General Participation Requirements

CHAPTER 3

A school that participates in the FSA programs must meet certain requirements. Participation standards are important because FSA funds received by a participating school are held in trust by that school for the intended student beneficiaries (except for allowed administrative expense reimbursement). This chapter explains many of the participation requirements.

GENERAL REQUIREMENTS

Voter registration

The PPA includes a voter registration requirement that applies to general elections and special elections for federal office, and to the elections of governors and other chief executives within a state.

If a participating institution is not located in a state that has enacted the motor vehicle/voter registration provisions of the National Voter Registration Act, the PPA requires the institution to make a good faith effort to distribute voter registration forms to its students. (Schools in Puerto Rico are not subject to this provision because Puerto Rico is not a state under the National Voter Registration Act.)

A school must request voter registration forms from the state in which it is located 120 days prior to the state's deadline for registering to vote. The school must make the voter registration forms widely available to its students. It must individually distribute the forms to its degree or certificate seeking (FSA eligible) students.

If a school dos not get the forms within 60 days prior to the deadline for registering to vote in the state, it is not liable for failing to meet the requirement during that election year.

GED preparatory program required

A school that admits students without a high school diploma or its recognized equivalent (except home-schooled students) must make a GED preparatory program available to its students. The school must provide information about the availability of the GED program to affected students. The course does not have to be provided by the school itself, and the school is not required to pay the costs of the program. The GED program must be offered at a place that is

The FSA Assessment modules that can assist you in understanding and assessing your compliance with the provisions of this chapter are "Institutional Eligibility," at

http://ifap.ed.gov/qamodule/InstitutionalEligibility/AssessmentA.html

"Consumer Information," at

http://ifap.ed.gov/qamodule/ConsumerModule/ConsumerInformation.html

and "Recertification," at

http://ifap.ed.gov/qamodule/RecerModule/Recertification.html

convenient for the students and the school must take reasonable steps to ensure that its students have access to the program, such as coordinating the timing of its program offerings with that of the GED program. The GED program must be proven successful in preparing its students to obtain a GED—such programs include GED programs that are conducted by state and local secondary school authorities, as well as programs for which the school has documentation that statistically demonstrates success.

The law does not require a school to verify that a student is enrolled in a GED program or to monitor the student's progress in the program. A student admitted based on his or her ability to benefit who does not have a high school diploma or its recognized equivalent is not required by law to enroll in a GED program, but the school may choose to make this an admission requirement. A student may not receive FSA program funds for the GED program although he or she may be paid for postsecondary courses taken at the same time as the GED coursework, including remedial coursework at the secondary level or higher.

For more on remedial coursework, including the admission of ability-to-benefit students, see *Volume 1 – Student Eligibility.*

Civil rights and privacy requirements

When a school signs the PPA, it also agrees to comply with the civil rights and privacy requirements contained in the Code of Federal Regulations (CFR) that apply to all students in the educational program, not just to FSA recipients (see chapters 6 & 9).

CONTRACTS WITH THIRD-PARTY SERVICERS

Third-party servicer cite
34 CFR 668.25, 668.1, 668.2, 668.11, 668.14 668.15, 668.16, 668.23, 668.81, 668.82, 668.83, 668.84, 668.86, 668.87, 668.88, 668.89, and Subpart H.

Schools are permitted to contract with consultants for assistance in administering the FSA programs. However, the school ultimately is responsible for the use of FSA funds and will be held accountable if the consultant mismanages the programs or program funds.

The General Provisions regulations contains requirements for all participating institutions that contract with third-party servicers. As defined by regulation, a third-party servicer is an individual or organization that enters into a contract (written or otherwise) with a school to administer any aspect of the institution's FSA participation.

Examples of functions that are covered by this definition are:

- processing student financial aid applications, performing need analysis, and determining student eligibility or related activities;
- certifying loan applications, servicing loans, or collecting loans;

- processing output documents for payment to students, and receiving, disbursing, or delivering FSA funds;
- conducting required student consumer information services;
- preparing and certifying requests for advance or reimbursement funding, preparing and submitting notices and applications required of eligible and participating schools, or preparing the Fiscal Operations Report and Application to Participate (FISAP); and
- processing enrollment verification for deferment forms or Student Status Confirmation Reports.

Excluded activities

Examples of functions excluded from this definition are:

- performing lockbox processing of loan payments;
- performing normal electronic fund transfers (EFTs);
- publishing ability-to-benefit tests;
- acting as a Multiple Data Entry Processor (MDE);
- financial and compliance auditing;
- mailing documents prepared by a school or warehousing school records;
- participating in written arrangements between eligible schools to make eligibility determinations and FSA program awards under 34 CFR 668.5(d)(2); and
- providing computer services or software.

Employees of a school

An employee of a school is not a third-party servicer. For this purpose, an employee is one who:

- works on a full-time, part-time, or temporary basis,
- performs all duties on site at the school under the supervision of the school,
- is paid directly by the school,
- is not employed by or associated with a third-party servicer, and
- is not a third-party servicer for any other school.

Requirements for contracting with a third-party servicer

A school may only contract with an eligible third-party servicer as specified by the regulatory criteria. Under such a contract, the servicer agrees to comply with all applicable requirements, to refer any suspicion of fraudulent or criminal conduct in relation to FSA program administration to the Department's Inspector General, and, if

the servicer disburses funds, to confirm student eligibility and make the required Returns to Title IV funds when a student withdraws.

If the contract is terminated, or the servicer ceases to perform any functions prescribed under the contract, the servicer must return to the school all unexpended FSA funds and records related to the servicer's administration of the school's participation in the FSA programs.

Institutional liability

A school remains liable for any and all FSA-related actions taken by the servicer on its behalf.

Notifying the Department of contracts

Schools are required to notify the Department of all existing third-party servicer contracts. If a school has submitted information regarding its third-party servicers as part of applying for certification or recertification, no additional submission is required. A school is not required to notify the Department if it does not contract with any third-party servicers.

If a school has not notified the Department, the school immediately must do so by completing Section J of the *Application for Approval to Participate in Federal Student Aid Programs* (**E-App**) (see chapter 5).

Schools are required to notify the Department if:

- the school enters into a contract with a new third-party servicer;
- the school significantly modifies a contract with an existing third-party servicer;
- the school or one of its third-party servicers terminates a contract;
- or a third-party servicer ceases to provide contracted services, goes out of business, or files for bankruptcy.

Notification to the Department (which must include the name and address of the servicer and the nature of the change or action) must be made within 10 days of the date of the change or action.

A school must provide a copy of its contract with a third-party servicer only upon request. A school is not required to submit the contract as part of the recertification process.

INCENTIVE COMPENSATION

The Department does not review or approve an individual school 's payment arrangements. ED developed the 12 permissible payment arrangements found in 34 CFR 668.14(b)(22)(ii) to provide an illustrative framework a school may use to make its own determination about compliance with the HEA. The list is not exhaustive, and schools that have additional questions should consult with their legal counsel when making this determination.

Covered employee
One who is involved in recruitment, admissions, enrollment, or financial aid activities

Section 487(a)(20) of the HEA prohibits a school from providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions regarding the award of FSA program funds. This statutory prohibition is implemented in 34 CFR 668.14(b)(22).

In response to numerous requests from schools, and after engaging in negotiations with the financial aid community, the Department amended the regulations on November 1, 2002. ED identified 12 types of payment and compensation plans that do not violate the statutory prohibition. These 12 safe harbors are divided into two categories.

The first safe harbor comprises the entirety of the first category, and describes whether a particular compensation payment is an incentive payment. It explains the conditions under which a school may pay compensation without that compensation being considered an incentive payment.

The second category is composed of the remaining 11 safe harbors. It describes the conditions under which a school may make an incentive payment to an individual or entity that could potentially be construed as based upon securing enrollments or financial aid. The safe harbors in this category describe the conditions under which such a payment may be made. If an incentive payment arrangement falls within any one safe harbor, that payment arrangement is not covered by the statutory prohibition.

The payment or compensation plans included in the safe harbors cover the following subjects:

1. adjustments to employee compensation;
2. recruitment into programs that are not eligible for Title FSA program funds;
3. payment for securing contracts with employers;
4. profit-sharing or bonus payments;
5. compensation based upon students completing their programs of study;

6. payments to employees for pre-enrollment activities;
7. compensation paid to managerial and supervisory employees not involved in admissions or financial aid;
8. token gifts;
9. profit distributions;
10. Internet-based recruiting activities;
11. payments to third parties for services to the school that do not include recruitment activities; and
12. payments permitted to third parties for services that include recruitment activities.

Adjustments to employee compensation

Adjustments to employee compensation cite
34 CFR 668.14(b)(22)(ii)(A)

This safe harbor strikes a balance between a school's need to base its employees' salaries or wages on merit, and the Department's responsibility to ensure that such adjustments do not violate the statutory prohibition against the payment of commissions, bonuses, and other incentive payments. Under this safe harbor, a school may make up to two adjustments (upward or downward) to a covered employee's annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. One cost-of-living increase that is paid to all or substantially all of the school's full-time employees will not be considered an adjustment under this safe harbor. In addition, with regard to overtime, if the basic compensation of an employee is not an incentive payment, neither is overtime pay required under the Federal Labor Standards Act.

Enrollments in programs that are not eligible for FSA program assistance

Programs that are not eligible for FSA program assistance cite
34 CFR 668.14(b)(22)(ii)(B)

This safe harbor recognizes that compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for FSA program funds is not covered by the incentive compensation prohibition.

Contracts with employers

Contracts with employers cite
34 CFR 668.14(b)(22)(ii)(C)

In general, the business-to-business marketing of employer-provided education is not covered by the incentive compensation prohibition. This safe harbor addresses the payment of employees' tuition and fees by an employer (either directly to the school or by reimbursement to the employee) under a contract arranged by a recruiter who is paid an incentive.

As long as there is no direct contact by the school's representative with prospective students, and as long as the employer is paying at least 50% of the training costs, incentive payments to recruiters who arrange for such contracts are not covered by the incentive payment prohibition, provided that the incentive payments are not based on the number of employees who enroll, or the amount of revenue generated by those employees.

Profit-sharing or bonus payments

Profit-sharing or bonus payments cite
34 CFR 668.14(b)(22)(ii)(D)

Profit-sharing and bonus payments to all or substantially all of a school's full-time employees are not incentive payments based on success in securing enrollments or awarding financial aid. As long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the school's full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition. In addition, such payments can be limited to all or substantially all of the full-time employees at one or more organizational level at the school, except that an organizational level may not consist predominantly of recruiters, the admissions staff, or the financial aid staff.

Compensation based upon program completion

Compensation based upon program completion cite
34 CFR 668.14(b)(22)(ii)(E)

This safe harbor recognizes that a major reason for the incentive compensation prohibition is to prevent schools from enrolling unqualified students. Completing a program of education or, in the case of students enrolled in a program longer than one academic year, completing the first academic year of that program, is a reliable indicator that the students were qualified to enroll in the program. Therefore, compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter, does not violate the incentive compensation prohibition.

Credits must be earned in residence
For this purpose, a school may not count transfer credits, credits awarded through successful completion of testing, credits for life experience, and any other credits not earned through attendance at that school toward the successful completion of an academic year.

Successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the school . (Time may not be substituted for credits earned.) In addition, the 30 weeks of instructional time element of the definition of an academic year does not apply to this safe harbor. Therefore, this safe harbor applies when a student earns, for example, 24 semester credits, no matter how short or long a time that takes.

Pre-enrollment activities

Pre-enrollment activities cite
34 CFR 668.14(b)(22)(ii)(F)

This safe harbor recognizes that generally, clerical pre-enrollment activities are not considered recruitment or admission activities. Accordingly, individuals whose responsibilities are limited to pre-enrollment activities that are clerical in nature are outside the scope of the incentive payment restrictions.

Buying third-party leads
Although buying leads from third parties for a flat fee is not a clerical pre-enrollment activity under this safe harbor, the activity is not covered under the incentive compensation prohibition.

The Department considers that soliciting students for interviews is a recruitment activity, not a pre-enrollment activity, and individuals may not receive incentive compensation based on their success in soliciting students for interviews. In addition, since a recruiter's job description is to recruit, it would be very difficult for a school to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities.

Managerial and supervisory employees

Managerial and supervisory employees cite
34 CFR 668.14(b)(22)(ii)(G)

This safe harbor recognizes that the incentive payment prohibition applies only to individuals who perform activities related to recruitment, admissions, enrollment, or the financial aid awarding process and their immediate supervisors. Direct supervisors are included in this prohibition because their actions generally have a direct and immediate impact on the individuals who carry out these covered activities.

The incentive payment prohibition, therefore, does not extend beyond first line supervisors or managers.

Token gifts

Token gifts cite
34 CFR 668.14(b)(22)(ii)(H)

Under this safe harbor, the regulations have been amended to take into account an increase in the value of what is considered a *token gift*. The Department has increased the maximum cost of a token, noncash gift that may be provided to an alumnus or student to $100, provided that:

The fair market value of an item
might be considerably greater than its cost. A high value item for which the school paid a minimal cost would not be considered a token gift.

- the gifts are not in the form of money; and
- no more than one gift is provided annually to an individual.

The cost basis of a token noncash gift is what the school paid for it. The value is the fair market value of the item.

Profit distributions

Profit distributions cite
34 CFR 668.14(b)(22)(ii)(I)

This safe harbor recognizes that profit distributions to owners are not payments based on success in securing enrollments or awarding financial aid. Therefore any owner, whether an employee or not, is entitled to a share of the organization's profits to the extent they represent a proportionate share of the profits based upon the employee's ownership interest.

Internet-based activities

Internet-based activities
34 CFR 668.14(b)(22)(ii)(J)

This safe harbor recognizes that the Internet is simply a communications medium, much like the U.S. mail, and is outside the scope of the incentive compensation prohibition. This safe harbor permits a school to award incentive compensation for Internet-based recruitment and admission activities that –

- provide information about the school to prospective students;
- refer prospective students to the school ; or
- permit prospective students to apply for admission online.

Payments to third parties for non-recruitment activities

Payments to third parties for non-recruitment activities
34 CFR 668.14(b)(22)(ii)(K)

This safe harbor recognizes that the incentive payment prohibition applies only to activities dealing with recruiting, admissions, enrollment, and financial aid. Therefore, payments to third parties for other types of services, including tuition-sharing arrangements, marketing, and advertising are not covered by the incentive compensation prohibition.

Payments to third parties for recruitment activities

Payments to third parties for recruitment activities
34 CFR 668.14(b)(22)(ii)(L)

This safe harbor recognizes that the incentive compensation prohibition applies to individuals who work both for the school and to entities outside the school, and that the rules that apply to schools apply equally to outside entities. Thus, if a school uses an outside entity to perform activities for it, including covered activities, the school may make incentive payments to the third party without violating the incentive payment prohibition as long as the individuals performing the covered activities are compensated in a way that would fall within the safe harbors of the regulations.

For example, if a school established a group of employees who provided the school with a series of services, and one of those services was recruiting, the incentive compensation prohibition would preclude only the individuals doing the recruiting from being paid on an incentive basis.

If that school hired a contractor to provide these services, the same rules would apply. The outside entity could not pay the individuals performing the recruiting services on an incentive basis, but it could pay the other employees performing non-recruiting activities on an incentive basis.

PROHIBITED ACTIVITIES IN THE LOAN PROGRAMS

Prohibited inducements
Schools 34 CFR 682.212
Lenders 34 CFR 682.200
Guarantors 34 CFR 682.401(e)

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

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

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

ANTI-DRUG ABUSE REQUIREMENTS

The HEA requires a school to certify to the Department that it operates a drug abuse prevention program that is accessible to its students, employees, and officers. Two other laws added related requirements for postsecondary schools that receive FSA funds.

The Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act of 1988 (Public Law 101-690) requires a federal grant recipient to certify that it provides a drug-free workplace. Because a school applies for and receives its Campus-Based allocation directly from the Department, the school is considered to be a grantee for purposes of the Act. Therefore, to receive Campus-Based funds, a school must complete the certification on ED Form 80-0013, which is part of the FISAP package (the application for Campus-Based funds). This certification must be signed by the school's CEO or other official with authority to sign the certification on behalf of the entire school.

Requirements for a drug-free workplace

The certification lists a number of steps that the school must take to provide a drug-free workplace, including:

- establishing a drug-free awareness program to provide information to employees;
- distributing a notice to its employees of prohibited unlawful activities and the school's planned actions against an employee who violates these prohibitions; and
- notifying the Department and taking appropriate action when it learns of an employee's conviction under any criminal drug statute.

A school's Administrative Cost Allowance (ACA) may be used to help defray related expenses, such as the cost of printing informational materials given to employees. (For a complete explanation of the ACA, see Volume 6 – Campus-Based Programs.)

Scope of the Act

The drug-free workplace requirements apply to all offices and departments of a school that receives Campus-Based funds. Organizations that contract with the school are considered subgrantees not subject to the requirements of the Drug-Free Workplace Act.

Drug-Free Schools and Communities Act

The Drug-Free Schools and Communities Act (Public Law 101-226) requires a school to certify that it has adopted and implemented a program to prevent drug and alcohol abuse by its students. Unlike the annual drug-free workplace certification, a school usually will only submit this certification to the Department once (on the E-App). (A school that changes ownership is an exception; it must recertify.)

Distribution to students and staff

The drug prevention program adopted by the school must include an annual distribution to all students, faculty, and staff of information concerning drug and alcohol abuse and the school's prevention program.

Development and review of a drug prevention program

A school must review its drug prevention program once every two years to determine its effectiveness and to ensure that its sanctions are being enforced. The development of a drug prevention program, although a condition for receiving FSA funds, is usually undertaken by the school administration at large, not by the financial aid office. The regulations originally published on this topic (August 16, 1990) were mailed to participating schools at the time; they offer a number of suggestions for developing a drug prevention program.

The effectiveness of a school's drug prevention program may be measured by tracking:

- the number of drug- and alcohol-related disciplinary actions;
- the number of drug- and alcohol-related treatment referrals;
- the number of drug- and alcohol-related incidents recorded by campus police or other law enforcement officials;
- the number of drug- and alcohol-related incidents of vandalism;
- the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse; and
- student, faculty, and employee attitudes and perceptions about the drug and alcohol problem on campus.

Consequences of noncompliance

A school that does not certify that it has a drug prevention program, or that fails to carry out a drug prevention program, may lose its approval to participate in the FSA programs.

Resources that schools can utilize in creating drug prevention programs are listed on the chart that follows.

Additional Sources of Information

The following resources are available for schools that are developing drug prevention programs.

- ***The Center for Substance Abuse Treatment and Referral Hotline.*** Information and referral line that directs callers to treatment centers in the local community. (1-800-662-HELP)
- ***The Drug Free Workplace Helpline.*** A line that provides information only to private entities about workplace programs and drug testing. Proprietary and private nonprofit but not public postsecondary schools may use this line. (1-800-967-5752)
- ***The National Clearinghouse for Alcohol and Drug Information.*** Information and referral line that distributes U.S. Department of Education publications about drug and alcohol prevention programs as well as material from other federal agencies. (1-301-468-2600)

ANTI-LOBBYING CERTIFICATION AND DISCLOSURE

In accordance with Public Law 101-121 (and regulations published December 20, 1989), any school receiving more than $100,000 for its participation in the Campus-Based programs must provide the following to the Department:

- Certification Form (combined with Debarment and Drug-Free Workplace Certifications, ED-80-0013). The school will not use federal funds to pay a person for lobbying activities in connection with federal grants or cooperative agreements. This certification must be renewed each year for a school to be able to draw down Campus-Based funds.
- Disclosure Form (Standard Form LLL). If the school has used nonfederal funds to pay a nonschool employee for lobbying activities, the school must disclose these lobbying activities to the Department. The school must update this disclosure at least quarterly and when changes occur.

Both of these forms are sent to schools with the Campus-Based fiscal report/application (FISAP) each summer. The certification form and the disclosure form must be signed by the CEO or other individual who has the authority to sign on behalf of the entire school. A school is advised to retain a copy in its files.

Primarily, these certifications cover the use of the Campus-Based Administrative Cost Allowance (ACA). **Association membership is not a legitimate administrative cost of the FSA Programs.** Schools may not use the ACA to pay for their membership in professional associations (such as NASFAA, AICS, NACUBO, etc.), regardless of whether the association engages in lobbying activities.

The school is also responsible for payments made on its behalf, and must include the certification in award documents for any subgrantees or contractors (such as need analysis servicers, financial aid consultants, or other third parties paid from the ACA).

A school acting as a lender in the FFEL program

School as FFEL lender cite
34 CFR 682.601

Under certain conditions, a school that is not a correspondence school (see chapter 8) may make (originate) loans under the FFEL program. To originate FFEL loans a school must meet **all** of the following conditions —

1. Unless it is granted a waiver by the Department, a school may not have loans outstanding to or on behalf of more than 50% of the undergraduates in attendance on at least a half-time basis.
2. The school must inform any undergraduate student who has not previously obtained a loan from the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender.
3. The school may not make or originate a loan for an academic period to a student until the student provides the school with evidence of denial of a loan by a commercial lender for the same academic period.
4. The school's cohort default rate must not exceed 15%.
5. Except for reasonable administrative expenses directly related to the FFEL Program, the school must use federal payments of interest and special allowances for need-based grant programs for its students.

REPORTING INFORMATION ON FOREIGN SOURCES AND GIFTS

Foreign gifts reporting cite
Sec. 117 of the HEA

Recent reminder to schools of requirements for reporting foreign gifts
DCL: GEN-04-11, Oct. 4, 2004.

Foreign source defined
A foreign source is
- a foreign government, including an agency of a foreign government;
- a legal entity created solely under the laws of a foreign state or states;
- an individual who is not a citizen or national of the United States; and
- an agent acting on behalf of a foreign source.

Federal law requires certain postsecondary schools (whether or not the school is eligible to participate in the FSA programs) to report ownership or control by foreign sources. Federal law also requires these postsecondary schools to report contracts with or gifts from the same foreign source that, alone or combined, have a value of $250,000 or more for a calendar year. These reports must be filed with the Department by the January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control. The January 31 report should cover the period July 1 – December 31 of the previous year, and the July 31 report should cover January 1 – June 30 of the same year.

Who must report

A school (and each campus of a multicampus school) must report this information if the school

- is legally authorized to provide a program beyond the secondary level within a state;

- provides a program that awards a bachelor's degree or a more advanced degree, or provides at least a two-year program acceptable for full credit toward a bachelor's degree;
- is accredited by a nationally recognized accrediting agency; and
- is extended any federal financial assistance (directly or indirectly through another entity or person) or receives support from the extension of any federal financial assistance to the school's subunits.

Contents of disclosure report

Each disclosure report to the Department must contain

- for gifts received from or contracts entered into with a foreign government – the name of the country and the aggregate amount of the gifts and contracts received from each foreign government;
- for gifts received from or contracts entered into with a foreign source other than a foreign government – the name of the foreign state to which the contracts or gifts are attributable, and the aggregate dollar amount of the gifts and contracts attributable to a particular country (The country to which a gift or a contract is attributable is the country of citizenship; or, if unknown, the principal residence for a foreign source who is a natural person and the country of incorporation, or if unknown, the principal place of business for a foreign source that is a legal entity.);
- in the case of a school that is owned or controlled by a foreign entity – the identity of the foreign entity, the date on which the foreign entity assumed ownership or control, and a description of any substantive changes to previously reported ownership or control, or institutional program or structure resulting from the change in ownership or control;
- for restricted or conditional gifts received from, or restricted or conditional contracts entered into with a foreign government – the name of the foreign country, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions or restrictions;
- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign person –

Contract defined
Any agreement for the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of either of the parties.

Gift defined
Any gift of money or property.

Restricted or conditional gift or contract

Any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding

- the employment, assignment, or termination of faculty;
- the establishment of departments, centers, research or lecture programs, or new faculty positions;
- the selection or admission of students; or
- the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

the citizenship (or if unknown, the principal residence) of that person, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions and restrictions; and

- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign source (legal entity other than a foreign state or individual – the country of incorporation or, if unknown, the principal place of business for that foreign entity), the amount of the gift or contract, date of the gift or contract, and a description of the conditions and restrictions.

Alternative reporting

In lieu of the reporting requirements listed above:

- If a school is in a state that has substantially similar laws for public disclosure of gifts from, or contracts with, a foreign source, a copy of the report to the state may be filed with the Department. The school must provide the Department with a statement from the appropriate state official indicating that the school has met the state requirements.
- If another department, agency, or bureau of the Executive Branch of the federal government has substantially similar requirements for public disclosure of gifts from, or contracts with, a foreign source, the school may submit a copy of this report to the Department.

Where to report foreign gift information

Foreign gift, contract, and ownership or control reports must be submitted to the FSA School Participation Teams using FSA's electronic application process (E-App) found at

www.eligcert.ed.gov

Go to Section K, Question 69, and enter the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L, to complete the signature page. You may then submit your report.

Penalties

If a school fails to comply with the requirements of this law in a timely manner, the Department is authorized to undertake a civil action in federal district court to ensure compliance. Following a knowing or willful failure to comply, a school must reimburse the Treasury of the United States for the full costs of obtaining compliance with the law.

For additional information

Contact the School Participation Team for your state. The telephone numbers for the School Participation Teams can be found at the end of chapter 12.