

§ 668.27

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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.

(e) For the purposes of this section—

(1) A commitment under the Federal Pell Grant and PAS 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;

(2) 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; and

(3) A commitment under the Federal Stafford and Federal SLS programs occurs when the Secretary or a guaranty agency notifies the lender that the loan is guaranteed.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094, 1099a-3)

[59 FR 22442, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 61 FR 60492, Nov. 27, 1996; 63 FR 40624, July 29, 1998; 64 FR 59042, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000]

§ 668.27 Waiver of annual audit submission requirement.

(a) *General.* (1) At the request of an institution, the Secretary may waive the annual audit submission requirement for the period of time contained in paragraph (b) of this section if the institution satisfies the requirements contained in paragraph (c) of this section and posts a letter of credit in the amount determined in paragraph (d) of this section.

(2) An institution requesting a waiver must submit an application to the Secretary at such time and in such manner as the Secretary prescribes.

(3) The first fiscal year for which an institution may request a waiver is the

fiscal year in which it submits its waiver request to the Secretary.

(b) *Waiver period.* (1) If the Secretary grants the waiver, the institution need not submit its compliance or audited financial statement until six months after—

(i) The end of the third fiscal year following the fiscal year for which the institution last submitted a compliance audit and audited financial statement; or

(ii) The end of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits if the award year in which the institution will apply for recertification is part of the third fiscal year.

(2) The Secretary does not grant a waiver if the award year in which the institution will apply for recertification is part of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits.

(3) When an institution must submit its next compliance and financial statement audits under paragraph (b)(1) of this section—

(i) The institution must submit a compliance audit that covers the institution's administration of the title IV, HEA programs for the period for each fiscal year for which an audit did not have to be submitted as a result of the waiver, and an audited financial statement for its last fiscal year; and

(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) *Rescission 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.

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

[64 FR 58618, Oct. 29, 1999]

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.

¹ If the auditor is not fully independent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

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 impinge on 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.

² Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's 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 function 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.

[51 FR 41921, Nov. 19, 1986. Redesignated at 65 FR 65650, Nov. 1, 2000]

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.”¹

(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 non-compliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of non-compliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural non-compliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only non-compliance 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 non-compliance. 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.

¹Letter (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.

(d) When non-compliance is reported, the auditor should place the findings in proper perspective. The extent of instances of non-compliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of non-compliance.

[45 FR 86856, Dec. 31, 1980. Redesignated at 65 FR 65650, Nov. 1, 2000]

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 assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

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

§ 668.32 Student eligibility—general.

A student is eligible to receive title IV, HEA program assistance if the student—

(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;

(2) For purposes of the 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 FSEOG Program, 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