
Providing Consumer Information

This chapter describes the requirements for the consumer information that a school must provide to students, the Department, and others.

In addition to the disclosure of general information required under the consumer information regulations, there are specific disclosure and reporting requirements with which schools must comply.

Those requirements are found in the —

- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Campus Security/Clery Act) – requires an Annual Security Report, disclosure of an Institution’s Security Policies and reporting of Crime Statistics;
- Student Right-to-Know Act – requires disclosure of information on Graduation, Completion, and Transfer-Out Rates; and the Graduation, Completion, and Transfer-Out Rates for Student Athletes at schools that award athletically related aid.
- Equity in Athletics Disclosure Act – requires disclosure of Athletic Program Participation Rates and Financial Support Data.

Schools that participate in the campus-based programs must also comply with disclosure requirements for drug and alcohol abuse prevention. Although some of these disclosure requirements contain common elements, each disclosure is required separately (see the chart *School Disclosure Requirements* at the end of this chapter).

As part of the continuing effort to reduce the number of defaulted federal student loans, it is important to provide students with information necessary for choosing an appropriate academic program and for fully understanding the responsibility of loan repayment.

Consumer information cites
34 CFR 668.41, 668.42, 668.43, 668.44,
668.45, 668.46, 668.47, & 668.48

General information includes
Financial assistance information pursuant
to 34 CFR 668.42, and
Institutional information pursuant to
34 CFR 668.43

Civil penalty
In addition to limiting, suspending, or
terminating the participation of any school
that fails to comply with the consumer
information requirements, the Department
may impose civil fines of up to \$27,500 for
each violation.

Civil penalty cite
20 U.S.C. §1094(c)(3)(B)

This chapter also includes a summary of the effects of misrepresentation of institutional information on a school's FSA participation.

In some cases a school is only required to make information available upon request, while in others the school must directly distribute the required information. You can find a chart summarizing the disclosure requirements at the end of this chapter.



Reminder

Individual Notice Required

Each year a school must provide to enrolled students a notice containing a list of the consumer information it must disseminate under the Higher Education Act of 1965, as amended and the procedures for obtaining this consumer information. **Schools must provide this notice through a one-on-one distribution.**

Schools must also provide a notice (though not an individual notice) of student rights under the Family Educational Rights and Privacy Act (FERPA). You can find a sample notification at ED's FERPA Web site

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html>

BASIC CONSUMER INFORMATION REQUIREMENTS

Subpart D of the General Provisions lists basic information about the school and about financial aid that must be available to enrolled and prospective students. If necessary, these materials must be prepared by the school. However, much of the required information may already be available in brochures and handouts routinely disseminated by the school or in federal publications such as *The Student Guide*. You can find a chart summarizing a school's consumer information disclosure responsibilities at the end of this chapter.

Financial aid information

At a minimum, the following information must be provided about financial assistance available at a school:

- the need-based and non-need-based federal financial aid that is available to students;
- the need-based and non-need-based state and local aid programs, school aid programs, and other private aid programs that are available;
- how students apply for aid and how eligibility is determined;
- how the school distributes aid among students;
- the rights and responsibilities of students receiving aid;
- how and when financial aid will be disbursed;

General information cite
34 CFR 668.43

Financial assistance
information cite
34 CFR 668.42

- the terms and conditions of any employment that is part of the financial aid package;
- the terms of, the schedules for, and the necessity of loan repayment and required loan exit counseling; and
- the criteria for measuring satisfactory academic progress, and how a student who has failed to maintain satisfactory progress may reestablish eligibility for federal financial aid.

General information about the school

The school must provide the following minimum information about itself:

- the names of associations, agencies, and/or governmental bodies that accredit, approve, or license the school and its programs, and 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 applicable transportation costs, such as commuting) and any additional costs of the program in which the student is enrolled or has expressed an interest;
- a statement of the requirements for the return of FSA program funds when a student withdraws from school, information about any refund policy with which the school must comply, and the requirements for officially withdrawing from the school. (For more information about the Return of Federal Student aid, see *Volume 5 – Overawards, Overpayments, and Withdrawal Calculations*.)
- the degree programs, training, and other education offered;
- the availability of a GED program, if the school admits students who do not have a high school diploma or equivalent;
- the instructional, laboratory, and other physical plant facilities associated with the academic programs;
- a list of the faculty and other instructional personnel;
- whom to contact for information on student financial assistance and whom for general institutional issues;
- the terms and conditions under which students receiving federal education loans may obtain deferments; and
- information regarding the availability of FSA program funds for study abroad programs.

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

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

"Equity in Athletic Disclosure Act," at

<http://ifap.ed.gov/qamodule/ConsumerModule/ConsumerInformationpage10.html>

"Drug and Alcohol Abuse Prevention Information," at

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

"Campus Security," at

<http://ifap.ed.gov/qamodule/ConsumerModule/ConsumerInformationpage13.html>

and "FEPR," at

<http://ifap.ed.gov/qamodule/ConsumerModule/ConsumerInformationpage18.html>

The school must have someone available during normal operating hours to help persons obtain 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 this requirement if it can demonstrate that a waiver is appropriate. A school should contact their case management team for more information. (You can find a chart containing contact information for the School Eligibility channel at the end of chapter 12.)

CONSUMER INFORMATION FROM THE DEPARTMENT

Consumer information from the Department
Sec. 485

The Department is required to make available to schools, lenders, and secondary schools descriptions of the FSA programs in order to assist students in gaining information through institutional sources, and to assist schools in carrying out the FSA program requirements. The Department does this through a variety of informational sources such as *The Student Guide*, this *Handbook*, and the Department's Web page

www.ifap.ed.gov

The Department, to the extent possible, will also do the following:

- compile and disseminate information describing state and other prepaid tuition and savings programs;
- make clear when ED's Web products are displayed on a non-federal Web page, that ED is not endorsing that Web page;
- update its Internet site to include direct links to databases with information on public and private financial assistance programs that are accessible without charge, and without any implied or actual endorsement;
- provide additional direct links to resources from which students may obtain information about fraudulent and deceptive financial aid practices; and
- make a reasonable effort to verify that linked databases do not contain fraudulent information.

This information is available at

www.students.gov

STUDENT RIGHT-TO-KNOW DISCLOSURES

Student Right-to-Know disclosures must be made by July 1 of each year.

The Student Right-to-Know Act requires schools to disclose:

1. Completion or graduation rates and, if applicable, transfer-out rates for a specific cohort of the general student body. This cohort is of certificate- or degree-seeking, full-time, first-time undergraduate students.
2. For schools that offer athletically related student aid, completion or graduation rates and, if applicable, transfer-out rates of students receiving athletically related student aid, if the institution offers athletic aid.

The institution must provide student athlete graduation rate information to potential student athletes, their parents, and their high school coaches and guidance counselors upon making an offer of athletic aid.

Schools must make available no later than July 1, 2004, the rates for the cohort for which the 150% of the normal time for completion elapsed between September 1, 2002 and August 31, 2003.

Important: Schools should not confuse the requirements and methodologies for providing information to students and other consumers with the requirement for reporting similar information to the Department.

A school such as a community college is required to calculate and disclose its transfer-out rates only if it determines that its mission includes providing substantial preparation for its students to enroll in another eligible school (such as an eligible four-year institution).

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

1. A completion or graduation rate for students who transfer into the school;
2. A completion or graduation rate and transfer-out rate for the students described as *exclusions* to the requirements in this section.

Schools may exclude from all cohorts students who:

- have left school to serve in the armed forces,
- have left school to serve on official church missions,
- have left school to serve with a foreign aid service of the federal government, such as the Peace Corps,

Student Right-to-Know cite

Sec. 485(a)

34 CFR 668.45

NCES, IPEDS, the EADA and Student-Right-to-Know information

Though in some cases the dates by which schools must make consumer and safety information available to students, parents, and high school counselors and coaches are based on the dates by which schools must report that information to the Department, the regulatory requirements are separate. The disclosure requirements arise from the Student-Right-to-Know and Campus Security Act and the Equity in Athletics Disclosure Act. Schools report similar information to the Department when they fulfill the requirement that they participate in the annual Integrated Postsecondary Education Data System (IPEDS) Survey conducted by the National Center for Education Statistics (NCES).

The National Center for Education Statistics (NCES) survey program at the postsecondary education level provides statistical information used by planners, policy makers, and educators in addressing multiple issues. One major source of this information is the annual Integrated Postsecondary Education Data System (IPEDS) Survey. The IPEDS system, established as the core postsecondary education data collection program for NCES, is a system of surveys designed to collect data from all primary providers of postsecondary education. The IPEDS system is built around a series of interrelated surveys that collect institution-level data in such areas as – institutional characteristics, enrollments, program completions, staffing patterns, faculty salaries, finances, and financial aid.

Information on NCES and IPEDS is available at –

<http://www.nces.ed.gov/IPEDS>

- are totally and permanently disabled; or
 - are deceased.
3. A transfer-out rate (required only if preparing students for transfer is part of the schools stated or implied mission).

Determining the cohort for completion or graduation and transfer-out rates

Determining rate cite
34 CFR 668.45

To calculate completion or graduation and transfer-out rates, a school must identify a group of students each year (a cohort) and review the performance of that cohort over time to determine the percentage of those students who complete their programs or transfer out of the school. The same *snapshot* approach is used to determine rates for both the general student body cohort and those rates related to students receiving athletically related student aid. The regulations specify that the cohorts a school must establish are based on how the schools programs are offered.

Standard-term schools

A school that offers most of its programs based on standard terms (semesters, trimesters, quarters) must use a fall cohort for these calculations. That is, the school must count all first-time freshmen who are certificate- or degree-seeking, full-time undergraduate students who first enter the school during the fall term.

The fall cohort

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 in which the student enrolled full time) and is still enrolled as of October 15, the end of the school's drop-add period for the fall term, or another official reporting date (in the fall) on which a school must report fall enrollment data to either the state, its board of trustees or governing board, or another external governing body. Does not include a student whose first enrollment was during a summer term that did not immediately precede the student's first full-time fall enrollment.

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 of one year and August 31 of the following year. For programs less than or equal to one academic year in length, schools should include in the cohort only students who are enrolled for at least 15 days. For programs longer than one academic year, schools should include in the cohort only students who are enrolled for 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, if a school chooses, it may calculate as a separate supplemental rate, a completion rate for students who transfer into the school.

Definitions

The definitions of certificate- or degree-seeking students, first-time freshman students, and undergraduate students were adopted from the National Center for Education Statistics (NCES) Integrated Postsecondary Education Data System (IPEDS) Graduation Rate Survey (GRS).

Athletically related student aid – any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student athlete simply happens to be the recipient, is not athletically-related student aid.

Certificate- or degree-seeking student – a student enrolled in a course for credit who is recognized by the school as seeking a degree or certificate.

First-time undergraduate student – an entering undergraduate who has never attended an institution of higher education. Includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Undergraduate students – students enrolled in a bachelor's degree program, an associate's degree program, or a vocational or technical program below the baccalaureate level.

Transfer/preparatory program – At least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program.

Completer/Graduate – A student is counted as a completer or graduate if

- the student completed his or her program within 150% of the normal time for completion of the program, or
- the student has completed a transfer preparatory program within 150% of the normal time for completion of that program.

Schools must use the FSA definition of a *full-time student* that is found in the Student Assistance General Provisions regulations (see *Volume 1 – Student Eligibility*).

Waivers

A first time undergraduate does not include a student whose first enrollment was during a summer term that did not immediately precede the student's first full-time fall enrollment.

Preparatory program cite
34 CFR 668.8(b)(1)(ii)

Waivers cite
34 CFR 668.45

The regulations provide for waiving the disclosure of completion or graduation rate and transfer-out rate calculations (to coaches and guidance counselors only) for the general student body cohort and for athletic data for any school that is a member of an athletic association or conference that has voluntarily published (or will publish) completion or graduation-rate data that the Department determines are substantially comparable to the data required by the regulations.

The NCAA may distribute graduation rate information to all secondary schools in the United States to satisfy the distribution requirements for prospective student athletes' guidance counselors and coaches. This does not relieve the school of its obligation to provide the information to the prospective student athletes and their parents.

The Department will continue to work with interested agencies to help them develop standards that meet these requirements. If in the future the Department determines that another agency's requirements meet the standards of the Student Right-to-Know Act, the Department will inform schools that those rates may be used to satisfy the Student Right-to-Know disclosure requirements.

Disclosing and reporting information on completion or graduation rates for the general student body cohort

The requirements for disclosing this information have been broken down into four steps: (1) determining the cohort, (2) calculating the rates, (3) disclosing the rates, and (4) reporting the rates to the Department via the *Graduation Rate Survey*

Step 1: Determining the cohort

Schools must determine the cohort as described under *Determining the Cohort for Completion or Graduation and Transfer-Out Rates* 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 when 150% of the normal time for completion of each program has elapsed for all of the students in the cohort. Then, it must determine how many of those students graduated or completed their program and, if applicable, how many transferred out of their program within that 150% period.

Normal time

Normal time is the amount of time necessary for a student to

complete all requirements for a degree or certificate according to the school's catalog. This is typically –

- four years (8 semesters or trimesters, or 12 quarters, excluding summer terms) for a bachelor's degree in a standard term-based school,
- two years (4 semesters or trimesters, or 6 quarters, excluding summer terms) for an associate degree in a standard term-based school, and
- the scheduled times for certificate programs.

The following formula is used to calculate a completion rate for the general student body cohort:

Determining the transfer-out rate

$$\frac{\text{Number of students in cohort who completed their program within 150\% of normal time for completion}}{\text{Number of students in cohort (minus permitted exceptions)}}$$

The following formula is used to calculate a transfer-out rate for the general student body cohort:

Definition of a transfer-out student

$$\frac{\text{Number of students in cohort who transferred out of their program* within 150\% of the normal time for completion}}{\text{Number of students in cohort (minus permitted exceptions)}}$$

*to another eligible institution

A student is counted as a transfer-out student if, within 150% of the normal time for completion of the program, the student has transferred out of the program and enrolled in any program of another eligible institution for which the prior program provides substantial preparation. A school is required to report only on those students that the school knows have transferred to another school. A school must document that the student actually transferred.

Step 3: Disclosing the rates

The information on completion, graduation rates and, if applicable, transfer-out rates must be made available by the July 1 immediately following the 12-month period ending August 31 during which the expiration of 150% of normal time took place for the group of students on which the school bases its completion and transfer-out rate calculation.

Schools must disseminate the information on 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.

Step 4: Reporting the rates

The information must be reported to the Department by the GRS deadline.

Reporting information on completion or graduation

EXAMPLE: Determining completion or graduation and transfer-out rates for the general student body**Step 1: Determining the cohort**

Tower of London College (TLC) has both two-year and four-year degree programs. It operates on a semester basis, so it used a fall cohort.

During its 1998 fall semester, TLC had enrolled 1,000 full-time first-year freshmen in degree programs. It tagged those students as its 1998 cohort.

Step 2: Calculating the rates

In September of 2004 (after the 150% of normal time for completion of the four-year program elapsed), TLC searched its records to see how many of the 1,000 students in the cohort had completed a two-year degree as of August 31, 2001 (when 150% of normal time for completion of the two-year program elapsed). It found that 250 students had completed such a degree. It noted both the number and identity of those students. TLC noted the identity of the students so that it would be able to determine if any of the 250 students also obtained a four-year degree and must be treated as duplicates (see below).

It also found that 35 students from the cohort received a two-year degree between September 1, 2001 and August 31, 2004. TLC was unable to count these students as completors for Student Right-to-Know purposes, as they had completed the program after more than 150% of normal time for completion had elapsed; however, TLC chose to use this data as supplemental information.

Since TLC's mission includes substantial preparation for its students to enroll in another eligible institution, it also determined the number of transfer-out students in the two-year program by ascertaining the number of students in the cohort for which it had documents showing that the student had transferred to, and begun classes at, another eligible school. It found that it had documentation on 50 such students.

On August 31, 2004, 150% of the normal time for completion of the four-year program elapsed. In September of 2004, TLC determined how many of the 1,000 students had received a four-year degree as of August 31, 2004. It found that 450 students had done so.

Because TLC had identified the completors of the two-year program, it was able to determine that 10 of the students it had counted as two-year completors had also received a four-year degree. TLC is not permitted to count these students as completors twice, so instead it

Example Continued

deducted the number from the number of two-year degree program completors (it could also have deducted them from the number of four-year completors had it so chosen).

TLC surveyed its records to determine the number of students from the cohort in the four-year program that it could document as having transferred as of August 31, 2004. It found 65 students had done so.

To determine if any of the students could be excluded from the cohort, TLC searched its records for documentation. The records showed that a total of 15 students in the original cohort had left the institution for the express purpose of joining a church mission, the armed forces, or a foreign aid program sponsored by the federal government, had died, or become totally and permanently disabled.

TLC calculated its completion rate and transfer-out rate as follows:

$$\sqrt{450 \text{ four-year program completors} + (250 \text{ two-year program completors} - 10 \text{ duplicates}) = 690 \text{ completors}}$$

$$\sqrt{1,000 \text{ students in cohort} - 15 \text{ permitted exclusions} = 985}$$

$$\sqrt{\text{Completion rate} = 690 \div 985 = 70\%}$$

$$\sqrt{\text{Transfers} = 65 \text{ four-year program transfers} + 50 \text{ two-year transfers} = 115}$$

$$\sqrt{\text{Transfer-out rate} = 115 \div 985 = 11.7\%}$$

Step 3: Disclosing the rates

On July 1, 2005 (the July 1 following the expiration of 150% of normal time for the entire cohort), TLC published its graduation/completion rate and its transfer-out rate for the students who had entered in the fall of 1998.

TLC decided to provide separate, supplemental information regarding the completion and retention rates of its part-time students because it has a large part-time-student population. It also provided separate, supplemental information on the number of students who completed the two-year program after four years and after five years. It could have also provided separate, supplemental information on students who transferred into the school from another school had it so wished.

rates for student athletes

Schools that participate in an FSA program and offer athletically related student aid must provide information on completion or graduation rates, transfer-out rates, if applicable, and other statistics for students who receive athletically-related student aid to potential student athletes, and to their parents, high school coaches, and guidance counselors.

The definition of athletically related student aid used here and discussed earlier in this chapter is the same definition that is used for the Equity in Athletics Disclosure Act (EADA) disclosure requirements. The definitions of certificate- or degree-seeking students, first-time undergraduate students, undergraduate students, and normal time are the same as those used for the calculation of completion or graduation and transfer-out rates for a school's general student body cohort (also discussed above).

Step 1: Determining the cohort

A school must determine the cohort as described under *Determining the Cohort for Completion or Graduation and Transfer-Out Rates*.

Step 2: Calculating the rates for completion or graduation for student athletes

Schools that provide athletically related student aid must report three sets of completion rates and three transfer-out rates (if applicable):

1. by race and gender — a completion or graduation rate and, if applicable, a transfer-out rate for the general student body;
2. a completion or graduation rate and, if applicable, a transfer-out rate for the members of the cohort who received athletically related student aid (this rate is calculated in the same manner as the rates for the general student body, but must be broken down by race and gender within each sport); and
3. the *four-year average* completion or graduation rate and, if applicable, the average transfer-out rate for the four most recent completing classes of the cohort categorized by race and gender for the general student population, and for race and gender within each sport. (A school that doesn't have data for four years should report an average completion rate for all the years for which it has data.)

Information that is required to be reported by sport must be

Reporting cite
34 CFR 668.48

Reporting to parents
In cases of separation or divorce, if it is difficult to locate both parents, it is acceptable to provide the required information solely to the parent who acts as the student's guardian.

broken down into the following categories:

- football,
- basketball,
- baseball,
- cross-country and track combined, and
- all other sports combined.

A school may exclude from the athletic cohort the student exceptions specified under *Student Right-to-Know Disclosures*.

In addition to the completion rates and transfer-out rates, schools must report

- the number of students, categorized by race and gender, who attended the school during the year prior to the submission of the report, and
- within each sport — the number of those attendees who received athletically-related student aid, categorized by race and gender.

Step 3: Disclosing the rates for student athletes

A school must also provide the report to each prospective student athlete and his or her parents, coaches, and counselor when an offer of athletically-related student aid is made to the prospective student athlete.

Schools are not required to provide completion rate information for students who entered before the 1996-97 academic year. However, if a school has data on students entering prior to the 1996-97 academic year (as the result of NCAA requirements, for example), the school should report these data in the four-year averages.

Schools that are not yet reporting completion or graduation rates or, if applicable, transfer-out rates because they do not have the necessary data must still disclose the additional data regarding the number of students who attended the previous year, categorized by race and gender, and the number who attended the previous year and who received athletically related student aid, categorized by race and gender within each sport.

There is a *de minimus* exception to the disclosure requirements for the completion or graduation rates or, if applicable, the transfer-out rates of student athletes. Schools with five or fewer student athletes need not disclose their rates.

Reporting the rates for student athletes

The rates for student athletes must be completed and submitted to the Department together with other Student-Right-to-Know data by the Graduation Rate Survey (GRS) deadline.

GRS Deadline

Also applies to schools that don't offer athletically-related student aid.

Supplemental information

Schools may provide additional information to place their completion or transfer-out rates for both the general student body and those related to athletically-related student aid in context. For example, a small school's completion rate may vary greatly from year to year because the school's calculations use a very small cohort. The school may wish to provide prior year's data and an explanation of factors affecting the completion rate.

EQUITY IN ATHLETICS

The EADA is designed to make prospective students aware of a school's commitment to providing equitable athletic opportunities for its men and women students.

Equity in athletics cite

Sec. 485(e)
34 CFR 668.47

The Higher Education Amendments of 1992 added language to the Program Participation Agreement (PPA) concerning additional administrative requirements for institutions offering athletically related student aid. The Amendments of 1998 moved these provisions into the section of the law that addresses Equity in Athletics. These requirements now fall under the reporting requirements of the EADA.

Any coeducational institution of higher education that participates in an FSA program and has an intercollegiate athletic program must prepare an annual EADA report. The report contains participation rates, financial support, and other information on men's and women's intercollegiate athletic programs. It is referred to as the *Report on Athletic Program Participation Rates and Financial Support Data* (34 CFR 668.47).

Disclosure of the report

The EADA requires schools to make this report available upon request to students, prospective students, and the public in easily accessible places. For example, a school may make copies of the report physically available in intercollegiate athletic offices, admissions offices, or libraries, or by providing a copy to every student in his or her electronic mailbox.

The *Report on Athletic Program Participation Rates and Financial Support Data* must be summarized, and its availability described in the **one-on-one disclosure** to all students and prospective students required of the institution.

A school must provide the report promptly to anyone who requests the information. For example, a school may not refuse to provide a copy of the report to the news media, and the school may not require an individual requesting the information to come to the school to view the report. A school may not charge a fee for the information.

Reports must be compiled and made available each year by October 15. Schools must submit their Equity in Athletics reports to the Department annually within 15 days of making them available to students, prospective students, and the public. Using passwords supplied to their institutions' chief administrators, schools report EADA data to the Department on-line at

<http://surveys.ope.ed.gov/athletics>

Additional information on the collection of EADA data will be posted, as it becomes available, on the Department's Web site at:

<http://www.ed.gov/about/list/policy.html>

The Department has to ensure that the individual school reports and a report to Congress are made available to the public within a reasonable period of time.

The Department is also required to notify secondary schools in all states regarding the availability of information in individual school reports and how such information may be accessed.

Contents of the Equity in Athletics/EADA Report

A school must first designate its reporting year. A reporting year may be any consecutive 12-month period of time. For its designated reporting year, a school must report:

1. the number of male and female full-time undergraduate students that attended the school (undergraduate students are those who are consistently designated as such by the school);
2. the total amount of money spent on athletically related student aid (including the value of waivers of educational expenses aggregately) for: (a) men's teams and (b) women's teams;
3. the ratio of athletically related student aid awarded to male athletes to athletically related student aid awarded to female athletes (see the definition of athletically-related student aid under *Definitions*);
4. the expenses incurred by the school for:
 - total expenses for all sports,
 - football,

Alternative reporting

A school also may report those expenses on a per capita basis for each team and may report combined expenditures attributable to closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

- men's basketball,
- women's basketball,
- all other men's sports except football and basketball, and
- all other women's sports except basketball

Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses for all sports.

5. total recruiting expenses aggregately for (a) all men's teams and (b) all women's teams;
6. total annual revenues for – (a) all sports combined, (b) all men's teams, (c) all women's teams, (d) football, (e) men's basketball, (f) women's basketball, (g) all men's sports other than football and basketball, and (h) all women's sports other than basketball;
7. in its total revenues and men's or women's combined revenues, as applicable – revenues not attributable to a particular sport such as untargeted alumni contributions to athletics, investment income, and student activities fees;
8. individually by team **or** by average –
 - a. the annual institutional salary of non-volunteer head coaches for all offered sports of (1) men's teams and (2) women's teams — this must include the number of persons and full-time equivalent positions used to calculate each average;
 - b. the annual institutional salary of non-volunteer assistant coaches for all offered sports of (1) men's teams and (2) women's teams. This must include the number of persons and full-time equivalent positions used to calculate each average
9. a listing of the varsity teams that competed in intercollegiate athletic competition and for each team, the following data –
 - a. total number of participants as of the day of the first scheduled contest of the reporting year for the team, number of those who participated on more than one varsity team, and number of other varsity teams on which they participated;
 - b. total operating expenses (expenditures on lodging and meals, transportation, officials, uniforms, and equipment) attributable to the team;
 - c. whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the

Coach's salary

If a coach had responsibility for more than one team and a school does not allocate that coach's salary by team, the school must divide the salary by the number of teams for which the coach had responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

institution (The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.);

- d. the number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution (The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.); and
- e. an unduplicated head count of the individuals who were listed as participants on at least one varsity team, by gender.

Definitions

Definitions cite

34 CFR 668.41(a)

34 CFR 668.47(a)

Expenses means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically-related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

Recruiting expenses means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

Operating expenses means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as *game-day expenses*), for (a) lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and (b) officials.

Institutional salary is all wages and bonuses a school pays a coach as compensation attributable to coaching.

Varsity team means a team that (a) is designated or defined by its institution or an athletic association as a varsity team; or (b) primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

Participants on varsity teams include not only those athletes who take part in a scheduled contest but also any student who practices with the team and receives coaching as of the day of the first scheduled intercollegiate contest of the designated reporting year. This includes junior varsity team and freshmen team players if they are part of the

overall varsity program. Schools should also include all students who receive athletically-related student aid, including redshirts, injured student athletes, and fifth year team members who have already received a bachelor's degree.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

LOAN COUNSELING

Before a FFEL, or Federal Direct Loan borrower takes out a loan, the school must ensure that entrance counseling is conducted – individually or in a group with other borrowers. Initial counseling must include: an explanation of the use of an MPN; the importance of the repayment obligation; a description of the consequences of default; providing sample repayment schedules; familiarization with a borrower's rights and responsibilities as well as other terms and conditions. Loan (exit) counseling must also be provided before the borrower completes his or her course of study or otherwise leaves the school. There are similar requirements in the Perkins loan program (see *Volume 6 – Campus-Based Programs*).

Loan counseling is particularly important because new students often have little or no experience with repayment and managing debt. Your school must ensure that the student receives comprehensive entrance and exit counseling, even though the counseling may be given by a consultant, servicer, lender, or guarantor (usually on the Web), or on-line on the Direct Loan Web site. First-time Stafford borrowers must receive entrance counseling before the first disbursement of the loan, and all students who are graduating or withdrawing from school must receive exit counseling. If the counseling is given electronically, you'll need to make sure that the student receives written counseling materials for any required information that is not provided in the electronic counseling presentation. Your school is also responsible for making knowledgeable staff available to answer student questions.

Here we cover the elements of entrance and exit counseling that are either required by regulation or recommended. However, there are many ways to deliver this information and to reinforce it through continuing contacts with your student borrowers. You have an opportunity at each disbursement to remind students about the importance of academic progress, planning for future employment, and staying in touch with the holder of the loan.

The Direct Loan Program and many FFEL guaranty agencies, lenders, and other organizations offer on-line counseling through the Web, videos, pamphlets, and other counseling materials. Your school may choose to rely on Web counseling services, if those services provide all of the information required by regulation.

The General Provisions require that you inform students about the availability of grant aid before awarding loans.

The Perkins regulations require that borrowers receive similar information. You can read more about the Perkins requirements in chapter 5 of Volume 6 – “The Campus Based Programs.”

Loan counseling in regulations

FFEL: 34 CFR 682.604 (f) and (g)

DL: 34 CFR 685.304

Perkins: 34 CFR 674.16(a)

Direct Loan counseling materials

Direct Loan schools can order counseling materials by calling:

1-800-848-0978

On-line counseling and print materials are also available on-line at the Direct Loan Web Site:

<http://lo-online.ed.gov>

If your staff are conducting in-person counseling sessions, charts, handouts, audiovisual materials, and question-and-answer sessions can help convey the information in a more dynamic manner. We also recommend the use of written tests. Moreover, the regulations require (for any form of counseling) that someone with expertise in the FSA programs be available shortly after the counseling to answer borrowers' questions about those programs.

Regardless of the counseling methods your school uses, you must be sure to document that the student participated in and completed entrance and exit counseling. You can usually also get confirmation that the student has completed the on-line counseling session through a printout, electronic message, or other means.

The chart at the end of this section summarizes information to be covered as a part of entrance and exit counseling sessions. The arrows indicate those elements that must be covered in both entrance and exit counseling.

ENTRANCE COUNSELING

Before a first disbursement may be made to a first-time Stafford borrower, the student must receive *entrance counseling* that explains the loan obligation. The counseling must be conducted in person, by audiovisual presentation, or by interactive electronic means.

Required elements of entrance counseling

The Direct Loan and FFEL regulations require that certain information be included in entrance counseling. Some of this information is included in the *Borrower's Rights and Responsibilities* statement that must accompany the MPN, but you should review and elaborate on these points as a part of the counseling presentation.

- ***Reinforce the importance of repayment.*** The regulations also require that entrance counseling *emphasize ... the seriousness and importance of the repayment obligation.* The lender or Direct Loan Servicing Center (DLSC) sends payment coupons or billing statements as a convenience for the borrower. Not receiving them does not relieve the borrower of his or her obligation to make payments. (Direct Loan borrowers are encouraged to set up electronic debiting of a bank account to repay their loans—electronic debiting is also available through many FFEL lenders.)

Entrance counseling cite
FFEL—34 CFR 682.604(f)
DL—34 CFR 685.304(a)

Counseling materials for overseas or correspondence students
Web-based counseling sites can be particularly useful for borrowers who are participating in a school's year-abroad program or other off-campus program, such as correspondence study. If the borrower has not previously received a Stafford loan at that school, the school must document that the student has completed on-line entrance counseling that meets FSA requirements, or provide entrance counseling information by mail before releasing loan proceeds.

- **Describe the consequences of default.** The regulations require that entrance counseling *describe the likely consequences of default, including adverse credit reports, federal offset, and litigation.* We also recommend that you tell the borrower of the charges that might be imposed for delinquency or default, such as the lender's or guarantor's collection expenses (including attorney's fees). Defaulters often find that repayment schedules for loans that have been accelerated are more stringent than the original repayment schedule. A defaulter is no longer eligible for any deferment provisions, even if he or she would otherwise qualify. Finally, a defaulter's federal and state tax refunds may be seized and wages garnished, and the borrower loses eligibility for any further funding from the FSA programs.
- **Explain the use of the Master Promissory Note.** If relevant at your school, explain the use of the multi-year feature of the MPN, and the borrower confirmation process. You should advise students to carefully read the MPN and the Borrower's Rights and Responsibilities statement before signing the MPN. In addition, you should inform borrowers of their right to sign a new promissory note for each loan and *opt out* of the multi-year feature of the MPN.
- **Stress that repayment is required, regardless of educational outcome or subsequent employability.** Entrance counseling information must explain that the student borrower is obligated to repay the full loan even if he or she doesn't finish the program, can't get a job after graduating, or is dissatisfied with the school's educational program or other services.
- **Provide sample monthly repayment amounts.** The student must receive sample monthly repayment amounts for different levels of indebtedness, or for the average indebtedness of Stafford borrowers at your school or in the same educational program at your school.

Other suggestions for entrance counseling

In addition to the required elements above, counselors often include some of the following information in their sessions. (Some of these items are included in an Appendix B to Subpart M of 34 CFR 668, as *Default Reduction Strategies* for schools that are required to adopt default management plans.)

- **Review terms and conditions of the loan.** As a part of entrance counseling, tell the borrower the current interest rate on his/her loan(s), the applicable grace period, and the approximate date the first installment payment will be due.

Counseling as part of a Default Management Plan

A school with a high default rate may be required to implement a Default Management Plan. The sample plan included in the FSA regulations mentions several steps that relate to loan counseling:

- Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.
- Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.
- Keep statistics on the number of enrolled borrowers who received default prevention counseling services each fiscal year.

Cite Appendix B to Subpart M of 34 CFR 668

Alternative entrance counseling approaches

The Direct Loan regulations describe how a school may adopt alternative approaches as a part of its quality assurance plan—see 34 CFR 685.304(a)(5)

Often a student loan is the borrower's first experience in obtaining a loan of any kind, so it helps to clearly explain basic loan terminology to ensure that a borrower understands the process and knows who holds his/her loan. For instance, define terms such as *loan servicer*, the use of contractors to service the loan, and the process of selling loans to other lenders or to *secondary markets*. (A loan servicer is a corporation that administers and collects loan payments for the loan holder. A secondary market is a lender or a private or public agency that specializes in buying student loans.)

- ***Review repayment options.*** Explain that the exact repayment schedule will not be provided until loan repayment begins. Tell the student that certain fees (the origination fee and, for FFEL, an insurance fee) will be subtracted from the loan amount before the loan is disbursed but that repayment of the full loan amount is required. Review the availability of different repayment plans (standard, extended, graduated, income-sensitive/contingent), as well as loan consolidation. Stress that a borrower must make payments on his or her loans even if the borrower does not receive a payment booklet or a billing notice.
- ***Discuss how to manage expenses (budgeting).*** It would also be helpful to include general information for the student about budgeting of living expenses and personal financial management. Financial planning includes decisions by the borrower about the amount of student aid that he or she can afford to borrow. Budgeting information can be combined with an assessment of the student's earning potential in his or her chosen career, and with required information about anticipated monthly payments and overall indebtedness.
- ***Reinforce the importance of communicating change of status, etc. to the lender.*** The counseling should stress the student's obligation to keep the lender (or the Direct Loan Servicing Center) informed about address changes, or changes in enrollment. (Failure to tell the lender about their responsibility to notify the lender or the DLSC is one of the most common reasons why a loan goes into default.) The borrower should always know the most current name and address of the lender, the loan servicer, and the guarantor of the loan.

The student is required to inform the lender when he or she graduates, changes schools, drops below half time, or withdraws from school. The borrower also must tell the DLSC or the lender if his/her address changes (including changes in the permanent address while in school). The student should also be reminded of the importance of notifying the holder of the loan in the event of a name change (including the change of a last name through marriage) or a change in Social Security Number.

- *Review deferments, forbearance, etc.* The borrower should have a general understanding of the deferment, forbearance, and cancellation options, and how to apply for them. The counseling should stress that the borrower needs to contact the lender or DLSC if he or she is having difficulty in repaying the loan, as the lender or DLSC may be able to suggest options that would keep the loan out of default.
- *Review Borrower's Rights and Responsibilities.* The student must receive a statement of Borrower's Rights and Responsibilities. This may be provided by the Direct Loan Program or the FFEL lender, but it's a good idea to review the information on the statement with the borrower to make sure that he or she is familiar with that information.
- *Refund and other policies affecting withdrawals.* The borrower should be aware of the school's academic progress policy and refund policy, and how the return of FSA funds will affect loan repayment.
- *Importance of keeping loan records.* This would be a good time, if your school has the resources, to provide a student with a folder or other aids to encourage him or her to keep all financial aid materials in one place. The student should keep copies of all records relating to the loan, beginning with the Master Promissory Note and notices showing when the student received loan payments or his/her account was credited. The student should keep the loan repayment schedule provided by the lender or DLSC when repayment begins, as well as records of loan payments—including canceled checks and money order receipts. The student should keep copies of any requests for deferment or forbearance, or any other correspondence with the loan holder or DLSC.
- *Reminder about exit counseling.* Because many students leave school before the scheduled end of their academic programs, it's helpful to remind students during entrance counseling that they are obligated to attend exit counseling before they cease to be enrolled **at least half time**.

EXIT COUNSELING

Your school must ensure that students receive exit counseling before they leave school. Counseling may be provided in person, (individually or in groups), or using audiovisual materials. As with entrance counseling, exit counseling is offered on the Web by many guarantors, lenders, and by the Direct Loan Program.

Student borrowers should be advised to complete on-line exit counseling or sign up for a counseling session (if offered at your school) shortly before graduating or ceasing at least half-time

Borrower's Rights and Responsibilities (FFEL version)

These are the contents of the statement that the borrower receives along with the Master Promissory Note.

- Governing law
- Use of this note
- Subsidized and unsubsidized loans
- Maximum program loan amounts
- Maximum individual loan amounts
- Use of loan money
- Disbursement of loan money
- Change of status
- Effect of loans on other student aid
- Grace period
- Repayment
- Interest rates
- Payment of interest
- Loan cancellation
- Sale or transfer of loans (FFEL)
- Loan discharge
- Consequences of default
- Capitalization of interest
- Credit bureau notification
- Special repayment arrangements
- Deferments
- Forbearance
- Repayment chart (showing repayment amounts under different repayment plans, based on varying amounts of initial debt)

Exit counseling requirements cites
DL—34 CFR 685.304(b);
FFEL—34 CFR 682.604(g)

Exit counseling for correspondence and study abroad students

As an alternative for correspondence programs, or study abroad programs that are approved by the U.S. school for credit, you must send the borrower written counseling materials within 30 days after the borrower completes the program, with a request that the borrower provide the contact and personal information that would ordinarily have been collected through the counseling process.

Staying in touch with the Direct Loan Servicer

If they keep their PIN numbers handy, Direct Loan borrowers can manage their loans on-line by going to:

<http://www.dlsonline.com/index.asp>

to check account balances, change address, estimate repayments, or print out forms (deferment, forbearance, electronic debit account).

enrollment. As with entrance counseling, knowledgeable financial aid staff at the school must be reasonably available to answer questions from student borrowers. One of a borrower's obligations is to participate in an exit counseling session.

Required elements of exit counseling

Some of the material presented at the entrance counseling session will again be presented during exit counseling. The emphasis for exit counseling shifts, however, to more specific information about loan repayment and debt-management strategies. The following information must be provided as a part of exit counseling:

- **Review information from entrance counseling.** Several topics that were covered in entrance counseling must be reviewed during exit counseling: the consequences of default and the importance of the repayment obligation, the use of the Master Promissory Note, and the obligation to repay the loan even if the borrower drops out, doesn't get a job, or is otherwise dissatisfied with the quality of the school's educational programs and services.
- **Provide an average anticipated monthly repayment amount.** The borrower must be given an estimate of the average anticipated monthly payments based on his/her indebtedness (or on the average indebtedness of Stafford borrowers in the same program at your school). We recommend giving the borrower a sample *loan repayment schedule* based on his/her total indebtedness. A loan repayment schedule usually will provide more information than just the expected monthly payment—for instance, it would show the varying monthly amounts expected in a graduated repayment plan.

Note that the lending organization is not required to send the repayment schedule to the borrower until the grace period. Direct Loan borrowers who use the On-line Exit Counseling Session (www.dlservicer.ed.gov) can view repayment schedules based on their account balances (using their PIN numbers), select a repayment plan, and update demographic data.

In Direct Loans, a school may request that the Servicing Center send the repayment schedule information to the financial aid office 30, 60, or 90 days before the student completes the program. If the school chooses this option, it accepts the obligation to deliver this repayment information to the borrower either in the exit counseling session or by mailing it to the borrower.

- **Review repayment options.** The counseling must review the options for loan repayment, such as the standard, extended, graduated, and income-contingent/income-sensitive plans. The option of consolidating loans must also be discussed.

Both the Direct Loan Program and the FFEL Program offer Consolidation Loans. Direct Consolidation Loans are available from the U.S. Department of Education. FFEL Consolidation Loans are available from participating lenders such as banks, credit unions, and savings and loan associations.

- **Discuss debt management strategies.** A counselor should stress the importance of developing a realistic budget based on the student's minimum salary requirements. It's helpful to have the student compare these costs with the estimated monthly loan payments, and to emphasize that the loan payment is a fixed cost, like rent or utilities.
- **Review forbearance, deferment, and cancellation options.** The counseling should reinforce the availability of forbearance, deferment, and cancellation for certain situations, and emphasize that in most cases the borrower must start the process by applying to the lender or the DLSC.
- **Tell the student about the availability of loan information on NSLDS and the availability of the FSA Ombudsman's office.** The borrower's loan history can be viewed on-line at the Web site for the National Student Loan Data System (PIN required for access). Students without Internet access can identify their loan holder by calling **1-800-4-FED-AID**.

However, the borrower should be aware that the information on the NSLDS site is updated by lenders and guarantors and may not be as current as the latest information from those loan holders.

The Ombudsman's office is a resource for borrowers when other approaches to resolving student loan problems have failed. Borrowers should first attempt to resolve complaints by contacting the school, company, agency, or office involved. If the borrower has made a reasonable effort to resolve the problem through normal processes and has not been successful, he or she should contact the FSA Ombudsman.

- **Collecting and updating personal and contact information.** During exit counseling, an aid officer must obtain the borrower's expected permanent address after leaving school, the address of the borrower's next of kin, and the name and address of the borrower's expected employer (if known). A school must correct its records to reflect any changes in a borrower's name, address, Social Security Number, or references, and it must obtain the borrower's current driver's license number and state of issuance. Within 60 days after the exit interview, the financial aid office must provide this information to the guarantor (indicated in the borrower's student aid records) or the Direct Loan Servicing Center.

Pros and Cons of Consolidation

A Consolidation Loan can lower the borrower's total monthly repayment and simplify loan repayment. Because the repayment period for the Consolidation Loan is often longer than for most Stafford Loans, the monthly payments may be lower. (On the other hand, the total interest that is paid over the longer repayment period is usually greater.) If the borrower has more than one loan, a Consolidation Loan simplifies repayment because there's only one lender and one monthly payment. Consolidation may also be an option for a borrower in default, if certain conditions are met.

The borrower should also be aware that some deferments and other benefits available with his/her current loans (especially Perkins) may be lost through consolidation.

CFA Ombudsman Office

Toll-free: 1-877-557-2575

<http://fsahelp.ed.gov>

U.S. Department of Education
FSA Ombudsman
830 First Street, NE
Fourth Floor
Washington, DC 20202

fax: 202-275-0549

Checking completion of on-line exit counseling

Direct Loan schools can use the program's Web site to confirm which of their students have completed on-line exit counseling:

<http://www.dlsonline.com/index.asp>

Similar on-line counseling services are provided by guarantors in the FFEL program.

Further recommendations for exit counseling

It's a good idea to provide the student with the current name and address of the borrower's lender(s), based on the latest information that your school has. The counseling presentation might also explain to the student how to complete deferment forms and prepare correspondence to the lender. **Emphasize that borrowers should always keep copies of all correspondence from and to them about their loans.** Stress that a borrower must make payments on his or her loans even if the borrower does not receive a payment booklet or a billing notice.

Providing borrower information at separation

The personal and contact information collected at the time of exit counseling must be provided to the guaranty agency or Direct Loan Servicing Center within 60 days. A student authorizes his or her school to release information to lenders as part of the promissory note the student signs as part of the loan application process, no further permission is needed.

Exit counseling follow up

If the student borrower drops out without notifying your school, you must confirm that the student has completed on-line counseling, or mail exit counseling material to the borrower at his or her last known address. The material must be mailed within 30 days of your learning that a borrower has withdrawn or failed to participate in an exit counseling session.

If you're mailing these exit materials, you're not required to use certified mail with a return receipt requested, but you must document in the student's file that the materials were sent. If the student fails to provide the updated contact information, you are not required to take any further action.

Entrance Counseling

Required Elements:

Reinforce importance of repayment

Describe consequences of default

Explain use of the Master Promissory Note

Stress that repayment is required regardless of educational outcome and subsequent employability

Provide sample monthly repayment amounts for different amounts of debt, or for average debt of Stafford borrowers in same year at school or in same program

Other Suggestions for Counseling:

Review the availability of state grant aid

Review terms and conditions of the loan

Review repayment options

Discuss how to manage expenses (budgeting) while in school

Reinforce importance of communicating change of status, etc., with the lender

Review deferment, forbearance, cancellation options and procedures

Review Borrower's Rights and Responsibilities

Review refund and other policies affecting withdrawals from school

Reinforce importance of keeping loan records

Remind student of exit counseling requirement

Exit Counseling

Required Elements:

Review these four elements from entrance counseling

Provide an average anticipated monthly repayment amount, based on borrower's indebtedness or for average debt of Stafford borrowers in same year at school or in same program

Review repayment options (standard repayment, extended, graduated, income-sensitive/contingent) and consolidation

Discuss debt management strategies that would facilitate repayment

Review forbearance, deferment, and cancellation options and procedures

Tell the student about the availability of loan information through the NSLDS Web site, and the availability of the FSA Student Loan Ombudsman's Office

Collect driver's license number and state of issuance, expected permanent address, address of next of kin, and name and address of employer (if known), and update any changes to student's personal information (name, social security number, etc.).

Other suggestions for counseling:

Provide student with contact information for lender(s) and reinforce importance of communicating change of status, etc., with the lender.

Remind borrowers to keep copies of all correspondence about their loans.

Drug and alcohol prevention cite
34 CFR 668.14(c)

DRUG AND ALCOHOL ABUSE PREVENTION INFORMATION

A school that participates in the campus-based programs must provide information under the Drug-Free Workplace Act of 1988 (Public Law 101-690), including a notice to its employees of unlawful activities and the actions the school will take against an employee who violates these prohibitions. In addition, the Drug-Free Schools and Communities Act (Public Law 101-226) requires a school that participates in any FSA program to provide information to its students, faculty, and employees to prevent drug and alcohol abuse.

Information to be included in drug prevention materials

A school must provide the following in its materials:

- information on preventing drug and alcohol abuse;
- standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of drugs and alcohol by students and employees on the school's property, or as part of the school's activities;
- a description of the sanctions under local, state, and federal law for unlawful possession, use, or distribution of illicit drugs and alcohol;
- a description of any drug and alcohol counseling, treatment, or rehabilitation programs available to students and employees;
- a description of the health risks associated with the use of illicit drugs and alcohol; and
- a clear statement that the school will impose sanctions on students and employees for violations of the standards of conduct (consistent with local, state, and federal law) and a description of these sanctions, up to and including expulsion, termination of employment, and referral for prosecution.

The Appendices and Comments and Responses sections of the August 16, 1990, regulations (Federal Register / Vol. 55, page 33587) provide additional guidance and information for schools to use in developing these materials.

Distribution of materials to all students and employees

The school may include this information in publications such as student or employee handbooks, provided that these publications are distributed to each student and employee. Merely making drug prevention materials available to those who wish to take them is not sufficient. The school must use a method that will reach every student and employee, such as the method used to distribute grade reports or paychecks. The school must distribute these materials annually. If new students enroll or new employees are hired after the initial distribution for the year, the school must make sure that they also receive the materials. (For more information on anti-drug abuse requirements, see chapter 3.)

MISREPRESENTATION

Under the General Provisions regulations the Department may fine, 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.

Definition of misrepresentation

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 the Department. This includes disseminating testimonials and endorsements given under duress.

Substantial Misrepresentation is any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

Misrepresentation of the educational program includes, among other things, false or misleading statements about the school's accreditation or the school's size, location, facilities, or equipment. Misrepresentation of financial charges includes, among other things, false or misleading statements about scholarships provided for the purpose of paying school charges. To be considered a scholarship, a grant must actually be used to reduce tuition charges made known to the student before the scholarship was offered to the student. (The tuition charges must be charges that are applied to all students whether or not they are receiving a scholarship.) It is also considered misrepresentation if the school gives false or misleading information as to whether a particular charge is a customary charge for that course at the school.

Misrepresentation includes making any false or misleading statements about the employability of the school's graduates.

The regulatory provisions concerning misrepresentation are given

Misrepresentation cite

34 CFR Subpart F
34 CFR 668.71

Prospective student

Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

in detail below.

Nature of educational program

Misrepresenting educational
program cite

34 CFR 668.72

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

- the particular types, specific sources, 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 of instruction qualifies a student for acceptance into a labor union or similar organization or receipt of a local, state, or federal 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 its 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 its 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 it will provide 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 668.43 (institutional information) and 34 CFR 668.46 (campus security information).

Nature of financial charges

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

- 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 whether or 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.

Misrepresenting financial charges
cite
34 CFR 668.73

Employability of graduates

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

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

Employability of graduates cite
34 CFR 668.74

CAMPUS SECURITY

General information

Campus security cite
Sec. 485(f)
34 CFR 668.46

The Department of Education is committed to assisting schools in providing a safe environment for students to learn and staff to work, and in keeping parents and students well informed about campus security. The department encourages schools to use the resources available on the following Web sites in making their campuses safer.

Department of Justice Violence Against Women Office

www.ojp.usdoj.gov/vawo/

Department of Education World Wide Web site on campus safety

www.ed.gov/admins/lead/safety/campus.html

Department of Education Web Site for Financial Aid Professionals (for further information on regulations and policies related to campus security)

<http://ifap.ed.gov/IFAPWebApp/index.jsp>

Higher Education Center for Alcohol and other Prevention World Wide Web site

www.edc.org/hec/

The Department is strongly committed to enforcing the provisions of the Campus Security Act of 1990 requiring a school to compile an annual campus security report.

Distribution of the Campus Crime Report

Distribution cite
34 CFR 668.41(e)

By October 1 of each year, a school must publish and distribute its annual campus security report.

It must be distributed to all **enrolled students and current employees** directly by publications and mailings, including – direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail.

If the school chooses to fulfill this requirement by posting the crime report on an Internet or Intranet Web site, an **individual notice must be distributed to each student and current employee** that includes:

- a statement of the report's availability,
- a list and brief description of the information contained in the report,

- the exact electronic address (URL) of the Internet or Intranet Web site at which the report is posted, and
- a statement saying the school will provide a paper copy upon request.

Upon request, a school must provide its annual campus security report to a prospective student or prospective employee. In order to ensure that a prospective student or employee can request the report, the institution must provide them with notice of the report's availability. The notice must include a brief description of the report. If a student requests it, the institution must provide a hard copy of the report.

Schools are required to submit the statistical section of their Annual Crime Report to the Department on an annual basis. The survey data is collected through the Department's Campus Crime and Security Web site

surveys.ope.ed.gov/security

The use of an electronic format will eliminate mailing and processing paper questionnaires, significantly reduce the reporting burden, and improve the timeliness of the data from institutions.

Definition of campus

Institutions must meet the campus security report requirements **individually for each separate campus**. Institutions must provide crime statistics for three discrete categories: campus, non-campus buildings or property, and public property.

Campus means –

- any building or property (including residence halls) owned or controlled by a school within the same reasonably contiguous geographic area and used by the school in direct support of or in a manner related to its educational purposes.
- property within the same reasonably contiguous area that is owned by the school but controlled by another person, frequently used by students, and supports the school's purposes (such as a food or other retail vendor).

Non-campus building or property means –

- any building or property owned or controlled by a student organization officially recognized by the school; and
- any building or property (other than a branch campus) owned or controlled by the school, that is **not** within

Annual submission cite

34 CFR 668.41(e)(5)

Definition of a campus cite

34 CFR 668.46(a)

Third-party housing

Whether the rent is paid to the third party by the institution on behalf of the student or directly by the student, a student housing facility owned by a third party that has a contract with an institution to provide housing for the institution's students is considered "under the control" of the institution.

the same reasonable contiguous area, is used in direct support of or in relation to the school's educational purpose, and is frequently used by the students.

Public property means all public property including thoroughfares, streets, sidewalks, and parking facilities that is within the same campus or immediately adjacent to and accessible from the campus. This would not include, for example, highways that are adjacent to the campus, but that are separated from the campus by a fence or other man-made barrier.

A school may use a map to visually illustrate the areas included in the definition of its campus.

Timely warning

Timely warning cite
34 CFR 668.46(e)

In addition to the required annual campus security report, schools are required to provide a timely warning to the campus community of any occurrences of the following crimes that are reported to campus security authorities or local police agencies and are considered to represent a threat to students and employees. These crimes are –

- criminal homicide including, (a) murder and nonnegligent manslaughter, and (b) negligent manslaughter;
- forcible and nonforcible sex offenses;
- robbery;
- aggravated assault;
- burglary;
- motor vehicle theft; and
- arson;
- separately by category of prejudice, each crime listed above and 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;
- arrests for violations of liquor and drug law violations, and illegal weapons possession; and
- persons not arrested but referred for campus disciplinary action for liquor, drug, and weapons law violations.

A school is not required to provide timely warning with respect to crimes reported to a pastoral or professional counselor as these positions are defined under 34 CFR 668.46(a).

Note: A school must also include statistical and policy information related to these same crimes in its campus security report; see the discussion on *Campus Security* earlier in this chapter.

Campus security authority

The following are campus security authorities –

1. a campus police or security department;
2. any individual or individuals who have responsibility for campus security but who do not constitute a campus security or police department, such as an individual who is responsible for monitoring entrance into school property (e.g., an access monitor);
3. an individual or organization specified in a school's campus security statement as the individual or organization to which students and employees should report criminal offenses; and
4. an official of a school who has significant responsibility for student and campus activities including, but not limited to, student housing, student discipline, and campus judicial proceedings.

The definition of campus security authority includes others in addition to those individuals working for the school's campus security office or expressly performing a campus security function at the school's request. An official who has significant responsibility for student and campus activities is a campus security authority. For example, a dean of students who oversees student housing, a student center, or student extracurricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities.

Professional and pastoral counselors excluded from reporting requirements

Of itself, reporting a statistic is not likely to identify a victim. However, the need to verify the occurrence of a crime and the need for additional information about a crime to avoid double counting can lead to the identification of the victim. Therefore, in order to ensure that victims have access to confidential counseling, professional and pastoral counselors, as defined in the regulations are **not** required to report crimes discussed with them in their roles as counselors when they are functioning within the scope of their license or certification. Other confidential reporting options are encouraged to obtain statistical data without infringing on an individual's expectation of confidentiality.

A *pastoral counselor* is a person who is associated with a religious order or denomination, who is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Campus security authority cite
34 CFR 668.46(a)

A *professional counselor* is a person whose official responsibilities include providing mental health counseling to members of the school's community and who is functioning within the scope of his or her license or certification.

Daily crime log

Crime log cite

34 CFR 668.46(f)

Crime log vs. Annual Security Report

The crime log contains records only of incidents reported to campus police or security department. The annual security report contains records of incidents reported to any campus security authority — a much broader designation.

Schools that maintain a campus police or security department must make, keep, and maintain daily logs of any crime reported to the campus police or security department, and any crime that occurs on campus, in a noncampus building or property, or public property (as defined by regulations) within the patrol jurisdiction of the campus police or security department. The logs must be written in a manner that is easily understood. For each crime, the school must record the date it was reported, the nature, date, time, and general location, and the disposition of the complaint, if known. The logs must be made public, except where prohibited by law or when disclosure would jeopardize the confidentiality of the victim. Schools are required to update logs with new information when available, but no later than two business days after the information is received, unless the disclosure is prohibited by law or would jeopardize the confidentiality of the victim. The school must disclose any information withheld once the adverse effect is no longer likely to occur.

Often time passes between when a crime is committed and when it is discovered, making the date of occurrence unknown or uncertain. In addition, for statistical purposes, the FBI collects crime data based on when crimes are reported to the police. Therefore, **an institution must report crime data based on when the crime was reported to campus police or security authorities.**

The school must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The school must make any portion of the log older than 60 days available within two business days of a request for public inspection.

A school may withhold information if (and as long as) the release of the information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to evade detection, or result in the destruction of evidence. A school may withhold only the information that would cause the aforementioned adverse effects.

The annual security report

The annual security report, due October 1, must contain the required crime statistics for the three calendar years preceding the year in which the report is disclosed. The crime report due October 1, 2004, must include statistics for the 2001, 2002, and 2003 calendar years. Schools must retain records used to create their campus security reports for three years after the due date of the report. Therefore, schools must maintain the information (data from 2001, 2002,

and 2003) used in compiling the 2004 report, and make the report available through September 30, 2007. Crimes must be reported for the calendar year in which the crime was reported to a campus security authority rather than the year in which the crime occurred.

Policies and procedures for reporting crimes

The annual security report provides information regarding campus security policies and campus crime statistics. With limited exceptions, the campus security requirements do not prescribe policies and procedures for schools to follow. Rather, schools are required to make disclosures concerning the policies and procedures implemented by the school.

All schools must compile the required crime statistics in accordance with the definitions used in the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) system, Hate Crime Data Collection Guidelines and the Training Guide for Hate Crime Collection. For further guidance concerning the application of definitions and classification of crimes a school must use either the *UCR Reporting Handbook* or the *UCR Reporting Handbook: NIBRS Edition* depending on the crime.

Except when determining how to report crimes committed in a multiple offense situation, a school must use the hierarchy rule found in the *UCR Reporting Handbook*. Copies of these publications are available from: FBI Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304-625-2823). Schools are encouraged but not required to participate in the FBI's UCR program.

The statistics required in the annual security report may not include the identification of the victim or the person accused of committing the crime.

A school must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or state police agency. A school making a good faith effort will not be held responsible for the failure of local and state police agencies to supply the required statistics.

The annual security report must include the following:

1. the required institutional crime statistics, including:
 - a. criminal homicide, including (1) murder and nonnegligent manslaughter, and (2) negligent manslaughter;
 - b. sex offenses, including (1) forcible sex offenses, and (2) nonforcible sex offenses;
 - c. robbery;
 - d. aggravated assault;

Security report cite
34 CFR 668.46(b)

The category of manslaughter
The category of manslaughter, broken into two subcategories, nonnegligent and negligent manslaughter. "Murder and nonnegligent manslaughter" is the willful (nonnegligent) killing of one human being by another. "Manslaughter by negligence" is the killing of another person through gross negligence. Collectively the two categories are referred to as "criminal homicide" consistent with the FBI's definitions.

Arson defined

"Arson" is any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling, house, public building, motor vehicle or aircraft, personal property of another, etc.

Liquor law, drug, and weapons violations

The period for which liquor law, drug law and weapons possession violations must be reported has changed from the most recent year to the most recent three years. In addition, the school must disclose not only the number of arrests for these crimes but also the unduplicated number of persons who were referred for campus disciplinary action for these activities.

Institutions should not include students referred for campus disciplinary action for alcohol, drug, and weapons possession unless those violations were also violations of law. For example, if a student of legal drinking age in the state where the institution is located violates the institution's dry campus policy and is referred for disciplinary action, that statistic should not be included in the institution's crime statistics. If a student was both arrested and referred for campus disciplinary action for the same violation, the new regulations require that the institution report the statistic only under arrests.

- e. burglary;
- f. motor vehicle theft;
- g. arson;
- h. separately by category of prejudice, each crime listed above and 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;
- i. arrests for violations of liquor and drug law violations, and illegal weapons possession; and
- j. persons not arrested but referred for campus disciplinary action for liquor, drug, and weapons law violations.

Schools must report crime statistics by means of separate categories:

- on campuses (see *Definition of a campus*);

Note: Crimes that occur in dormitories or other residential facilities for students are reported as a subset of crimes on campus and as a separate category.

- in or on a noncampus building or property;
 - on public property; and
 - dormitories or other residential facilities for students on campus.
2. a statement of current campus policies regarding procedures for reporting crimes and other emergencies occurring on campus and the policies for the school's response to these reports, including:
 - a. policies for making timely reports of the above described crimes to members of the campus community;
 - b. policies for preparing the annual disclosure of crime statistics; and
 - c. a list of the titles of each person or organization to whom the criminal offenses described above should be reported for the purpose of making timely warning reports and the annual statistical disclosure.

This statement must also describe any institutional policies or procedures that allow voluntary or

- confidential reports made by victims or witnesses to be included in the annual disclosure of crime statistics.
3. a statement of the school's policies concerning the security of, and access to, all campus facilities, including residences, and security considerations used in the maintenance of campus facilities,
 4. a statement of the school's policies concerning campus law enforcement, including
 - a. the enforcement authority of campus security personnel, their working relationship with state and local police and other law enforcement agencies, and whether the security personnel have the authority to arrest individuals; and
 - b. policies that encourage accurate and prompt reporting of crimes to campus police and the appropriate police agencies; and
 - c. procedures that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform their clients of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
 5. descriptions of the type and frequency of programs that
 - a. inform students and employees about campus security procedures and practices; and
 - b. encourage students and employees to be responsible for their own security and the security of others.
 6. a description of institutional crime prevention programs;
 7. a statement of the policies concerning the monitoring and recording (through local police agencies) of criminal activity at off-campus locations of student organizations officially recognized by the school, including student organizations with off-campus housing facilities (see the *Definition of a campus*);
 8. the policies concerning the possession, use, and sale of alcoholic beverages, including the enforcement of state underage drinking laws;
 9. a statement of institutional policies concerning the possession, use, and sale of illegal drugs including the enforcement of state and federal drug laws;
 10. a description of the drug and alcohol-abuse education programs available to students and employees, as required under section 120(a) through (d) of the Higher Education Act;

11. a statement of the sexual assault prevention programs available and the procedures to be followed when a sex offense occurs, including:
 - a. a description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;
 - b. procedures a student should follow if a sex offense occurs (whom to contact, how to contact them, the importance of preserving evidence for proof of a criminal offense, and to whom to report);
 - c. options for the notification of local law enforcement officials (including on-campus and local police) and a statement that school personnel will assist the student in notifying these authorities, if requested by the student;
 - d. availability of on- and off-campus counseling, mental health, or other student services for victims of sex offenses;
 - e. notice to students that the school will change a victim's academic and living situations after the alleged sex offense and of the options for changes, if changes are requested by the victim and are reasonably available;
 - f. procedures for campus disciplinary actions in cases of an alleged sex offense, including a clear statement that both the accuser and the accused
 - are entitled to the same opportunities to have others present during a disciplinary proceeding, and
 - will be informed of the school's final determination of any school disciplinary proceeding with respect to the alleged sex offense and any sanction that is imposed against the accused; and
 - g. sanctions the school may impose following a final determination of a school disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.
 - h. beginning with the annual security report required by October 1, 2003, a statement advising the campus community where to find law enforcement agency information concerning registered sex offenders who might be present on campus.

Clarification

Complaints against schools

When a complaint is filed against a school alleging noncompliance with the campus security regulations, the Department will assess the complaint and determine the appropriate response.

Information about submitting reports of noncompliance is available at

www.ed.gov/admins/lead/safety/campus.html

Technical assistance to schools in administering the campus security regulations is available from the Department's Customer Support Branch at 1-800-433-7327.

CAMPUS SECURITY AND THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

The provisions of the Family Educational Rights and Privacy Act (FERPA) do not prohibit a school from complying with the campus security regulations. First, FERPA does not generally prohibit the disclosure of statistical, non-personally identifiable information. Second, as a matter of law, FERPA does not preclude a school's compliance with the timely warning requirement. The Department has concluded that as a later enacted, more specific statute, the Campus Security Act takes precedence over FERPA's requirements against the release of personally identifiable information from a student's education record. Thus, institutions may make a timely warning report to the campus community on criminal activity, and even if the school discloses the identity of an individual, the school has not violated the requirements of FERPA.

Records created and maintained by a campus law enforcement unit for a law enforcement purpose are not education records and may be disclosed without a student's consent. In contrast, records of a disciplinary action or proceeding, even if maintained by a campus law enforcement unit, are considered education records of a student, and cannot be made available to the public without the consent of the student.

FERPA does allow a postsecondary institution to disclose the *final results* of disciplinary proceedings under the following circumstances:

- **to anyone**, if the violation was a crime of violence or a nonforcible sexual offense, and the institution concludes that **a violation of the institution's rules or policies did occur**; and

FERPA cites

Public Law 107-56; 115 Stat. 272
20 U.S.C. § 1232g(a)(4)(A)(i) and (ii)

Disclosure

34 CFR 99.31 (a)(13) and (14)

FERPA Information

For additional guidance on provisions of FERPA contact the Family Policy Compliance Office (FPCO) at

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5901

(202) 260-3887 – Telephone
(202) 260-9001 – Fax
FERPA@ED.Gov. – E-mail

The Web site address is

www.ed.gov/offices/OI/fpc/ferpa/

- **to a victim** of a crime of violence or a nonforcible sexual offense, when the proceedings were in reference to that crime, the institution may disclose the results of the proceedings, **regardless of whether the institution concluded that a violation was committed.**

The offenses to which this permissible disclosure applies are listed in the FERPA regulations (34 CFR 99.39).

A school is not relieved of compliance with the reporting requirements of the campus security regulations when the school refers a matter to a disciplinary committee, rather than to the school's law enforcement unit or directly to the local authorities.

Disciplinary actions cite

34 CFR 99.3

Law enforcement unit cite

34 CFR 99.8

Recordkeeping change pursuant to an ex parte order

In addition to allowing disclosure without prior written consent or prior notification, this provision amends FERPA's recordkeeping requirements (20 U.S.C. § 1232g(b)(4); 34 CFR 99.32). As a result, FERPA, as amended, does not require a school official to record a disclosure of information from a student's education record when the school makes that disclosure pursuant to an "ex parte" order. Rather, the school may respond to the specific requirements contained in the "ex parte" order.

Furthermore, an educational agency or institution that, in good faith, produces information from education records in compliance with an "ex parte" order issued under the amendment "shall not be liable to any person for that production."

Disciplinary action or proceeding

The investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Law enforcement unit

Any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to

- enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself, or
 - maintain the physical security and safety of the agency or institution.
-

Ex Parte Orders

In response to the terrorist attacks on the United States that took place on September 11, 2001, Congress made changes to FERPA. Section 507 of the USA PATRIOT Act amended FERPA, by adding a new exception to the general consent rule.

The recent amendment to FERPA permits educational agencies and institutions to disclose – without the consent or knowledge of the student or parent – personally identifiable information from the student's education records to the Attorney General of the United States or to his designee in response to an ex parte order in connection with the investigation or prosecution of terrorism crimes

specified in sections 2332b(g) (5) (B) and 2331 of title 18, U.S. Code. An *ex parte* order is an order issued by a court of competent jurisdiction without notice to an adverse party.

Lawfully issued subpoenas and court orders

FERPA permits educational agencies and institutions to disclose, without consent, information from a student's education records in order to comply with a *lawfully issued subpoena or court order* in three contexts. These three contexts are:

1. Grand Jury Subpoenas – Educational agencies and institutions may disclose education records to the entity or persons designated in a Federal Grand Jury subpoena.
2. Law Enforcement Subpoenas – Educational agencies and institutions may disclose education records to the entity or persons designated in any other subpoena issued for a law enforcement purpose.

For these subpoenas, the court may order the institution not to disclose to anyone the existence or contents of the subpoena or the institution's response. If the court so orders, then neither the prior notification requirements of § 99.31 (a) (9) nor the recordation requirements at 34 CFR. § 99.32 would apply. (In the case of an agency subpoena, the educational institution has the option of requesting a copy of the good cause determination.)

3. Ex parte orders – Educational agencies and institutions may disclose, without consent or knowledge of the student or parent, personally identifiable information to the Attorney General of the United States or his designee in response to an *ex parte* order in connection with the investigation of a crime of terrorism. An *ex parte* order is an order issued by a court without notice to the adverse party.

Health or safety emergency

The health or safety exception permits educational agencies and institutions to disclose personally identifiable information from a student's education record without the written consent of the student in the case of an immediate threat to the health or safety of students or other individuals. Typically, law enforcement officials, public health officials, and trained medical personnel are the types of parties to whom information may be disclosed under this FERPA exception.

The Department consistently has limited the health and safety exception to a specific situation that presents imminent danger or to a situation that requires the immediate need for information from education records in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release must be narrowly tailored considering the immediacy, magnitude, and specificity of information concerning the emergency. Moreover, this

Subpoena cites

20 U.S.C. § 1232g(b)(1)(J)(i) and (ii), (b)(2)(B);
34 CFR. § 99.31(a)(9)

All other subpoenas

In contrast to the exception to the notification and recordkeeping requirements described here, educational agencies or institutions may disclose information pursuant to any other court order or lawfully issued subpoena only if the school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action. Additionally, schools must comply with FERPA's recordkeeping requirements under 34 CFR. § 99.32 when disclosing information pursuant to a standard court order or subpoena.

Recordkeeping requirements for health and safety exceptions

FERPA's recordkeeping requirements apply to disclosures made pursuant to the health or safety exception.

Dear Colleague Letter

A Dear Colleague Letter on the recent changes to FERPA is available at

<http://www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf>

exception is temporarily limited to the period of the emergency and generally will not allow for a blanket release of personally identifiable information from a student's education records.

Disclosures to the Immigration and Naturalization Service (INS)

Clarification

An educational institution may release personally identifiable information on an F, J, or M nonimmigrant student to the Department of Homeland Security (formally the Immigration and Naturalization Service (INS)) in compliance with the Student Exchange Visitor Information System (SEVIS) program without violating FERPA.

Institutional and Financial Assistance Information for Students

Who Receives the Information	What They Receive	How It Must Be Provided	When It Must Be Provided
<p>Currently enrolled students and current employees</p>	<p>The institution's annual campus security report in its entirety (pursuant to 668.46)</p>	<p>Through publications, mailings, or electronic media sent directly to individuals. If a school chooses to post its annual security report to a Web site it must send each individual a notice through U.S. mail, campus mail, or directly to an e-mail address that</p> <ol style="list-style-type: none"> 1. provide a brief summary of the information required to be disclosed; 2. provides the inter- or intra-net Web site address where the information can be found; 3. states that, upon request, the individual is entitled to a paper copy; and 4. informs the individual how to request a paper copy. 	<p>The institution must prepare and make available its security report annually by October 1.</p>
<p>Currently enrolled students</p>	<p>Notice about the availability of the following —</p> <ol style="list-style-type: none"> 1. information on financial assistance available to students enrolled in the institution (pursuant to 668.42); 2. information on the institution (pursuant to 668.43); 3. the institution's completion or graduation rate, and, if applicable, its transfer-out rate (pursuant to 668.45); 4. information about students' rights under FERPA (pursuant to 99.7); and 5. information about athletic program participation rates and financial support (EADA) (pursuant to 668.47). <p>The notices must be sufficiently detailed to allow students to understand the nature of the disclosures and make an informed decision whether to request the full reports.</p>	<p>A school must provide direct individual notice to each person.</p> <p>A school may provide the required notice through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronically directly to an E-mail address.</p> <p>The individual notice provided to enrolled students must</p> <ol style="list-style-type: none"> 1. provide a brief summary of the information required to be disclosed; 2. provides the inter- or intra-net Web site address where the information can be found; 3. state that upon request the student is entitled to a paper copy; and 4. inform the student how to request a paper copy. 	<p>Annually, a school must provide notice to each enrolled student. Immediately, upon request, the institution must provide the full reports.</p> <p>The institution must prepare its completion or graduation rate, and, if applicable, its transfer-out rate report by July 1, immediately following the point in time at which the 150% point for the cohort has elapsed.</p> <p>Institutions must prepare and make available information about athletic program participation rates and financial support (EADA) by October 15.</p> <p>Information on the institution and its financial assistance programs must be current.</p>
<p>The general public</p>	<p>An institution that</p> <ol style="list-style-type: none"> 1. participates in any Title IV, HEA program and 2. has an intercollegiate athletic program <p>must provide a report on athletic program participation rates and financial support (EADA) (pursuant to 668.47).</p>	<p>Through appropriate publications, mailings, or electronic media.</p>	<p>Annually, for the preceding year, the institution must prepare the report and make it available by October 15.</p>

Institutional and Financial Assistance Information for Students (CONTINUED)

Who Receives the Information	What They Receive	How It Must Be Provided	When It Must Be Provided
Prospective students	<ol style="list-style-type: none"> 1. Information on financial assistance available to students enrolled in the institution (pursuant to 668.42); 2. Information on the institution (pursuant to 668.43); 3. Information about students' rights under FERPA; 4. Notice about the availability of the institution's annual campus security report (pursuant to 668.46). The notice must include: <ol style="list-style-type: none"> a. a list of the information in the report; b. brief descriptions of the required disclosures that are sufficient to allow students to understand the nature of the disclosures and make an informed decision whether to request the full report; (Please see the NPRM of 8/10/99 page 43583 for an example) and c. an opportunity to request a copy. 5. The institution's completion or graduation rate, and, if applicable, its transfer-out rate (pursuant to 668.45). 6. Information about athletic program participation rates and financial support (pursuant to 668.47). 	<p>Directly to prospective students through appropriate publications, mailings, or electronic media an institution must provide individual notice of the availability of items 1 through 6.</p> <p>Upon request, institutions must provide their complete report on completion, graduation and, if applicable, transfer-out rates.</p> <p>Upon request, an institution must provide a copy of its full annual security report to a prospective student.</p> <p>If provided electronically, notices and reports must be sent directly to an e-mail address.</p>	<p>Prior to a prospective student's enrolling or entering into any financial obligation with an institution, the institution must provide its report on completion, graduation, and transfer-out rates.</p> <p>Notice about the availability of the other reports should be included in the materials an institution provides to prospective students.</p> <p>Immediately upon request, the institution must provide its security report on a direct, individual basis.</p>
Prospective student athletes and their <ol style="list-style-type: none"> 1. parents, 2. high school coaches, & 3. guidance counselors 	<p>An institution that is attended by students receiving athletically-related student aid must produce a report on the completion and graduation rates of student athletes pursuant to 668.48.</p>	<p>The information must be provided directly to the respective parties. It may be provided in writing (on paper) or through electronic mail but not simply by posting it to a Web site.</p> <p>If the NCAA provides an institution's completion and graduation rates of student athletes to high school coaches and counselors, the institution is deemed to be in compliance with that portion of this requirement.</p>	<p>The institution must provide the report at the time it makes an offer of athletically-related student aid to a prospective student athlete.</p> <p>Annually by July 1, institutions that are attended by students receiving athletically-related student aid must produce the report and make it available.</p>

Institutional and Financial Assistance Information for Students (CONTINUED)

Who Receives the Information	What They Receive	How It Must Be Provided	When It Must Be Provided
<p>Everyone who requests information about employment at the institution.</p>	<p>A notice about the availability of the annual campus security report. The notice must include a list of the information from the institution's annual security report to which employees and prospective employees are entitled. The list must include brief descriptions of the required disclosures. The descriptions should be sufficient to allow employees and potential employees to understand the nature of the disclosures and make an informed decision whether to request the full report.</p>	<p>In response to an inquiry about employment, a school must provide direct individual notice to each prospective employee. A school may provide the required notice through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronically directly to an e-mail address.</p> <p>If the school makes the information available by posting it to its Web site, then the notice provided to students must</p> <ol style="list-style-type: none"> 1. identify the information required to be disclosed; 2. provide the inter- or intra-net address where the information can be found; 3. state that, upon request, the student is entitled to a paper copy; and 4. inform the student how to request a paper copy. 	<p>The institution must prepare its report annually by October 1. Immediately, upon request, the institution must provide the full report.</p>
<p>Faculty, students, and employees</p>	<p>Drug and alcohol prevention information pursuant to Public Law 101-226.</p>	<p>Schools must use a method that ensures that the information will reach every student, faculty member, and employee.</p>	<p>The institution must ensure that students who enroll and employees who are hired after the initial distribution for the year, also receive the information.</p>

