

## Chapter

# 2

# Institutional Eligibility and Participation

Foreign institutions of higher education, including foreign medical and dental schools, are eligible to participate in the Federal Family Educational Loan (FFEL) Program if they meet the general requirements set forth in the regulations governing the U.S. student financial aid programs and the specific requirements for the FFEL Program.

A foreign school can participate in the FFEL Program if it is comparable to an institution of higher education and has been approved by the U.S. Department of Education (ED). Under ED's rules, a foreign school that wants to participate in the FFEL Program must submit documentation to ED to show that it qualifies to participate in the program. The school must apply electronically using the format prescribed by ED and must provide all information and documentation requested. (This process is described later in this chapter.)

## Eligibility Factors

An eligible foreign institution is one that qualifies as an "institution of higher education" or, for medical and veterinary schools, is a proprietary institution of higher education.

An institution of higher education must be public or private nonprofit. A proprietary institution of higher education is always a private, for-profit institution.

A public school or institution is government supported. Private schools or institutions are owned by private corporations and/or individuals. A nonprofit school is owned and operated by one or more nonprofit corporations or associations, and no part of its net earnings benefits a private shareholder or individual.

ED considers a foreign school to be comparable to an eligible institution of higher education in the United States if it is a public or private nonprofit educational institution that:

- ◆ admits as regular students persons who have a secondary school completion credential or its recognized equivalent;
- ◆ is legally authorized by an appropriate authority to provide an educational program beyond secondary education in the country where the institution is physically located; *and*



### Laws & Regulations

- 34 CFR 600.4



### Reference

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*



### Laws & Regulations

- 34 CFR 600.54



## Laws &amp; Regulations

- 34 CFR 600.55

- ◆ provides an eligible educational program for which the school is legally authorized to award a degree equivalent to an associate, baccalaureate, graduate, or professional degree awarded in the United States; or 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 is equivalent to a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation.

### **Additional Criteria for Medical Schools**

A foreign graduate medical school must meet all of the above requirements, except it can be for-profit (proprietary). However, it must also:

- ◆ provide, and normally require its students to complete, a faculty-supervised program of clinical and classroom medical instruction of not less than 32 months in length in a facility that is either:
  - outside the United States adequately equipped to afford students comprehensive clinical and classroom medical instruction *or*
  - in the United States through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating entities viewed as relevant by ED;
- ◆ have graduated classes for each of the two 12-month periods immediately before ED receives the school's request for an eligibility determination;
- ◆ employ only faculty members whose academic credentials are equivalent to credentials required of faculty members teaching similar courses in medical schools in the United States;
- ◆ be approved by an accrediting body that is legally authorized to evaluate the quality of medical school educational programs and facilities in that country and whose standards of accreditation have been determined comparable to U.S. standards by the National Committee on Foreign Medical Education and Accreditation (NCFMEA);
- ◆ have a student body where at least 60 percent of the full-time regular students and at least 60 percent of the school's most recent graduating class did not meet the citizenship requirements for FFEL Program eligibility; *and*

- ◆ have a student body where at least 60 percent of the school's graduates who took any step of the examinations administered by the Educational Commission for Foreign Medical Graduates in the previous year passed the exam (for this purpose, the school must include as graduates each person who graduated during the three years preceding the year for which the calculation is performed).

Foreign graduate medical schools must provide ED with the requested documentation annually to remain eligible.

A medical school not meeting all of the 60 percent requirements can still be eligible if it has a clinical training program that was approved by a state as of January 1, 1992, and remains approved by that state.

### ***Additional Requirements for Veterinary Schools***

In addition to meeting the criteria for all foreign institutions of higher education, a foreign veterinary school must also:

- ◆ provide, and require its students to complete, a program of clinical and classroom veterinary instruction supervised by the school's faculty in a facility that is either:
  - outside the United States that is equipped to afford the students comprehensive clinical and classroom veterinary instruction *or*
  - in the United States through a training program that has been approved by veterinary licensing boards and evaluating entities recognized by ED;
- ◆ have graduated classes for each of the two 12-month periods immediately before ED receives the school's request for eligibility determination;
- ◆ employ only faculty members who have academic credentials that are equivalent to credentials required of faculty members teaching the same or similar courses in veterinary schools in the United States; *and*
- ◆ have a clinical training program that was approved by a state as of January 1, 1992, and remains currently approved, or have its students complete clinical training at an approved veterinary school located in the United States.

The eligibility of a foreign school expires up to six years after the date ED has approved the school to be eligible unless ED specifies a shorter period.

A foreign school loses eligibility on the date the school fails to satisfy the above criteria. In this case, a student who is eligible to receive FFEL



#### **Laws & Regulations**

- 34 CFR 600.56

Program loans and has been continuously enrolled in the school before the school's loss of eligibility can still receive loans for attendance at that school for the academic year immediately following the academic year the school lost eligibility, if the student received a loan for attendance when the school was still eligible.

### **Accreditation for Medical Schools**

ED is not an accrediting entity. However, the U.S. Secretary of Education does appoint members to the NCFMEA. The NCFMEA was established under the Higher Education Amendments of 1992. The law gives the Committee the responsibility for reviewing the standards foreign countries use to accredit medical schools. The Committee determines whether those standards are comparable to the standards used to accredit medical schools in the United States. The decisions made by the Committee affect whether U.S. students attending foreign medical schools can receive loans under the FFEL Program.

The NCFMEA does not review or accredit foreign medical schools. It only reviews the standards that a foreign country uses to accredit its medical schools. If the NCFMEA determines that a foreign country's standards are comparable, then any medical school accredited in that country meets the accreditation requirement for eligibility to participate in the FFEL Program. For more information on the NCFMEA, refer to its Web site at [www.ed.gov/offices/OPE/accreditation/ncfmission.html](http://www.ed.gov/offices/OPE/accreditation/ncfmission.html).

If a foreign medical school loses its accreditation, the school is no longer eligible to participate in the FFEL Program. Previously enrolled FFEL borrowers who have maintained continuous enrollment remain eligible for FFEL loans for that academic year and one additional academic year.

### **Admission Standards**

U.S. students admitted to an eligible foreign school must have a high school diploma (credential of secondary school completion) or its recognized equivalent. Recognized equivalents of a high school diploma include a General Educational Development (GED) certificate or a state certificate received after the student has passed a state authorized test that is considered equivalent to a high school diploma.

ED recognizes that there are special cases. If a student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree, the student's postsecondary school academic transcript is considered equivalent to a high school diploma. A student seeking enrollment in a program that is at least at the associate-degree level and who has excelled academically in high school and met formalized written admissions policies of the school is also considered to have the equivalent of a high school diploma.



#### **Reference**

- HEA 1992



#### **Web Site**

- [www.ed.gov/offices/OPE/accreditation/ncfmission.html](http://www.ed.gov/offices/OPE/accreditation/ncfmission.html)



#### **Reference**

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*

The school may rely in good faith on the student’s certification that he or she has received the required high school diploma or GED. A copy of this certification must be kept on file. It may be a part of the school’s admissions application or a separate document. The school may require the student to provide supporting documentation.

**The 90/10 Rule**

A proprietary institution may derive no more than 90 percent of its revenues from Title IV programs to be eligible for Title IV participation. A school must determine its revenue percentages using the following formula for its latest complete fiscal year:

*Title IV program funds used for tuition, fees, and other institutional charges to students*

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*sum of revenues generated by the school from tuition, fees, and other institutional charges in eligible training programs, plus revenues generated from school activities necessary for the education or training of students enrolled in those eligible programs*

In determining whether a school satisfies the 90/10 Rule, the totals used in the fraction do not include refunds paid to or on behalf of students who have withdrawn, dropped out, been expelled, or otherwise failed to complete the period of enrollment.

A proprietary school becomes an ineligible institution if the school violates the 90/10 Rule. The institution has 90 days after its most recent fiscal year has ended to report to the U.S. Secretary of Education if it did not satisfy the 90/10 Rule for that period. A school that fails to satisfy the 90/10 Rule loses its eligibility as of the last day of that fiscal year.

A school changing from for-profit to nonprofit status must continue to file this report for the first year of its nonprofit status.

**Program Requirements**

A school must offer at least one eligible program to qualify as an eligible institution. To receive FFEL Program funds, a student must be enrolled in an eligible program of study or in a course of study of no longer than one year that is required for enrollment in the eligible program.

The school is responsible for determining whether a program is eligible before certifying FFEL Program loans for the students enrolled in it. The school’s eligibility extends to all eligible programs identified on the application for participation.

An eligible program is an educational program that is provided by a participating school and satisfies requirements set by U.S. laws and



**Reference**

- 2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility

regulations. An eligible program provided by an institution of higher education must be:

- ◆ one for which the school is legally authorized to award a degree that is equivalent to an associate's, bachelor's, professional, or graduate degree awarded in the United States;
- ◆ at least a two-academic-year program that is acceptable for full credit toward the equivalent of a bachelor's degree awarded in the United States; *or*
- ◆ the equivalent of at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares a student for gainful employment in a recognized occupation.

A recognized occupation is one that is listed in the “occupational division” of the *Dictionary of Occupational Titles* or one that is considered by ED, in consultation with the U.S. Department of Labor, to be a recognized occupation.



#### Reference

- *Dictionary of Occupational Titles*

A school is not eligible for FFEL Program participation if, during the school's latest award year, more than 50 percent of its courses are taught through correspondence, including telecommunications courses, or if 50 percent or more of its regular students are enrolled in correspondence/ telecommunications courses. The latter restriction is waived for a school that offers a two-year associate or four-year baccalaureate degree program if the school demonstrates that the correspondence students receive no more than 5 percent of the school's total FFEL funding. An independent accountant must attest to correspondence calculations.

### ***Criminal Activity and Bankruptcy***

A school is not eligible to participate in the FFEL Program if the school, its owner, or its chief executive officer (CEO):

- ◆ has pled guilty to, has pled nolo contendere to, or was found guilty of a crime involving the acquisition, use, or expenditure of Title IV program funds *or*
- ◆ has been judicially determined to have committed fraud involving Title IV program funds.

A school is also ineligible if it or an affiliate it controls has filed for or has had an order filed against it for relief in bankruptcy.

### ***Withdrawal Rates***

Schools that are requesting to participate in the FFEL Program for the first time must have an undergraduate withdrawal rate for regular students of no

more than 33 percent for an award year. Regular students are students enrolled in a program that leads to a recognized credential. When calculating the withdrawal rate, all regular, enrolled students are included. The definition of enrolled does not require either payment of tuition or class attendance; therefore, the withdrawal rate must include enrolled students who have not yet paid tuition and those who have not actually begun attending classes.

A student is considered withdrawn if he or she officially withdraws, unofficially drops out, is expelled from the school, or receives a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee). A student who withdraws from one or more courses of a program but does not withdraw entirely from the school does not meet the definition of withdrawn. The 33 percent withdrawal rate applies to all regular, enrolled students, not just to FFEL recipients.

## Applying to Participate in the FFEL Program

A foreign school that wants to participate in the FFEL Program must first apply electronically to ED for certification. ED determines whether the school meets the required standards set by the regulations governing the Title IV programs. A school must apply to ED by completing the *Application for Approval to Participate in Federal Student Financial Aid Programs* and must receive a Program Participation Agreement (PPA) from ED before being designated an eligible institution.

To make a determination of whether a school is eligible to participate, ED evaluates the application and accompanying documentation. Additional documentation includes the school's financial statements, compliance audits, and other additional materials requested by ED, such as catalogs or contracts with third-party servicers. ED may ask additional questions not listed on the application. If the school has previously participated in the program, ED will examine the school's previous audits and program reviews. ED uses the information provided to determine three factors about the school: eligibility, administrative capability, and financial responsibility.

A foreign school must submit an application to ED:

- ◆ when it wishes to be approved for the first time (initial certification) to participate in the FFEL Program;
- ◆ when it undergoes a change in ownership, structure, or governance;
- ◆ when it wishes to be recertified to participate in the FFEL Program (application must be completed and submitted 90 days before the expiration of the current PPA);



## Web Site

- [www.eligcert.ed.gov](http://www.eligcert.ed.gov)

- ◆ when it wishes to be designated as an “eligible institution” to certify loan deferments for U.S. students; *or*
- ◆ when it wishes to be reinstated to participate in the FFEL Program.

### **Application Process**

Applications for initial certification, recertification, reinstatement, or reporting changes to previous applications must be submitted to ED through the Internet at [www.eligcert.ed.gov](http://www.eligcert.ed.gov). A signature page is required and must be mailed separately along with all required supporting documentation.

- ◆ The application is divided into 13 sections and a glossary.
- ◆ Sections A through D contain general questions about the school.
- ◆ Sections E and F contain questions about educational programs and locations of the school.
- ◆ Section G contains questions regarding telecommunications and/or correspondence courses, student eligibility, and incarcerated students.
- ◆ Section H should be completed by schools that are initial applicants, schools with a change of ownership or structure, and schools seeking reinstatement.
- ◆ Section I is for foreign schools, including foreign graduate medical schools and veterinary schools.
- ◆ Section J contains questions regarding third-party servicers.
- ◆ Section K contains questions regarding administrative capability and financial responsibility.
- ◆ Section L is a signature page for the school’s president/CEO.
- ◆ Section M contains a list of the required documentation that must be submitted to ED.

The definitions contained in the glossary are generally restatements of statutory or regulatory definitions. The definitions are provided to assist schools in completing the application by helping to ensure that a school knows how a term is defined in the application.

A school seeking initial certification must provide answers to certain basic questions on the electronic application. After answering these questions, the school will be directed to print the application and fax it to ED. ED will provide the school with an Office of Postsecondary Education Identifier



number that gives the school access to the entire electronic application on the Web. The school can then reenter the Web site and complete the application.

A foreign school must submit a copy of the school's most recent catalog and a certified English translation of all sections dealing with degrees and programs provided at the school. The school must also provide a copy of the legal authorization from its country and a certified English translation showing that the school is authorized to provide an educational program beyond the secondary school level and award a degree. A foreign medical school must also provide a copy of the approval to provide a graduate medical educational program from the accrediting agency approved by the NCFMEA and a certified English translation.

The president/CEO/chancellor of the school should review the application and sign it. After the application has been completed, it must be transmitted to ED. The school should also keep a copy of the application and the supporting documentation for its records.

The signature page and supporting documentation should be mailed to ED at one of the addresses listed below.

If by regular mail:

U.S. Department of Education  
Student Financial Assistance, Schools Channel  
Foreign Schools Case Management Team  
830 First Street, NE  
Union Center Plaza, 7<sup>th</sup> Floor  
Washington, DC 20202-5340

If by overnight mail/courier delivery:

U.S. Department of Education  
Student Financial Assistance, Schools Channel  
Foreign Schools Case Management Team  
830 First Street, NE  
Union Center Plaza, 7<sup>th</sup> Floor  
Washington, DC 20002-5340  
Phone: (for overnight mail/courier delivery only) 202-377-3168

Any additional questions or documentation needed are generally requested within 90 days of ED's receiving the application. Before the application is approved, ED must receive a response to its request for additional information.

Schools participating in the FFEL Program for the first time are required to send two representatives to ED's precertification training. This requirement also applies to schools that have undergone a change in ownership, structure, or governance.

For all institutions, the regulations provide that the CEO may elect to send another executive-level officer of the school to ED's precertification training in his or her place. Both the designated financial aid administrator and the chief executive of the institution or the designee must attend the training up to one year prior to but no later than 12 months after the institution executes its PPA.

- ◆ The attending financial aid representative must be the person designated by the school to be responsible for administering the Title IV programs. The financial aid representative must attend all four and one-half days of the workshop.
- ◆ If the school uses a consultant to administer its financial aid, the consultant must attend the training as the school's financial aid representative. Because the school ultimately is responsible for proper Title IV program administration, ED strongly recommends that a financial aid employee from the school attend the training as well.

The institution may request a waiver of the training requirement for either the financial aid administrator or the chief executive. ED may grant or deny the waiver for the required individual, require another official to take the training, or require alternative training. Information about precertification training is available at <http://SFA4Schools.sfa.ed.gov>.

A school that has changed ownership or structure during the review period may continue to operate on a provisional basis, provided the institution under the new ownership submits a materially complete application no later than 10 business days after the change occurs.

If a school was previously certified and is resubmitting an application to continue to participate, the school is considered to be in a certified period as long as the application is submitted in the correct time frame.

If a school once participated but no longer participates or if it has never been eligible, the school will not be considered certified during the review period.

After reviewing the application, ED sends the school a PPA or an application denial letter. A foreign school with questions may contact ED's Foreign Schools' Team at:

Telephone: 202-377-3168  
Fax: 202-205-2904  
Email: [OSFA.Foreign.Schools.Team@ed.gov](mailto:OSFA.Foreign.Schools.Team@ed.gov)

**Web Site**

- <http://SFA4Schools.sfa.ed.gov>

**Where to Call**

- Foreign Schools Team  
202-377-3168

**Temporary Approval for Continued Participation**

ED permits a school undergoing a change in ownership that results in a change in control to continue to participate in the Title IV programs on a provisional basis if the school submits a materially complete application that is received by ED no later than 10 business days after the change becomes effective. A materially complete application for the purpose of applying for a temporary approval must include:

- ◆ a fully completed application form;
- ◆ a copy of the school's country license or equivalent that was in effect on the day before the change in ownership took place;
- ◆ a copy of the accrediting agency's approval (in effect on the day before the change in ownership) that granted the school accreditation status, including an approval of the nondegree programs it offers;
- ◆ financial statements of the school's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of generally accepted accounting principles (GAAP), published by the Financial Accounting Standards Board, and generally accepted governmental auditing standards (GAGAS) published by the U.S. General Accounting Office;
- ◆ audited financial statements for the school's new owner's two most recently completed fiscal years that are prepared and audited in accordance with GAAP and GAGAS or acceptable equivalent information for that owner; *and*
- ◆ a completed signature page, Section L.

The signature page and supporting documentation should be mailed to ED at one of the addresses listed below.

If by regular mail:

U.S. Department of Education  
Student Financial Assistance, Schools Channel  
Foreign Schools Case Management Team  
830 First Street, NE  
Union Center Plaza, 7<sup>th</sup> Floor  
Washington, DC 20202-5340

If by overnight mail/courier delivery:

U.S. Department of Education  
 Student Financial Assistance, Schools Channel  
 Foreign Schools Case Management Team  
 830 First Street, NE  
 Union Center Plaza, 7<sup>th</sup> Floor  
 Washington, DC 20002-5340  
 Phone: (for overnight mail/courier delivery only) 202-377-3168

If the application is approved, ED sends the school a Temporary Provisional PPA. The Temporary Provisional PPA extends the terms and conditions of the PPA that were in effect for the institution before its change of ownership.

The Temporary Provisional PPA expires on the earlier of:

- ◆ the date that ED signs a new PPA;
- ◆ the date that ED notifies the school that its application is denied; *or*
- ◆ the last day of the month following the month in which the change of ownership occurred unless the school provides the necessary documents.

ED can automatically extend the Temporary Provisional PPA on a month-to-month extension if, prior to the expiration date, the school submits:

- ◆ a same-day balance sheet showing the school's financial position on the day the ownership changed, prepared in accordance with GAAP and audited in accordance with GAGAS;
- ◆ (if not already provided) approval of the change of ownership from the school's agency that legally authorizes postsecondary education in that country;
- ◆ (if not already provided) approval of the change of ownership from the school's accrediting agency; *and*
- ◆ a default management plan that follows examples provided by ED, unless the school is exempt from providing one.

The school is exempt from providing a default management plan if the school, including its main campus and any branch campus, does not have a cohort default rate in excess of 10 percent, and the owner of the school does not, and has not, owned any other school with a cohort default rate in excess of 10 percent.



**Web Site**

- [www.eligcert.ed.gov](http://www.eligcert.ed.gov)



**Reference**

- DCL GEN-97-6

### ***Updating the Application***

A school is required to report changes to certain information on its approved application. These changes must be reported electronically within 10 calendar days of the change. Some of these changes require ED's approval before the school may disburse FFEL Program funds.

Changes that require ED's written approval include:

- ◆ change in the country's authorizing agency;
- ◆ increase in level of program offering (for example, adding graduate degree programs when the school previously offered only undergraduate programs);
- ◆ addition of certain locations;
- ◆ addition of a branch campus;
- ◆ change in type of ownership; *and*
- ◆ change in ownership.

Other changes that must be reported to ED but that do not require ED's approval include:

- ◆ change of name or address (including main branch and separate locations);
- ◆ addition of certain locations;
- ◆ measures of program length;
- ◆ decreases in program level;
- ◆ changes in control;
- ◆ changes in FFEL Program administrators;
- ◆ closure of reported branches and locations;
- ◆ changes in governance of public institutions;
- ◆ change to postsecondary authorization;
- ◆ change to degree authorization;
- ◆ change to program equivalence;

- ◆ change to program criteria; *and*
- ◆ change to U.S. administrative or recruitment offices.

Foreign graduate and medical schools must also report any:

- ◆ change to the accrediting body;
- ◆ change to NCFMEA approval of the accrediting entity; *and*
- ◆ change to clinical sites located in the United States.

When one of these changes occurs, within 10 calendar days a school must report the change and the date the change occurred using the electronic application. In addition, a school must send:

- ◆ any required supporting documentation *and*
- ◆ Section L of the application containing the original signature of the appropriate person.

The supporting documents must be sent to ED at the address on page 2-9 of this chapter. If further action is needed, ED will tell the school how to proceed and which materials and additional completed sections of the application need to be submitted. After receiving the required materials (and depending on the circumstances), ED will evaluate the change, either approving or denying the change, and notify the school.

### Change of Ownership

A change in ownership and control occurs when a person or corporation obtains or loses authority to control a school's actions, whether the school is a proprietary institution, a partnership, or a corporation. The most common examples of change in controlling interest are when a school is sold to a new owner, two or more schools merge, or one school divides into several schools.

A school must submit a completed application to ED following any change in ownership and control. In these cases, the PPA signed by the former owner automatically expires on the date the change takes place, and the school's FFEL Program participation ends. The school may not certify FFEL Program loans until it receives a new PPA from ED.

### Program Participation Agreement

As mentioned, once a school is certified by ED to participate in the FFEL Program, it must enter into an agreement with ED called the Program Participation Agreement (PPA).

The PPA provides information on the terms and conditions of participation. Under the PPA, the school agrees to comply with the laws, regulations, and policies governing the FFEL Program. Once a school is certified for participation, the school must administer FFEL Program funds in a practical and responsible manner. When a school no longer provides educational instruction, a school's PPA automatically terminates.

The PPA lists the basic administrative requirements of FFEL Program participation. If ED approves a school's application, ED sends the school two copies of the PPA. The PPA includes the date that the school's eligibility to participate expires. The school must sign and return both copies to ED. ED then sends the school an Eligibility and Certification Approval Report (ECAR) and a copy of the PPA signed and dated on behalf of the U.S. Secretary of Education for the school's records. Both the ECAR and the PPA must be made available for review by auditors, program reviewers, and other ED officials.

The date the PPA is signed by ED is the date the school may begin participation. FFEL Program fund disbursements may begin in the loan period in which ED signed the PPA. ED's Program Systems Service and regional offices, as well as state guaranty agencies, are notified that the school is approved to participate.

## School Participation Requirements

Once a foreign school has been approved by ED to participate in the FFEL Program, the school must perform certain actions to maintain its participation. The following discussion of participation requirements is addressed to schools, but a school may contract with a third party to perform these actions. See Contracts with Third-Party Servicers in Appendix E.

### **Administrative Capability**

To be certified to participate in the FFEL Program, a foreign school must demonstrate that it is administratively capable of providing the education promised and of properly managing the program.

### **Required Electronic Processes**

A school can receive ED guidance from ED's SFA4Schools Web site at <http://SFA4Schools.sfa.ed.gov> about required electronic processes. A school that uses a third-party servicer may want to be kept informed by the servicer of all information posted by ED on the Web site. A school may enroll in ED's "fax broadcast" service to receive high-priority messages from ED automatically by facsimile. This service will be used for messages that need immediate attention. These messages will also be posted on the Web site. To enroll, a school may call 319-337-5665.



#### Take a Look

- See Appendix E for contracts with third-party servicers.



#### Web Site

- <http://SFA4Schools.sfa.ed.gov>



#### Where to Call

- Fax Broadcast Service  
319-337-5665

### Coordination of Student Financial Aid

One standard of administrative capability requires that an eligible foreign school designate a capable individual to administer the FFEL Program. An individual is considered “capable” if he or she has successfully completed FFEL Program training provided or approved by ED and has previous experience and documented success in FFEL Program administration. The school’s administration must be coordinated in such a way that all the information it receives from any school office concerning a student’s FFEL eligibility is communicated to the FFEL Program administrator. The administrator must be aware of the sources of aid at the school and must be able to coordinate with all financial aid programs at the school to ensure that a student does not exceed his or her need.

### Ensuring Consistent Student Information

A school must have a system of identifying and resolving discrepancies in the FFEL Program-related information received by various school offices. Such a system would include a review by the school of all financial aid and need analysis documents and documents relating to admissions, citizenship, and previous educational experience. For instance, the school’s admissions or registrar’s office must provide the FFEL Program administrator with any information it has that affects a student’s eligibility, the student’s enrollment in an ineligible program, or past educational experience.

### ED Office of Inspector General Referrals

If a school finds that a student may have engaged in fraud or other criminal misconduct in applying for FFEL Program funds, it must refer this information to ED’s Office of Inspector General (OIG). The OIG in turn notifies other officials as appropriate. This requirement does not preclude the school from notifying other law enforcement agencies as necessary. Examples of fraudulent information include, but are not limited to, the use of false identities, forgery of signatures or certifications, and false claims of income, citizenship, or independent student status.

The school must also inform the OIG of any credible information indicating that any employee or servicer may have engaged in fraud relevant to the FFEL Program eligibility of the school or its students. The OIG may be reached at 1-800-MIS-USED (1-800-647-8733) or 202-205-5770, by fax at 202-260-0230, and by email at [OIG.hotline@ed.gov](mailto:OIG.hotline@ed.gov).

### Counseling

A school must provide adequate financial aid counseling to all enrolled and prospective students. Counseling must include, at a minimum, information about the source and amount of the financial aid offered and the method used to determine and disburse or apply aid to a student’s account. This counseling should also include information about the student’s rights and responsibilities associated with enrollment and receipt of financial aid. The



#### **Where to Call**

- Office of Inspector General  
202-205-5770



#### **Take a Look**

- See Chapter 4 for more information on entrance and exit counseling.



information presented should include a description of the school's refund policy, the requirements for the treatment of FFEL Program funds when a student withdraws, satisfactory academic progress standards, and any other conditions or factors that affect the student's aid package. The school must also provide entrance and exit counseling for student borrowers in the FFEL Program.

### Staffing

To manage a school's participation effectively, the FFEL Program administrator must be supported by an adequate number of professional, paraprofessional, and clerical personnel. An "adequate" staff depends on the number of students aided, the number of applicants evaluated and processed, the amount of funds administered, the type of financial aid delivery system the school uses, and the school's use of third-party contractors. ED determines, on a case-by-case basis, whether a school has an adequate number of qualified persons, based on program reviews, audits, and information provided on the school's application for approval to participate in the FFEL Program.

Responsibility for overall administration resides with the school's president, chancellor, or CEO. Although authority and responsibility are delegated to other offices, the leadership and support of the CEO or president are crucial to successfully administering the FFEL Program. The school should have written information indicating the responsibilities of its various offices with respect to the FFEL Program.

A school must also ensure that its administrative procedures for the FFEL Program include an adequate system of internal checks and balances. For schools that receive direct disbursements of FFEL loans, this system must, at a minimum, separate the functions of authorizing payment of funds and disbursing or delivering funds so that no one person or office exercises both functions for any student receiving FFEL Program funds. Small schools are not exempt from this requirement even though they may have limited staff. Individuals working in either authorization or disbursement may perform other functions as well, but not both authorization and disbursement. If a school performs any aspect of these functions via computer, no one person may have the ability to change data that affect both authorization and disbursement.

Authorization and disbursement must each be performed by individuals who are not members of the same family and who do not together exercise substantial control over the school. Substantial control is defined as direct or indirect control over at least 25 percent ownership interest (either alone or with family members), representation (under voting trust, power of attorney, or proxy) of a person who individually or with a group has at least 25 percent ownership interest, status as CEO or other executive officer, or membership on a board of directors of an entity that holds at least 25 percent ownership.

### Satisfactory Academic Progress

An eligible foreign school must publish and apply a policy to measure the academic progress of its students that complies with the elements of a reasonable standard of satisfactory progress as described in the regulations. A school can use satisfactory academic progress standards set by an accrediting agency or some other organization, as long as the standards meet U.S. requirements. The policy used for students who receive FFEL Program funds must be at least as strict as the policy used for those who do not receive FFEL Program funds. The policy must be applied consistently to all FFEL recipients within identifiable categories, such as full-time or part-time, graduate, or undergraduate. The policy must include both a qualitative measure (grade point average, work projects completed, or comparable factors that are measured against a norm) and a quantitative measure (maximum time frame for completion of the program) of the student's progress.

U.S. laws and regulations specify minimum standards for satisfactory academic progress. For an undergraduate program, the maximum time frame cannot exceed 150 percent of the published length of the program measured in academic years, academic terms, credit hours attempted, or clock hours completed, as appropriate. For example, if the published length of a program is 120 credit hours, the maximum time frame established by the school to complete the program cannot exceed 180 attempted credit hours.

The time frame must be divided into increments not longer than the lesser of one academic year or one half the published length of the educational program. The school's policy must include a schedule designating the minimum amount or percentage of work a student must successfully complete by the end of each increment to complete the program within the maximum time frame. The policy must provide for a determination at the end of each increment as to whether the student has met the qualitative and quantitative standards. The policy must be consistent within all programs and categories of students.

In addition, if the program is longer than two academic years, the undergraduate student must, at the end of the second year, have a grade point average of at least a "C" or its equivalent or have academic standing consistent with the school's requirements for graduation. Exceptions are permissible only if the school determines that a student's failure to meet satisfactory academic progress requirements is due to the death of a relative, an injury or illness of the student, or other special circumstances. The school must review academic progress, at a minimum, at the end of each year. A student who is not making satisfactory progress at the end of the second year but comes into compliance with graduation requirements at the end of a later grading period may be considered to be making satisfactory progress beginning with the next grading period.



### Laws & Regulations

- 34 CFR 668.19



A school's satisfactory academic progress policy must explain how withdrawals, grades of incomplete, repeated courses, and noncredit remedial work affect the satisfactory academic progress determination. A procedure must be established to enable a student to appeal a determination that finds that he or she is not making satisfactory academic progress. It must also specify how a student may reestablish that he or she is making satisfactory progress.

### Financial Aid History

A school must consider a student's financial aid history in making FFEL Program awards. Previously, a school was required to either obtain a paper financial aid transcript (FAT) or to verify eligibility through the National Student Loan Data System (NSLDS) for all students who previously had attended a postsecondary institution. Effective July 1, 2001, new regulations eliminated the requirement that schools obtain a paper FAT. The regulations now mandate the use of NSLDS data for purposes of obtaining financial aid history information.

The regulations make a distinction between two types of transfer students. For a prior-year transfer, the new institution may continue to rely on the Student Aid Report (SAR)/Institutional Student Information Record (ISIR) financial aid history information it receives for that student. For a current-year transfer student, instead of requesting a paper FAT from the former institution, the new institution should request updated student eligibility information from NSLDS.

The new regulations also replace the various certification, origination, and disbursement provisions in the former rules with only one requirement: An institution may not make a disbursement of student financial assistance program funds to a current-year transfer student for seven days after it requests updated information from NSLDS. An institution may make a disbursement earlier to a student who is otherwise eligible if, within the seven-day period, NSLDS provides the updated information to the institution or the institution obtains the information itself directly from NSLDS.

The new regulations eliminate the requirement that an institution that receives a request for the completion of a paper FAT must respond to that request. However, through July 1, 2001, in all cases where an institution or student requests a paper FAT, the former institution must complete and promptly return the FAT.

### Cohort Default Rates

A school may be found to have impaired administrative capability when the cohort default rate for its FFEL Program unsubsidized and subsidized Stafford Loans exceeds 25 percent for one or more of the three most recent fiscal years.

The cohort default rate is the percentage of current and former students who entered repayment on a subsidized or unsubsidized Stafford Loan in a given fiscal year (for the U.S. government, October 1 through September 30) and who defaulted before the end of the following fiscal year. However, a borrower who enters repayment on more than one of these loans during the fiscal year in question is counted only once in computing the school's default rate for that year. Federal PLUS Loans and Federal Consolidation Loans are not included in calculating a school's cohort default rate.

For the purpose of calculating cohort default rates for subsidized or unsubsidized Stafford Loans, a loan is generally considered to have entered repayment on the first day following six months of an uninterrupted initial grace period.

For the purpose of calculating cohort default rates under the FFEL Program, a loan is considered in default on the date that ED or the guaranty agency pays a default claim.

ED calculates draft cohort default rates before it calculates and publishes the official rates. ED's calculation of draft rates gives schools a reasonable opportunity to review and correct errors in their repayment and default information that guaranty agencies provided to ED for the purpose of calculating the rates. A school that does not submit a challenge will not be able to correct certain errors once ED releases the official cohort default rate.

A school with an official cohort default rate of 10 percent or more receives a copy of the supporting data used in the calculation of the rate. A school with a rate of less than 10 percent may request the supporting documentation used to calculate the rate within 10 working days if it wants to examine the data.

If a school finds inconsistencies between its records and the draft data, it must submit a challenge to the relevant guaranty agency within 30 calendar days of receiving the data. If the guaranty agency agrees with the school's allegations of error, the agency will submit data corrections to NSLDS.

A school should strive to keep its cohort default rates low to maintain its eligibility to participate in the FFEL Program. Three consecutive rates of 25 percent or more or one rate of over 40 percent results in a period of ineligibility of two years or longer.

A school may be exempt from certain sanctions regardless of its cohort default rates if it has a small number of borrowers or it makes a successful appeal.



**Reference**

- DPL GEN-01-08



**Web Site**

- <http://SFA4Schools.sfa.ed.gov>



**Laws & Regulations**

- 34 CFR 668.17



**Reference**

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*

**Default Management Plan**

A school new to the FFEL Program is required to develop a default management plan before certification. In addition, a school that undergoes a change in ownership that results in a change in control or a school that changes its status as a main campus, branch campus, or additional location must also develop a default management plan. The school's default management plan must be accepted by ED.

The Higher Education Amendments of 1998 provided that a school is exempt from submitting a default management plan if the school and its affiliates have a cohort default rate that is 10 percent or less and the new owner does not own, and has never owned, any other school with a cohort default rate over 10 percent.

**Debarment and Suspension**

Debarment and suspension actions are imposed against individuals who the U.S. government determines constitute a current risk to U.S. agencies based on the individual's action.

If a school or its principals have been suspended, debarred, or proposed for debarment by a U.S. agency, the school is no longer eligible to participate in the FFEL Program. The principals of a school include the owner(s), director(s), officers, partners, employees, or any other person with primary management or supervisory responsibilities. A principal may also be someone who is *not* employed by the school but who has critical or substantive influence over a covered transaction.

If a school discovers that a person employed in a management or supervisory capacity has been suspended or debarred by a U.S. agency, the school must remove that person from the position or risk losing eligibility.

**Financial Responsibility**

To participate in the FFEL Program, a foreign school must demonstrate that it is financially responsible.

- ◆ A foreign school that received less than \$500,000 (U.S. dollars) in FFEL Program funds during its most recently completed fiscal year will have its financial responsibility determined through ED's examination of audited financial statements prepared according to the standards of the school's home country.
- ◆ A foreign school that received \$500,000 or more in FFEL Program funds during its most recently completed fiscal year must submit its audited financial statements in accordance with U.S. regulations and satisfy the financial responsibility standards described in this section.

ED determines whether a school is financially responsible on the basis of its ability to:

- ◆ provide the services described in its official publications and statements;
- ◆ properly administer the FFEL Program in which it participates; *and*
- ◆ meet all of its financial obligations.

Financial responsibility standards can be divided into two categories: general standards and performance and affiliation standards. General standards are basic standards used to evaluate a school's financial health. Performance and affiliation standards are standards used to evaluate a school's past performance and to evaluate persons affiliated with the school.

### General Standards for Private Nonprofit or Proprietary Institutions

A private nonprofit or proprietary institution is financially responsible if ED determines that the school:

- ◆ has a composite score (explained below) of at least 1.5, based on review of the school's financial statement under ED criteria;
- ◆ has sufficient cash reserves to make the required return of FFEL Program funds (these requirements are known as the "refund reserve standards");
- ◆ is current in its debt payments; *and*
- ◆ is meeting all its financial obligations, including making required returns of FFEL Program funds and making repayments to cover debts and liabilities arising from participation in the FFEL Program.

Even if a school meets all the above general requirements, ED does not consider the school to be financially responsible if:

- ◆ the auditor's opinion is adverse, qualified, or disclaimed (unless ED determines that a qualified or disclaimed opinion does not have a significant bearing on the school's financial condition), or the school has a statement by the auditor in its audited financial statement expressing doubt about the continued existence of the school as a "going concern," *or*
- ◆ the school violated certain requirements relating to past performance in the FFEL Program.



#### Laws and Regulations

- 34 CFR 668, Subpart L



#### Take a Look

- See Chapter 5, Return of Title IV Funds.

**Laws & Regulations**

- 34 CFR 668.172

**Composite Score**

The composite score standard combines different measures of fundamental elements of financial health to yield a single measure of a school's overall financial health. This method allows financial strength in one area to make up for financial weakness in another area. In addition, this method provides an equitable measure of the financial health of schools of different sizes.

The first step ED takes in calculating a school's composite score is to determine the school's primary reserve, equity, and net income ratios by using information from the school's audited financial statement in the ratios established by ED. These ratios are used to take into account the total financial resources of the school. The ratios differ depending on whether the school is private nonprofit or for profit. The primary reserve ratio represents a measure of a school's viability and liquidity. The equity ratio represents a measure of a school's ability to borrow and its capital resources. The net income ratio represents a measure of a school's profitability. Upon review, some items from a school's audited financial statement may be excluded from the calculation of the ratios. For example, ED may exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs, from the ratio calculations.

ED then calculates a strength factor score for each ratio. The equations depend upon whether the school is private or nonprofit. A strength factor score reflects a school's relative strength or weakness in a fundamental element of financial health, as measured by each of the ratios. Specifically, the strength factor scores reflect the extent to which a school has the financial resources to replace existing technology with newer technology; replace physical capital that wears out over time; recruit and re-train faculty and staff (human capital); and develop new programs. Once again, the algorithms differ depending on the type of school.

A weighting percentage is applied to each strength factor score to obtain a weighted score for each ratio. The sum of the weighted scores equals the school's composite score. Because the weighted scores reflect the strengths and weaknesses represented by the ratios and take into account the importance of those strengths and weaknesses, a strength in the weighted score of one ratio may compensate for a weakness in the weighted score of another ratio calculation. The weighting percentage used for private for-profit and nonprofit schools differs. The resulting weighted scores are added to arrive at the composite score.

Once the composite score is calculated, it is measured along a common scale from negative 1.0 to positive 3.0. The scale reflects the degree of certainty that a school will be able to continue operations and meet its obligations to its students and ED. See the Financial Responsibility Composite Score Scale shown on the next page.



## Reference

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*



## Laws &amp; Regulations

- 34 CFR 668.173

### Financial Responsibility Composite Score Scale

1.5 to 3.0	Financially responsible without further oversight.
1.0 to 1.4	Financially responsible if it meets the “zone alternative” or posts with ED a letter of credit equal to 50 percent or greater of FFEL Program funds it received in its most recent fiscal year. May be permitted to participate under provisional certification with smaller letter of credit, but not considered fully financially responsible.
-1.0 to .9	Financially responsible if it meets the 50 percent or greater letter of credit alternative. May be permitted to participate under provisional certification with smaller letter of credit, but not considered fully financially responsible.

### Cash Reserves

A school must have sufficient cash reserves to make any required return of FFEL Program funds. ED considers a school to have sufficient cash reserves if the school demonstrates that it makes its refunds and returns to FFEL funds in a timely manner.

A school has made its refunds and returns in a timely manner if it can demonstrate, through audits for the two most recent fiscal years, that for the past two years the school has paid required refunds and returns on time, and if the auditor did not note for either fiscal year a material weakness or a reportable condition in the school’s report on internal controls that is related to refunds and returns.

ED provides for a small margin of error in determining that a school has paid all required refunds and returns on time. ED considers a school to have paid refunds and returns in a timely manner if the auditor did not note in either of the two most recent fiscal years a material weakness or reportable condition in refund-related internal controls and:

- ◆ less than 5 percent of the returns and refunds sampled by the auditor were late *or*
- ◆ there is only one late return in the sample of refunds and returns examined by the auditor (regardless of the percentage of returns in the sample represented by the one late return).

If a finding is made that a school no longer meets the criteria for demonstrating that it has sufficient cash reserves to make any required refunds, the school must post a letter of credit equal to 25 percent of the total FFEL Program refunds and returns made or that should have been made by the school during its most recently completed fiscal year.



The school must submit the letter of credit to ED no later than 30 days after the school is notified of the finding or no later than 30 days after the school's compliance audit is due if it was the auditor who conducted the school's compliance audit who determined that the school no longer qualifies. The letter of credit must be sent to:

U.S. Department of Education  
 Student Financial Assistance, Schools Channel  
 Foreign Schools Case Management Team  
 830 First Street, NE  
 Union Center Plaza, 7<sup>th</sup> Floor  
 Washington, DC 20202-5340

In addition to posting the letter of credit, if a guaranty agency determines that the school no longer meets the refund reserve standard, the school must notify ED of the guaranty agency that conducted the review.

### Current in Debt Payments

A school is not current in its debt payments if:

- ◆ 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*
- ◆ 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.

### General Standards for Public Schools

A public foreign school is financially responsible if its debts and liabilities are backed by the full faith and credit of a government entity. ED considers a public school to have that backing if it notifies ED that it is designated as a public institution by the government entity that has the legal authority to make that designation. The school must also provide ED with a letter from an official of the appropriate government entity confirming the school's status as a public school.

A public school must also meet the past performance standards and submit financial statements.

### Alternatives to General Standards

If a foreign school does not meet the general standards for financial responsibility, ED may still consider the school to be financially responsible or it may allow the school to participate under provisional certification if the school qualifies for an alternative standard.

If ED determines that a school that does not meet one or more of the general standards also does not qualify for an alternative standard, ED may



#### **Laws & Regulations**

- 34 CFR 668.175

initiate a limitation, suspension, or termination action against the school or deny certification.

#### *Alternative for a New School*

A school that seeks to participate in the FFEL Program for the first time and does not meet the composite score standard (has a composite score of less than 1.5) but meets all other standards may demonstrate financial responsibility by submitting an irrevocable letter of credit to ED. The letter of credit must be acceptable and payable to ED and equal to at least 50 percent of the FFEL Program funds that ED determines that the school would receive during its initial year of participation.

#### *Alternative for a Participating School*

A participating institution that fails to meet one or more of the general standards or is not financially responsible because it has an unacceptable audit opinion may demonstrate financial responsibility by submitting an irrevocable letter of credit to ED. The letter of credit must be acceptable and payable to ED and equal to at least 50 percent of the FFEL Program funds that the school has received during its most recently completed fiscal year.

#### *Zone Alternative*

A participating school that fails to meet the composite score standard (has a composite score of less than 1.5) but meets all other standards may demonstrate financial responsibility for up to three consecutive fiscal years if ED determines that the school's composite score is equal to 1.0 to 1.4 for each of those years and the school meets specific monitoring and cash management requirements.

This alternative gives a school the opportunity to improve its financial condition over time without requiring the school to post a letter of credit or participate under provisional certification. Under the zone alternative, a school's operations, including its administration of the FFEL Program, are monitored more closely. If a school does not score at least 1.0 in one of the two subsequent fiscal years or does not improve its financial condition to attain a composite score of at least 1.5 by the end of the three-year period, the school must satisfy another alternative standard to continue to participate. In addition, if a school fails to comply with the information reporting or payment method requirements, ED may determine that the school no longer qualifies under this alternative.

Under this alternative, the school:

- ◆ must request and receive funds under the cash monitoring or reimbursement payment methods, as specified by ED;

- ◆ must provide timely information regarding certain oversight and financial events (for example, any adverse action taken by the school's accrediting agency);
- ◆ may be required to submit its financial statement and compliance audit earlier than normally required; *and*
- ◆ may be required to provide information about its current operations and future plans.

The school must also require its auditor to express an opinion, as part of the school's compliance audit, on the school's compliance with the requirements of the zone alternative, including the school's administration of the payment method under which the school received and disbursed FFEL Program funds.

*Provisional Certification for Schools Not Meeting the Standards*

If a participating institution fails to meet one or more of the general standards or is not financially responsible because it has an unacceptable audit opinion, ED may permit the school to participate under provisional certification for up to three years. For example, a school with a composite score of less than 1.0 that cannot post the 50 percent letter of credit required for the letter of credit alternative may be permitted to continue to participate under provisional certification by submitting a smaller letter of credit.

ED may also permit a school that is not financially responsible because of a condition of past performance of the school to participate under provisional certification for up to three years if the school demonstrates to ED that it has satisfied or resolved the condition.

A school that participates under provisional certification for a lack of financial responsibility does so under the following conditions:

- ◆ The school must submit to ED a letter of credit, payable and acceptable to ED, for an amount determined by ED. This amount must be equal to at least 10 percent of the FFEL Program funds received by the school during its most recent fiscal year.
- ◆ The school must demonstrate that it has met all of its financial obligations and was current on its debt payments for its two most recent fiscal years.
- ◆ ED may require the school to comply with the requirements under the zone alternative regarding cash payment and information reporting.

If a school is still not financially responsible at the end of a period of provisional certification, ED may again permit provisional certification.

However, ED may require the school or the persons or entities that exercise substantial control over the school to submit financial guarantees to ED to satisfy any potential liabilities arising from the school's participation in the FFEL Program. The same persons may be required to agree to be jointly and severally liable for any program liabilities.

ED is not required to offer provisional certification to a school. It is an alternative that ED may offer the school instead of denying an application for recertification.

### **Past Performance and Affiliation Standards**

In addition to meeting the general standards of financial responsibility and not having an unfavorable audit opinion, a school must demonstrate that it properly administers the FFEL Program and that it meets all of its financial obligations, including repayments to ED for debts and liabilities. This aspect of a school's financial responsibility is evaluated on the basis of past performance of the school and the persons affiliated with the school.

#### ***Past Performance of a School***

A school is not financially responsible if it:

- ◆ has been subject to a limitation, suspension, or termination action or has entered into an agreement to resolve a limitation, suspension, or termination action initiated by ED or a guaranty agency in the past five years;
- ◆ has had, in either of the last two compliance audits or in a program review, findings for the current or either of the previous two fiscal years audit that required a repayment of more than 5 percent of the FFEL Program funds received by the school for the year covered by the review or audit;
- ◆ has been cited during the past five years for failing to submit compliance audits and financial statements in a timely manner as required; *or*
- ◆ has failed to satisfactorily resolve any compliance problems identified in program reviews or audit reports, based upon a final decision of ED.

#### ***Past Performance of Persons Affiliated with a School***

A school is not financially responsible if a person who exercises control over the school (or any member of the person's family) owes a liability for an FFEL Program violation or has ever exercised control over another school (or a third-party servicer) that owes a liability for an FFEL Program violation unless that person, family member, institution, or servicer demonstrates that the liability is being repaid in accordance with an agreement with ED.

ED may consider a school that does not meet this requirement to be financially responsible if the school:

- ◆ notifies ED that the person repaid an acceptable portion of the liability, in accordance with the regulations;
- ◆ notifies ED that the liability is currently being repaid in accordance with a written agreement; *or*
- ◆ demonstrates to the satisfaction of ED:
  - why the person who exercises substantial control should nevertheless be considered to lack that control *or*
  - why the person who exercises substantial control and each member of that person’s family do not or did not exercise substantial control over the institution or servicer that owes the liability.

It is no longer a U.S. requirement for schools that participate in the FFEL Program to maintain fidelity bond coverage for their employees. A school may choose to do so, however, to protect itself when liabilities arise as a result of lack of honesty on the part of the school’s employees or officers.

A school must report any changes of control under which a person acquires the ability to substantially affect the actions of the school. Such changes in control could call into question the school’s financial responsibility.

***Provisional Certification for Schools Substantially Controlled by Persons or Entities Owing Liabilities***

If a school is not financially responsible because the persons or entities that exercise control over the school owe an FFEL Program liability, ED may permit the school to participate under provisional certification if:

- ◆ the persons or entities that owe the liability repay or enter into an agreement with ED to repay the liability. In lieu of this, the school may assume the liability and repay or enter into an agreement to repay the liability;
- ◆ the school meets all the general standards of financial responsibility except that the school must demonstrate that it has met all of its financial obligations and was current on its debt payments for its two most recent fiscal years; *and*
- ◆ the school submits to ED a letter of credit, payable and acceptable to ED, for an amount determined by ED. The amount must be equal to at least 10 percent of the FFEL Program funds received by the school during its most recent fiscal year.

The school must comply with the requirements under the zone alternative regarding cash management and information reporting.

In addition, ED may require the school or persons or entities that exercise substantial control over the school to submit financial guarantees to ED to satisfy any potential liabilities arising from the school's FFEL Program participation. The same persons may be required to agree to be jointly and severally liable for any FFEL Program liabilities.

Again, provisional certification is offered to a school at ED's discretion. ED is not required to offer provisional certification to a school.

### Audited Financial Statements

ED reviews all financial statements it receives. A preliminary calculation of the school's composite score is made and a determination whether the statements are materially complete based on a checklist of minimum requirements is performed. In some cases a school may receive a more thorough analysis of its financial statements. Financial statements are covered in more detail in the section that addresses audits.

### **Contracts with Third-Party Servicers**

A foreign school is allowed to contract with a third-party servicer for assistance in administering its FFEL Program. *However, the school is ultimately responsible for the use of the funds and is held accountable if the third-party servicer mismanages the funds.* The school may choose to include in its third-party servicer's contract provisions for compensating the school for liabilities the school owes ED as a result of the servicer's errors. A third-party servicer is defined as an individual or organization that enters into a contract with a school to administer any aspect of the institution's participation in the Title IV programs. See Appendix E, "Getting Help," for more information on third-party servicers.

Schools must notify ED of all existing third-party contracts and provide ED with the servicer's name, address, employer identification number, telephone number, fax number, and Internet address. If a school modifies a contract or enters into a new contract with a third-party servicer, or if the third-party servicer ceases to provide contracted services, goes out of business, or files for bankruptcy, the school is required to notify ED. Notification should include the name and address of the servicer and the specific change or action that has taken place. ED must be notified within 10 days of the date of the change or action. Additions or changes to a school's third-party servicer must be reported to ED in Section J of the *Application for Approval to Participate in Federal Student Financial Aid Programs*.

### **Cash Management**

The cash management requirements are intended to:



#### **Laws & Regulations**

- 34 CFR 668.25



#### **Take a Look**

- See Appendix E for more information on third-party servicers.



### Reference

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*

- ◆ promote sound cash management of FFEL Program funds by schools;
- ◆ minimize the costs to the U.S. government of making FFEL Program funds available to students and schools; *and*
- ◆ minimize the costs that accrue to students who receive FFEL Program loans.

The FFEL Program funds received by a school are intended solely for the use of student beneficiaries. All funds are held in trust by the school for students, ED, and in the case of FFEL Program funds, for lenders and guaranty agencies. FFEL Program funds cannot be used as collateral or for any other purpose. These rules and procedures also apply to a third-party servicer.

### Limitations on Use of FFEL Funds

When ED determines that there is a need to strictly monitor a school's participation in the FFEL Program, the school may be placed on the cash monitoring payment method. If a school is placed on cash monitoring it will receive a letter from ED describing the limitations. The school may be prohibited from certifying a loan application for a borrower until the school's request to make the certification for that borrower is approved by ED. This restriction applies on the date that ED notifies a school that it must obtain approval to certify loan applications.

The school must provide documentation demonstrating that each borrower included in the request is eligible to receive a disbursement or certification. The documentation must be provided to ED or an entity approved by ED for that purpose (for example, a certified public accountant, a financial aid consultant, or a guaranty agency).

Until ED approves a request, the school may be:

- ◆ prohibited from endorsing a master check or obtaining a borrower's endorsement of any loan check the school receives from a lender;
- ◆ required to maintain loan funds that it receives from a lender via electronic funds transfer (EFT) in a separate bank account; *and*
- ◆ prohibited from certifying a borrower's loan application.

### Maintaining and Accounting for Funds

For each account that contains FFEL Program funds, a school must identify that FFEL Program funds are maintained in the account by including the phrase "U.S. federal funds" in the name of the account.



### Laws & Regulations

- 34 CFR 668.167(d)



### Laws & Regulations

- 34 CFR 668.163



## Laws &amp; Regulations

- 34 CFR 668.164

ED may require a school to maintain FFEL Program funds in a separate account if ED determines that the school failed to comply with cash management requirements, recordkeeping and reporting requirements, or other applicable program regulations.

### Delivery and Disbursement of FFEL Program Funds

FFEL Program funds may be disbursed directly to the student or the parent by the lender. In this case, the lender must notify the school that the funds have been disbursed and provide the name and Social Security number of the student or the name and Social Security number of the parent borrower for PLUS Loans. Other information that must be provided includes:

- ◆ the type of loan;
- ◆ the amount of the disbursement;
- ◆ the date of the disbursement; *and*
- ◆ the name, address, telephone, and fax number or email address of the lender, servicer, or guaranty agency to which inquiries should be directed.

FFEL Program funds may also be delivered by EFT directly from the lender to a school for FFEL Program borrowers at the school. In that case, FFEL Program funds are disbursed when a school credits a student's account with the funds or pays a student or parent directly.

It is important for a number of reasons to distinguish when FFEL Program funds have been disbursed. To begin with, once the funds have been disbursed, a student becomes an FFEL recipient, and the rights and responsibilities of a loan recipient are in effect; for example, the student assumes responsibility for all the interest accruing on the loan if it is unsubsidized and has the right to cancel the loan. In addition, knowing when a disbursement occurs allows a school to determine when it must comply with regulatory requirements related to disbursements and other cash management issues.

When a school disburses FFEL Program funds to a student by crediting the student's account, it may only do so for allowable charges. Funds in excess of the allowable charges must be paid directly to the student, unless the student authorizes otherwise. Allowable charges are current charges for tuition and fees, room and board (if the student contracts with the school), and other current charges that a student incurs for educationally related activities, if the school obtains the student's or parent's authorization to have such charges credited with FFEL Program funds.



In addition to crediting a student's account, a school may disburse FFEL Program funds directly to a student or parent. A school or lender does this by:

- ◆ releasing a check provided to the school by an FFEL Program lender to the student or parent;
- ◆ issuing a check or other instrument payable to and requiring the endorsement or certification of the student or parent;
- ◆ initiating an EFT to a bank account designated by the student or parent; *or*
- ◆ paying the student in cash, in which case the school must obtain a signed receipt from the student or parent.

A parent borrower of Federal PLUS Loan funds may authorize the school to transfer these funds to a bank account in the student's name.

### ***Time Frames for Disbursing FFEL Funds from the Lender***

Funds may not be disbursed before the student has registered. To minimize the risk of liability to the school in the event the student withdraws, the school should require payment for all institutional charges to be assessed against the student as soon as possible, even if the FFEL lender disbursed the loan directly to the student.

### **Early Disbursements**

The earliest a school may disburse FFEL Program funds is:

- ◆ 10 days before the first day of classes for the academic year (period of enrollment) for a student enrolled in a credit-hour program offered in semester, trimester, or quarter academic terms *or*
- ◆ the later of 10 days before the first day of classes for the academic year (period of enrollment) or the date the student completed the previous academic year for which he or she received FFEL Program funds, for a student enrolled in a clock-hour program or a credit-hour program that is not offered in semester, trimester, or quarter academic terms.

### **Late Disbursements**

A school may make a late first disbursement of FFEL Program funds to an ineligible student if the student became ineligible because he or she is no longer enrolled at the school at least half time for the loan period. A late disbursement may be made only if two conditions were met before the student became ineligible: the student gave the school a SAR with an Expected Family Contribution calculated by ED, and the school certified the



#### **Laws & Regulations**

- 34 CFR 668.164(f)



#### **Laws & Regulations**

- 34 CFR 668.164(g)

loan. The disbursement must take place within 90 days of the loss of eligibility and can be made only if the funds are used to pay for educational costs the student incurred while eligible.

A school may make a late disbursement only if the funds are used to pay for unpaid educational costs that the school determines the student incurred for the period that the student was enrolled and eligible. A school is not required to obtain detailed expenditure documentation from the student. Instead, it may develop a policy that applies in all cases. For example, a school may adopt a policy that all expenses for books and supplies are considered to have been incurred by a student who withdraws after the first two weeks of the term (provided that this policy does not conflict with any applicable refund requirements).

### Returning FFEL Program Funds

When a school receives FFEL Program funds from the lender by EFT or master check, the school must credit the student's account or issue a direct payment to the eligible student or parent borrower within three business days. If the FFEL lender provided the loan funds through a check requiring the endorsement of the student or parent, the school must disburse those funds to eligible students or, for Federal PLUS Loan funds, to parents of eligible students, no later than 30 calendar days after the school receives the funds.

Sometimes the school receives the loan funds at a point when the student is temporarily not eligible for payment. For instance, a student may need to complete the clock hours or credit hours he or she was supposed to complete in the previous academic year (for an academic program without terms). A school has an additional 10 business days to pay the borrower if the student is ineligible for payment within the normal disbursement period (as described above) but is expected to become eligible for payment within the additional 10 business days. This means that the school can wait 13 days after receipt of the EFT or master check (40 days for a check requiring endorsement) to pay a student who is expected to regain eligibility during this 10-day window.

### *Time-Frame for Returning Undisbursed FFEL Funds*

For FFEL Program funds that a school does not disburse by the end of the initial or conditional period, as applicable, the school must return those funds to the lender promptly but no later than 10 business days from the last day allowed for disbursement. However, if a student becomes eligible to receive FFEL Program funds during the return period, the school may disburse those funds provided that the disbursement is made on or before the last day of the return period.

### *Proration of Loan Fees for Returned FFEL Funds*

If a school returns an FFEL disbursement or any portion of an FFEL disbursement to a lender, the origination fee and insurance premium are



### Laws & Regulations

- 34 CFR 668.164(e)

reduced in proportion to the amount returned. If a student returns an FFEL disbursement or any portion of an FFEL disbursement to the lender, the origination fee and insurance premium are reduced in proportion to the amount returned only if the lender receives the returned amount within 120 days after disbursement.

### Student Financial Aid Credit Balances

Whenever a school credits FFEL Program funds to a student's account, and those funds exceed the student's allowable charges, an FFEL credit balance occurs. A school must pay the excess funds (the credit balance) directly to the student as soon as possible, but:

- ◆ no later than 14 days after the date the balance occurred on the student's account, if the balance occurred after the first day of class of an academic year *or*
- ◆ no later than 14 days after the first day of classes of the period of enrollment if the credit balance occurred on or before the first day of class of that payment period.

An FFEL credit balance occurs only if the total amount of FFEL Program funds exceeds the allowable charges.

The law requires that any excess Federal PLUS Loan funds be returned to the parent. Therefore, if a school determines that PLUS Loan funds created a credit balance, the credit balance would have to be given to the parent.

ED does not address the treatment of credit balances that are created by non-FFEL Program funds. However, under the return of funds requirements, when a student withdraws, an FFEL credit balance must be eliminated before a calculation of the amount, if any, owing to the FFEL Program is computed.

A school is permitted to hold a credit balance if the school obtains a voluntary authorization from the student or parent. If the school receives authorization to hold excess funds, it must identify the student or parent and the amount of funds held for the student or parent in a subsidiary ledger account designated for that purpose.

Note that a school must maintain, at all times, cash in its bank account at least equal to the amount the school holds for students. Because FFEL Program funds are awarded to students to pay current year charges, the school must pay any remaining credit balance by the end of the loan period.

If a school cannot locate a student who has an FFEL credit balance (the school has exhausted all possible avenues to find the student), the school must return the credit balance to ED.

The school is permitted to retain any interest earned on the student's credit balance funds. ED may prohibit a school that has been placed on



#### Laws & Regulations

- 34 CFR 668.164(d)



#### Laws & Regulations

- 34 CFR 668.165



#### Take a Look

- See Appendix F for a sample notification of loan disbursement.

reimbursement from holding excess funds. If ED determines that the school has failed to meet the financial responsibility standards, a limitation may be placed on the school, preventing it from holding excess funds for any student.

#### Prior-Year Charges

In general, FFEL Program funds can be used to pay only educational expenses a student incurs in the period for which those funds are provided. However, a school is permitted to use a student's FFEL Program funds to pay minor prior-year institutional charges if the student has, or will have, an FFEL credit balance and the school obtains the student's or parent's authorization to pay the prior-year charges.

A school may obtain authorization from a student in advance to use FFEL Program funds to cover prior-year charges that are less than \$100. To pay prior-year charges for amounts equal to or greater than \$100, in addition to obtaining authorization, a school must determine that payment would not prevent the student from paying for his or her current educational expenses.

#### Notifications Schools Send to Borrowers

Before a school certifies FFEL Program funds for any award year, the school must notify a student of the amount of FFEL Program funds the student and his or her parent can expect to receive, and how and when the funds will be disbursed. The notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

A school must provide the best information it has regarding the amount of FFEL Program funds a student can expect to receive. Because the actual loan disbursements received by a student may differ slightly from the amount expected by the school (due to loan fees and rounding differences), a school may include the gross amount of the loan disbursement or a close approximation of the net disbursement amount.

#### Opportunity for Loan Cancellation

Because incurring a loan obligation is a serious responsibility, a borrower must be given the opportunity to cancel the loan at or close to the time the funds are actually disbursed. Notification by the school of when a loan disbursement occurs is required to remind borrowers of their loan obligation and to give students the opportunity to replace credited loan proceeds with other funds (except when loans are disbursed directly by a lender or school to a student). Therefore, the school must notify a student or parent in writing or electronically whenever the school credits the student's account with FFEL Program funds. The notification must include:

- ◆ the date and amount of the disbursement;

- ◆ the right of the student or parent borrower to cancel all or a portion of the loan (applicable only if the school received the loan funds from a lender through EFT payment or master check); *and*
- ◆ the procedures and the time frame that the student or parent borrower must notify the school that he or she wishes to cancel the loan or a portion of the loan.

A school is not required to provide notification if the school disburses an FFEL Program loan directly to the student or parent by check. This is because a student or parent who receives an FFEL disbursement by check has the opportunity to refuse the funds by not endorsing the check or by returning the check.

This notification of crediting a student's account with loan funds must be sent no earlier than 30 days before and no later than 30 days after crediting the student's account. If a school notifies a borrower electronically, it must request that the borrower confirm receipt of the notice, and the school must maintain a copy of the confirmation. For example, if a school notifies a borrower through electronic mail, the school must request a "return receipt" message and keep a copy of the receipt on file.

A school may not use an in-person or telephone conversation as the sole means of notification. In-person and telephone conversations are not adequate and verifiable methods of providing notice. However, notification to borrowers in person or by telephone may be done in addition to providing written or electronic notice.

Once the school has provided notification, if the student or parent wants to cancel all or a portion of a loan, he or she must inform the school. The school must honor the request if the request is received no later than:

- ◆ 14 days after the date the school sends the notice *or*
- ◆ the first day of the loan period, if the school sends the notice more than 14 days before the first day of the loan period.

If a student's or parent's request for cancellation is received within the specified time period, the school must return the loan proceeds and cancel the loan as appropriate. If a student's or parent's request for cancellation is received after the specified time period, the school may, but is not required to, honor the request. Regardless of when the request is received, the school must inform the student or parent, in writing or electronically, of the outcome of the request.

A school is not responsible for returning a portion of a loan that was disbursed to a student or parent directly before the request for cancellation was received. However, a school is encouraged to take an active role in advising the borrower to return the portion of funds already received.



## Laws &amp; Regulations

- 34 CFR 668.165(b)

### Student/Parent Authorizations

A school must obtain authorization from a student (or parent borrower) before:

- ◆ disbursing FFEL Program funds by EFT to a bank account designated by the student or parent;
- ◆ using FFEL Program funds to pay for allowable charges other than tuition, fees, and room and board (if the student contracts with the school);
- ◆ holding excess FFEL Program funds (credit balances); *and*
- ◆ applying FFEL Program funds to prior-year charges.

In obtaining an authorization from a student or parent, a school may not require or coerce the authorization and must notify the student or parent that he or she may cancel or modify the authorization at any time. Once a student or parent cancels or modifies his or her authorization, the school may not perform the function, or must perform the function as modified, from that date forward.

A cancellation or modification is not retroactive. If a student or parent cancels an authorization to use FFEL Program funds to pay for allowable charges other than tuition, fees, and room and board (if the student contracts with the school), or prior-year charges, the school may use FFEL Program funds to pay any authorized charges incurred by the student before the notice was received by the school. If a student or parent cancels an authorization to hold excess funds, the funds must be paid directly to the student or parent as soon as possible, but no later than 14 days after the school receives the notice.

A school may include two or more of the items that require authorization on one statement. However, a student (or parent borrower) must be informed that he or she may refuse to authorize any individual item on the statement.

Any authorization must clearly explain how the school will carry out an activity. It does not need to detail every aspect pertaining to the activity. However, a blanket authorization that only identifies the activities to be performed is not acceptable. For example, an authorization permitting a school to use excess FFEL Program funds must provide detail that is sufficient to give a general idea of what the excess funds would be used to pay. A blanket statement that excess funds would cover any charges is not acceptable.

Unless otherwise specified, a student or parent may authorize a school to carry out the activities for which authorization is provided for the entire

**Take a Look**

- See Chapter 5 for more information on return of Title IV funds.

**Laws & Regulations**

- 34CFR 668.43
- 34CFR 668.45

period the student is enrolled at the school. As mentioned above, a student or parent may cancel or modify an authorization at any time.

**Return of Title IV Funds**

The Higher Education Amendments of 1998 changed the refund and repayment provisions for Title IV programs. The law renamed the process “treatment of Title IV funds when a student withdraws”; it is also known as “the return of Title IV funds.” The amendments also revised how to calculate both the earned and unearned amount of Title IV funds when a student does not complete a period of enrollment or payment period.

A calculation to determine earned and unearned amounts of aid must be made for each eligible student who withdraws. See Chapter 5 of this handbook for more information.

**Consumer Information**

A foreign school is required to make certain information available about itself to students, ED, and others. 34 CFR Subpart D lists the basic information a school must make available to enrolled and prospective students. A school is also required to provide each year to enrolled students a list of the information it must disclose and the procedures for obtaining the information. The school must prepare these materials, unless the data are available in the form of brochures and handouts that are routinely given out by the school or in federal publications such as *The Student Guide*.

The following minimum information must be provided about the school:

- ◆ the names of associations, agencies, and/or governmental bodies that accredit, approve, or license the school and its programs;
- ◆ the procedures by which a student may receive a copy for review of the school’s accreditation, licensure, or approval;
- ◆ special facilities and services available to disabled students;
- ◆ the costs of attending the school (tuition and fees, books and supplies, room and board, and estimated transportation costs, such as commuting) and any additional costs of the program in which the student is enrolled or has expressed a specific interest;
- ◆ a statement of the requirements for the return of FFEL Program funds when a student withdraws from school;
- ◆ information about any refund policy with which the school must comply;
- ◆ the requirements for officially withdrawing from the school;

- ◆ the degree programs, training, and other education offered;
- ◆ the instructional, laboratory, and other physical plant facilities associated with the academic programs;
- ◆ a list of the faculty and other instructional personnel;
- ◆ the satisfactory progress standards that students must maintain;
- ◆ whom to contact for information on student financial assistance and on general institutional issues; *and*
- ◆ the school's campus security report.

The school must have someone available during normal operating hours to provide consumer information. One full-time employee or several persons may be assigned so that someone is always available (with reasonable notice) to assist enrolled or prospective students and their families. Existing personnel may satisfy this requirement. A school may request a waiver of the full-time availability requirement if it can demonstrate that a waiver is appropriate. A school should contact ED's Case Management and Oversight for more information.

The following minimum information must be provided regarding student financial aid at the school and other topics:

- ◆ what need-based and non-need-based U.S. financial aid is available to students;
- ◆ what other need-based and non-need-based public, school, and private aid programs are available;
- ◆ how students apply for aid and how eligibility is determined;
- ◆ the rights and responsibilities of students receiving aid;
- ◆ how and when financial aid will be calculated and disbursed;
- ◆ the terms of, schedules for, and necessity of loan repayment and required loan exit counseling;
- ◆ the criteria for measuring satisfactory academic progress;
- ◆ how a student who has failed to maintain satisfactory academic progress may reestablish eligibility for U.S. financial aid;
- ◆ information on preventing drug and alcohol abuse; *and*





**Reference**

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*

- ◆ the terms and conditions under which students receiving U.S. education loans may obtain deferments while serving:
  - in the Peace Corps;
  - under the Domestic Volunteer Service Act; *and*
  - as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

Student Right-to-Know Act

The Student Right-to-Know (SRK) Act requires schools to disclose the completion or graduation rates and, if applicable, transfer-out rates for a specific cohort of the general student body. For nonterm schools the cohort year is September 1 through August 31. For other schools the cohort is the number of first-time, credential-seeking, full-time undergraduate students who enter the school in the fall term. The information must be disclosed on request to current and prospective students. SRK Act disclosures are made by July 1 of each year.

In addition to calculating the completion or graduation rates described within this section, a school may, but is not required to, calculate:

- ◆ a completion or graduation rate for students who transfer into the school;
- ◆ a completion or graduation rate and transfer-out rate for the students described as “exceptions” to the requirements in this section, including students who:
  - have left school to serve in the U.S. Armed Forces;
  - have left school to serve on official church missions;
  - have left school to serve with a foreign aid service of the U.S. government, such as the Peace Corps;
  - are totally and permanently disabled; or
  - are deceased; *and*
- ◆ a transfer-out rate, if the school determines its mission does not include providing substantial preparation for its students to enroll in another eligible school.

A school is required to calculate and disclose its transfer-out rates if it determines that its mission includes preparing students to enroll in other institutions (such as a community college).

All rates involve certificate- or degree-seeking, full-time undergraduate students.

### ***Determining the Cohort for Completion or Graduation and Transfer-Out Rates***

To calculate completion or graduation and transfer-out rates, a school must identify a group of students each year (a cohort) and monitor the cohort over time to determine the percentage of those students who complete their programs or transfer out of the school. The regulations specify which cohort a school must use, based on the programs that the school offers. Schools should include in the cohort only students who are enrolled for at least 30 days.

### **Standard Term Schools**

A school that offers most of its programs based on standard terms (semesters, trimesters, quarters) must use a fall cohort of first-time undergraduates for these calculations. That is, the school must count all first-time freshmen who are certificate- or degree-seeking, full-time undergraduate students who enter the school during the fall term. For a fall cohort, a student has entered the school if he or she enrolled for the fall term (or during the summer immediately preceding the fall term) and is still enrolled as of October 15, as of the end of the school's add-drop period for the fall term, or as of another official reporting date (in the fall) on which a school must report fall enrollment data to its board of trustees or governing board or some other external governing body.

### **Nonstandard Term or Nonterm Schools**

A school that does not offer most of its programs based on standard terms must count all first-time students who are certificate- or degree-seeking, full-time undergraduate students who enter the school between September 1 and August 31. For a cohort for nonstandard term and nonterm schools, a student has entered the school if he or she has attended at least 30 days.

Schools may not include students who transfer into the school from another school as entering students for purposes of these calculations. However, a school may calculate a completion rate for students who transfer into the school as a separate, supplemental rate.

### ***Waivers***

ED will continue to work with interested agencies to help them develop standards that meet the requirements. If in the future ED determines that another agency's requirements meet the standards of the SRK Act, it will inform schools that those rates may be used to satisfy the SRK Act requirements.



**Laws & Regulations**

- 34 CFR 668.45

**Reporting Information on Completion or Graduation Rates for the General Student Body Cohort**

The requirements for disclosing this information have been broken down into three steps: determining the cohort, calculating the rates, and disclosing the rates.

**Step 1 - Determining the cohort**

A school must determine the cohort to identify students in such a way that it can take a snapshot of those same students at a later time.

**Step 2 - Calculating the rates**

Once a school has identified a cohort, it must determine how many of those students completed their program and, if applicable, how many transferred out of their program at the point in time that 150 percent of the normal time for completion of each program has elapsed for all of the students in the cohort.

A school may exclude from the cohort students who:

- ◆ have left school to serve in the U.S. Armed Forces;
- ◆ have left school to serve on official church missions;
- ◆ have left school to serve with a foreign aid service of the U.S. government, such as the Peace Corps;
- ◆ have become totally and permanently disabled; *or*
- ◆ are deceased.

**Step 3 - Disclosing the rates**

The information on completion, graduation rates, and, if applicable, transfer-out rates must be disclosed by July 1 immediately following the expiration of 150 percent of normal time for the group of students on which the school bases its completion and transfer-out rate calculation.

Schools must disseminate the information about completion or graduation and, if applicable, transfer-out rates to enrolled and prospective students upon request, through appropriate publications, mailings, or electronic media (for example, school catalogs or admissions literature). Schools are strongly encouraged to provide this information to other interested parties, such as guidance counselors, upon request.

**Campus Security Act**

ED is committed to assisting all schools in providing students with a safe environment in which to learn and to keep parents and students well informed about campus security.



**Laws & Regulations**

- 34 CFR 668.46

**Web Sites:**

- [www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo)
- [www.ed.gov/offices/OPE/PPI/security.html](http://www.ed.gov/offices/OPE/PPI/security.html)
- [www.edc.org/hec/](http://www.edc.org/hec/)

**Laws & Regulations**

- Campus Security Act of 1990

The following Web sites contain suggestions that foreign schools can use in developing and implementing a comprehensive campus security policy:

- ◆ Department of Justice's Violence Against Women Office:  
[www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo)
- ◆ The ED Web site on campus safety:  
[www.ed.gov/offices/OPE/PPI/security.html](http://www.ed.gov/offices/OPE/PPI/security.html)
- ◆ Higher Education Center for Alcohol and Other Drug Prevention:  
[www.edc.org/hec/](http://www.edc.org/hec/).

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (formerly the Campus Security Act of 1990) requires a school to compile an annual campus security report. For prospective students and prospective employees the school must provide a notice, upon request, that includes:

- ◆ a statement of the report's availability;
- ◆ a brief description of the report's contents; *and*
- ◆ an opportunity to request a copy of the report.

If the school chooses to fulfill this requirement by posting the crime report on an Internet or Intranet Web site, the notice described above must also contain:

- ◆ the exact Internet or Intranet address at which the report is posted  
*and*
- ◆ a statement that the school will provide a paper copy of the report upon request.

A school must provide its annual campus security report, upon request, to a prospective student or prospective employee.

In addition to the required annual campus security report, schools are required to provide timely warning to the campus community of any occurrences of crimes that are reported to campus security authorities or local police agencies and are considered to represent a continuing threat to students and/or employees. A school is not required to provide timely warning with respect to crimes reported to a pastoral or professional counselor. A school must also include statistical and policy information related to these same crimes in its campus security report.

These crimes include:

- ◆ criminal homicide/murder;
- ◆ negligent and nonnegligent manslaughter;
- ◆ forcible and nonforcible sex offenses;
- ◆ robbery;
- ◆ aggravated assault;
- ◆ burglary;
- ◆ motor vehicle theft;
- ◆ arson;
- ◆ any other crime involving bodily injury reported to local police agencies or to a campus security authority that shows evidence of prejudice based on race, gender, religion, sexual orientation, ethnicity, or disability; *and*
- ◆ arrests for, and persons referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

#### Loan Counseling

Before an FFEL loan borrower takes out a loan and again before he or she leaves school, the school must counsel that borrower, individually or in a group with other borrowers, regarding loan repayment. For a complete discussion of loan counseling requirements, see Chapter 4.

#### Misrepresentation

The regulations permit ED to fine a school, or limit, suspend, or terminate the participation of any school that substantially misrepresents the nature of its educational program, its financial charges, or the employability of its graduates.

*Misrepresentation* is any false, erroneous, or misleading statement made to a student or prospective student, to the family of an enrolled or prospective student, or to ED. This includes disseminating testimonials and endorsements given under duress.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous, or misleading statements concerning:



#### Laws & Regulations

- 34 CFR 668.72 to 668.74

- ◆ the particular type(s), specific source(s), nature, and extent of its accreditation;
- ◆ whether a student may transfer course credits earned at the institution to any other institution;
- ◆ whether successful completion of a course qualifies a student for acceptance into a labor union or similar organization or the receipt of a local, state, or U.S. license or a nongovernment certification required as a precondition for employment or to perform certain functions;
- ◆ whether its courses are recommended by vocational counselors, high schools, or employment agencies or by governmental officials for government employment;
- ◆ its size, location, facilities, or equipment;
- ◆ the availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states the programs are designed to meet;
- ◆ the nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states the programs and courses are designed to meet;
- ◆ the number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- ◆ the availability of part-time employment or other forms of financial assistance;
- ◆ the nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance the school provides its students before, during, or after the completion of a course;
- ◆ the nature and extent of any prerequisites established for enrollment in any course; *or*
- ◆ any matters required to be disclosed to prospective students under 34 CFR 668.44 (institutional information) and 34 CFR 668.46 (campus security information).

Misrepresentation by an institution about the nature of its financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning:



#### Laws & Regulations

- 34 CFR 668.73



**Laws & Regulations**

- 34 CFR 668.74

- ◆ offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges that are applied to all students not receiving a scholarship and are made known to the student in advance *or*
- ◆ whether a particular charge is the customary charge at the institution for a course.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous, or misleading statements that:

- ◆ the school is connected with any organization or is an employment agency or other agency that provides authorized training leading directly to employment;
- ◆ the school maintains a placement service for graduates or will otherwise secure or assist its graduates in obtaining employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; *or*
- ◆ concern government job market statistics in relation to the potential placement of its graduates.

Disclosing Student Information



**Laws & Regulations**

- 34 CFR 99

To protect the privacy of students and families, U.S. law sets conditions on the disclosure of personal information from records that are kept by schools that participate in the FFEL Program. This law is the Family Educational Rights and Privacy Act of 1974 (FERPA).

ED regulations set limits on the disclosure of personally identifiable information from school records, define the responsibilities of the school, and define the rights of the student in reviewing his or her record and requesting a change to the records. A school must give the student the opportunity to inspect and review his or her education records, but it does not have to provide copies of the records unless the requirement that the student come to the school to inspect and review the records would effectively deny access to the student.

While the school may not charge a fee for retrieving the records, it may charge a reasonable fee for providing copies of records, provided that the fee would not prevent access to the records.

Under FERPA, a school is required to:

- ◆ develop a written policy stating the procedures for parents and students to review the records;

- ◆ notify parents and students of their rights to request a review of education records; *and*
- ◆ document each time personally identifiable information is disclosed to persons other than the student.

A student has the right to:

- ◆ inspect and review education records pertaining to the student;
- ◆ request an amendment to the student's record, if necessary; *and*
- ◆ request a hearing to challenge the contents of the education record on the grounds that the records are inaccurate, misleading, or violate the rights of the student (if the request for an amendment is denied).

The term *education record* does not include records that are kept in the sole possession of the maker of the record. Records that contain information taken directly from a student or that are used to make decisions about the student are not sole-possession records. Sole-possession records are:

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

FERPA regulations established rules governing the disclosure of student information to parties other than the student. The regulations list conditions under which “personally identifiable information” from a student's education record may be disclosed without the student's prior written consent. Several of these conditions are of particular interest to the financial aid office. They include:

- ◆ Disclosure may be made to authorized representatives of ED, the OIG, or state and local education authorities. These officials may access education records as a part of an audit or program review or to ensure compliance with FFEL Program requirements. (Representatives of ED include research firms that are under contract with ED to conduct studies of financial aid procedures using student information provided by the schools selected for the study. They also include lenders and guaranty agencies.)
- ◆ Disclosure may be made in connection with financial aid that the student has received or applied for. For instance, the school may receive a request from the U.S. Immigration and Naturalization Service or the U.S. Federal Bureau of Investigation for access to a student's records. (Such a request may only be granted if the student information is needed to determine the amount of



the aid, the conditions for the aid, the student's eligibility for the aid, or to enforce the terms or conditions of the aid.)

- ◆ Disclosure may be made to either parent of a dependent student (regardless of which parent claims the student as a dependent) if the student is a dependent as defined by the U.S. Internal Revenue Service (IRS). For IRS purposes, a student is a dependent of the parent(s) if the student receives more than half of his or her support from the parent(s).
- ◆ Disclosure may be made to organizations that are conducting studies concerning the administration of student aid programs on behalf of educational agencies or institutions.

Schools are required to keep a record of each request for access and each disclosure of personally identifiable student information. The record must identify the parties who requested the information and their legitimate interest in the information. This record must be maintained in the student's file as long as the education records themselves are kept.

If student records are requested by ED reviewers in the course of a program review, for instance, the school must document in each student's file that the student's records were disclosed to representatives of ED.

When student information has been disclosed to one of the parties listed above, that party may redisclose that information to additional parties who are authorized to receive the information without prior written consent, provided that such redisclosure is included in the statement in the student's file. For instance, if a program review finds evidence that a student may have fraudulently obtained aid, this information may be redisclosed to ED's OIG by the regional office. The OIG would not have to make a separate request to the school for the same information.

When redisclosure is anticipated, the additional parties to whom the information will be disclosed must be included in the record of the original disclosure.

If a foreign school would like a copy of ED's model FERPA policy for postsecondary schools, it may request a copy at the following address:

Family Policy and Compliance Office  
 U.S. Department of Education  
 400 Maryland Avenue, SW  
 Washington, DC 20202-4605

The policy is also available at [www.ed.gov/offices/OM/fpco/psi1.html](http://www.ed.gov/offices/OM/fpco/psi1.html).

### ***Agreements Between Schools***

Two or more institutions may enter into a consortium or contractual agreement to assist students who receive FFEL Program funds while studying at a school or organization other than their home school. The “home school” is the one that will grant a student’s degree or certificate.

#### **Consortium Agreements**

A consortium agreement can only exist between eligible schools. Under such a written agreement, a student may take courses at a school other than the home institution (the school where the student expects to receive a degree or certificate) and have those courses count toward the degree or certificate at the home school without jeopardizing the student’s eligibility for FFEL loans.

#### ***Elements of a Consortium Agreement***

There is no limit on the portion of the eligible program that may be provided by eligible schools other than the home school. Agreement contents can vary widely and will depend upon the interests of the schools involved and government standards.

ED does not dictate the format of the agreement or where the agreement is kept. However, certain information should be included in all agreements, such as which school will grant the degree or certificate; what the student’s tuition, fees, and room and board costs are at each school; and what the student’s enrollment status will be at each school.

The agreement should specify:

- ◆ which school, if either, will be responsible for disbursing aid;
- ◆ which school will be responsible for monitoring student eligibility;
- ◆ the procedures for calculating awards and disbursing aid;
- ◆ which school will monitor satisfactory progress and other student eligibility requirements; *and*
- ◆ which school will keep records and distribute FFEL refunds.

Usually, the home school is responsible for disbursements, but if the student is enrolled for a full term or academic year at the host institution, it may be easier for the host institution to monitor the student’s eligibility and make payments. The school paying the student must return FFEL Program funds if the student is not entitled to them.

The agreement becomes effective for the academic period in which it is signed. Thus, if an agreement is signed in the middle of the spring semester, the student can be paid for the entire academic year, including the preceding fall semester.

### Contractual Agreements

A contractual agreement is a contract between eligible and ineligible schools or organizations. Under such an agreement, the ineligible school or organization provides, under written contract, a portion of the eligible school's educational program. An eligible school may not contract with an ineligible school that has been terminated from FFEL Program participation or has withdrawn from FFEL Program participation while under a termination, show-cause, suspension, or similar proceeding by a country licensing agency, accrediting agency, guaranty agency, or ED.

There is a limit on the portion of the program that can be given at the ineligible school. The ineligible school can provide no more than 25 percent of the educational program.

Under a contractual agreement, the eligible school is always the home school. The home school performs all the aid processing and delivery functions for its students attending the ineligible school. The home school is responsible for maintaining all records necessary to document student eligibility and receipt of aid.

### ***Record Maintenance and Retention***

A school participating in the FFEL Program collects and generates a significant volume of program-related and student-related information on a yearly basis. U.S. regulations specify which of these records must be maintained and the period of time that they must be retained. These record maintenance and retention requirements are schoolwide, and they include fiscal, financial aid, and general institutional records.

The importance of maintaining complete and consistent records cannot be overemphasized. These records are used to document a school's administrative capability and financial responsibility, and they are crucial in maintaining eligibility to participate in the FFEL Program. As such, schools must make student financial aid program and general records available to auditors and representatives of ED at their request. Records that are poorly maintained or that are not readily available for review can lead to findings, exceptions, and liabilities in the course of an audit or program review. This section describes applicable record-keeping requirements.

### General Student Records

Schools must establish, maintain, and keep current certain records pertaining to FFEL Program loan recipients. For each student receiving FFEL funds, a school must keep records of:

- ◆ the student's admission and enrollment status at the institution;
- ◆ the program of study and the courses in which the student is enrolled;

- ◆ the student's academic progress;
- ◆ all financial aid the student receives at the institution;
- ◆ the student's prior receipt of financial aid at other institutions, if applicable;
- ◆ all return of FFEL funds due or paid to the student, Title IV programs, or FFEL Program lenders; *and*
- ◆ the student's job placement (if the school provides a placement service and the student uses that service).

### General Institutional Records

Schools must maintain all records that relate generally to a school's eligibility to participate in the FFEL Program. Examples include:

- ◆ the institution's PPA, approval letter, and ECAR sent from ED;
- ◆ licensing agency reviews, approvals, and reports;
- ◆ audit and program review reports;
- ◆ the institution's eligibility to participate in the FFEL Program;
- ◆ records of the eligibility of the school's educational programs for FFEL funds;
- ◆ records of the school's administration of the FFEL Program according to all applicable requirements;
- ◆ records of the school's financial responsibility;
- ◆ records of the eligibility of any additional location that offers at least 50 percent of the program and offers FFEL funds; *and*
- ◆ records of its admission and satisfactory academic progress policy.

### General Fiscal Records

A school must keep consistent and accurate records of its use of FFEL Program funds. Program and fiscal records must show a clear (easily followed) audit trail for expenditures of U.S. government funds. Similarly, these records must clearly show that funds were obtained, managed, disbursed, and returned according to U.S. regulations. Fiscal records that must be maintained include:

- ◆ records of all FFEL Program transactions;
- ◆ bank statements for accounts containing FFEL funds;

- ◆ student school accounts, including (for each enrollment period) institutional charges, cash payments, FFEL payments, cash disbursements, and return of FFEL funds;
- ◆ general ledger (control accounts) and related subsidiary ledgers that identify each program transaction and separate those transactions from the institution's other financial transactions; *and*
- ◆ records that support data that appear on required reports.

### Financial Aid Application and Award Records

Schools are required to keep extensive records involving student applications for financial aid and financial aid awards. Required records include:

- ◆ student applications data for financial aid and need analysis documents for all eligible aid applicants who attended the school;
- ◆ documents establishing a student's financial need and borrower and student eligibility for FFEL Program funds, including the SAR;
- ◆ financial aid awards made to and accepted or declined by students;
- ◆ cost of attendance information for individual students;
- ◆ data used to establish a student's full-time or part-time enrollment status and period(s) of enrollment; *and*
- ◆ required student certification statements and any documents used to support or verify those certifications.

Schools should, but are not required to, keep copies of any software used to calculate and help determine a student's eligibility for FFEL aid. If a non-ED software package is needed to access and review records that a school maintains on its students, the school must maintain a copy of that software.

### Reporting Records

Schools must maintain reports or copies of reports submitted or received in connection with administering the FFEL Program, including:

- ◆ federal and independent audit reports and school responses *and*
- ◆ licensing agency reports, if required.

In addition, schools must maintain records that support the data that appear on all required reports.

### FFEL Program Records

For the FFEL Program, additional records a school must maintain include, but are not limited to:

- ◆ the name of the borrower and a copy of the loan application and, in the case of a Federal PLUS Loan, the name of the student on whose behalf the Federal PLUS Loan was made;
- ◆ a copy of the loan certification or data electronically submitted to the lender that includes the amount of the loan and the loan period for which the loan was intended;
- ◆ the calculation used to determine the loan amount;
- ◆ the data used to construct an individual student's budget or the school's itemized standard budget used to calculate students' estimated costs of attendance;
- ◆ the sources and amounts of financial aid available to the student that the school used to determine the student's estimated financial aid for the loan period;
- ◆ the amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;
- ◆ the amount, calculation, and date of calculation of any return of FFEL funds paid to or on behalf of a student;
- ◆ the data used to determine the student's EFC and the corresponding certification by the school to the lender for a subsidized Federal Stafford Loan for which the borrower receives an interest subsidy;
- ◆ if applicable, the date of each disbursement of the loan to the school and the amount of that disbursement;
- ◆ if applicable, the date the school endorsed each loan check;
- ◆ if applicable, the date(s) and amounts of loan proceeds delivered by the school to the student;
- ◆ if applicable, a copy of the letter from the lender that includes the date(s) and amounts of loan proceeds delivered directly to the borrower;
- ◆ a copy of the student's (or parent's, for a Federal PLUS Loan) written authorization for initial and subsequent disbursements of

loans delivered by EFT or master check for which the school has no authorization on the loan application;

- ◆ documentation of any master promissory note confirmation process or processes the school may have used;
- ◆ documentation that the student received entrance and exit loan counseling; *and*
- ◆ litigation records (if litigation occurred).

In addition, schools must maintain any other records that document their compliance with any applicable loan-related requirements.

### Record Retention Requirements

Schools must retain all required records for a minimum of three years. A school must keep records related to the FFEL Program, including any reports or forms, for three years after the end of the award year that the records are submitted. Records related to a borrower's eligibility and receipt of FFEL loans must be kept for three years from the end of the award year the student last attended the school.

Loan records, claim records, and records of expenditures questioned as a result of a program audit, program review, investigation, or other review must be kept until the later of the resolution of the questioned loan, claim, or expenditure or the end of the retention period applicable to that record.

### Record Maintenance

A school must maintain all required records in a systematically organized manner. Unless a specific format is required, a school may keep required records in hard copy, microform, computer file, optical disk, CD-ROM, or other media form.

Regardless of the format used to keep a record, all records must be retrievable in a coherent hard-copy format.

- ◆ A coherent hard-copy format could be, for example, an easily understandable print out of a computer file.
- ◆ 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 format or in an imaged-media format.
- ◆ A school may maintain a record in an imaged-media format only if the format is capable of reproducing an accurate, legible, and complete copy of the original document. When printed, the copy must be approximately the same size as the original document.



#### Laws & Regulations

- 34 CFR 668.24(e)
- 34 CFR 668.610



#### Laws & Regulations

- 34 CFR 668.24(d)



## Laws &amp; Regulations

- 34 CFR 668.24(d)(3)(ii)

### *Special Requirements*

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

review and audit purposes. The SAR must be available in its original, hard-copy format or in an imaged-media format.

### Examining Records

Schools must make their records available to ED at an institutional location that ED designates. These records must be readily available for review, including any records of transactions between a school and the financial institution where the school deposits its FFEL Program funds.

A school and its third-party servicer must cooperate with the agencies or individuals conducting audits, program reviews, investigations, or other reviews authorized by law. This cooperation must be extended to the following individuals and their authorized representatives:

- ◆ independent auditors;
- ◆ the U.S. Secretary of Education;
- ◆ ED's OIG;
- ◆ the Comptroller General of the United States; *and*
- ◆ any guaranty agency in whose program the school participates.

In the review process, a school or its third-party servicer must cooperate by providing timely access to requested records, pertinent books, documents, papers, or computer programs for examination and copying.

A school or its third-party servicer must also provide reasonable access to all personnel associated with the school's or servicer's administration of U.S. student financial aid programs so that any of the agents listed above may obtain relevant information. A school or its third-party servicer has not provided reasonable access if it:

- ◆ refuses to allow its personnel to supply all relevant information;
- ◆ permits interviews with those personnel only if the school's or servicer's management is present; *or*
- ◆ permits interviews with those personnel only if the interviews are tape recorded by the school or servicer.



## Laws &amp; Regulations

- 34 CFR 668.24(f)



If ED requests it, a school or its third-party servicer must promptly provide any information about the last known address, full name, telephone number, enrollment information, employer, and employer address of FFEL Program loan recipients who attend or attended the school.

A school must also provide this information, on request, to a lender or guaranty agency in the case of an FFEL Program borrower.

A school must still maintain required records if it:

- ◆ stops providing educational programs;
- ◆ is terminated or suspended from participating in the FFEL Program;
- ◆ undergoes a change of ownership that results in a change in control; *or*
- ◆ closes.

These records must be accessible for inspection and copying by the U.S. Secretary of Education or the Secretary's authorized representative *and* the appropriate guaranty agency (if applicable).

### ***Program Integrity***

One of ED's functions is to oversee the U.S. student financial aid programs to ensure they are administered properly. Audits and program reviews are conducted periodically to ensure the program integrity of schools that participate in these programs.

If it is found in a program review or audit that a school has disbursed FFEL Program funds improperly, the school must restore the funds as appropriate.

Program reviews and audits are not conducted solely to recover funds, but also to identify procedural problems at the school and to recommend solutions. A program review covers many of the same areas as an audit, including fiscal operations and accounting procedures, as well as the school's compliance with the specific program requirements for student eligibility and awards. However, program reviews tend to focus more on regulatory requirements that are specific to the FFEL Programs.

If a school is cited for fraud or other serious program abuses in a program review or audit, the school may be subject to corrective action and/or sanctions, such as fines, emergency action, limitation, suspension, or termination.

### **Independent Audits**

U.S. law requires that a foreign school participating in the FFEL Program must have an independent audit conducted at least once a year: a "compliance



#### **Laws & Regulations**

- 34 CFR 668.23(a)(3)

audit,” which is an audit of a school’s compliance with the laws and regulations that are applicable to the FFEL Program, and a “financial statements audit,” which is an audit of the school’s financial statements.

While a compliance audit covers the school’s administration of the FFEL Programs, a financial statements audit provides ED with the information necessary to evaluate a school’s financial responsibility.

A foreign school can meet these audit requirements by having an audit performed under the guidelines of ED’s audit guide, *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers (SFA Audit Guide)*.



#### Reference

- *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers*

A school must simultaneously submit both the compliance audit and the audited financial statements within six months of the end of the school’s fiscal year. Both the compliance audit and the financial statements audit must be performed on a fiscal year basis. In addition, both audits must be prepared in accordance with GAGAS. The compliance audit and financial statements audit may be performed by different auditors. However, both audits must be submitted as one package.

The definition of an independent auditor makes clear that the compliance and financial statements audits submitted under these regulations must be performed by independent accountants.

A school’s first audit must cover the entire period of time since the school began to participate in the FFEL Program. Each subsequent audit must cover the period since the preceding audit that was accepted by ED.

#### ***Compliance Audit Submission Requirements***

The compliance audit must be conducted in accordance with:

- ◆ the general standards and the standards for compliance audits contained in the U.S. General Accounting Office’s (GAO’s) *Government Auditing Standards* and
- ◆ applicable audit guides from ED’s OIG.

In conducting an audit, a school or servicer and its auditor should use ED’s latest *SFA Audit Guide* and *The Blue Book*, the accounting and recordkeeping manual for the U.S. federal student financial aid programs. The *SFA Audit Guide* is available at [www.ed.gov/offices/OIG/nonfed/sfa.htm](http://www.ed.gov/offices/OIG/nonfed/sfa.htm). An audit guide specifically for foreign schools will be available on this site when it is published.

The auditor or auditing firm the school or servicer uses for its required nonfederal audit may be the same one that usually audits the school’s or servicer’s fiscal transactions.



#### Web Site

- [www.ed.gov/offices/OIG/nonfed/sfa.htm](http://www.ed.gov/offices/OIG/nonfed/sfa.htm)

To produce unbiased conclusions, the auditor must be independent of those authorizing the expenditure of FFEL Program funds.

ED may require a school to provide a copy of its compliance audit report to guaranty agencies, lenders, or accrediting agencies.

### ***Financial Statements Audit Submission Requirements***

A school's audited financial statements must cover the school's most recently completed fiscal year. ED uses the information in a school's audited financial statements to evaluate the school's financial responsibility. In addition to a school's audited financial statements, ED may require that the school submit additional information. For example, ED may require a school to submit or provide access to the accountant's work papers. Also, if ED finds it necessary to evaluate a particular school's financial condition, it can require a school to submit audited financial statements more frequently than once a year.

Since financial responsibility requirements vary for foreign schools based on the amount of FFEL Program funds received by the school, the requirements for preparation of the financial statements also vary.



#### **Laws & Regulations**

- 34 CFR 668.23(d)(3)

- ◆ A foreign school that received less than \$500,000 (U.S. dollars) in FFEL Program funds during its most recently completed fiscal year may have its audited financial statements prepared according to the standards of the school's home country.
- ◆ A foreign school that received \$500,000 or more in FFEL Program funds during its most recently completed fiscal year must have its audited financial statements translated and presented for analysis under U.S. GAAP and GAGAS.



#### **Reference**

- GAO Yellow Book



#### **Web Site**

- [www.gao.gov](http://www.gao.gov)

A table listing the elements of an audited financial statement in several foreign countries is listed in Chapter 5. Schools may go to the GAO Web site at <http://www.gao.gov> to access the government auditing standards, called *The Yellow Book*.

### **Third-Party Servicer Audit Requirements**

A third-party servicer must submit an annual compliance audit. However, if a servicer contracts with only one school, and that school's own audit sufficiently covers all the functions performed by the servicer, the servicer does not have to submit a compliance audit. If a servicer contracts with several schools, a single compliance audit can be performed that covers all of its administrative services for each school.



#### **Reference**

- *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers*

Guidance for audits of third-party servicers is found in the January 2000 edition of ED's audit guide, *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers*. A school may not use a third-party servicer's audit in place of its own required audit, because the



### Laws & Regulations

- 34 CFR 668.23(a)(3) & (c)

school is ultimately liable for its own violations as well as those of its third-party servicers. Any reimbursement of the third-party servicer to the school is strictly a matter of private contract between the servicer and the school and does not involve ED in any way.

### Submitting the Audit Performed

The school or servicer must submit four copies of the combined Financial Statement and Compliance Package Audit Report and the school's or servicer's corrective action plan to ED's Data Management and Analysis Division to one of the following addresses.

If by regular mail:

U.S. Department of Education  
Student Financial Assistance, Schools Channel  
Foreign Schools Case Management Team  
830 First Street, NE  
Union Center Plaza, 7<sup>th</sup> Floor  
Washington, DC 20202-5340

If by overnight mail/courier delivery:

U.S. Department of Education  
Student Financial Assistance, Schools Channel  
Foreign Schools Case Management Team  
830 First Street, NE  
Union Center Plaza, 7<sup>th</sup> Floor  
Washington, DC 20002-5340  
Phone: (for overnight mail/courier delivery only) 202-377-3168

ED reviews the audit report for format, completeness, and to ensure that it complies with the U.S. government's auditing standards. Based on the audit findings and the school's or servicer's written explanation, ED will determine if any funds were spent improperly. The school or servicer must repay any improperly spent funds within 45 days, unless the school or servicer has properly appealed the decision.

Once the audit is complete, the school or servicer must give ED and the OIG access to any records or other documents necessary to review the audit. A school that uses a third-party servicer must also give ED and the OIG access to records or other documents necessary to review a third-party servicer's compliance or financial statements audit. In addition, the school's or servicer's contract with the auditor must specify that the auditor will also give ED and the OIG access to the records and documents related to the audit, including work papers.

Access to the records includes the ability of ED or the OIG to make copies of the records. Throughout the audit process, and for other examinations



### Laws & Regulations

- 34 CFR 668.24(f)

such as program reviews, the school or servicer is required to cooperate fully with its independent auditor, ED, ED's Inspector General, the Comptroller General of the United States, and the appropriate guaranty agency. Cooperation includes timely and reasonable access to records, including computer records, for examination and copying and to personnel for the purpose of obtaining relevant information.

### Program Reviews

In addition to reviewing audits, ED conducts its own program reviews to identify possible problems in a school's FFEL Program administration. A program review covers many of the same areas as an audit, but program reviews tend to focus more on regulatory requirements specific to the FFEL Program.

### Guaranty Agency Reviews

The FFEL Program regulations also require guaranty agencies to conduct program reviews at postsecondary schools. Once every two years a guaranty agency must conduct onsite reviews of all schools for which it is the principal guaranty agency and that have a cohort default rate for either of the two preceding fiscal years that exceeds 20 percent, unless ED requires the schools to take specific default reduction measures or if the total amount of loans entering repayment in each of those fiscal years does not exceed \$100,000.

Alternatively, a guaranty agency may use its own criteria to select schools for the biennial onsite reviews if ED approves the agency's proposed alternative selection methodology. A program review conducted by a guaranty agency is similar to an ED program review, consisting of an entrance interview, a review of student records, an exit interview, and a written report.

The guaranty agency's review will focus on how the school meets FFEL-specific requirements, such as:

- ◆ certification of the loan application;
- ◆ maintenance of records supporting the student's loan eligibility;
- ◆ processing procedures and payment of loan monies; *and*
- ◆ prompt lender notification when the student changes enrollment status, such as complete withdrawal.

Two copies of the guaranty agency's report are forwarded to ED, including the school's payment if liabilities were assessed.

### Appealing Audit and Program Review Determinations

The law allows for appeals of final audit or program review determinations. Only a final determination may be appealed.

The letter conveying a final audit determination is clearly identified as a “Final Audit Determination Letter” (FAD) and explains the appeal procedures. For a program review, the final determination letter is marked “Final Program Review Determination Letter” (FPRD).

If a school or servicer wants to appeal an audit or program review determination, the school must appeal in writing to the ED official identified in the determination letter within 45 days after the school receives the determination letter (FAD or FPRD). If the school or servicer makes such a request, the determination will be reviewed by an impartial hearing official appointed by ED. In most cases, an oral presentation is not required. The school or servicer and ED must submit briefs with any accompanying materials to the official and provide the other party with a copy of its submission at the same time. If the final decision is appealed by either party, the U.S. Secretary of Education will review it. If the hearing official or the Secretary finds that the school or servicer improperly expended funds or otherwise failed to comply with applicable program rules and requirements, ED will collect the liability owed. The school or servicer must repay the funds within 45 days of ED’s notification of the liability, unless ED grants an extension. At its option, ED may elect to use an administrative offset to collect the funds owed.

### ***Withdrawal from the FFEL Program***

A school may stop participating in the FFEL Program voluntarily or it may be required to leave involuntarily. In either situation, there are required close-out procedures to follow.

A separate close-out audit is not required if a school closes an additional location or a branch campus because the next due compliance audit for the school must report on the use of FFEL Program funds at the closed location. However, the school must notify ED of the additional location or branch closure. (See page 2-13.)

### **Voluntary Withdrawal from the FFEL Program**

A school may voluntarily withdraw from the FFEL Program. For more information on the requirements and procedures for withdrawing, contact ED’s Foreign School’s Team at the following email address: OSFA.foreign.schools.team@ed.gov.

A school that withdrew voluntarily (for instance, to lower its default rate) can request to participate again without the waiting period required for a school that was terminated from the program involuntarily or withdrew voluntarily while under a show cause or suspension order.

Withdrawing from the FFEL Program while under a termination order or other sanction, or to avoid being placed under them, is not considered voluntary withdrawal.



#### **Reference**

- *2001-2002 Student Financial Aid Handbook, Volume 2: Institutional Eligibility*

### Involuntary Withdrawal from the FFEL Program

A school's participation ends in the following circumstances:

- ◆ The school closes or stops providing instruction, for a reason other than normal vacation periods or as a result of a natural disaster that directly affects the school or its students. If the school closes its main campus or stops providing instruction on its main campus, its loss of eligibility includes all its locations and programs.
- ◆ The school loses its eligibility.
- ◆ The school's participation is terminated under 34 CFR Part 668, Subpart G.
- ◆ The school's period of participation expires or the school's provisional certification is revoked by ED.
- ◆ The school's PPA is terminated or expired.
- ◆ The school's cohort default rate exceeds the limit.

If a school ceases to provide educational instruction in all programs, the school should make arrangements for its students to complete their programs. If the school chooses to enter into a formal teach-out arrangement, the school should contact the Foreign Schools Team for guidance.

When a school's participation in the FFEL Program ends, for whatever reason, the school must immediately notify ED and comply with the following minimum requirements:

- ◆ Within 45 days of the effective ending date of participation, submit to ED all financial reports, performance reports, and other reports required by FFEL Program regulations, as well as a dated letter of engagement for an audit by an independent auditor of all program funds received. The completed audit report must be submitted to ED within 45 days after the date of the letter of engagement.
- ◆ Report to ED on the arrangements for retaining and storing for the remainder of the appropriate retention period all records concerning the school's management of the program.
- ◆ Notify ED how the school will provide for collecting any outstanding FFEL Program loans held by the school.
- ◆ Refund students' unearned tuition and fees.

**Where to Call**

- Foreign Schools Team  
202-377-3168

In addition, a school must also return to the appropriate lender(s) any loan proceeds the school received but has not disbursed to students.

**Additional closeout procedures**

If a school's participation ends during a payment period or enrollment period but the school continues to provide education in the formerly eligible program until the end of the payment or enrollment period, the school may satisfy any unpaid FFEL commitments made to students for that period of enrollment by delivering subsequent FFEL disbursements to the students or by crediting them to the students' accounts (if the first disbursement already was delivered or credited before the school's participation ended).

Contact ED's Foreign Schools Team for guidance in fulfilling these requirements and responsibilities.

***Case Management***

Case management is ED's approach to oversight of schools that participate in the FFEL Programs. Case management is designed to provide ED with a thorough picture of a school's overall compliance through the use of Case Teams. Case Teams are composed of both regional and Washington, DC, staff. Each team is assigned a portfolio of schools. The team is responsible for all oversight functions for the schools in its portfolio. These functions include audit resolution, program reviews, financial statement analysis, and recertification.

Each school is assigned a Case Manager, who leads the Case Team in its evaluation of that school. The entire team will evaluate information on the school from a variety of sources to identify any compliance problems at the school. The team can then assess potential risk to the FFEL Program and determine the appropriate action to be taken. Once the appropriate action has been decided, the Case Manager assigned to the school ensures that the recommended actions are taken.

Case Teams will collect and review information on a school from many sources including, but not limited to:

- ◆ applications for recertification;
- ◆ financial and compliance audits;
- ◆ country authorization agency;
- ◆ accrediting agencies and licensing boards;
- ◆ student complaints; *and*
- ◆ ED databases.



Possible Actions

A Case Team may decide to take actions that include, but are not limited to:

- ◆ initiating recertification or provisional certification;
- ◆ initiating a program review;
- ◆ establishing liabilities;
- ◆ developing a strategy for providing technical assistance;
- ◆ placing the school on cash monitoring;
- ◆ requiring a letter of credit; *and*
- ◆ referring the school for an enforcement action.