

# School Requirements for the DL/FFEL Programs

*Before your school can begin making loans under Direct Loan or Federal Family Educational Loan (FFEL) Program, it must meet the statutory definition of an “eligible school,” and agree to perform certain administrative functions. Most of the statutory requirements for institutional eligibility are discussed in Volume 2 of the FSA Handbook. But there are a few exceptions and additional requirements for these loan programs, as discussed below. A school may also act as a lender in the FFEL program, provided it uses any net income from ED’s interest and special allowance payments to make financial aid grants to its students, as described at the end of this chapter.*

## ELIGIBILITY ISSUES FOR LOANS

In order to participate in the Direct Loan or FFEL programs, a school must meet the FSA program eligibility criteria discussed in *Volume 2: Institutional Eligibility and Participation*. Only institutional eligibility issues specific to the Direct Loan and FFEL programs are discussed here.

A school must be accredited as an institution of higher education offering a graduate-level program to be eligible to certify Direct Loans or FFELs at the **graduate level**. (Students must be unconditionally accepted into a graduate or professional program.) A school that only offers **correspondence programs** is not eligible to participate in the Direct Loan or FFEL programs.

A school can choose to participate in either the Stafford or PLUS programs, or both.

Foreign schools are eligible to participate in the FFEL programs (Stafford and PLUS loans made through private lenders). In fact, these are the only two FSA programs that are available to students enrolled in degree or certificate programs at foreign schools. However, an eligible school in the U.S. may pay a student with funds from any of the FSA programs for “study abroad” coursework, provided that the coursework is considered part of the student’s eligible program at the domestic school.

### SCHOOL ELIGIBILITY ISSUES:

- ➔ Eligibility for in-school deferment at non-participating schools
- ➔ Program Participation Agreement
- ➔ Prohibited school and lender activity
- ➔ Recordkeeping and audits
- ➔ Loss of eligibility
- ➔ Cohort default rates
- ➔ School acting as FFEL lender

### Program Participation Requirements

Current requirements may have changed since your school's agreement was executed—see Volume 2 of this Handbook and 34 CFR 668.14

### ***Eligibility for in-school deferments only***

If a school has never participated in the FSA programs but wants to be considered an eligible school so that its students can receive in-school deferments on previous loans, the school must demonstrate that it meets the definition of an eligible school before the school may certify borrower deferment forms. To find out more about eligibility for deferment purposes, contact the Case Management Team for your state. For students attending a foreign school to receive in-school deferments, the school must apply for eligibility through the Foreign Schools Team.

Applications to request designation as an eligible institution for in-school deferment should be sent via the Electronic Application that can be found at [www.eligcert.ed.gov](http://www.eligcert.ed.gov). Select the link to “Application” and then go to the bottom of the right-hand column to select “Initial Applicants” to review the general requirements to be an eligible institution. (For a more detailed explanation, see Volume 2, Chapter 1 of this *Handbook*.) If you believe that your school meets the requirements, you may print out a list of questions for initial applicants and fax the completed document to the Case Management Team that serves your state. The team will assign your school an OPEID number which will enable you to complete the full application to request designation as an eligible institution.

## **PROGRAM PARTICIPATION AGREEMENT REQUIREMENTS**

Financial aid administrators should be familiar with the terms of the Program Participation Agreement (PPA) that the school has made with the Department. See *Volume 2: Institutional Eligibility and Participation* for complete information about all of the requirements. For your reference, we have listed below some of the key provisions of the PPA that relate specifically to the loan programs. A school's PPA requires that

- an FFEL school must inform enrolled eligible borrowers of the availability of state grant assistance from the state in which the school is located, and provide a source of information for programs in the home state of the eligible borrower,
- a school must furnish information to the holders of Stafford or PLUS loans that were made at that school, as needed to carry out program requirements,
- a school must not certify or originate an FFEL or Direct Loan for an amount that exceeds the annual or aggregate loan limits, and
- a school that is beginning participation in the Stafford or PLUS programs or that has changed ownership (resulting in a change in control) must use a default management plan approved by the Department for its first years of participation unless the school has a default rate of 10% or less. (If the owner has

owned any other schools, the default rates at those schools may not have exceeded 10% during the tenure of that owner.)

The PPA (as well as program regulations) also prohibits schools from charging fees for processing applications or data required to determine eligibility for FSA Programs or for processing Direct Loan or FFEL Program deferment forms.

## **PROHIBITED SCHOOL AND LENDER ACTIVITY**

The Higher Education Act prohibits a school from paying a commission, bonus, or other payment that is based directly or indirectly on success in securing enrollments or financial aid if the payee is engaged in any student recruiting or admission activities, or in making decisions regarding the awarding of student aid. This prohibition applies equally to payments to school staff, entities, or contractors. However, the law makes one exception: it does not prohibit a school from making incentive payments for recruiting foreign students in foreign countries who aren't eligible for Federal student aid.

The final regulations published on November 1, 2002 have clarified the statutory prohibition on incentive payments by identifying 12 types of payment and compensation plans that are permissible under the law. For more detailed information, see the discussion in Volume 2, Chapter Two.

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

Lenders may not offer, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans. Similar restrictions apply to guaranty agencies. In addition, lenders and guaranty agencies are forbidden to mail unsolicited loan application forms to students enrolled in high school or college, or to their parents, unless the prospective borrower has previously received loans guaranteed by that agency.

However, lenders, guaranty agencies, and other participants in the FFEL Program may assist schools in the same way that the Department assists schools under the Direct Loan Program. For example, a lender's representatives can participate in counseling sessions at a school, including initial counseling, provided that school staff are present, the sessions are controlled by the school, and the lender's counseling activities reinforce the student's right to choose a lender. A lender can also provide loan counseling for a school's students through the Web or other electronic media, and it can help a school develop, print, and distribute counseling materials.

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### **Prohibition on commissions for enrollment recruiting**

Discussed as one of the program participation requirements — see Section 487(a)(20) of the HEA and 34 CFR 668.14(b)(22)

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### **Prohibited inducements**

Schools 34 CFR 682.212

Lenders 34 CFR 682.200

Guarantors 34 CFR 682.401(e)

### Record retention requirements

General Provisions —34 CFR 668.24

FFEL —34 CFR 682.610

DL—34 CFR 685.309(c)

If a school is a lender and the holder of a promissory note, the school has additional record retention responsibilities comparable to those in 34 CFR 682.414(a)(4)(ii)

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### Audit Guide Reference

The Audit Guides are posted on the Web in PDF format — go to the IFAP main page, select “Current Publications” and go to the alphabetical listing for “Audit Guides.” The specific Web address for the listing of publications is:

[ifap.ed.gov/library/current.htm](http://ifap.ed.gov/library/current.htm)

## RECORDKEEPING

In establishing or reviewing your office’s procedures, you should consult *Volume 2: Institutional Eligibility and Participation* for information on requirements that are common to all of the FSA programs. Following is a list of records that must be kept for the Stafford and PLUS loan programs:

- A copy of the loan certification that the school sends to the lender (in FFEL) or the Direct Loan Origination Center, including the amount of the loan and the period of enrollment. The requirement includes certification information submitted electronically.
- The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount (and any other information that may be required to determine the borrower’s eligibility, such as the student’s Federal Pell Grant eligibility or ineligibility).
- The date(s) the school disbursed the loan funds to the student (or to the parent borrower), and the amount(s) disbursed. (For loans delivered to the school by check, the date the school endorsed each loan check, if required.)
- Documentation of any confirmation process or processes associated with multi-year use of the Master Promissory Note. This does not have to be part of individual borrower files, but can be part of a student handout or other written statement of your policies. There is no retention limit for this documentation; you must keep it indefinitely because it may affect the enforceability of loans.

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

## AUDITS & AUDIT WAIVERS

At least once a year a school that participates in any FSA Program must have an independent auditor conduct a compliance audit and a financial statements audit. More information is provided in *Volume 2: Institutional Eligibility and Participation* and the *Audit Guide: Audits of Student Financial Assistance Programs*. (Both publications are available in electronic format at [ifap.ed.gov](http://ifap.ed.gov))

If your school has disbursed less than \$200,000 of FSA program funds for two consecutive completed award years and meets all of the conditions in 34 CFR 668.27, it may apply for a waiver of the annual

audit submission requirement. If granted, the waiver permits a school to submit compliance audits and financial statement audits six months after the end of a three-year period or, in certain cases, after the end of a two-year period.

Under the waiver, compliance and financial statement audits are not required until six months after the end of the third fiscal year in which your school last submitted a compliance and financial statement audit. For instance, if your school last submitted a compliance audit and financial statement audit in the fiscal year ending December 31, 1999 and receives an audit submission waiver, it is not required to submit another compliance audit or financial statement audit until June 30, 2003, which is six months after its third fiscal year (FY 2002) following the audits submitted in its 1999 fiscal year.

However, the waiver is not applicable when your school intends to apply for recertification in an award year that is part of the third fiscal year referred to above. In that case, your school must submit its compliance audit and financial statement audit six months after the second fiscal year following the fiscal year for which your school last submitted audits. Another limit on the waiver is when your school has a change in ownership that changes the control of the school—the application for approval of that change must be supported by audited financial statements for the two fiscal years completed immediately prior to the change.

### LOSS OF ELIGIBILITY OR WITHDRAWAL FROM LOAN PROGRAMS

If a school is notified that it has lost its eligibility to participate in the Direct Loan or FFEL programs and the school does not intend to appeal the decision, it must immediately inform all current and *prospective* students of its loss of eligibility. The school must also explain that it can no longer certify Stafford and PLUS loans for students or parents. If the school appeals its loss of eligibility within the required time frame, the school may continue certifying Stafford and PLUS loans during the appeal process. Once a final decision on the appeal is made, the school must take the actions described in the Department's final appeal determination letter.

If a school loses eligibility or discontinues participation in the Direct and/or FFEL programs, reinsurance of loans previously disbursed will not be affected, and interest subsidies will continue as long as each student maintains his or her required enrollment status. The student's grace period and eligibility for in-school deferment also will not be affected by a school's loss of eligibility.

If a school plans to withdraw from participation in the Direct Loan and/or FFEL programs, it must notify the appropriate guaranty agency or agencies (for FFEL schools) and the Department (for schools with either loan program) of its decision in writing. Once the effective date of withdrawal has been established, the school is

### Procedures for withdrawal from the FFEL or DL programs

Contact the Case Management Team for your state.

### New eCDR Process—enroll by 6/1/03!

The official FY2001 default rates will be sent in electronic form (as a plain-text message) to all domestic schools in the fall of 2003. You must enroll in the eCDR process by June 1, 2003, using the enrollment form at:

[www.fsawebenroll.ed.gov](http://www.fsawebenroll.ed.gov)

On this Web page, choose “Enroll” and then select the radio button for “Modify Existing Services for a Destination Point.”

The default rates will continue to be mailed to foreign schools. [Based on notice published February 23, 2003]

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### Cohort Default Rate Guide

This chapter only provides a brief overview of the default rate process. For more technical information, please refer to the **Cohort Default Rate Guide**. The *Guide* is updated continuously on the IFAP Web site.

[ifap.ed.gov/drmaterials/FinalCDRG.html](http://ifap.ed.gov/drmaterials/FinalCDRG.html)

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### Questions about Cohort Default Rates

U.S. Department of Education  
Default Management  
Union Center Plaza, 084F  
400 Maryland Avenue, SW  
Washington, DC 20202-5353

Telephone  
202/377-4259

Email  
[FSA.Schools.Default.Management@ed.gov](mailto:FSA.Schools.Default.Management@ed.gov)

prohibited from disbursing loan funds to the student (with one exception, discussed in the following paragraph). Any loan funds that cannot be disbursed must be returned to the lender within 30 days.

If the first payment of a Stafford Loan was made to the student before the school ceased to be eligible, the school may be able to make a subsequent disbursement to the student if it continues to provide instruction and the loan meets the other requirements in 34 CFR 668.26(d) (2) and (3). However, if a school loses eligibility before it delivers **any** loan proceeds to the student, the school is not permitted to deliver the loan proceeds to the student.

If a foreign medical school loses eligibility to participate in the FFEL Program, its students who were continuously enrolled at the school before the loss of eligibility may receive Stafford loans through the next academic year.

## COHORT DEFAULT RATES

Generally speaking, a cohort default rate is the percentage of a school’s student borrowers who enter repayment on Stafford loans during a particular fiscal year and who default before the end of the next fiscal year. (There are other criteria and exceptions — see the complete definition in the *Cohort Default Rate Guide*.)

The Department releases draft default rates in February to allow schools an opportunity to review and correct the data that will be used to calculate their official cohort default rates. In the early fall of each year, the Department issues the official cohort default rates. The most recent default rates, issued in September 2002, are based on the cohort of students who entered repayment in fiscal year 2000 (the federal fiscal year runs from October 1, 1999-September 30, 2000). These rates were mailed to schools and are posted on the Web at:

[www.ed.gov/offices/FSA/defaultmanagement/cdr.html](http://www.ed.gov/offices/FSA/defaultmanagement/cdr.html)

The fiscal year 2001 rates will be issued in the fall of 2003. If your school is located in the U.S., you must enroll for electronic delivery of the rates (see sidebar note for instructions).

If your school has a default rate above established thresholds, it may be subject to certain sanctions. Conversely, a school with default rates below other established thresholds may be exempted from certain of the disbursement requirements discussed in Chapter 4 of this Volume. For more information, please refer to the *Cohort Default Rate Guide*.



## SCHOOL ACTING AS FFEL LENDER

A postsecondary school can also act as an FFEL lender, but there are several restrictions on loans to *undergraduate students*.

- The school may only make Stafford loans to undergraduate students who have previously received a loan from the school or who have been denied a loan by an eligible lender.
- A school may make FFEL loans to no more than 50% of its undergraduate students.

These restrictions do not apply to graduate and professional students at the school.

As a lender, the school receives payments of interest and principal from the student borrower, and special allowance payments from the Department. Except for reasonable administrative expenses, the school must use the interest and special allowance payments to make need-based grants to its students.

To become an eligible lender, your school must have at least one full-time financial aid administrator, and have a cohort default rate of 15% or less. (Under certain circumstances, the Department can waive the cohort default rate limit.) Home-study schools cannot be FFEL lenders.

### School lending

FFEL regs—34 CFR 682.601  
HEA—Sec. 435(d)(2) thru (d)(5)  
US Code—20 USC 1085