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.)

An institution 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. As long as the state provides the voter registration forms 60 days prior to its 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 (Title IV eligible) students.

The above list is not exhaustive; schools must carefully review all of the requirements listed on their PPA and those specified in 34 CFR 668.14. In addition, a school must meet any requirements for participation specific to an individual FSA program.

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

http://ifap.ed.gov/qamodule/InstitutionalEligibility/AssessmentApage8.html

"Drug and Alcohol Abuse Prevention Information," at

http://ifap.ed.gov/qamodule/ConsumerModule/ConsumerInformationpage11.html

and "Recertification," at

http://ifap.ed.gov/qamodule/RecerModule/Recertificationpage2.html

GED preparatory program required

As mentioned above, 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 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.

It is the school's responsibility to determine whether a remedial program is at the secondary level. However, if the state, the school's accrediting agency, or the state agency recognized for the approval of public postsecondary vocational education determines that a remedial program is at the elementary level, the school must abide by that determination, and the course cannot be included for Title I program assistance. 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.

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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.

Section 668.25 of 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 the institution or warehousing institutional records;
- participating in written arrangements between eligible institutions 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 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 an application 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* (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 institution's payment arrangements. ED developed the 12 permissible payment arrangements found in 34 CFR 668.14(b)(22)(ii) to provide an illustrative framework an institution may use to make its own determination about compliance with the HEA. The list is not exhaustive, and institutions 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 an institution 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 Title IV, HEA 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 an institution 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 an institution 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 IV, HEA assistance;
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 institution 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 an institution'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, an institution 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 institution'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 Title IV, HEA assistance

Programs that are not eligible for Title IV, HEA 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 Title IV 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 institution 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 institution'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 an institution'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 institution'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 institution, 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)

Credits must be earned in residence
For this purpose, an institution 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 institution toward the successful completion of an academic year.

This safe harbor recognizes that a major reason for the incentive compensation prohibition is to prevent institutions 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.

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 institution. (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

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.

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

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 an institution to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities.

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.

Managerial and supervisory employees

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.

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

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

Token gifts

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 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 institution paid for it. The value is the fair market value of the item.

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

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.

Profit distributions

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.

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

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 an institution to award incentive compensation for Internet-based recruitment and admission activities that –

- provide information about the institution to prospective students;
- refer prospective students to the institution; or
- permit prospective students to apply for admission on-line.

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 institution and to entities outside the institution, and that the rules that apply to institutions apply equally to outside entities. Thus, if an institution uses an outside entity to perform activities for it, including covered activities, the institution 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 an institution established a group of employees who provided the institution 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 institution 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

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.

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

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 institution.

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 Application). (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 noninstitutional 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 institution. 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).

Selected Provisions — General Provisions Regulations — 34 CFR Part 668

By entering into this Program Participation Agreement, the Institution agrees that:

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to--

(i) The Secretary;

(ii) The State [regulatory bodies] for the State or States in which the institution or any of the institution's branch campuses or other locations are located;

(iii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan, and Federal PLUS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iv) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(v) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(vi) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of §668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of §668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under these programs at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender under the Federal Stafford Loan or Federal PLUS Program that qualifies the student for a loan or loans in excess of the amount that the student is eligible to borrow in accordance with §§425(a), 428(a)(2), 428(b)(1)(A) and (B), and 428H of the HEA;

(9) It will comply with the requirements of Subpart D of 34 CFR part §§668 concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment-

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the Federal Stafford Loan, or Federal PLUS Program, the institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source for further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15) In the case of an institution seeking to participate for the first time in the Federal Stafford Loan and Federal PLUS programs, the institution has included a default management plan as part of its application under §600.20 for participation in those programs and will use the plan for at least two years from the date of that application. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in the June 2001 Dear Partner Letter, GEN-01-08;

(16) In the case of an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the Federal Stafford Loan and Federal PLUS Programs, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in the June 2001 Dear Partner Letter, GEN-01-08;

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR Part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State [regulatory bodies], State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly --

(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those program, an individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been--

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that offers athletically related student aid, it will comply with the provisions of paragraph (d) of this section;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance, except that this requirement shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal Student Assistance. This provision does not apply to the giving of token gifts to students or alumni for referring students for admission to the institution as long as: the gift is not in the form of money, check, or money order; no more than one such gift is given to any student or alumnus; and the gift has a value of not more than $100;

(23) It will meet the requirements established pursuant to Part H of Title IV of the HEA by the Secretary, State [authorizing bodies], and nationally recognized accrediting agencies;

(24) It will comply with the refund provisions established in 34 CFR Part 668.22;

(25) It is liable for all improperly administered funds received or refunded under the Title IV, HEA programs, including any funds administered by a third-party servicer;

(26) If the stated objectives of an educational program of the institution are to prepare a student for gainful employment in a recognized occupation, the institution will--

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.

(c) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), the institution must certify that it--

(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of §668.47 as required by section 485(f) of the HEA.

(d) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), an institution that offers athletically related student aid must--

(l) Cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of the institution's fiscal year, of--

(i) The revenues derived by the institution from the institution's intercollegiate athletics activities, according to the following categories:

(A) Total revenues.

(B) Revenues from football.

(C) Revenues from men's basketball.

(D) Revenues from women's basketball.

(E) Revenues from all other men's sports combined.

(F) Revenues from all other women's sports combined;

(ii) Expenses made by the institution for the institution's intercollegiate athletics activities, according to the following categories:

(A) Total expenses.

(B) Expenses attributable to football.

(C) Expenses attributable to men's basketball.

(D) Expenses attributable to women's basketball.

(E) Expenses attributable to all other men's sports combined.

(F) Expenses attributable to all other women's sports combined; and

(iii) The total revenues and operating expenses of the institution; and

(2) Make the compilation and, where allowable by State law, the results of the audits required by paragraph (d)(1) of this section available for inspection by the Secretary and the public.

(e) For the purposes of paragraph (d) of this section--

(l) Revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues and other conference distributions, appearance guarantees and options, concessions, and advertising;

(2) Revenues such as student activities fees, alumni contributions, and investment interest income that are not allocable to a sport shall be included in the calculation of total revenues only;

(3) Expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies; and

(4) Expenses such as general and administrative overhead that are not allocable to a sport shall be included in the calculation of total expenses only.

(f)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(g)(1)(i) With respect to an institution that has been certified other than under a provisional certification--

(A) Except as provided in paragraphs (h) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(B) An institution may terminate a program participation agreement.

(C) If the Secretary or the institution terminates a program participation agreement under paragraph (g) of this section, the Secretary establishes the termination date.

(2) With respect to an institution that has been provisionally certified, the Secretary revokes a provisional certification through the proceedings in §668.13(d).

(h) An institution's program participation agreement automatically expires on the date that--

(l) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of §668.26(a)(1), (2), (4), or (7).

(i) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.