

§ 668.38

34 CFR Ch. VI (7-1-02 Edition)

(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 reserve forces and National Guard.

(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.

(Authority: 20 U.S.C. 1091 and 50 App. 462)

[60 FR 61812, Dec. 1, 1995, as amended at 61 FR 3776, Feb. 1, 1996]

§ 668.38 Enrollment in telecommunications and correspondence courses.

(a) If a student is enrolled in correspondence courses, the student is eligible to receive title IV, HEA program assistance only if the correspondence courses are part of a program that leads to an associate, bachelor's, or graduate degree.

(b)(1) For purposes of this section, a student enrolled in a telecommunications course at an institution of higher education is not enrolled in a correspondence course, if—

(i) The student is enrolled in a program that leads to a certificate for a program of study of 1 year or longer, or an associate, bachelor, or graduate degree; and

(ii) The number of telecommunications and correspondence courses the institution offered during its latest completed award year was fewer than 50 percent of all the courses the institution offered during that same year.

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one—

(i) That is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Act; and

(ii) At which at least 50 percent of the programs of study offered by the institution during its latest completed award year led to an associate, bachelor, or graduate degree.

(3) For purposes of paragraph (b)(1)(ii) of this section, the institution must calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

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

[60 FR 61810, Dec. 1, 1995, as amended at 64 FR 57358, Oct. 22, 1999]

§ 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))

Subpart D—Institutional and Financial Assistance Information for Students

SOURCE: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

§ 668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive title IV, HEA program funds if the student has been convicted of an offense involving the possession or sale of illegal drugs for the period described in paragraph (b) of this section. However, the student may regain eligibility before that 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