defined in 34 CFR 686.4, for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student enrolled in a TEACH Grant-
eligible program is not maintaining the required GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination after the end of the payment period, the institution may not pay the student a TEACH Grant for that payment period or make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) An institution may make one disbursement for a payment period to an otherwise eligible student if—

(1) The student’s final high school GPA is not yet available; or

(ii) The student’s cumulative GPA through the prior payment period under § 686.11 is not yet available; and

(2) The institution assumes liability for any overpayment if the student fails to meet the required GPA to qualify for the disbursement.

(e)(1) In accordance with 34 CFR 686.165, before disbursing a TEACH Grant for any award year, an institution must—

(i) Notify the student of the amount of TEACH Grant funds that the student is eligible to receive, how and when those funds will be disbursed, and the student’s right to cancel all or a portion of the TEACH Grant; and

(ii) Return the TEACH Grant proceeds, cancel the TEACH Grant, or both, if the institution receives a TEACH Grant cancellation request from the student by the later of the first day of a payment period or 14 days after the date it notifies the student of his or her right to cancel all or a portion of a TEACH Grant.

(2)(i) If a student requests cancellation of a TEACH Grant after the period of time in paragraph (e)(1)(iii) of this section, but within 120 days of the TEACH Grant disbursement date, the institution may return the TEACH Grant proceeds, cancel the TEACH Grant, or do both.

(ii) If the institution does not return the TEACH Grant proceeds, or cancel the TEACH Grant, the institution must notify the student that he or she may contact the Secretary to request that the TEACH Grant be converted to a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.32 Counseling requirements.

(a) Initial counseling. (1) An institution must ensure that initial counseling is conducted with each TEACH Grant recipient prior to making the first disbursement of the grant.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student’s questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) The initial counseling must—

(i) Explain the terms and conditions of the TEACH Grant agreement to serve as described in § 686.12;

(ii) Provide the student with information about how to identify low-income schools and documented high need fields;

(iii) Inform the grant recipient that, in order for the teaching to count towards the recipient’s service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(iv) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the agreement to serve and the conditions under which a suspension may be granted in accordance with § 686.41;

(v) Explain to the student that conditions, such as conviction of a felony, could preclude the student from completing the service obligation;

(vi) Emphasize to the student that if the student fails or refuses to complete the service obligation contained in the agreement to serve or any other condition of the agreement to serve—

(A) The TEACH Grant must be repaid as a Federal Direct Unsubsidized Loan; and

(B) The TEACH Grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(viii) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant;

(ix) Review for the grant recipient information on the availability of the Department’s Student Loan Ombudsman’s office;

(x) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation; and

(xi) Inform the student of sample monthly repayment amounts based on a range of student loan indebtedness.

(b) Subsequent counseling. (1) If a student receives more than one TEACH Grant, the institution must ensure that the student receives additional counseling prior to the first disbursement of each subsequent TEACH Grant award.

(2) Subsequent counseling may be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student’s questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) Subsequent counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve as described in § 686.12;

(ii) Emphasize to the student that if the student fails or refuses to complete the service obligation
contained in the agreement to serve or any other condition of the agreement to serve—

(A) The TEACH Grant must be repaid as a Federal Direct Unsubsidized Loan; and

(B) The TEACH Grant recipient will be obligated to repay the full amount of the grant and the accrued interest from the disbursement date;

(iii) Explain the circumstances, as described in § 686.34, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(iv) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant; and

(v) Review for the grant recipient information on the availability of the Department’s Student Loan Ombudsman's office.

(c) Exit counseling. (1) An institution must ensure that exit counseling is conducted with each grant recipient before he or she ceases to attend the institution at a time determined by the institution.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the grant recipient’s questions. As an alternative, in the case of a grant recipient enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the grant recipient may be provided with written counseling materials within 30 days after he or she completes the TEACH Grant-eligible program.

(3) Within 30 days of learning that a grant recipient has withdrawn from the institution without the institution’s knowledge, or from a TEACH Grant-eligible program, or failed to complete exit counseling as required, exit counseling must be provided either in-person, through interactive electronic means, or by mailing written counseling materials to the grant recipient’s last known address.

(4) The exit counseling must—

(i) Inform the grant recipient of the four-year service obligation that must be completed within the first eight calendar years after completing a TEACH Grant-eligible program in accordance with § 686.12;

(ii) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service obligation and the conditions under which a suspension may be granted in accordance with § 686.41;

(iii) Provide the grant recipient with information about how to identify low income schools and documented high need fields;

(iv) Inform the grant recipient that, in order for the teaching to count towards the recipient’s service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(v) Explain that the grant recipient will be required to submit to the Secretary each year written documentation of his or her status as a highly qualified teacher in a high-need field at a low-income school or of his or her intent to complete the four-year service obligation until the date that the service obligation has been met or the date that the grant becomes a Federal Direct Unsubsidized Loan, whichever occurs first;

(vi) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(vii) Emphasize that once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan it cannot be reconverted to a grant;

(viii) Inform the grant recipient of the average anticipated monthly repayment amount based on a range of student loan indebtedness if the TEACH Grants convert to a Federal Direct Unsubsidized Loan;

(ix) Review for the grant recipient available repayment options if the TEACH Grant converts to a Federal Direct Unsubsidized Loan, including the standard repayment, extended repayment, graduated repayment, income contingent and income-based repayment plans, and loan consolidation;

(x) Suggest debt-management strategies to the grant recipient that would facilitate repayment if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xi) Explain to the grant recipient how to contact the Secretary;

(xii) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(xiii) Review for the grant recipient the conditions under which he or she may defer or forbear repayment, obtain a full or partial discharge, or receive teacher loan forgiveness if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xiv) Review for the grant recipient information on the availability of the Department’s Student Loan Ombudsman’s office; and

(xv) Inform the grant recipient of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(5) If exit counseling is conducted through interactive electronic means, an institution must take reasonable steps to ensure that each grant recipient receives the counseling materials and participates in and completes the exit counseling.

(d) Compliance. The institution must maintain documentation substantiating the institution’s compliance with this section for each TEACH Grant recipient.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.33 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student’s needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 686.11 within the award year as long as the student has signed the agreement to serve prior to disbursement of the TEACH Grant. The student’s enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.34 Liability for and recovery of TEACH Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a student is liable for any TEACH Grant overpayment made to him or her.

(2) The institution is liable for a TEACH Grant overpayment if the overpayment occurred because the institution failed to follow the
procedures set forth in this part or in 34 CFR part 688. The institution must restore an amount equal to the overpayment to its TEACH Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a TEACH Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a TEACH Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make the requested repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the TEACH Grant overpayment.

(2) If a student objects to the institution’s TEACH Grant overpayment determination, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a TEACH Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection in accordance with procedures required by the Secretary. After referring the TEACH Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.35 Recalculation of TEACH Grant award amounts.

(a) Change in enrollment status. (1) If the student’s enrollment status changes from one academic term to another academic term within the same award year, the institution must recalculate the TEACH Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student’s projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student’s award for the payment period is recalculated. Any such recalculation must take into account any changes in the cost of attendance. In the case of an undergraduate or post-baccalaureate program of study, if such a policy is established, it must be the same policy that the institution established under 34 CFR 690.80(b) for the Federal Pell Grant Program and it must apply to all students in the TEACH Grant-eligible program.

(ii) If a student’s projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must recalculate the student’s enrollment status to reflect only those classes for which he or she actually began attendance.

(b) Change in cost of attendance. If the student’s cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may, but is not required to, establish a policy under which the student’s TEACH Grant award for the payment period is recalculated. If such a policy is established, it must apply to all students in the TEACH Grant-eligible program.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.36 Fiscal control and fund accounting procedures.

(a) An institution must follow the provisions for maintaining general fiscal records in this section and in 34 CFR 668.24(b).

(b) An institution must maintain funds received under this section in accordance with the requirements in 34 CFR 668.164.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.37 Institutional reporting requirements.

(a) An institution must provide to the Secretary information about each TEACH Grant recipient that includes but is not limited to—

(1) The student’s eligibility for a TEACH Grant, as determined in accordance with §§ 686.11 and 686.31;

(2) The student’s TEACH Grant amounts; and

(3) The anticipated and actual disbursement date or dates and disbursement amounts of the TEACH Grant funds.

(b) The Secretary accepts a student’s Payment Data that is submitted in accordance with procedures established through publication in the Federal Register, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution. An institution must submit the initial disbursement record for a TEACH Grant to the Secretary no later than 30 days following the date of the initial disbursement. The institution must submit subsequent disbursement records, including adjustment and cancellation records, to the Secretary no later than 30 days following the date the disbursement, adjustment, or cancellation is made.

(Authority: 20 U.S.C. 1070g, et seq.)

§ 686.38 Maintenance and retention of records.

(a) An institution must follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Authority: 20 U.S.C. 1070g, et seq.)

Subpart E—Service and Repayment Obligations

§ 686.40 Documenting the service obligation.

(a) Except as provided in §§ 686.41 and 686.42, within 120 days of completing or otherwise ceasing enrollment in a program of study for which a TEACH Grant was received, the grant recipient must confirm to the Secretary in writing that—

(1) He or she is employed as a full-time teacher but intends to meet the terms and conditions of the agreement to serve described in § 686.12; or

(2) He or she is not yet employed as a full-time teacher but intends to meet the terms and conditions of the agreement to serve described in § 686.12.

(b) If a grant recipient is performing full-time teaching service in accordance with the agreement to serve, or agreements to serve if
more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school in which the grant recipient is teaching. The documentation must show that the grant recipient is teaching in a low-income school. If the school at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient’s four elementary or secondary academic years of teaching and the school fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that recipient.

(c)(1) In addition to the documentation requirements in paragraph (b) of this section, the documentation must show that the grant recipient—

(i) Taught a majority of classes during the period being certified in any of the high-need fields of mathematics, science, a foreign language, bilingual education, English language acquisition, special education, or as a reading specialist; or

(ii) Taught a majority of classes during the period being certified in a State in another high-need field designated by that State and listed in the Nationwide List, except that teaching service does not satisfy the requirements of the agreement to serve if that teaching service is in a geographic region of a State or in a specific grade level not associated with a high-need field of a State designated in the Nationwide List as having a shortage of elementary or secondary school teachers.

(2) If a grant recipient begins qualified full-time teaching service in a State in a high-need field designated by that State and listed in the Nationwide List and in subsequent years that high-need field is no longer designated by the State in the Nationwide List, the grant recipient will be considered to continue to perform qualified full-time teaching service in a high-need field of that State and to continue to fulfill the service obligation.

(d) Documentation must also provide evidence that the grant recipient is a highly-qualified teacher.

(e) For purposes of completing the service obligation, the elementary or secondary academic year may be counted as one of the grant recipient’s four complete elementary or secondary academic years if the grant recipient completes at least one-half of the elementary or secondary academic year and the grant recipient’s school officer considers the grant recipient to have fulfilled his or her contract requirements for the elementary or secondary academic year for the purposes of salary increases, tenure, and retirement if the grant recipient is unable to complete an elementary or secondary academic year due to—

(1) A condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2612(a)(1) and (3)); or

(2) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency.

(f) A grant recipient who taught in more than one qualifying school during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(Approved by the Office of Management and Budget under control number 1845-0063.)

§ 686.41 Periods of suspension.

(a)(1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on—

(i) Enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State’s elementary or secondary schools;

(ii) A condition that is a qualifying reason for leave under the FMLA; or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency.

(b) A grant recipient may receive a suspension described in paragraphs (a)(1)(i), (ii), and (iii) of this section in one year increments that—

(i) Does not exceed a combined total of three years under both paragraphs (a)(1)(i) and (ii) of this section; or

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) of this section.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

§ 686.42 Discharge of agreement to serve.

(a) Death. If a grant recipient dies, the Secretary discharges the obligation to complete the agreement to serve based on an original or certified copy of the grant recipient’s death certificate, an accurate and complete photocopy of the original or certified copy of the grant recipient’s death certificate, or, on a case-by-case basis, reliable documentation acceptable to the Secretary.
(b) **Total and permanent disability.**

1. A grant recipient’s agreement to serve is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

2. The eight-year time period in which the grant recipient must complete the service obligation remains in effect during the conditional discharge period described in 34 CFR 685.213(c)(2) unless the grant recipient is eligible for a suspension based on a condition that is a qualifying reason for leave under the FMLA in accordance with § 686.41(a)(1)(ii)(D).

3. Interest continues to accrue on each TEACH Grant disbursement unless and until the TEACH Grant recipient’s agreement to serve is discharged.

4. If the grant recipient satisfies the criteria for a total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary discharges the grant recipient’s service obligation.

5. If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the grant recipient does not meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and the grant recipient is once again subject to the terms of the agreement to serve.

(c) **Military discharge.**

1. A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under § 686.41(a)(2)(ii), may qualify for a proportional discharge of his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

2. A grant recipient described in paragraph (c)(1) of this section may receive a—

   i. One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

   ii. Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

   iii. Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

   iv. Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

3. A grant recipient or his or her representative must provide the Secretary with—

   i. A written statement from the grant recipient’s commanding or personnel officer certifying—

      A. That the grant recipient is on active duty in the Armed Forces of the United States;

      B. The date on which the grant recipient’s service began; and

      C. The date on which the grant recipient’s service is expected to end; or

   ii. A copy of the grant recipient’s military orders and/or military identification.

4. For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

5. Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with § 686.12.

   (Approved by the Office of Management and Budget under control number 1845–0083)

   (Authority: 20 U.S.C. 1070g, et seq.)


§ 686.43 **Obligation to repay the grant.**

(a) The TEACH Grant amounts disbursed to the recipient will be converted into a Federal Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made and be collected by the Secretary in accordance with the relevant provisions of subpart A of 34 CFR part 685 if—

1. The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a Federal Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or field or for any other reason;

2. Within 120 days of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has failed to notify the Secretary in accordance with § 686.40(a);

3. Within one year of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has not—

   i. Been determined eligible for a suspension of the eight-year period for completion of the service obligation as provided in § 686.41;

   ii. Re-enrolled in a TEACH Grant-eligible program; or

   iii. Begun creditable teaching service as described in § 686.12(b);

4. The grant recipient completes the course of study for which a TEACH Grant was received and does not actively confirm to the Secretary, at least annually, his or her intention to satisfy the agreement to serve; or

5. The grant recipient has completed the TEACH Grant-eligible program but has failed to begin or maintain qualified employment within the timeframe that would allow that individual to complete the service obligation within the number of years required under § 686.12.

(b) A TEACH Grant that converts to a loan, and is treated as a Federal Direct Unsubsidized Loan, is not counted against the grant recipient’s annual or any aggregate Stafford Loan limits.

(c) A grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan—

1. Enters a six-month grace period prior to entering repayment, and

2. Is eligible for all of the benefits of the Direct Loan Program, including an in-school deferment.

(d) A TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be converted back to a grant.

(Authority: 20 U.S.C. 1070g, et seq.)
34 CFR 690

Integrated Regulations Incorporating

Program Integrity Issues Final Rules
(published in October 29, 2010 Federal Register)

Developed by NCHELP Program Regulations Committee
Updated: December 6, 2010

Base document:
GPO Compilation updated through July 1, 2010
## Table of Contents

### Subpart A—Scope, Purpose and General Definitions
- § 690.1 Scope and purpose ................................................................. 3
- § 690.2 Definitions ................................................................. 3
- §§ 690.3–690.5 [Reserved] ................................................................. 4
- § 690.6 Duration of student eligibility .............................................. 4
- § 690.7 Institutional participation .................................................... 4
- § 690.8 Enrollment status for students taking regular and correspondence courses ................................................................. 4
- § 690.10 Administrative cost allowance to participating schools ................................................................. 5
- § 690.11 Federal Pell Grant payments from more than one institution ................................................................. 5

### Subpart B—Application Procedures for Determining Expected Family Contribution
- § 690.12 Application ................................................................. 5
- § 690.13 Notification of expected family contribution ................................................................. 5
- § 690.14 Applicant’s request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information ................................................................. 5

### Subparts C–E [Reserved] ................................................................. 6

### Subpart F—Determination of Federal Pell Grant Awards
- § 690.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record ................................................................. 6
- § 690.62 Calculation of a Federal Pell Grant ................................................................. 6
- § 690.63 Calculation of a Federal Pell Grant for a payment period ................................................................. 6
- § 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years ................................................................. 8
- § 690.65 Transfer student: attendance at more than one institution during an award year ................................................................. 8
- § 690.66 Correspondence study ................................................................. 9
- § 690.67 Receiving up to two Scheduled Federal Pell Grant awards during a single award year ................................................................. 9

### Subpart G—Administration of Grant Payments
- § 690.71 Scope ................................................................. 10
- §§ 690.72–690.74 [Reserved] ................................................................. 10
- § 690.75 Determination of eligibility for payment ................................................................. 10
- § 690.76 Frequency of payment ................................................................. 11
- § 690.77–690.78 [Reserved] ................................................................. 11
- § 690.79 Liability for and recovery of Federal Pell Grant overpayments ................................................................. 11
- § 690.80 Recalculation of a Federal Pell Grant award ................................................................. 11
- § 690.81 Fiscal control and fund accounting procedures ................................................................. 11
- § 690.82 Maintenance and retention of records ................................................................. 12
- § 690.83 Submission of reports ................................................................. 12

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Base Document: GPO Compilation updated through July 1, 2010

October 26, 2010 Final Rules (Program Integrity Issues)
Subpart A—Scope, Purpose and General Definitions

SOURCE: 50 FR 10717, Mar. 15, 1985, unless otherwise noted.

§ 690.1 Scope and purpose.
The Federal Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted)

[50 FR 10717, Mar. 15, 1985, as amended at 59 FR 54730, Nov. 1, 1994]

§ 690.2 Definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Award year
Clock hour
Correspondence course
Credit hour
Secretary
State

(b) The following definitions are contained in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic Competitiveness Grant (ACG) Program
Academic year
Dependent student
Eligible program
Enrolled
Expected family contribution
Federal Family Education Loan (FFEL) Program
Federal Pell Grant Program
Federal Perkins Loan Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Full-time student
Half-time student
HEA
Independent student
Institutional student information record (ISIR)
National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
Parent
Payment period
Student aid report (SAR)

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant
Three-quarter-time student
Undergraduate student
Valid institutional student information record (valid ISIR)
Valid student aid report (valid SAR)
William D. Ford Federal Direct Loan Program

(c) Other terms used in this part are:

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full academic year in an award year, and the amount a three quarter- time, half-time, and less-than-half- time student would receive under the appropriate Disbursement Schedule for being enrolled in that enrollment status for a full academic year in an award year.

Central processor: An organization under contract with the Secretary that calculates an applicant’s expected family contribution based on the applicant’s application information, transmits an ISIR to each institution designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on—

(1) A student’s expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student’s attendance costs as defined in title IV, part F of the HEA.

(3) The amount of funds available for making Federal Pell Grants.

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which—

(1) A student is able to transmit his or her application information to the central processor or through his or her institution and an ISIR is transmitted back to the institution;

(2) A student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) An institution is able to receive an ISIR from the central processor for a student.

Eligible student: An eligible student as described in 34 CFR part 668, subpart C.

Enrollment status: Full-time, three quarter- time, half-time, or less-than half- time depending on a student’s credit-hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

Institution of higher education (Institution). An institution of higher education, or a proprietary institution of higher education, or a postsecondary vocational institution as defined in 34 CFR part 600.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant’s—

(1) Personal identification information.

(2) Application data used to calculate the applicant’s EFC; and

(3) EFC.

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Payment Schedule: A table showing a full-time student’s Scheduled Payment Schedule for a Federal Pell Grant for an academic year. This table, published annually by the Secretary, is based on—

(1) The student’s EFC; and

(2) The student’s cost of attendance as defined in part F of title IV of the HEA.

Scheduled Federal Pell Grant: The amount of a Federal Pell Grant which would be paid to a full-time student for a full academic year.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant’s expected family contribution is accurate and complete as of the date the application is signed.
Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070a, 1070g)


§§ 690.3–690.5 [Reserved]

§ 690.6 Duration of student eligibility.

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study. Any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in the institution’s determination of that student’s period of Federal Pell Grant eligibility.

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

(e) If a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than nine Scheduled Awards.

(Authority: 20 U.S.C. 1070a)


§ 690.7 Institutional participation.

(a) An institution may not participate in the Federal Pell Grant Program if the institution—

(1) Offers at least one eligible program for purposes of the ACG Program, as defined in 34 CFR 691.2(d), but does not participate in the ACG Program; or

(2) Offers at least one eligible program for purposes of the National SMART Grant Program, as defined in 34 CFR 691.2(d), but does not participate in the National SMART Grant Program.

(b) If an institution begins participation in the Federal Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Federal Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(c) If an institution becomes ineligible to participate in the Federal Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid ISIR, before the date the institution became ineligible, is paid a Federal Pell Grant for that payment period.

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(d)(1) If an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of part M of 34 CFR part 668, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.187.

(e) An institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Federal Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Federal Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Federal Pell Grant expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a)


§ 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student’s institution, the correspondence work may be included in determining the student’s enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student’s enrollment status is that amount of work which—

(1) Applies toward a student’s degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed the amount of a student’s regular course work for the payment period for which the student’s enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a...
student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than halftime.

(2) A student who would be a less than half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

<table>
<thead>
<tr>
<th>Under § 690.8</th>
<th>No. of credit hours regular work</th>
<th>No. of credit hours correspondence</th>
<th>Total course load in credit hours to determine enrollment status</th>
<th>Enrollment status</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>9</td>
<td>9</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>6</td>
<td>3</td>
<td>12</td>
<td>Three-quarter-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3) and (c)</td>
<td>2</td>
<td>6</td>
<td>6</td>
<td>Less-than-half-time</td>
</tr>
</tbody>
</table>

*Any combination of regular and correspondence work that is greater than zero, but less than six hours.

(Authority: 20 U.S.C. 1070a)


§ 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Federal Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely to pay the institution’s cost of administering the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs.

(c) If an institution enrolls a significant number of students who are attending less-than-full-time or are independent students, the institution shall use a reasonable proportion of these funds to make financial aid services available during times and in places that will most effectively accommodate the needs of those students.

(Authority: 20 U.S.C. 1096)


§ 690.11 Federal Pell Grant payments from more than one institution.

A student is not entitled to receive Federal Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 59 FR 54730, Nov. 1, 1994]

Subpart B—Application Procedures for Determining Expected Family Contribution

§ 690.12 Application.

(a) As the first step to receiving a Federal Pell Grant, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated. A copy of this form is not acceptable.

(b) The student shall submit an application to the Secretary by—

(1) Providing the application form, signed by all appropriate family members, to the institution at which the student attends or plans to attend so that the institution can transmit electronically the application information to the Secretary under EDE; or

(2) Sending an approved application form to the Secretary.

(c) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(3) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

| (d) | For each award year the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting these applications and for making corrections to the information contained in the applications. |
| (d) | (Approved by the Office of Management and Budget under control number 1840–0881) |
| (d) | (Authority: 20 U.S.C. 1070a) |
| (d) | [50 FR 10717, Mar. 15, 1985, as amended at 59 FR 54732, Nov. 1, 1994; 60 FR 21438, May 2, 1995; 60 FR 30789, June 12, 1995; 61 FR 60397, Nov. 27, 1996] |

§ 690.13 Notification of expected family contribution.

The Secretary sends a student’s application information and EFC as calculated by the central processor to the student on an SAR and allows each institution designated by the student to obtain an ISIR for that student.

(Approved by the Office of Management and Budget under control number 1840–0881)

(Authority: 20 U.S.C. 1070a)

[81 FR 60397, Nov. 27, 1996]

§ 690.14 Applicant’s request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information.

(a) An applicant may request that the Secretary recalculate his or her expected family contribution if—

(1) He or she believes a clerical or arithmetic error has occurred; or
The applicant shall request that the
application was signed.
submitted was inaccurate when the
information he or she
must be supported by—
(1) Information contained on an
approved form, that is certified by the
student, and one of the student’s
parents if the student is a dependent
student.
(c) If an institution transmits
electronically the student’s
recalculation request to the
Secretary, the corrected information
must be supported by—
(1) Information contained on an
approved form, that is certified by the
student, and if the student is a
dependent student, one of the
student’s parents; or
(2) Verification documentation
provided by a student under 34 CFR
686.57.
(d) The recalculation request must
be received by the Secretary no later
than the deadline date established
by the Secretary through publication
in the FEDERAL REGISTER.
(Authority: 20 U.S.C. 1070a)
[50 FR 10721, Mar. 15, 1985, as amended
at 51 FR 8954, Mar. 14, 1986; 59 FR
54732, Nov. 1, 1994; 61 FR 60397, Nov.
27, 1996]
Subparts C–E [Reserved]
Subpart F—Determination of
Federal Pell Grant Awards
SOURCE: 50 FR 10722, Mar. 15, 1985,
unless otherwise noted.
§ 690.61 Submission process and
deadline for a Student Aid Report
or Institutional Student Information
Record.
(a) Submission process. (1) Except
as provided in paragraph (a)(2) of
this section, an institution must
disburse a Federal Pell Grant to an
eligible student who is otherwise
qualified to receive that
disbursement and electronically
transmit Federal Pell Grant
disbursement data to the Secretary
for that student if—
(i) The student submits a valid SAR
to the institution; or
(ii) The institution obtains a valid
ISIR for the student.
(2) In determining a student’s
eligibility to receive his or her
Federal Pell Grant, an institution is entitled to assume that SAR
information or ISIR information is
accurate and complete except under the conditions set forth in 34 CFR
668.16(f) and 668.60.
(b) Valid Student Aid Report or
Valid Institutional Student Information
Record deadline. Except as provided
in the verification provisions of §
668.60 and the late disbursement
provisions of § 668.164(g) of this
chapter, for a student to receive a
Federal Pell Grant for an award year,
the student must submit the relevant
parts of the valid SAR to his or her
institution or the institution must
obtain a valid ISIR by the earlier of—
(1) The last date that the student is
still enrolled and eligible for payment
at that institution; or
(2) By the deadline date established
by the Secretary through publication
of a notice in the FEDERAL
REGISTER.
(Authority: 20 U.S.C. 1070a)
[59 FR 54732, Nov. 1, 1994, as amended
at 61 FR 60397, Nov. 27, 1996; 67 FR
67083, Nov. 1, 2002; 69 FR 12277, Mar.
16, 2004]
§ 690.62 Calculation of a Federal
Pell Grant.
(a) The amount of a student’s Pell
Grant for an academic year is based
upon the payment and disbursement schedules published by the
Secretary for each award year.
(b) No payment may be made to a
student if the student’s annual award
is less than $200. However, a
student who is eligible for an annual
award that is equal to or greater than
$200, but less than or equal to $400,
shall be awarded a Federal Pell
Grant of $400.
(Authority: 20 U.S.C. 1070a(a)(2))
[50 FR 10722, Mar. 15, 1985, as amended
at 59 FR 54730, 54732, Nov. 1, 1994]
§ 690.63 Calculation of a Federal
Pell Grant for a payment period.
(a)(1) Programs using standard
terms with at least 30 weeks of
instructional time. A student’s
Federal Pell Grant for a payment
period is calculated under paragraphs (b) or (d) of this section if—
(i) The student is enrolled in an
eligible program that—
(A) Measures progress in credit
hours;
(B) Is offered in semesters,
trimesters, or quarters;
(C) Requires the student to enroll for
at least 12 credit hours in each term
in the award year to qualify as a full-
time student; and
(ii) The program uses an academic
calendar that provides at least 30
weeks of instructional time in—
(A) Two semesters or trimesters in
the fall through the following spring,
or three quarters in the fall, winter,
and spring, none of which overlaps
any other term (including a summer
term) in the program; or
(B) Any two semesters or trimesters,
or any three quarters where—
(1) The institution starts its terms for
different cohorts of students on a
periodic basis (e.g., monthly);
(2) The program is offered exclusively in semesters, trimesters,
or quarters; and
(3) Students are not allowed to be
enrolled simultaneously in
overlapping terms and must stay
with the cohort in which they start
unless they withdraw from a term (or
skip a term) and re-enroll in a
subsequent term.

(2) Programs using standard terms
with less than 30 weeks of
instructional time. A student’s
Federal Pell Grant for a payment
period is calculated under paragraph
(c) or (d) of this section if—

(i) The student is enrolled in an
eligible program that—

(A) Measures progress in credit
hours;

(B) Is offered in semesters,
trimesters, or quarters;

(C) Requires the student to enroll in
at least 12 credit hours in each term
in the award year to qualify as a full-
time student; and

(D) Is not offered with overlapping
terms; and

(ii) The institution offering the
program—

(A) Provides the program using an
academic calendar that includes two
semesters or trimesters in the fall
through the following spring, or three
quarters in the fall, winter, and
spring; and

(B) Does not provide at least 30
weeks of instructional time in the
terms specified in paragraph
(a)(2)(ii)(A) of this section.

(3) Other programs using terms and
credit hours. A student’s Federal
Pell Grant for a payment period is
calculated under paragraph (d) of


(d) Other programs using terms and credit hours. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, halftime, or less-than-half-time students;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

<table>
<thead>
<tr>
<th>Program in the fall and spring semesters or trimesters</th>
<th>The number of weeks in the program's academic year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>; or</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters</th>
</tr>
</thead>
<tbody>
<tr>
<td>The number of weeks in the program's academic year</td>
</tr>
<tr>
<td>; and</td>
</tr>
</tbody>
</table>

| (4) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or |
| (ii) Dividing the student’s annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student’s annual award if— |

| (A) An institution chooses to distribute all of the student’s annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and |
| (B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program’s academic year. |

| (c) Programs using standard terms with less than 30 weeks of instructional time. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by— |

| (1) Determining his or her enrollment status for the term; |

| (2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, halftime, or less-than-half-time students; |

| (3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable: |

<table>
<thead>
<tr>
<th>The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters</th>
</tr>
</thead>
<tbody>
<tr>
<td>The number of weeks in the program's academic year</td>
</tr>
</tbody>
</table>

| In a program using quarters— |

| (A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program’s academic year; |

| (B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program’s academic year to |

This section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) Programs not using terms or using clock hours. A student’s Federal Pell Grant for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) Programs of study offered by correspondence. A student’s Federal Pell Grant payment for a payment period is calculated under § 690.66 if the program is offered by correspondence courses.

(6) Programs for which an exception to the academic year definition has been granted under 34 CFR 688.3. If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 688.3, an institution may calculate a student’s Federal Pell Grant payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph(a)(1)(ii)(A) of this section as are in the program’s academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(iii) The institution uses the methodology described in § 690.66 if the program is correspondence study.

(b) Programs using standard terms with at least 30 weeks of instructional time. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, halftime, or less-than-half-time students; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student’s annual award if—

(A) An institution chooses to distribute all of the student’s annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program’s academic year.

(c) Programs using standard terms with less than 30 weeks of instructional time. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(i)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, halftime, or less-than-half-time students; and

(3) Dividing his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:
(a) The entire payment period must be considered to occur within one award year.

(b)(1) An institution must assign the payment period to the award year in which the student receives the greater payment for the payment period based on the information available at the time that the student’s Federal Pell Grant is initially calculated.

(2) The institution must reassign the payment to the award year providing the greater payment if the institution receives information that the student would receive a greater payment for the payment period by reassigning the payments to the other award year—

(i) Subsequent to the initial calculation of the student’s payment for the payment period; and

(ii) Not later than the deadline date for the first award year that the Secretary established through publication in the Federal Register for each award year; and

(3) The institution may reassign the payment to the award year providing the greater payment if the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year—

(i) Subsequent to the deadline date established in paragraph (b)(2) of this section; and

(ii) Not later than the deadline date for the first award year for administrative relief based on unusual circumstances that the Secretary establishes through publication in the Federal Register for each award year;

(c) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year; and

(d) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(Approved by the Office of Management and Budget under control number 1845-NEWS)

(Authority: 20 U.S.C. 1070a)


§ 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—
in the same award year, the student may receive a Federal Pell Grant at the second institution only if—

1. The student submits a valid SAR to the second institution; or
2. The second institution obtains a valid ISIR.

(b) The second institution shall calculate the student’s award according to § 690.63.

(c) The second institution may pay a Federal Pell Grant only for that portion of the academic year in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student’s Scheduled Federal Pell Grant for that award year except as provided under § 690.67.

(d) If a student’s Scheduled Federal Pell Grant at the second institution differs from the Scheduled Federal Pell Grant at the first institution, the grant amount at the second institution is calculated as follows—

1. The amount received at the first institution is compared to the Scheduled Federal Pell Grant at the first institution to determine the percentage of the Scheduled Federal Pell Grant that the student has received.
2. That percentage is subtracted from 100 percent.
3. The remaining percentage is the percentage of the Scheduled Federal Pell Grant at the second institution to which the student is entitled.

(e) The student’s Federal Pell Grant for each payment period is calculated according to the procedures in § 690.63 unless the remaining percentage of the Scheduled Federal Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student’s Federal Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year that exceeds—

1. His or her Scheduled Federal Pell Grant; or
2. The amount which he or she was eligible to receive for the award year under § 690.67.

(Authority: 20 U.S.C. 1070a)

§ 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

1. Determining the student’s annual award using the half-time Disbursement Schedule; and
2. Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of—

(i) The number of credit hours in the payment period

(ii) The number of instructional time in the payment period

(b) For purposes of paragraph (a) of this section—

1. The institution shall make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and
2. The institution shall make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

1. The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;
2. If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the Disbursement Schedule for a half-time student is used to calculate the payment for the payment period; or
3. If the student is enrolled in less than 6 credit hours that commence and are completed in that term the Disbursement Schedule for a less-than-half-time student is used to calculate the payment for the payment period;
4. The institution shall make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training shall be calculated under § 690.63(d) if the residential training is offered using terms and credit hours or § 690.63(e) if the residential training is offered using credit hours without terms.

(59 FR 54734, Nov. 1, 1994, as amended at 72 FR 62033, Nov. 1, 2007; 74 FR 20221, May 1, 2009)

§ 690.67 Receiving up to two Scheduled Federal Pell Grant awards during a single award year.

(a) Eligibility. An institution shall award up to the full amount of a second Scheduled Award to a student in an award year if the student—

1. Is enrolled for credit or clock hours that are attributable to the student’s second academic year in the award year;
2. Is enrolled in an eligible program leading to a bachelor’s or associate degree or other recognized educational credential as provided in 34 CFR part 668, subpart O for students with intellectual disabilities; and
3. Is enrolled at least as a half-time student.

(b) Transfer student. (1) Options. If a student transfers to an institution during an award year, the institution must determine the credit or clock hours earned in the award year at the other institutions in accordance...
with paragraph (b)(2) or (3) of this section.

(2) Assumption method. (i) The institution may assume that a student has completed the credit or clock hours in the first academic year of the award year if the first Scheduled Award was disbursed at other institutions during the award year; or

(ii) If less than the first Scheduled Award has been disbursed at a prior institution that the student attended during the award year, the institution must determine the credit or clock hours the student is considered to have previously earned in the award year by—

(A) Multiplying the amount of the student’s Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the institution’s academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution; and

(B) If the student previously attended more than one institution in the award year, adding the results of paragraph (b)(2)(i) of this section for each prior institution.

(3) Hours-earned method. (i) If the institution has information concerning the credit or clock hours earned by a student while attending other institutions, the institution may determine the credit or clock hours actually earned at other institutions.

(ii) To make a determination under paragraph (b)(3)(i) of this section, the institution must have information that—

(A) Includes the time periods when the credit or clock hours were earned; and

(B) Does not include nonapplicable credit or clock hours described in paragraph (d) of this section.

(4) Receipt of additional information. (i) If an institution receives additional information concerning, Federal Pell Grant disbursements or, for paragraph (b)(3) of this section, credit or clock hours earned at other institutions and related information, subsequent to a prior payment period in which the institution disbursed a payment of a second Scheduled Award in the award year based on the application of paragraph (b)(2) or (3) of this section, the institution is not required to apply the information to the prior payment period.

(ii) [Reserved]

(c) Special Circumstances. (1) In a payment period in which there is insufficient remaining eligibility from a student’s first Scheduled Award to provide a full payment for the payment period, the financial aid administrator at the institution may waive the requirement in paragraph (a)(1) of this section, if the financial aid administrator—

(i) Determines that the student due to circumstances beyond the student’s control was unable to complete the credit or clock hours of the first academic year that are necessary to be enrolled for credit or clock hours that are attributable to the second academic year; and

(ii) The determination is made and documented on an individual basis.

(2) For purposes of paragraph (c)(1) of this section, circumstances beyond a student’s control—

(i) May include, but are not limited to, the student withdrawing from classes due to illness or being unable to register for classes necessary to complete his or her eligible program because those classes were not offered during that period; and

(ii) Do not include, for example, withdrawing to avoid a particular grade or failing to register for a necessary class that was offered during the period to avoid a particular instructor.

(d) Nonapplicable credit or clock hours. To determine the student’s eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

(Approved by the Office of Management and Budget under control number 1845-NEW5)

(Authority 20 U.S.C. 1070a)

[50 FR 43162, Nov. 28, 1985, unless otherwise noted.]

§ 690.71 Scope.

This subpart deals with program administration by an institution of higher education.

(Authority: 20 U.S.C. 1070a)


§§ 690.72–690.74 [Reserved]

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines that the student—

(1) Qualifies as an eligible student under 34 CFR Part 668, Subpart C;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3) If enrolled in a credit hour program without terms or a clock hour program, has completed the payment period as defined in § 686.4 for which he or she has been paid a Federal Pell Grant.

(b) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Federal Pell Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Federal Pell Grant nor make adjustments in subsequent Federal Pell Grant...
(d) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution amount at least equal to the maximum authorized award amount for the award year if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Approved by the Office of Management and Budget under control number 1845–0681)

(Authority: 20 U.S.C. 1070a)

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student’s needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student’s enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 56 FR 56916, Nov. 6, 1991]

§§ 690.77–690.78 [Reserved]

§ 690.79 Liability for and recovery of Federal Pell Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR Part 668. The institution must restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the Federal Pell Grant overpayment.

(2) If a student objects to the institution’s Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a Federal Pell Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a)

[67 FR 67083, Nov. 1, 2002]

§ 690.80 Recalculation of a Federal Pell Grant award.

(a) Change in expected family contribution. (1) The institution shall recalculate a Federal Pell Grant award for the entire award year if the student’s expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14; or

(ii) A correction based on information required as a result of verification under 34 CFR part 668, subpart E.

§ 690.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal records in this part and in 34 CFR 688.24(b).
§ 668.164.

received under this part in 1996, 1994; 61 FR 60397, 60493, Nov. 27, 0681)

(Authority: 20 U.S.C. 1070a, 1232f)

§ 690.82 Maintenance and retention of records.

(a) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a, 1232f)

§ 690.83 Submission of reports.

(a)(1) An institution may receive either a payment from the Secretary for an award to a Federal Pell Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student’s Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student’s Payment Data.

(2) The Secretary accepts a student’s Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b)(1) An institution shall report to the Secretary any change in the amount of a grant for which a student qualifies including any related Payment Data changes by submitting to the Secretary the student’s Payment Data that discloses the basis and result of the change in award for each student. The institution shall submit the student’s Payment Data reporting any change to the Secretary by the reporting deadlines published by the Secretary in the FEDERAL REGISTER.

(2) An institution shall submit, in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of a Federal Pell Grant award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(c) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d)(1) Notwithstanding paragraphs (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award year and that was conducted after December 31, 1988 and timely submitted to the Secretary under 34 CFR 668.23(c).

(3) An institution that timely submits the Payment Data for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, the Payment Data necessary to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student’s Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Approved by the Office of Management and Budget under control number 1840–0688)

(Authority: 20 U.S.C. 1070a, 1094, 1226a–1)

34 CFR 691

Integrated Regulations Incorporating

Program Integrity Issues Final Rules
(published in October 29, 2010 Federal Register)

Developed by NCHELP Program Regulations Committee
Updated: December 6, 2010

Base document:
GPO Compilation updated through July 1, 2010
### Table of Contents

Subpart A—Scope, Purpose, and General Definitions

- § 691.1 Scope and purpose ................................................................. 3
- § 691.2 Definitions ........................................................................... 3
- §§ 691.3–691.5 [Reserved] ................................................................. 4
- § 691.6 Duration of student eligibility—undergraduate course of study ............................................................................ 4
- § 691.7 Institutional participation ........................................................ 4
- § 691.8 Enrollment status for students taking regular and correspondence courses ............................................................... 4
- §§ 691.9–691.10 [Reserved] ................................................................. 5
- § 691.11 Payments from more than one institution .............................. 5

Subpart B—Application Procedures ...................................................... 5

- § 691.12 Application .......................................................................... 5
- §§ 691.13–691.14 [Reserved] ................................................................. 5
- § 691.15 Eligibility to receive a grant ................................................... 5
- § 691.16 Rigorous secondary school program of study ......................... 7
- § 691.17 Determination of eligible majors .............................................. 7

Subparts C–E [Reserved] ........................................................................ 8

Subpart F—Determination of Awards .................................................... 8

- § 691.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record .............................................. 8
- § 691.62 Calculation of a grant .............................................................. 8
- § 691.63 Calculation of a grant for a payment period .............................. 9
- § 691.64 Calculation of a grant for a payment period which occurs in two award years ............................................................. 11
- § 691.65 Transfer student ................................................................. 11
- § 691.66 Correspondence study ......................................................... 11

Subpart G—Administration of Grant Payments .................................... 12

- § 691.71 Scope .................................................................................. 12
- §§ 691.72–691.74 [Reserved] ................................................................. 12
- § 691.75 Determination of eligibility for payment ................................. 12
- § 691.76 Frequency of payment ......................................................... 12
- §§ 691.77–691.78 [Reserved] ................................................................. 12
- § 691.79 Liability for and recovery of grant overpayments .................... 12
- § 691.80 Redetermination of eligibility for a grant award ...................... 13
- § 691.81 Fiscal control and fund accounting procedures .......................... 13
- § 691.82 Maintenance and retention of records ....................................... 13
- § 691.83 Submission of reports .......................................................... 13

Base Document: GPO Compilation updated through July 1, 2010
Subpart A—Scope, Purpose, and General Definitions

§ 691.1 Scope and purpose.

(a) The ACG Program awards grants to help eligible financially needy first and second-year undergraduate students, who complete rigorous secondary school programs of study, meet the cost of their postsecondary education.

(b) The National SMART Grant Program awards grants to help eligible financially needy third-, fourth-, and, in the case of a program with at least five full years, fifth-year undergraduate students who are pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering or a critical foreign language meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a–1, unless otherwise noted)

[71 FR 38004, July 3, 2006, as amended at 74 FR 20221, May 1, 2009]

§ 691.2 Definitions.

(a) The following definitions used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Award year

Clock hour

Correspondence course

Credit hour

Eligible institution

Federal Family Education Loan (FFEL) Programs

Regular student

Secretary

State

Title IV, HEA program

(b) The following definitions used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year

Enrolled

Expected family contribution

Federal Pell Grant Program

Full-time student

Half-time student

HEA

Payment period

Three-quarter time student

Undergraduate student

William D. Ford Federal Direct Loan (Direct Loan) Program

(c) The following definitions used in this part are in 34 CFR part 77:

Local educational agency (LEA)

State educational agency (SEA)

(d) Other terms used in this part are:

ACG Scheduled Award: The maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year.

Annual award: The maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or halftime student and remaining in that enrollment status for one year.

Classification of Instructional Programs (CIP): A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education’s National Center for Education Statistics used to identify eligible majors for the National SMART Grant Program. Further information on CIP can be found at http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002165.

Eligible major: A major, as identified by the Secretary under § 691.17(a), in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language as defined in section 103(3) of the HEA; or a qualifying liberal arts curriculum as identified by the Secretary under § 691.17(b).

Eligible program: An eligible program as defined in 34 CFR 668.8 that—

(1) For purposes of the ACG Program—

(i) Is an undergraduate program of at least one academic year, but less than two academic years, in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(ii) Is an undergraduate program of at least two academic years in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(iii) Leads to an associate's degree or a bachelor's degree;

(iv) Is at least a two-academic-year program acceptable for full credit toward a bachelor's degree; or

(v) Is a graduate degree program that includes at least three years of undergraduate education;

(2) For purposes of the National SMART Grant Program—

(i) Leads to a bachelor's degree in an eligible major or is a graduate degree program in an eligible major that includes at least three years of undergraduate education; and

(ii) In the case of a five-year program, is a program that—

(A) Requires at least five full undergraduate years to complete, as certified by an appropriate institutional official in accordance with the institution’s policies and procedures and documented in the institution's records;

(B) Contains not less than 24 semester hours, 36 quarter credits, or 900 clock hours in each year of the program, including the fifth year; and

(C) Is not a program that is a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b).

(3) For purposes of paragraph (2)(ii)(A) of this definition, the appropriate official of an institution is the chief executive officer, provost, dean, academic department chairman, or other official with responsibility for setting a degree program’s coursework.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant’s—

(1) Personal identification information;

(2) Application data used to calculate the applicant’s EFC; and

(3) EFC.

National SMART Grant Scheduled Award: The maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth year, or fifth-year student for the applicable year.

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant’s expected family contribution is accurate and complete as of the date the application is signed.

Valid Student Aid Report (valid SAR): A Student Aid Report on which all of the information used in calculating the applicant’s expected family contribution is accurate and
complete as of the date the application is signed.

(e)(1) As used in this part, the terms "first-year," "second-year," "third year," "fourth-year," and "fifth-year" refer to a student’s grade level in the student’s eligible program as determined by the institution for all students in the eligible program.

(2) A student’s grade level for purposes of the ACG and National SMART Grant programs must be the same grade level as used for determining annual loan limits under the FFEL and Direct Loan programs (34 CFR parts 682 and 685).

(Authority: 20 U.S.C. 1070a–1)


§§ 691.3–691.5 [Reserved]

§ 691.6 Duration of student eligibility—undergraduate course of study.

(a) While enrolled in an ACG-eligible program, a student is eligible to receive up to one ACG Scheduled Award while enrolled as a first-year student and one ACG Scheduled Award while enrolled as a second-year student.

(b)(1) While enrolled in a National SMART Grant-eligible program, a student is eligible to receive up to one National SMART Grant Scheduled Award while enrolled as a third-year student, one National SMART Grant Scheduled Award while enrolled as a fourth-year student, and, in the case of a National SMART Grant-eligible program with five full years of coursework, one National SMART Grant Scheduled Award while enrolled as a fifth-year student.

(2)(i) A student’s eligibility to receive up to one National SMART Grant Scheduled Award as a fourth-year student, in the case of a National SMART Grant-eligible program with less than five full years of coursework, extends from the beginning of the student’s fourth year until he or she completes his or her first undergraduate baccalaureate course of study.

(ii) A student’s eligibility to receive up to one National SMART Grant Scheduled Award as a fifth-year student, in the case of a National SMART Grant-eligible program with at least five full years of coursework, extends from the beginning of the student’s fifth year until he or she completes his or her first undergraduate baccalaureate course of study.

(c) A student may not receive more than two ACG Scheduled Awards and three National SMART Grant Scheduled Awards during the student’s undergraduate education in all eligible programs.

(Authority: 20 U.S.C. 1070a–1)

[74 FR 20222, May 1, 2009]

§ 691.7 Institutional participation.

(a) An institution that offers one or more eligible programs, as defined in § 691.2(d), for purposes of the ACG Program, and that participates in the Federal Pell Grant Program under 34 CFR part 690 must participate in the ACG Program.

(b) An institution that offers one or more eligible programs, as defined in § 691.2(d), for purposes of the National SMART Grant Program, and that participates in the Federal Pell Grant Program under 34 CFR part 690 must participate in the National SMART Grant Program.

(c) If an institution begins participation in the ACG or National SMART Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(d) If an institution becomes ineligible to participate in the ACG or National SMART Grant Program during an award year, a student who was eligible for a grant under § 691.15 who was attending the institution and who submitted a valid SAR to the institution, or for whom the institution obtained a valid ISIR, before the date the institution became ineligible is paid a grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(e)(1) If an institution loses its eligibility to participate in the Federal Pell Grant Program under the provisions of subpart M of 34 CFR part 668, it also loses its eligibility to participate in the ACG or National SMART Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.187.

(f) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name of each eligible student under § 691.15 who, during the award year, submitted a valid SAR to the institution or for whom it obtained a valid ISIR before it became ineligible;

(2) The amount of funds paid to each grant recipient for that award year;

(3) The amount due each student eligible to receive a grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the ACG or National SMART Grant Program expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a–1)

§ 691.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student’s institution, the correspondence work may be included in determining the student’s enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student’s enrollment status is that amount of work that—

(1) Applies toward a student’s degree or certificate or is remedial work taken by the student to help in his or her eligible program;

(2) Is completed within the period of time required for regular coursework; and

(3) Does not exceed the amount of a student’s regular coursework for the payment period for which the student’s enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than halftime.

(2) A student who would be a less than-half-time student based solely
on his or her correspondence work or based on a combination of his or her correspondence work and regular coursework is considered a less-than-half-time student and is ineligible for an ACG or a National SMART Grant.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution of higher education defines full-time enrollment as 12 credits per term, making halftime enrollment equal to six credits per term.

<table>
<thead>
<tr>
<th>Under § 691.8</th>
<th>Number of credit hours regular work</th>
<th>Number of credit hours correspondence</th>
<th>Total course load in credit hours to determine enrollment status</th>
<th>Enrollment status</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>3</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>3</td>
<td>9</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>6</td>
<td>3</td>
<td>9</td>
<td>Three-quarter-time.</td>
</tr>
<tr>
<td>(b)(3)</td>
<td>6</td>
<td>6</td>
<td>12</td>
<td>Full-time.</td>
</tr>
<tr>
<td>(b)(3) and (c)</td>
<td>2</td>
<td>6</td>
<td>6</td>
<td>Half-time.</td>
</tr>
<tr>
<td>(c)*</td>
<td></td>
<td></td>
<td></td>
<td>Less-than-half-time.</td>
</tr>
</tbody>
</table>

* Any combination of regular and correspondence work that is greater than zero, but less than six hours. A less-than-half-time student would be ineligible for an ACG or a National SMART Grant.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 72 FR 62034, Nov. 1, 2007; 74 FR 20222, May 1, 2009]

§§ 691.9–691.10 [Reserved]

§ 691.11 Payments from more than one institution.

A student is not entitled to receive grant payments under this part concurrently from more than one institution. A student may only receive an ACG or a National SMART Grant at the same institution from which the student receives his or her Federal Pell Grant award.

(Authority: 20 U.S.C. 1070a–1)

Subpart B—Application Procedures

§ 691.12 Application.

(a) As the first step to receiving a grant under this part, a student shall apply on an approved application form to the Secretary to have his or her Federal Pell Grant eligibility. A copy of this form is not acceptable.

(b)(1) The student shall provide any information requested by the Secretary in addition to the information necessary to establish eligibility for a Federal Pell Grant.

(2) The additional information may include, but is not limited to, information about the rigorous secondary school program of study completed by a student applying for an ACG.

(c) The student shall submit an application to the Secretary by—

(1) Providing the application form, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically; or

(2) Sending an approved application form to the Secretary.

(d) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(e) For each award year, the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting this application and additional information and for making corrections to the information provided.

(Authority: 20 U.S.C. 1070a–1)

§§ 691.13–691.14 [Reserved]

§ 691.15 Eligibility to receive a grant.

(a) General. A student who meets the requirements of 34 CFR part 668, Subpart C, is eligible to receive an ACG or a National SMART Grant if the student is receiving a Federal Pell Grant disbursement in the same award year.

(b) ACG Program. (1) A student is eligible to receive an ACG if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2006, a rigorous secondary school program of study under § 691.16;

(C) Has not been previously enrolled as a regular student in an eligible program of undergraduate education except as part of a secondary school program of study. A transfer student who is a first-year student is not considered to have been previously enrolled; and

(iii) For the second year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2005, a rigorous secondary school program of study under § 691.16;

(C) For the first year of his or her eligible program, obtained a grade point average (GPA) of 3.0 or higher on a 4.0 scale, or the numeric equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2) A student is eligible for an ACG grant under this part, a student shall apply on an approved application form to the Secretary to have his or her Federal Pell Grant award. A copy of this form is not acceptable.

(f) A student is eligible to receive an ACG or a National SMART Grant if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2006, a rigorous secondary school program of study under § 691.16;

(C) Has not been previously enrolled as a regular student in an eligible program of undergraduate education except as part of a secondary school program of study. A transfer student who is a first-year student is not considered to have been previously enrolled; and

(iii) For the second year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2005, a rigorous secondary school program of study under § 691.16;

(C) For the first year of his or her eligible program, obtained a grade point average (GPA) of 3.0 or higher on a 4.0 scale, or the numeric equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2) An institution must document a student’s successful completion of a
rigorous secondary school program of study under paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(ii)(A) and (b)(1)(iii)(B) of this section using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) If an institution has reason to believe that the documentation provided by the student under paragraph (b)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student’s succession to completion of a rigorous secondary school program of study by using documentation provided directly to the institution by the cognizant authority.

(3) For purposes of paragraph (b) of this section—

(i) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency;

(C) A public or private high school; or

(D) A testing organization such as the College Board or State agency; or

(ii) A home-schooled student’s parent or guardian is the cognizant authority for purposes of providing the documentation required under paragraph (b) of this section. This documentation must show that the home-schooled student successfully completed a rigorous secondary school program under §691.16. This documentation may include a transcript or the equivalent or a detailed course description listing the secondary school courses completed by the student.

(4) For a student who transfers from an eligible program at one institution to an eligible program at another institution, the institution to which the student transfers may rely upon the prior institution’s determination that the student successfully completed a rigorous secondary school program of study in accordance with paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(ii)(A), and (b)(1)(iii)(B) of this section based on documentation that the prior institution may provide, or based on documentation of the receipt of an ACG disbursement at the prior institution.

(5)(i) If a student self-certifies on an application under §691.12, or otherwise self-identifies to the institution, that he or she completed a rigorous secondary school program of study under §691.16, an institution must attempt to collect the documentation described under paragraph (b)(2) of this section. (ii) Notwithstanding 34 CFR 686.16(f), an institution is not required to determine the ACG eligibility of a student if the student does not self-certify on his or her application, or otherwise self-identify to the institution, the completion of a rigorous secondary school program of study.

(c) National SMART Grant Program. A student is eligible to receive a National SMART Grant for the third, fourth, or fifth year of his or her eligible program if the student—

(1) Meets the eligibility requirements in paragraph (a) of this section;

(2)(i) In accordance with the institution’s academic requirements, formally declares an eligible major;

(ii) Is at an institution where the academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant on that basis and the student demonstrates his or her intent to declare an eligible major in accordance with paragraph (d) of this section; or

(iii) Is at an institution that offers as an eligible major a qualifying liberal arts curriculum identified under §691.17(b); and

(3) Has a cumulative GPA through the most recently completed payment period of 3.0 or higher on a 4.0 scale, or the numeric equivalent measure, consistent with other institutional measures for academic and title IV, HEA program purposes, in the student’s eligible program.

(d) Intent to declare a major. (1) For a student whose institution’s academic policies do not allow the student to declare an eligible major in time to qualify for a National SMART Grant disbursement, the institution must obtain and keep on file a recent self-certification of intent to declare an eligible major that is signed by the student.

(2) The student described in paragraph (d)(1) of this section must formally declare an eligible major when he or she is able to do so under the institution’s academic requirements.

(3) If the student is enrolled in a qualifying liberal arts curriculum as a major, there is no requirement to declare a major.
Under the National SMART Grant Program, if a student transfers from one institution to the current institution, the current institution must determine that student’s eligibility for a National SMART Grant for the first payment period using either the method described in paragraph (f)(2)(i) of this section or the method described in paragraph (f)(2)(ii) of this section, whichever method coincides with the current institution’s academic policy. For an eligible student who transfers to an institution that—

(i) Does not incorporate grades from coursework that it accepts on transfer into the student’s GPA at the current institution, the current institution, for the courses accepted in the eligible program upon transfer—

(A) Must calculate the student’s GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student’s eligible program; and

(B) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(ii) Incorporates grades from the coursework that it accepts on transfer into the student’s GPA at the current institution, an institution must use the grades assigned to the coursework accepted by the current institution into the eligible program as the student’s cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(g) Numeric equivalent. (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing ACG or National SMART Grant eligibility. That institution’s equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.0 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only “satisfactory/unsatisfactory”, “pass/fail”, or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the “pass” or “satisfactory” standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale awarded in that program, or that a student’s performance for tests and assignments yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale; and

(ii) The institution’s equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student’s academic performance.

(Authority: 20 U.S.C. 1070a–1)

§ 691.16 Rigorous secondary school program of study.

(a)(1) For each award year commencing with the 2009–2010 award year, the Secretary establishes a deadline for submission of information about secondary school programs of study that are recognized by the designated official, consistent with State law, to prepare students for college and that the designated official deems rigorous.

(2) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English.

(3) A secondary school program identified by a State–college partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado.

(4) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of “4” or higher on the examinations for at least two of those courses.

(5) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of “3” or higher on the College Board’s Advanced Placement Program Exams for at least two of those courses.

(6) Rigorous secondary school programs of study established by an SEA or, if legally authorized by the State to establish a separate secondary school program of study, an LEA, where such programs were recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009.

(Approved by the Office of Management and Budget under control numbers 1845–0001 and 1845–0039)

(20 U.S.C. 1070a–1)


§ 691.17 Determination of eligible majors.

(a) Eligible major. For each award year, the Secretary identifies the eligible majors in the physical, life, or computer sciences, mathematics, technology, engineering, critical foreign languages as defined in section 103(3) of the HEA, or a qualifying liberal arts curriculum as
an eligible major as determined under paragraph (b) of this section.  

(b) Qualifying liberal arts curriculum as an eligible major. The Secretary may designate a baccalaureate-degree liberal arts curriculum as an eligible major if—

(1) The curriculum is the only curriculum at the institution of higher education and was offered prior to February 8, 2006;

(2) A student is not allowed to declare a major in a particular subject area; and

(3) The Secretary determines that the curriculum—

(i) Is at least equal to the requirements for an identified National SMART Grant-eligible major at an institution of higher education that offers a baccalaureate degree in that eligible major; or

(ii) Requires the student to undertake a rigorous course of study in mathematics, biology, chemistry, and physics that consists of at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years.

(c) Designation of eligible majors. For each award year, the Secretary publishes a list of eligible majors identified by CIP code.

(d) Designation of an additional eligible major. (1) For each award year, the Secretary establishes a deadline for an institution to request designation of an additional eligible major.

(2) Requests for designation of an additional eligible major must include—

(i) The CIP code and program title of the additional major;

(ii) The reason or reasons the institution believes the additional major should be considered an eligible program under this part; and

(iii) Documentation showing that the institution has actually awarded or plans to award a bachelor's degree in the requested major.

(3) In addition to the information in paragraph (d)(2) of this section, requests for designation of a liberal arts curriculum as an eligible major must include the information demonstrating that the liberal arts curriculum complies with the requirements described in paragraph (b) of this section.

(4) For each award year, the Secretary will confirm the final list of eligible majors.

(e) Duration of eligible major. A major that ceases to be listed as an eligible major for an award year remains an eligible major in subsequent award years for a student who pursues that major and receives a National SMART Grant in the award year in which the major was an eligible major.

(Authority: 20 U.S.C. 1070a–1)


Subpart C—E [Reserved]

Subpart F—Determination of Awards

§ 691.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.

(a) Submission process. (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse an ACG or a National SMART Grant to a student who is eligible under § 691.15 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a valid SAR to the institution; or

(ii) The institution obtains a valid ISIR for the student.

(2) In determining a student’s eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 688.16(f) and 688.60.

(b) Student Aid Report or Institutional Student Information Record deadline. Except as provided in the verification provisions of 34 CFR 688.60 and the late disbursement provisions of 34 CFR 688.164(g) of this chapter, for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the valid SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a–1)

§ 691.62 Calculation of a grant.

(a) (1) For each award year, the Secretary establishes and announces the ACG and National SMART Grant Scheduled Awards depending on the availability of funds for all students who are eligible for a grant under § 691.15.

(2) The Secretary may revise the ACG and National SMART Grant Scheduled Awards in an award year depending on the availability of funds for all students who are eligible for a grant under § 691.15.

(b)(1) The maximum ACG Scheduled Award for an eligible student may be up to—

(i) $750 for the first year of the student’s eligible program; and

(ii) $1,300 for the second year of the student’s eligible program.

(2) The maximum National SMART Grant Scheduled Award for an eligible student may be up to $4,000 for each of the third, fourth, and fifth years of the student’s eligible program.

(c) The ACG first-year annual award for—

(1) A full-time student is the lesser of $750 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section; and

(2) A three-quarter-time student is the lesser of $562.50 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of $375 or 50 percent of a reduced ACG Scheduled Award.

(d) The ACG second-year annual award for—

(1) A full-time student is the lesser of $1,300 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section; and

(2) A three-quarter-time student is the lesser of $975 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of $650 or 50 percent of a reduced ACG Scheduled Award.

(e) The National SMART Grant annual award for—

(1) A full-time student is the lesser of $4,000 or a reduced National SMART Grant Scheduled Award as determined under paragraph (a)(2) of this section;
§ 691.63 Calculation of a grant for a payment period.

(a)(1) Programs using standard terms with at least 30 weeks of instructional time. A student’s grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(1) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(2) The program is offered exclusively in semesters, trimesters, or quarters; and

(3) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

(b) Programs using standard terms with less than 30 weeks of instructional time. A student’s payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(i)(A) of this section.

(c) Other programs using terms and credit hours. A student’s payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measured progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(d) Programs not using terms or using clock hours. A student’s payment for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(e) Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3. If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student’s payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(i)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program’s academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(b) Programs using standard terms with at least 30 weeks of instructional time. The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student’s ACG or National SMART Grant annual award if—

(A) An institution chooses to distribute all of the student’s ACG or National SMART Grant annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program’s academic year.

(c) Programs using standard terms with less than 30 weeks of instructional time. The payment for a
payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62;

(3) Multiplying his or her ACG or National SMART Grant annual award determined under paragraph (c)(2) of this section by the following fraction as applicable: or In a program using semesters or trimesters—

The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters

The number of weeks of instructional time in the program's academic year

; or

In a program using quarters—

The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters

The number of weeks of instructional time in the program's academic year

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's ACG or National SMART Grant annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's ACG or National SMART Grant annual award if—

(A) An institution chooses to distribute all of the student's ACG or National SMART Grant Scheduled Award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) Other programs using terms and credit hours. The payment for a payment period, i.e., an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62; and

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program’s academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(3) Multiplying his or her ACG or National SMART Grant annual award determined under paragraph (d)(2) of this section by the following fraction:

The number of weeks of instructional time in the term

The number of weeks of instructional time in the program's academic year

The number of credit or clock hours in the program's academic year;

or

(ii) The number of weeks of instructional time in the payment period

The number of weeks of instructional time in the program's academic year

(f) Maximum disbursement. A single disbursement may not exceed 50 percent of any award determined under paragraph (d) of this section. If a payment for a payment period calculated under paragraph (d) of this section would require the disbursement of more than 50 percent of a student's ACG or National SMART Grant annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student’s ACG or National SMART Grant annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) Definition of academic year. For purposes of this section, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3.

(h) Payment period and grade level progression. A student may not progress to the next year during a payment period. The student’s payment for the payment period—

(1) Is from the ACG or National SMART Grant Scheduled Award of the year being completed; and

(2) Is calculated based on the student's credit or clock hours for the payment period, and weeks of instructional time in the payment period.

Authority: 20 U.S.C. 1070a–1

§ 691.64 Calculation of a grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period that is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year;

(2) The institution shall determine for each ACG or National SMART Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraphs (a)(3) and (a)(6) of this section;

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year;

(4) If the institution places the payment period in the first award year, it shall pay a student with funds from the first award year;

(5) If the institution places the payment period in the second award year, it shall pay a student with funds from the second award year; and

(6) The institution must assign the payment period for both the ACG or National SMART Grant and the Federal Pell Grant to the same award year.

(b) An institution may not make a payment that results in the student receiving more than his or her ACG or National SMART Grant Scheduled Award for a year of the student’s eligible program.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 74 FR 20224, May 1, 2009]

§ 691.65 Transfer student.

(a) If a student who receives a grant under this part at one institution subsequently enrolls at a second institution in the same award year, the student may receive a grant at the second institution only if—

(1)(i) The student submits a valid SAR to the second institution; or

(ii) The second institution obtains a valid ISIR; and

(2) The student is receiving a Federal Pell Grant in the same award year.

(b) The second institution shall calculate the student’s award according to § 691.63.

(c) The second institution may pay a grant only for that portion of the year of the student’s eligible program in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student’s ACG or National SMART Grant Scheduled Award for the student’s year at the second institution.

(d) If a student transfers between award years and the student’s ACG or National SMART Grant Scheduled Award at the second institution differs from the ACG or National SMART Grant Scheduled Award at the first institution for that year of the student’s eligible program, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the ACG or National SMART Grant Scheduled Award at the first institution to determine the percentage of the ACG or National SMART Grant Scheduled Award that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the ACG or National SMART Grant Scheduled Award at the second institution to which the student is entitled.

(e) The student’s ACG or National SMART Grant payment for each payment period is calculated according to he procedures in § 691.63 unless the remaining percentage of the ACG or National SMART Grant Scheduled Award at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student’s payment is equal to that remaining percentage.

(f) A transfer student shall repay any amount received that exceeds his or her ACG or National SMART Grant Scheduled Award for a year in accordance with § 691.79.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 71 FR 64419, Nov. 1, 2006; 74 FR 20224, May 1, 2009]

§ 691.66 Correspondence study.

(a) An institution calculates the ACG or National SMART Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Determining that the student is attending at least half-time;

(2) Determining the student’s half-time annual award determined under § 691.62; and

(3) Multiplying the student’s half-time annual award by the lesser of—

(i) The number of credit hours in the payment period

(ii) The number of credit hours in the program’s academic year

or

The number of weeks of instructional time in the payment period

or

The number of weeks of instructional time in the program’s academic year

(b) For purposes of paragraph (a) of this section—

(1) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution must make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term.

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the student’s half-time annual award determined under § 691.62 is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term, the student is not eligible for an ACG and National SMART Grant;

(3) A payment for a payment period is calculated using the formula in §
§ 691.63(d) except that paragraphs (c)(1) and (c)(2) of this section are used in lieu of § 691.63(d)(1) and (2), respectively; and

(d) Payments for periods of residential training must be calculated under § 691.63(d) if the residential training is offered using terms and credit hours or § 691.63(e) if the residential training is offered using credit hours without terms.

(Authority: 20 U.S.C. 1070a–1)

[74 FR 20224, May 1, 2009]

Subpart G—Administration of Grant Payments

§ 691.71 Scope.

This subpart deals with program administration by an eligible institution.

(Authority: 20 U.S.C. 1070a–1)

§§ 691.72–691.74 [Reserved]

§ 691.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a grant under this part to a student only after it determines that the student—

(1) Qualifies as a student who is eligible under § 691.15;

(2) Is enrolled as an undergraduate student in an eligible program;

(3) If enrolled in a self-paced credit hour program without terms or a self-paced clock-hour program, as described in paragraph (e), is progressing at least a full-time student after completing at least—

(i) Fifty percent of the credit or clock hours of the payment period for which the student is being paid; or

(ii) For a credit-hour program, 50 percent of the academic coursework of the payment period for which the student is being paid if the institution is unable to determine when the student has completed one-half of the credit hours of the payment period; and

(4) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period as defined in 34 CFR 668.4 for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a grant under this part to the student for the entire payment period.

(2) For purposes of the ACG Program, if an institution determines at the beginning of a payment period that a student enrolled in the second year of his or her eligible program is not maintaining the necessary GPA for an ACG under § 691.15(b)(1)(i)(C), but reverses that determination before the end of the payment period, the institution may pay an ACG to the student for the entire payment period.

(3) For purposes of the National SMART Grant Program, if an institution determines at the beginning of a payment period that a student is not maintaining the necessary GPA for a National SMART Grant under § 691.15(c)(3) or is not pursuing a required major under § 691.15(c)(2), but reverses that determination before the end of the payment period, the institution may pay a National SMART Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for an ACG under § 691.15(b)(1)(i)(C), a National SMART Grant under § 691.15(c)(3), or, in the case of a National SMART Grant under § 691.15(c)(3), a student an ACG or a National SMART Grant for that payment period nor make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) Subject to the requirement of paragraph (d)(2), an institution may make one disbursement for a payment period to an otherwise eligible student if—

(1)(i) For the first payment period of the student’s ACG for the second year, a student’s GPA for the first year under § 691.15(b)(1)(i)(C) is not yet available; or

(ii) For a payment period for a National SMART Grant, a student’s cumulative GPA through the prior payment period under § 691.15(c)(3) for the student’s enrollment in the eligible program through the prior payment period under § 691.15(c)(3) is not yet available; and

(2) The institution assumes liability for any overpayment as a result of the student failing to meet the required GPA to qualify for the disbursement.

(e) For purposes of this section, a self-paced program is an educational program without terms that allows a student—

(1) To complete courses without a defined schedule for completing the courses; or

(2) At the student’s discretion, to begin courses within a program either at any time or on specific dates set by the institution for the beginning of courses without a defined schedule for completing the program.

(Authority: 20 U.S.C. 1070a–1)


§ 691.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student’s needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 691.15 within the award year. The student’s enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a–1)

[71 FR 38004, July 3, 2006, as amended at 74 FR 20225, May 1, 2009]

§§ 691.77–691.78 [Reserved]

§ 691.79 Liability for and recovery of grant overpayments.

(a) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any grant overpayment made to him or her under this part.

(2) The institution is liable for a grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR part 668. The institution must restore an amount equal to the overpayment to its ACG or National SMART Grant account, as applicable.
(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, grant payment of or repayment of the student's overpayment for an award to an ACG or a National SMART Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student’s Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student’s Payment Data.

(2) The Secretary accepts a student’s Payment Data that is submitted in accordance with procedures established through publication in the FEDERAL REGISTER, that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(1) An institution shall report to the Secretary any change in the amount of a grant for which a student qualifies including any related Payment Data changes by submitting to the Secretary the student’s Payment Data that discloses the basis and result of the change in award for each student. The institution shall submit the student’s Payment Data reporting any change to the Secretary by the reporting deadlines published by the Secretary in the FEDERAL REGISTER.

(2) An institution shall submit, in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of an award that the student received when it determines that an overpayment has occurred.
that overpayment is one for which
the institution is not liable under §
691.79(a).

(c) In accordance with 34 CFR
668.84, the Secretary may impose a
fine on the institution if the institution
fails to comply with the requirements
specified in paragraphs (a) or (b) of
this section.

(d)(1) Notwithstanding paragraph (a)
or (b) of this section, if an institution
demonstrates to the satisfaction of
the Secretary that the institution has
provided ACGs or National SMART
Grants in accordance with this part
but has not received credit or
payment for those grants, the
institution may receive payment or a
reduction in accountability for those
grants in accordance with
paragraphs (d)(4) and either (d)(2) or
(d)(3) of this section.

(2) The institution must demonstrate
that it qualifies for a credit or
payment by means of a finding
contained in an audit report of an
award year that was the first audit of
that award year and timely submitted
to the Secretary under 34 CFR
668.23(a).

(3) An institution that timely submits
the Payment Data for a student in
accordance with paragraph (a) of
this section but does not timely
submit to the Secretary, or have
accepted by the Secretary, the
Payment Data necessary to
document the full amount of the
award to which the student is
titled, may receive a payment or
reduction in accountability in the full
amount of that award, if—

(i) A program review demonstrates
to the satisfaction of the Secretary
that the student was eligible to
receive an amount greater than that
reported in the student’s Payment
Data timely submitted to, and
accepted by the Secretary; and

(ii) The institution seeks an
adjustment to reflect an
underpayment for that award that is
at least $100.

(4) In determining whether the
institution qualifies for a payment or
reduction in accountability, the
Secretary takes into account any
liabilities of the institution arising
from that audit or program review or
any other source. The Secretary
collects those liabilities by offset in
accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a–1, 1094,
1226a–1)