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Institutional Eligibility for Participation in Title IV Student Financial Aid Programs

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Summary

Title IV of the Higher Education Act (HEA) authorizes programs that provide financial assistance to students to assist them in obtaining a postsecondary education at certain institutions of higher education (IHEs). These IHEs include public, private nonprofit, and proprietary institutions. For students attending such institutions to be able to receive Title IV assistance, an institution must meet basic criteria, including offering at least one eligible program of education (e.g., programs leading to a degree or preparing a student for gainful employment in a recognized occupation).

In addition, an IHE must satisfy the program integrity triad, under which it must be

- licensed or otherwise legally authorized to operate in the state in which it is physically located,
- accredited or preaccredited by an agency recognized for that purpose by the Department of Education (ED), and
- certified by ED as eligible to participate in Title IV programs.

These requirements are intended to provide a balance between consumer protection, quality assurance, and oversight and compliance in postsecondary education providers participating in Title IV student aid programs.

An IHE must also fulfill a variety of other related requirements, including those that relate to institutional recruiting practices, student policies and procedures, and the administration of the Title IV student aid programs.

Finally, additional criteria may apply to an institution depending on its control or the type of educational programs it offers. For example, proprietary institutions must meet HEA requirements that are otherwise inapplicable to public and private nonprofit institutions, including deriving at least 10% of their revenues from non-Title IV funds (also known as the 90/10 rule). While an institution is ineligible to participate in Title IV programs if more than 50% of its courses are offered by correspondence or if 50% or more of its students are enrolled in correspondence courses.

This report first describes the types of institutions eligible to participate in Title IV programs and discusses the program integrity triad. It then discusses additional issues related to institutional eligibility, including program participations agreements, required campus safety policies and crime reporting, and distance and correspondence education.

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Overview

Title IV of the Higher Education Act (HEA; P.L. 89-329), as amended, authorizes programs that provide financial assistance to students to attend certain institutions of higher education (IHEs). 6,760 institutions were classified as Title IV eligible IHEs in academic year (AY) 2016-2017.[1] Of those IHEs eligible to participate in Title IV programs, approximately 29.4% were public institutions, 27.8% were private nonprofit institutions, and 42.9% were proprietary (or private, for-profit) institutions. It is estimated that $122.5 billion was made available to students through Title IV federal student aid in FY2017.[2]

To be able to receive Title IV assistance, students must attend an institution that is eligible to participate in the Title IV programs. IHEs must meet a variety of requirements to participate in the Title IV programs. First, an IHE must meet basic eligibility criteria, including offering at least one eligible program of education.

In addition, an IHE must satisfy the program integrity triad, under which it must be

- legally authorized to provide a postsecondary education in the state in which it is located;
- accredited or preaccredited by an agency recognized by the Department of Education (ED) for such purposes,[3] and
- certified by ED as eligible to participate in Title IV programs.

The state authorization and accreditation components of the triad were developed independently to address the issues of quality assurance and consumer protection, and the federal government (ED specifically) generally relies on states and accrediting agencies to determine standards of educational program quality. The federal government's only direct role in determining Title IV eligibility is through the process of certification of eligibility and ensuring IHEs meet some additional Title IV requirements. Certification, as a component of the program integrity triad, focuses on an institution's fiscal responsibility and administrative capacity to administer Title IV funds.

An IHE must fulfill a variety of other related requirements, including those that relate to institutional recruiting practices, student policies and procedures, and Title IV program administration. Finally, additional criteria may apply to an institution depending on its control or the type of educational programs it offers. For instance, proprietary institutions must derive at least 10% of their revenues from non-Title IV funds (also known as the 90/10 rule). Failure to fulfill some of these requirements does not necessarily end an IHE's participation in the Title IV

[1] Although 6,760 institutions were eligible to participate in Title IV FSA programs in AY2016-2017 (July 1, 2016-June 30, 2017), 5,963 institutions participated in and received funds through Title IV FSA programs in FY2017 (October 1, 2016-September 30, 2017). U.S. Department of Education, National Center for Education Statistics, *Postsecondary Institutions and Cost of Attendance in 2016-2017; Degrees and Other Awards Conferred: 2015-16; and 12-Month Enrollment: 2015-16, First Look (Provisional Data)*, NCES 2017-075rev, Table 1, https://nces.ed.gov/pubs2017/2017075rev.pdf and U.S. Department of Education, Federal Student Aid, *Annual Report FY 2018*, Washington, DC, November 15, 2018, p. 3, https://www2.ed.gov/about/reports/annual/2018report/fsa-report.pdf.

[2] This includes federal loans, work-study, and grants. See U.S. Department of Education, Federal Student Aid, *Annual Report 2018*, Washington, DC, November 15, 2018, p. 8, https://www2.ed.gov/about/reports/annual/2018report/fsa-report.pdf.

[3] ED recognizes accrediting agencies both for Title IV and non-Title IV purposes. There are some differences in criteria for ED recognition for each. ED-recognition of accrediting agencies for purposes of participation in non-Title IV programs are beyond the scope of this report.

programs, but may lead to additional oversight from ED and/or restrictions placed an IHE's Title IV participation.

This report provides a general overview of HEA provisions that affect a postsecondary institution's eligibility for participation in Title IV student aid programs. It first describes general eligibility criteria at both the institutional and programmatic level and then, in more detail, the program integrity triad. Next, it discusses several issues that are closely related to institutional eligibility: Program Participation Agreements, campus safety policies and crime reporting required under the Clery Act, the return of Title IV funds, and distance education.

Eligibility Criteria

To be eligible to participate in HEA Title IV student aid programs, institutions must meet several criteria. These criteria include requirements related to programs offered by the institutions, student enrollment, institutional operations, and the length of academic programs. This section discusses the definition of an eligible IHE for the purposes of Title IV participation and program eligibility requirements.

Eligible Institutions

The HEA contains two definitions of institutions of higher education. Section 101 provides a general definition of IHE that applies to institutional eligibility for participation in HEA programs other than Title IV programs.[4] The Section 102 definition of IHE is used only to determine institutional eligibility to participate in HEA Title IV programs.

Section 101 Institutions

Section 101 of the HEA provides a general definition of IHE. This definition applies to institutional participation in non-Title IV HEA programs. Section 101 IHEs can be public or private nonprofit educational institutions. Section 101 specifies criteria both public and private nonprofit educational institutions must meet to be considered IHEs.

Public Institutions of Higher Education

Neither the HEA nor regulations specifically define a public institution of higher education. However, in general, public institutions can be described as those whose educational programs are operated by states or other government entities and are primarily supported by public funds.[5]

Private Nonprofit Institutions of Higher Education

Regulations define a nonprofit IHE as one that (1) is owned and operated by a nonprofit corporation or association, with no part of the corporation's or association's net earnings benefiting a private shareholder or individual, (2) is determined by the Internal Revenue Service to be a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (IRC), and

[4] The Section 101 definition is also commonly used as a reference in many other non-HEA programs.

[5] U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System, 2018-19 Glossary, "Public institution."

(3) is legally authorized to operate as a nonprofit organization by each state in which it is physically located.[6]

Section 101 Institution of Higher Education

To be considered a Section 101 IHE, public and private nonprofit educational institutions must

- admit as regular students only individuals with a high school diploma or its equivalent, individuals beyond the age of compulsory school attendance, or individuals who are dually or concurrently enrolled in both the institution and in a secondary school;
- be legally authorized to provide a postsecondary education within the state in which they are located;
- offer a bachelor's degree, provide a program of at least two-years that is acceptable for full credit toward a bachelor's degree, award a degree that is accepted for admission to a graduate or professional program, or provide a training program of at least a one-year that prepares students for gainful employment in a recognized occupation; and
- be accredited or preaccredited by an accrediting agency recognized by ED to grant accreditation or preaccreditation status[7]

Section 102 Institutions

Section 102 of the HEA defines IHE only for the purposes of Title IV participation. The Section 102 definition includes all institutions included in the Section 101 definition (i.e., public and private nonprofit IHEs) and also includes proprietary institutions, postsecondary vocational institutions, and foreign institutions that have been approved by ED.[8] Section 102 specifies that proprietary and postsecondary vocational institutions must meet many of the same Section 101 requirements that are applicable to public and private nonprofit institutions. In addition, Section 102 specifies other criteria that all types of educational institutions must meet to be considered Title IV eligible IHEs.

Proprietary Institutions of Higher Education

HEA Section 102 specifies that a proprietary IHEs is an institution that is neither a public nor a private nonprofit institution.[9] In addition to the basic Title IV eligibility criteria that all IHEs must meet (e.g., state authorization, accreditation by an ED-recognized accrediting agency), proprietary IHEs must meet additional criteria to be considered Title IV eligible. Specifically, a proprietary IHE must (1) provide an eligible program of training "to prepare students for gainful employment in a recognized occupation"[10] or (2) provide a program leading to a baccalaureate degree in liberal arts that has been continuously accredited by a regional accrediting agency since

[6] 34 C.F.R. §600.2. Under IRC Section 501(c)(3), an organization is exempt from federal taxation if no part of its earnings insures to the benefit of an individual or private shareholder and if it is organized and operated exclusively for, among other potential items, educational purposes.

[7] HEA §101; 20 U.S.C. §1001.

[8] HEA §102(a)(2); 20 U.S.C. §1002(a)(1). Department of Education, *2017-2018 Federal Student Aid Handbook*, vol. 2, pp. 3-5, https://ifap.ed.gov/fsahandbook/attachments/1718FSAHbkActiveIndex.pdf (hereinafter *FSA Handbook*).

[9] HEA §102(b)(1)(C); 20 U.S.C. §1002(b)(1)(C).

[10] HEA §102(b)(1)(A); 20 U.S.C. §1002(b)(1)(A).

October 1, 2007, and have provided the program continuously since January 1, 2009. Additionally, it must have been legally authorized to provide (and have continuously been providing) the same or a substantially similar educational program for at least two consecutive years.[11]

Postsecondary Vocational Institutions

HEA Section 102 defines a postsecondary vocational institution as a public or private nonprofit institution that provides an eligible program of training "to prepare students for gainful employment in a recognized occupation,"[12] and has been legally authorized to provide (and has continuously been providing) the same or a substantially similar educational program for at least two consecutive years.[13] It is possible for a public or private nonprofit IHE that offers a degree program (e.g., an associate's or bachelor's degree) to also qualify as a postsecondary vocational institution by offering programs that are less than one academic year and that lead to a nondegree recognized credential such as a certificate.

Foreign Institutions

Institutional participation in Title IV student aid programs allows students from the United States to borrow through the federal Direct Loan program to attend postsecondary institutions located outside of the United States.[14] In general, a foreign institution is eligible to participate in the Direct Loan program if it is comparable to an eligible IHE (as defined in HEA Section 101) within the United States, is a public or private nonprofit institution,[15] and has been approved by ED. Foreign graduate medical schools, veterinary schools, and nursing schools are also eligible to participate in Title IV student aid programs, but must meet additional requirements. Freestanding foreign graduate medical schools, veterinary schools, and nursing schools may be proprietary institutions.[16] Additional requirements for foreign institutions to participate in Title IV student aid programs are beyond the scope of this report and, generally, will not be discussed hereinafter.

Section 102 Institution of Higher Education

The definitions of proprietary institutions and postsecondary vocational institutions contained in Section 102 have several overlapping components with the Section 101 definition of IHE.[17] For instance, both proprietary and postsecondary vocational institutions must (1) admit as regular students only those individuals with a high school diploma or its equivalent, individuals beyond

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[11] HEA §102(b)(1)(E) and 34 C.F.R. § 600.5(b). See also *FSA Handbook*, vol. 2, p. 11.

[12] HEA §102(c); 20 U.S.C. §1002(c).

[13] HEA §102(b)(1)(E) and 34 C.F.R. § 600.6(b). See also *FSA Handbook*, vol. 2, p. 11.

[14] Institutions can choose to participate in Title IV programs or can choose to be designated by ED as "eligibility-only." An eligibility-only designation allows an institution and its eligible students to qualify to participate in non-Title IV programs and benefits, such as the American Opportunity Tax Credit. Additionally, students attending eligibility-only institutions qualify for in-school deferment of payment on their federal student loans that they have previously borrowed.

[15] A foreign nonprofit institution is one that is owned and operated only by one or more nonprofit corporations of associations and (1) is determined to be a nonprofit educational institution by the ED-recognized tax authority of the institution's home country or (2) if there is no ED-recognized tax authority of the institution's home country, the institution demonstrates to ED that it is a nonprofit educational institution. 34 C.F.R. §600.2.

[16] HEA §102(a)(2); 20 U.S.C. §1002(a)(2). 34 C.F.R. §600.54.

[17] Eligibility requirements differ somewhat for foreign institutions; a complete description of these differences is beyond the scope of this report.

the age of compulsory school attendance, or individuals who are dually or concurrently enrolled in both the institution and in a secondary school; (2) be legally authorized to provide a postsecondary education by the state in which they are located; and (3) be accredited or preaccredited by an accrediting agency recognized by ED to grant such statuses.[18]

In addition, all types of institutions (including public and private nonprofit institutions) must meet requirements related to the course of study offered at the institution and student enrollment to be considered Title IV eligible under Section 102. In general, any type of institution is considered ineligible to participate in Title IV programs if more than 25% of its enrolled students are incarcerated, or if more than 50% of the its enrolled students do not have a secondary school diploma or equivalent and the institution does not provide a two-year associate's degree or a four-year bachelor's degree. Also, in general, an institution is ineligible if more than 50% of the courses offered are correspondence courses or if 50% or more of its students are enrolled in correspondence courses. These "50% rules" are discussed in more detail in the distance education section of this report.[19] Finally, an institution is considered ineligible to participate in Title IV programs if the institution has filed for bankruptcy or the institution (or its owner or chief executive officer) has been convicted of or pled no contest or guilty to a crime involving the use of Title IV funds.[20]

While the above-described criteria generally apply to most types of Section 102 institutions, specific criteria apply to individual types of Section 102 institutions. The following sections provide information on Title IV eligibility criteria that apply to those additional types of IHEs not specified in Section 101, but specified in Section 102: proprietary IHEs, postsecondary vocational institutions, and foreign institutions.

Hereinafter, unless otherwise noted, the term "institution of high education (IHE)" only refers to Section 102 institutions.

Eligible Programs

To qualify as an eligible institution for Title IV participation, an institution must offer at least one eligible program, but overall institutional eligibility does not necessarily extend to all programs offered by the institution. Not all of an institution's programs must meet program eligibility requirements for an IHE to participate in Title IV, but, in general, students enrolled solely in ineligible programs cannot receive Title IV student aid.[21] To be Title IV eligible, a program must lead to a degree (e.g., an associate's or bachelor's degree) or certificate or prepare students for gainful employment in a recognized occupation.

Before awarding Title IV aid to students, an IHE must determine that the program in which a student is participating is Title IV eligible, ensure that the program is included in its accreditation notice, and ensure that the the IHE is authorized by the appropriate state to offer the program.[22]

[18] HEA §102(b) and (c).

[19] HEA §102(a)(3); 20 U.S.C. §1002(a)(3).

[20] HEA §102(a)(4); 20 U.S.C. §1002(a)(4).

[21] HEA §484(a)(1); 20 U.S.C. §1091(a)(1). Students enrolled in certain preparatory or teacher certification courses, may be eligible to receive limited forms of student aid. *FSA Handbook*, vol. 2, p. 19.

[22] *FSA Handbook*, vol. 2, p. 19.

In addition to the general criteria for all types of institutions, a program must meet specific eligibility requirements depending on whether the institution at which it is offered is a public or private nonprofit IHE, a proprietary IHE, or a postsecondary vocational IHE.[23]

Public and Private Nonprofit Institutions of Higher Education

At a public or private nonprofit IHE, the following types of programs are Title IV eligible: (1) programs that lead to an associate's, bachelor's, professional, or graduate degree; (2) transfer programs that are at least two academic years[24] in length and for which the institution does not award a credential but that are acceptable for full credit toward a bachelor's degree; (3) programs that lead to a certificate or other recognized nondegree credential, that prepare students for gainful employment in a recognized occupation, and that are at least one academic year in length; (4) certificate or diploma training programs that are less than one year in length, if the institution also meets the definition of a postsecondary vocational institution; and (5) programs consisting of courses required for elementary or secondary teacher certification in the state in which the student intends to teach.[25]

For all of these, an academic year must also require an undergraduate course of study to contain an amount of instructional time in which a full-time student is expected to complete at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours.

Proprietary and Postsecondary Vocational Institutions

In general, eligible programs at proprietary and postsecondary vocational institutions must meet a specified number of weeks of instruction and must provide training that prepares students for gainful employment in a recognized occupation (described below).[26] At proprietary and postsecondary vocational institutions, the following types of programs are Title IV eligible:

- undergraduate programs that provide at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of instruction offered over a minimum of at least 15 weeks[27]; such programs may admit, as regular students, individuals who have not completed the equivalent of an associate's degree;
- programs that provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered over a minimum of 10 weeks; such programs must be graduate or professional programs or must admit as regular students only individuals who have completed the equivalent of an associate's degree;

[23] In general, many of the eligible program requirements discussed herein may also apply to foreign IHEs.

[24] In general, an academic year must be at least 30 weeks of instructional time for a program measured in credit hours or via direct assessment and at least 26 weeks of instructional time for a program measured in clock hours. For both of these, an academic year must also require an undergraduate course of study to contain an amount of instructional time in which a full-time student is expected to complete at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours. HEA §481(a)(2); 20 U.S.C. §1088(a)(2). 34 C.F.R. §668.10(a)(3)(i). Regulations define the terms credit and clock hours. See 34 C.F.R. §600.2.

[25] These programs must be offered in credit or clock hours. 34 C.F.R. §668.8(c); *FSA Handbook*, vol. 2, p 20.

[26] As with public and private nonprofit IHEs, an academic year for programs at proprietary and postsecondary vocational IHEs must require an undergraduate course of study to contain an amount of instructional time in which a full-time student is expected to complete at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours over a period of at least 30 weeks for credit hour programs or 26 weeks for clock hour programs.

[27] Regulations define the terms clock hours, semester hours, trimester hours, and quarter hours. See 34 C.F.R. §§600.2 and 668.8

- short-term programs that provide between 300 and 600 clock hours of instruction over a minimum of 10 weeks[28]; such programs must have been in existence for at least one year, have verified completion and placement rates of at least 70%, may not last more than 50% longer than the minimum training period required by the state or federal agency for the occupation for which the program is being offered, and must admit as regular students some individuals who have not completed the equivalent of an associate's degree; and
- programs offered by accredited proprietary IHEs that lead to a bachelor's degree in liberal arts; the school must have been continuously accredited by an ED-recognized accrediting agency since at least October 1, 2007 and must have provided the program continuously since January 1, 2009.[29]

Programs Required to Prepare Students for Gainful Employment

Most nondegree programs offered by public and private nonprofit IHEs[30] must prepare students for "gainful employment in a recognized occupation."[31] Gainful employment requirements also apply to almost all programs offered by proprietary and postsecondary vocational institutions, regardless of whether they lead to a degree.[32]

Status of Gainful Employment Regulations

In response to concerns about the quality of programs that prepare students for gainful employment and the level of student debt assumed by individuals who attend these programs, ED issued final rules on gainful employment on October 31, 2014.[33] The regulations require that educational programs subject to gainful employment requirements offered by IHEs meet minimum performance standards to be considered offering education that prepares students for gainful employment in a recognized occupation. They also require IHEs to disclose specified information about each of its gainful employment programs to enrolled or prospective students.

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[28] Short-term programs are only eligible to participate in the Direct Loan Program. 34 C.F.R. §668.8(d)(3).

[29] 34 C.F.R. §668.8(d); *FSA Handbook*, vol. 2, p. 21.

[30] The following types of nondegree programs offered by public and private nonprofit IHEs are not subject to gainful employment requirements: (1) preparatory classwork necessary for enrollment in a Title IV eligible program; (2) approved comprehensive transition and postsecondary programs for students with intellectual disabilities; (3) transfer programs that are at least two academic years in length and for which the school does not award a credential but that are designed to be acceptable for full credit toward a bachelor's degree; and (4) teacher certification programs for which the institution does not award a credential. *FSA Handbook*, vol. 2, p. 23.

[31] HEA §§101(b)(1); 20 U.S.C. §§1001(b)(1).

[32] HEA §§ 102(b)(1)(A)(i) and 102(c)(1)(A); 20 U.S.C. §§ 1002(b)(1)(A)(i) and 1002(c)(1). The following programs offered by proprietary IHEs are not subject to gainful employment requirements: (1) programs offered by proprietary IHEs accredited by an ED-recognized regional accrediting agency that lead to a bachelor's degree in liberal arts. The school must have been continuously accredited by an ED-recognized accrediting agency since at least October 1, 2007, and must have provided the program continuously since January 1, 2009; (2) preparatory classwork necessary for enrollment in a Title IV eligible program; and (3) approved comprehensive transition and postsecondary programs for students with intellectual disabilities. *FSA Handbook*, vol. 2, p. 23.

[33] Previously, ED had issued rules on gainful employment in late 2010 and early 2011. On June 30, 2012, the day before the final regulations related to gainful employment performance metrics were to go into effect, the U.S. District Court for the District of Columbia vacated most of the gainful employment regulations. *Association of Private Colleges & Universities v. Duncan*, 2012 U.S. Dist. LEXIS 90434 (D.C. 2012). Rather than appealing the decision, ED promulgated new gainful employment rules.

Finally, the gainful employment rules require IHEs to report information to ED necessary to calculate the debt-to-earnings ratios.

Although the gainful employment regulations became effective July 1, 2015, various aspects of them have not yet been fully implemented or have been delayed in implementation. For example, ED delayed until July 1, 2019, some portions of the rule relating to certain disclosure requirements.[34] Additionally, to enable ED to calculate whether an IHE's programs meet the minimum performance standards (discussed below), regulations specify that ED obtains data from the Social Security Administration (SSA).[35] However, a memorandum of understanding relating to data sharing between ED and SSA lapsed in 2018.[36]

In August 2018, ED issued a Notice of Proposed Rulemaking that proposes to rescind the gainful employment rules in their entirety.[37] Based on HEA requirements relating to the implementation date for Title IV regulations,[38] the earliest possible date the proposed rules could go into effect is July 1, 2020.[39]

Current Gainful Employment Regulations

The gainful employment regulations establish a framework within which educational programs offered by IHEs must meet minimum performance standards to be considered offering education that prepares students for gainful employment in a recognized occupation. Under the framework, ED annually calculates two debt-to-earnings (D/E) rates for each gainful employment program offered by an IHE, the discretionary income rate and the annual earnings rate.[40] These rates measure a gainful employment program's completers' debt[41] (their annual loan payments) as a percentage of their post-completion earnings. Using these measures, institutions will be determined to be "passing," "in the zone," or "failing." Thresholds for each category are as follows:

[34] Department of Education, "Program Integrity: Gainful Employment," 83 *Federal Register* 28177, June 18, 2018.

[35] 34 C.F.R. §668.404(c)(1).

[36] Emily Wilkins, "Student Loan, Gainful Employment Rules Delayed, Official Says," *Bloomberg Government*, October 2, 2018, https://about.bgov.com/blog/student-loan-rules-delayed-official-says/.

[37] Department of Education, "Program Integrity: Gainful Employment," 83 *Federal Register* 40167, August 14, 2018.

[38] HEA §492(c); 20 U.S.C. §1089(c).

[39] Emily Wilkins, "Student Loan, Gainful Employment Rules Delayed, Official Says," *Bloomberg Government*, October 2, 2018, https://about.bgov.com/blog/student-loan-rules-delayed-official-says/.

[40] 34 C.F.R. Part 668, Subpart Q.

[41] To be included in a program's D/E calculation, a program completer must have received Title IV aid to enroll in the program. Program completer debt used in the D/E rates include both Title IV loans and private education loans. 34 C.F.R. §§668.402 & 668.404.

- **Passing**: Programs whose completers have annual loan payments[42] less than or equal to 8% of annual earnings[43] (the annual earnings rate) *or* less than or equal to 20% of discretionary income[44] (the discretionary income rate).
- **In the zone:** Programs whose completers have annual loan payments greater than 8% but less than or equal to 12% of annual earnings *or* greater than 20% but less than or equal to 30% of discretionary income.
- **Failing**: Programs whose completers have annual loan payments greater than 12% of annual earnings *and* greater than 30% of discretionary income.

Programs that are failing in two out of any three consecutive years or that are in the zone for four consecutive years will be ineligible for Title IV participation for three years.

The gainful employment rules also contain several disclosure requirements. For any year in which ED notifies an IHE that a gainful employment program could become ineligible in the next year based on its debt-to-earnings ratios (i.e., one year of failure or three years in the zone), the IHE must provide a warning to current and prospective students that the program does not meet the gainful employment standards and that if the program does not meet the gainful employment standards in the future, students would not be able to receive Title IV aid.[45]

In addition, an IHE must disclose specified information about each of its gainful employment programs to enrolled and prospective students. Information to be disclosed includes the following:[46]

- the primary occupation that the program prepares students to enter;
- whether the program satisfies applicable educational prerequisites for professional licensure or certification in each state within the institution's metropolitan statistical area (MSA);
- program length and number of clock or credit hours, or equivalent, in the program;
- the program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates;

[42] Annual loan payments are calculated by determining the median loan debt of a program's completers during the cohort period (two or four years, depending on number of program completers) and amortizing the median loan debt over a specified repayment period, depending on the credential offered by the program (i.e., over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate's degree, or a graduate certificate; over a 15-year repayment period for a program that leads to a bachelor's or a master's degree; or over a 20-year period for a program that leads to a doctoral or first-professional degree). 34 C.F.R. §668.404(b).

[43] Annual earnings are the greater of the mean or median annual earnings. ED obtains the earnings of gainful employment program completers during the cohort period from the Social Security Administration. 34 C.F.R. §668.404(c).

[44] Discretionary income is the difference between the greater of the mean or median annual earnings and 150% of the Federal Poverty Guidelines. 34 C.F.R. §668.404(a).

[45] Additional information required in the warning includes descriptions of the academic and financial options available to enrolled students to continue in another program at the IHE or to transfer credits to another IHE. An IHE must provide prospective students with similar information and may not enroll, register, or enter into a financial commitment with a prospective student earlier than (a) three business days after it provided the prospective student with the warning or (b) if 30 days have passed from the date the IHE first provided the warning to the prospective student, three business days after it provides the prospective student with a second warning. 34 C.F.R. §668.410(a)(6).

[46] 34 C.F.R. §668.412.

- Federal Family Education Loan (FFEL) and Direct Loan program loan repayment rates for all students who entered repayment on Title IV loans and who enrolled in the program, for those who withdrew from the program, and for those who completed the program;[47]
- the program tuition, fees, and additional costs incurred by a student who completes the program within the program's published length;
- the job placement rate for the program, if otherwise required by the institution's accrediting agency or state;
- the percentage of enrolled students who received Title IV or private loans for enrollment in the program;
- the median loan debt and mean or median earnings of students who completed the program, of students who withdrew from the program, and of both groups combined;
- the program cohort default rate; and
- the annual earnings rate for the program.[48]

Institutions must also certify that each of their gainful employment programs is included in the IHE's accreditation, meets any state or federal entity accreditation requirements, and meets any state licensing and certification requirements for the state in which the IHE is located.

Program Integrity Triad

Title IV of the HEA sets forth three requirements to ensure program integrity in postsecondary education, known as the program integrity triad. The three requirements are state authorization, accreditation by an accrediting agency recognized by ED, and eligibility and certification by ED. This triad is intended to provide a balance in the Title IV eligibility requirements. The states' role is to provide consumer protection, the accrediting agencies' role is to provide quality assurance, and the federal government's role is to provide oversight of compliance to ensure administrative and fiscal integrity of Title IV programs at IHEs.

State Authorization

The state role in the program integrity triad is to provide legal authority for an institution to operate a postsecondary educational program in the state in which it is physically located.[49]

There are two basic requirements for an IHE to be considered legally authorized by a state:

1. the state must authorize the IHE by name to operate postsecondary educational programs, and
2. the state must have in place a process to review and address complaints concerning IHEs, including enforcing applicable state law.[50]

[47] For information on how the loan repayment rate is calculated, see 34 C.F.R. §668.413.

[48] The annual earnings rate is the percentage of a gainful employment program's annual loan payments divided by the higher of the mean or median annual earnings of the program's completers during the applicable cohort period.

[49] 34 C.F.R. §600.9.

[50] These two requirements do not apply to (1) institutions authorized by the federal government by name to operate postsecondary educational programs and (2) institutions authorized by name by an Indian tribe to operate

An IHE can be authorized by name through a state charter, statute, constitutional provision, or other action by an appropriate state agency (e.g., authorization to conduct business or operate as a nonprofit organization). Additionally, an institution must also comply with any applicable state approval or licensure requirements.[51]

The state agency responsible for the authorization of postsecondary institutions must also perform three additional functions:

- upon request, provide the Secretary with information about the process it uses to authorize institutions to operate within its borders;
- notify the Secretary if it has evidence to believe that an institution within its borders has committed fraud in the administration of Title IV programs; and
- notify the Secretary if it revokes an institution's authorization to operate.[52]

On December 19, 2016, ED issued final regulations related to state authorization for IHEs offering postsecondary distance or correspondence education (discussed later in this report). The regulations would require an IHE offering postsecondary distance or correspondence education to students residing in a state in which the IHE is not physically located to meet any requirements within the student's state of residence. Under the rules, an IHE may meet this requirement if it participates in a state authorization reciprocity agreement.[53] These regulations were scheduled to become effective July 1, 2018. However, on July 3, 2018 (and effective June 29, 2018), the Secretary of Education (Secretary) issued a final rule delaying the implementation of these requirements until July 1, 2020.[54]

Accreditation

The second component of the program integrity triad is accreditation by an ED-recognized accrediting agency or association.[55] In higher education, accreditation is intended to help ensure an acceptable level of quality within IHEs. For Title IV purposes, an institution must be accredited or preaccredited by an ED-recognized accrediting agency. Each accrediting agency must meet HEA-specified standards to be recognized by ED.

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postsecondary educational programs, provided they are located on tribal lands and the tribal government has a process to review and address complaints concerning the IHEs and enforces applicable tribal law. Additionally, religious institutions are considered authorized to operate postsecondary educational programs within a state if they are exempt under state law from state authorization as religious institutions. *Federal Student Aid Handbook*, vol. 2, pp. 5-6.

[51] States may exempt institutions established through a state charter, statute, or constitutional provision from state approval or licensure requirements based on the IHE's having been in operation for at least 20 years or based on its accreditation by one or more ED-recognized accrediting agencies. If the IHE was authorized by the state to conduct business or operate as a nonprofit organization, the state may not exempt the IHE from state approval or licensure requirements based on years in operation, accreditation, or comparable exemptions. *Federal Student Aid Handbook*, vol. 2, p. 6.

[52] HEA §495; 20 U.S.C. §1099a.

[53] A state reciprocity agreement is "an agreement between two or more states that authorizes institutions located and legally authorized in a state covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other states covered by the agreement." U.S. Department of Education, "Program Integrity and Improvement," 81 *Federal Register* 92262, December 19, 2016.

[54] Department of Education, "Program Integrity and Improvement," 83 *Federal Register* 31296, July 3, 2018.

[55] For additional information on accreditation and the federal government's role, see CRS Report R43826, *An Overview of Accreditation of Higher Education in the United States*, by Alexandra Hegji.

Background

From its inception, accreditation has been a voluntary process. It developed with the formation of associations that distinguished between IHEs that merited the designation of college or university from those that did not. Since then, accreditation has been used as a form of "external quality review ... to scrutinize colleges, universities and programs for quality assurance and quality improvement."[56]

In 1952, shortly after the passage of the Veterans' Readjustment Act of 1952 (the Korean GI Bill; P.L. 82-550), the federal government began formally recognizing accrediting agencies. This was done as one means to assess higher education quality and link it to determining which institutions would qualify to receive federal aid under the Korean GI Bill. Rather than creating a centralized authority to assess quality, the federal government chose to rely in part on the existing expertise of accrediting agencies.[57] Today, ED's formal recognition of accrediting agencies is important, because an IHE's Title IV eligibility is conditioned upon accreditation from an ED-recognized accreditation organization.[58]

As part of the accreditation system's development, three types of accrediting agencies have emerged:

- **Regional accrediting agencies.** These operate in six regions of the United States, with each agency concentrating on a specific region. Generally, these accredit entire public and private nonprofit degree-granting IHEs.
- **National accrediting agencies.** These operate across the United States and also accredit entire institutions. There are two types of national accrediting agencies: faith-based agencies that accredit religiously affiliated or doctrinally based institutions, which are typically private nonprofit degree-granting institutions, and career-related agencies that typically accredit proprietary, career-based, degree- and nondegree-granting institutions.
- **Specialized or programmatic accrediting agencies.** These operate throughout the United States and accredit individual educational programs (e.g., law) and single-purpose institutions (e.g., freestanding medical schools). Specific educational programs are often accredited by a specialized accrediting agency, and the institution at which the program is offered is accredited by a regional or national accrediting organization.[59]

Accreditation Process

Generally, an institution must be accredited by an ED-recognized accrediting agency that has the authority to cover all of the institution's programs.[60] Alternatively, a public or private nonprofit IHE may be preaccredited by an agency recognized by ED to grant such preaccreditation, and a

[56] Judith S. Eaton, *An Overview of U.S. Accreditation*, Council for Higher Education Accreditation, Washington, DC, November 2015, p. 1, http://chea.org/pdf/Overview%20of%20US%20Accreditation%202015.pdf (hereinafter CHEA, *An Overview of U.S. Accreditation*).

[57] For additional information on the history of accreditation and the federal role, see John R. Proffit, The Federal Connection for Accreditation, *The Journal of Higher Education*, 1979, http://www.jstor.org/stable/1980935?seq=1.

[58] HEA §101(a)(5); 20 U.S.C. §1001(a)(5).

[59] CHEA, *An Overview of U.S. Accreditation*, p. 2.

[60] Such an agency is known as the institution's primary accrediting agency.

public postsecondary vocational institution may be accredited by a state agency[61]that ED determines is a reliable authority. Proprietary institutions must be accredited by an ED-recognized accrediting agency.[62]

The accreditation process begins with an institution or program requesting accreditation. Institutional accreditation is cyclical, with a cycle ranging from every few years up to 10 years. Initial accreditation does not guarantee subsequent renewal of the accredited status.[63]

Typically, an institution seeking accreditation will first perform a self-assessment to determine whether its operations and performance meet the basic standards required by the relevant accrediting agency. Next, an outside group of higher education peers (e.g., faculty and administrators) and members of the public conduct an on-site visit at the institution during which the team determines whether the accrediting organization's standards are being met. Based on the results of the self-assessment and site visit, the accrediting organization determines whether accreditation will be awarded, renewed, denied, or provisionally awarded to an institution.[64]

Educational programs within institutions can be accredited by programmatic accrediting agencies; however, a program is not required to be accredited by a programmatic accrediting agency for Title IV purposes. Rather, it only needs to be covered by the IHE's primary accrediting agency.[65] Frequently, programmatic accrediting agencies review a specific program within an IHE that is accredited by a regional or national accrediting agency.

An institution that has had its accreditation revoked or terminated for cause cannot be recertified as an IHE eligible to participate in Title IV programs for 24 months following the loss of accreditation, unless the accrediting agency rescinds the loss. The same rules apply if an institution voluntarily withdraws its accreditation. The Secretary can, however, continue the eligibility of a religious institution whose loss of accreditation, whether voluntary or not, is related to its religious mission and not to the HEA accreditation standards.[66] If an institution's accrediting agency loses its recognition from ED, it has up to 18 months to obtain accreditation from another ED-recognized agency.[67]

Federal Recognition of Accrediting Agencies

Although the federal government does not set specific standards for institutional or programmatic accreditation, generally, it does require that institutions be accredited or preaccredited by a

[61] This requirement is distinct from the state authorization requirement.

[62] *FSA Handbook*, vol. 2, p. 8.

[63] CHEA, *An Overview of U.S. Accreditation*, p. 4.

[64] Ibid., pp. 4-5. Accrediting agency terms such as "award" or "deny" that are used in this report are meant to provide general descriptions of the types of actions taken by accrediting agencies, as accrediting agencies' definitions for these terms may vary.

[65] Generally, although institutions are not required to have their programs accredited by programmatic accrediting agencies, they may wish to have a program accredited for various reasons. For instance, many employers require prospective employees to be graduates of an accredited program, and licensure requirements for some occupations in certain states require programmatic accreditation. Under the gainful employment regulations, however, an institution must certify to ED that each gainful employment program it operates is programmatically accredited, if such accreditation is required by a federal government entity or by the state in which the institution is located to participate in the Title IV student aid programs. This certification requirement effectively requires programmatic accreditation for Title IV eligibility in certain instances. 34 C.F.R. §668.414(d)(1).

[66] 20 U.S.C. §1099b(j).

[67] HEA §498(h)(2); 20 U.S.C. §1099c(h)(2).

recognized accrediting organization to be eligible for Title IV participation. ED's primary role in accreditation is to recognize an accrediting agency as a "reliable authority regarding the quality of education or training offered" at IHEs through the processes and conditions set forth in the HEA and federal regulations.[68]

For ED recognition, Section 496 of the HEA specifically requires that an accrediting agency be a state, regional, or national agency that demonstrates the ability to operate as an accrediting agency within the relevant state or region or nationally. Additionally, agencies must meet one of the following criteria:

- IHE membership with the agency must be voluntary, and one of the primary purposes of the agency must be accreditation of the IHEs.[69]
- The agency must be a state agency approved by the Secretary as an accrediting agency on or before October 1, 1991.
- The agency must either conduct accreditation through a voluntary membership of individuals in a profession, or it must have as its primary purpose the accreditation of programs within institutions that have already been accredited by another ED-recognized agency.

Agencies that meet the first or third criterion listed above must also be administratively and financially separate and independent of any related trade association or membership organization.[70] For an agency that meets the third criterion and that was ED-recognized on or before October 1, 1991, the Secretary may waive the requirement that the agency be administratively and financially independent of any related organization, but only if the agency can show that the existing relationship with the related organization has not compromised its independence in the accreditation process.

All types of accrediting agencies must show that they consistently apply and enforce standards that ensure that the education programs, training, or courses of study offered by an IHE are of sufficient quality to meet the stated objectives for which the programs, training, or courses are offered. The standards used by the accrediting agencies must assess student achievement in relation to the institution's mission; this may include course completion, job placement rates, and passage rates of state licensing exams. Agencies must also consider curricula, faculty, facilities, fiscal and administrative capacity, student support services, and admissions practices.

Accrediting agencies must also meet requirements that focus on the review of an institution's operating procedures, including reviewing an institution's policies and procedures for determining credit hours, the application of those policies and procedures to programs and

[68] HEA §496; 20 U.S.C. §1099b; 34 C.F.R. §602.1.

[69] ED also recognizes accrediting agencies for the purpose of participating in other federal programs. ED-recognition of accrediting agencies for purposes of participating in non-Title IV programs are beyond the scope of this report.

[70] Section 496 of the HEA (20 U.S.C. §1099b) sets forth four criteria for an accrediting agency to be considered "separate and independent." They are (1) members of the postsecondary education governing body of the agency cannot be elected or selected by the board or chief executive officer of any related or affiliated trade association or membership organization; (2) for every six members of the board of the agency, at least one must be a member of the public; (3) dues to the agency must be paid separately from dues to any related or associated trade association or membership organization; and (4) the agency's budget must be developed and determined by the agency, without review or consultation from another entity or organization.

coursework, and reviewing any newly established branch campuses.[71] They must also perform regular on-site visits that focus on the quality of education and program effectiveness.[72]

Eligibility and Certification by ED

The final component of the program integrity triad is eligibility and certification by ED. Here, ED is responsible for verifying an institution's legal authority to operate within a state and its accreditation status. ED also evaluates an institution's financial responsibility and administrative capability to administer Title IV student aid programs. An institution can be certified to participate in Title IV for up to six years before applying for recertification.

Financial Responsibility

ED determines an IHE's financial responsibility based on its ability to provide the services described in its official publications, to administer the Title IV programs in which it participates, and to meet all of its financial obligations.[73] A public IHE is deemed financially responsible if its debts and liabilities are backed by the full faith and credit of the state or another government entity.[74] A proprietary or private nonprofit IHE is financially responsible if it meets specific financial ratios (e.g., equity ratio) established by ED,[75] has sufficient cash reserves to make any required refunds (including the return of Title IV funds), is meeting all of its financial obligations, and is current on its debt payments.[76]

Even if an institution meets the above requirements, ED does not consider it financially responsible if the IHE does not meet third-party financial audit requirements or if the IHE violated past performance requirements, such as failing to satisfactorily resolve any compliance issues identified in program reviews or audits.[77]

Alternatively, if an institution does not meet the above standards of financial responsibility, ED may still consider it financially responsible or give it provisional certification, under which it may operate for a time, if it qualifies under an alternative standard. These alternative standards include submitting an irrevocable letter of credit to ED that is equal to at least 50% of the FSA program funds that the IHE received during its most recently completed fiscal year, meeting specific monitoring requirements, or participating in the Title IV programs under provisional certification.[78]

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[71] 34 C.F.R. §602.24.

[72] 34 C.F.R. §602.17.

[73] HEA §498(c); 20 U.S.C. §1099c(c); 34 C.F.R. §668, Subpart L.

[74] An IHE is considered to have the full faith and credit backing if it notifies ED that it is designated as a public institution by the state, local, or municipal government entity; tribal authority; or other government entity that has the legal authority to make such a designation. The IHE must provide ED with a letter from an appropriate official confirming its status as a public institution. *FSA Handbook*, vol. 2, p. 89.

[75] In evaluating an IHE's financial responsibility, ED will calculate a composite score based on its equity, primary, and net income ratios. 34 C.F.R. §668.172.

[76] *FSA Handbook*, vol. 2, p. 90.

[77] *FSA Handbook*, vol. 2, pp. 89-90; 100-101.

[78] *FSA Handbook*, vol. 2, pp. 96-99.

Administrative Capability

Along with demonstrating financial responsibility, an institution must demonstrate its ability to properly administer the Title IV programs in which it participates and to provide the education it describes in public documents (e.g., marketing brochures). Administrative capability focuses on the processes, procedures, and personnel used in administering Title IV funds and indicators of student success.[79]

Administrative capability standards address numerous aspects of Title IV administration. For example, to administer Title IV programs an institution must use ED's electronic processes[80] and develop a system to identify and resolve discrepancies in Title IV information received by various institutional offices. The IHE must also refer cases of Title IV student fraud or criminal misconduct to ED's Office of Inspector General for resolution, and it must provide all enrolled and prospective students financial aid counseling. Finally, the IHE must have an adequate internal system of checks and balances that includes dividing the functions of authorizing payments and disbursing funds between two separate offices.[81]

Institutions are required to have a capable staff member to administer Title IV programs and coordinate those programs with other aid received by students.[82] This person must also have an adequate number of qualified staff to assist with aid administration. Before receiving Title IV funds, an IHE must certify that neither it nor its employees have been debarred or suspended by a federal agency; similar limitations apply to lenders, loan servicers, and third-party servicers.[83]

Relating to indicators of student success, an institution must have satisfactory academic progress (SAP) standards for students receiving Title IV funds. In general, IHEs must develop SAP standards that establish a minimum grade point average (or its equivalent) for students and a maximum time frame in which students must complete their educational programs. A student who fails to meet the SAP requirements becomes ineligible to receive Title IV funds.[84] Also related to student success indicators, an institution that seeks to participate in Title IV programs for the first time may not have an undergraduate withdrawal rate for regular students that is greater than 33% during its most recently completed award year.[85]

Cohort Default Rate

An institution may be deemed administratively incapable if it has a high cohort default rate (CDR). In general, the CDR is the number of an IHE's federal loan recipients who enter repayment in a given fiscal year (the cohort fiscal year) and who default within a certain period of

[79] HEA §498(d); 20 U.S.C. § 1099c(d); 34 C.F.R. §668.16.

[80] Some of the required electronic processes include establishment of a Student Aid Internet Gateway mailbox to transmit student data records to ED, use of the E-App to submit and update an institution's eligibility information, and use of the Default Management website to receive draft and official cohort default rate data. A list of required electronic processes can be found at *FSA Handbook*, vol. 2, p. 64.

[81] 34 C.F.R. §668.16.

[82] ED considers an individual capable for purposes of Title IV administration if the individual: (1) is certified as a financial aid administrator, if the institution's state requires such certification; (2) has successfully completed an ED-provided or ED-approved Title IV training program; or (3) has previous experience and success in administering Title IV programs. This list is not definitive; ED may consider other relevant factors. 34 C.F.R. §668.16(b)(1).

[83] *FSA Handbook*, vol. 2, pp. 50-58.

[84] For more information about SAP and student eligibility for FSA programs, see *FSA Handbook*, vol. 1.

[85] Withdrawal occurs when students drop out of all Title IV eligible coursework during an academic term. *FSA Handbook*, vol. 2, p. 2-14.

time after entering repayment (cohort default period; CDP), *divided by* the total number of borrowers who entered repayment in the cohort fiscal year.[86]

Since 2014, ED has used a three-year CDP in calculating an institution's CDR.[87] An IHE will be found administratively incapable if one of the following conditions is met:

1. an institution's CDR is greater than 40% in one year for loans made under the FFEL and Direct Loans programs;[88]
2. an institution's CDR is 30% or greater for each of the three most recent fiscal years for loans made under the FFEL and Direct Loans programs; or
3. an institution's CDR is 15% or greater in any single year for loans made under the Federal Perkins Loan Program.

When an IHE is determined to be administratively incapable due to a high CDR, it may become ineligible to participate in the Direct Loan, Pell Grant, and/or Perkins Loan programs (but not other Title IV programs). ED may grant provisional certification for up to three years to an institution that would be deemed administratively capable except for its high cohort default rates.[89]

Provisional Certification

If an institution is seeking initial certification, ED can grant it up to one year of provisional certification. ED can also grant an institution provisional certification for up to three years if ED is determining the IHE's administrative capacity and financial responsibility for the first time, if the IHE has experienced a partial or total change in ownership, or if ED determines that the administrative or financial condition of the IHE may hinder its ability to meet its financial responsibilities. Additionally, if an accrediting agency loses its ED recognition, any institution that was accredited by that agency may continue to participate in Title IV programs for up to 18 months after ED's withdrawal of recognition.[90]

Program Reviews

To ensure that an institution is conforming to eligibility requirements, ED can conduct program reviews. During a program review, ED evaluates an institution's compliance with Title IV requirements and identifies actions the IHE must take to correct any problem(s). Review priority is given to those institutions with high cohort default rates; IHEs with significant fluctuations in Pell Grant awards or Direct Loan volume that are not accounted for by changes in programs offered; IHEs that are reported to have deficiencies or financial aid problems by their state or

[86] For institutions with fewer than 30 students entering repayment in a given cohort fiscal year, an "average rate" CDR is used, which is calculated by dividing the number of borrowers who entered repayment in the current cohort fiscal year and the two preceding cohort fiscal years, by the number who defaulted in the CDP for the cohort fiscal year in which they entered repayment. HEA § 434(m)(1)(A); 20 U.S.C. §1085(m)(1)(A).

[87] For instance, the 2013 cohort fiscal year includes the number of borrowers who entered repayment in 2013 and who defaulted in 2013, 2014, or 2015. In 2016, the CDR for the 2013 cohort fiscal year was used to determine whether an institution is administratively incapable based on that information. Prior to 2014, ED used a two-year CDP in calculating an institution's CDR.

[88] These first two CDRs are calculated for Federal Family Education Loan program Subsidized and Unsubsidized Stafford Loans and Direct Loan program Subsidized and Unsubsidized Loans. An institution may be subject to provisional certification if two of the three of its most recent CDRs are 30% or greater. 34 C.F.R. §668.16(m).

[89] 34 C.F.R. §668.16(m)(2)(i).

[90] 34 C.F.R. §668.13(c).

accrediting agency; IHEs with high annual dropout rates;[91] and IHEs determined by ED to pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.[92] If, during a review, ED determines that an institution is not administratively capable or financially responsible or is violating Title IV program rules, ED may grant it provisional certification, take corrective actions, or impose sanctions.

Sanctions and Corrective Actions

ED has the authority to impose a variety of sanctions and corrective actions on an institution that violates Title IV program rules, a Program Participation Agreement (discussed later in this report) or any other agreement made under the laws or regulations, or if it substantially misrepresents the nature of its educational programs, financial charges, or graduates' employability. Sanctions include fines, limitations, suspensions, emergency actions, and terminations. ED can also sanction third-party servicers performing tasks related to the institution's Title IV programs.

Fines, Limitations, and Suspensions

ED may impose several types of sanctions on institutions for statutory and regulatory violations, including fines, limitations, and suspensions. ED can fine an institution up to $55,907 for each statutory or regulatory violation it commits, depending on the size of the IHE and the seriousness of the violation.[93]

Under a limitation, ED imposes specific conditions or restrictions on an institution related to its administration of Title IV funds. A limitation lasts for at least 12 months, and if an institution fails to abide by the limitation, ED may initiate a termination proceeding.

Finally, under a suspension, an institution is not allowed to participate in Title IV programs for up to 60 days.

Each of these sanctions may require an institution to take corrective actions as well, which may include repaying illegally used funds or making payments to eligible students from the IHE's own funds.[94]

Emergency Action

ED can take emergency action to withhold Title IV funds from an institution if it receives reliable information that an IHE is violating applicable laws or regulations, agreements, or limitations. ED must determine that the institution is misusing federal funds, that immediate action is necessary to stop misuses, and that the potential losses outweigh the importance of using established procedures for limitation, suspension, or termination. An emergency action suspends an

[91] "High annual dropout rates" is undefined.

[92] HEA §498A(a)(2); 20 U.S.C. §1099c-1(a)(2).

[93] HEA Section 487(c)(3)(B) (20 U.S.C. §1094(c)(3)(B)) specifies that fines may equal up to $25,000 for each violation. However, the Inflation Adjustment Act (20 U.S.C. §2461, note) requires that each federal agency annually adjust for inflation their civil monetary penalties. The $55,907 fine for institutional Title IV violations represents ED's most recent adjustment to its civil monetary penalties. Department of Education, "Adjustment to Civil Monetary Penalties for Inflation," 83 *Federal Register* 2062, January 16, 2018.

[94] *FSA Handbook*, vol. 2, p. 212.

institution's participation in Title IV programs and prohibits it from disbursing such funds. Typically, the emergency action may not last more than 30 days.[95]

Termination of Title IV Participation

The final action ED can take is the termination of an institution's participation in Title IV programs. Generally, an institution that has had its participation terminated cannot reapply to be reinstated for at least 18 months. To request reinstatement, an institution must submit a fully completed application to ED and demonstrate that it has corrected the violation(s) for which its participation was terminated. ED may then approve, approve subject to limitations, or deny the institution's request.[96]

Other Related Issues

Several other requirements affect institutional eligibility for Title IV programs. Some of these requirements include institution Program Participation Agreements, which include provisions related to incentive compensation and campus crime reporting requirements; return of Title IV funds; and distance education. The failure to meet the requirements for any of these may result in the loss of Title IV eligibility or other sanctions.

Program Participation Agreements

HEA Section 487 specifies that each institution wanting to participate in Title IV student aid programs is required to have a current Program Participation Agreement (PPA). A PPA is a document in which the institution agrees to comply with the laws, regulations, and policies applicable to the Title IV programs; it applies to an IHE's branch campuses and locations that meet Title IV requirements, as well as its main campus. It also lists all of the Title IV programs in which the IHE is eligible to participate, the date on which the PPA expires, and the date on which the IHE must reapply for participation.

By signing a PPA, an institution agrees that it will act as a fiduciary responsible for properly administering Title IV funds, will not charge students a processing fee to determine a student's eligibility for such funds, and will establish and maintain administrative and fiscal procedures to ensure the proper administration of Title IV programs. The PPA reiterates many provisions required for institutional eligibility and ED certification discussed earlier in this report and contains several additional notable requirements that may affect an IHE's Title IV eligibility, which are described below. Along with the general participation requirements with which an institution must comply, a PPA may also contain institution-specific requirements.[97]

90/10 Rule

As part of their PPAs, domestic and foreign proprietary IHEs must agree to derive at least 10% of their revenue from non-Title IV funds (i.e., no more than 90% of their revenue can come from Title IV funds). This is known as the 90/10 rule. Examples of non-Title IV funds include private education loans and some military and veterans' benefits, such as benefits provided under the Post-9/11 GI Bill program. If an IHE violates the 90/10 rule in one year, it does not immediately

[95] Ibid.

[96] Ibid.

[97] 34 C.F.R. §668.14.

lose its Title IV eligibility. Rather, it is placed on a provisional eligibility status for two years. If the IHE violates the 90/10 rule for two consecutive years, it loses its eligibility for at least two years.[98]

Incentive Compensation

In a PPA, an IHE must agree it will not provide any commission or incentive compensation to individuals based directly or indirectly on their success in enrolling students or the enrolled students' obtaining financial aid; however, some exceptions apply to this general rule. For instance, IHEs can provide incentive compensation to individuals for the recruitment of foreign students who are ineligible to receive Title IV funds or they can provide incentive compensation through a profit-sharing plan.[99]

The ban on incentive compensation only applies to the activities of securing enrollment (recruitment) and securing financial aid. Other activities are not banned, and ED draws a distinction between activities that involve directly working with individual students and policy-level determinations that affect recruitment and financial aid awards. For instance, an individual who is responsible for contacting potential student applicants or assisting students in filling out an enrollment application cannot receive incentive compensation, but an individual who conducts marketing activities, such as the broad dissemination of informational brochures or the collection of contact information, can receive incentive compensation.[100]

Clery Act Requirements

HEA Section 485(f), referred to as the Clery Act,[101] requires domestic Title IV participating IHEs (1) to report to ED campus crime statistics and (2) establish and disseminate campus safety and security policies. Both the campus crime statistics and campus safety and security policies must be compiled and disseminated to current and prospective students and employees in an IHE's annual security report (ASR).

Campus crime statistics required to be reported to ED and included in an ASR include data on the occurrence on campus[102] of a range of offenses specified in statute, including murder, burglary, robbery, domestic violence, rape, and other forms of sexual violence.

In addition to campus crime statistics, ASRs must include statements of campus safety and security policies regarding, for example,

[98] 20 U.S.C. §1094(a)(24) and (d)(2). Of the 1,764 IHEs reporting revenues for purposes of the 90/10 rule, between July 1, 2016, and June 30, 2017, a total of 12 had Title IV revenues that were greater than 90%, and all remained Title IV eligible because they satisfied the 90/10 rule in the previous year. Source: Letter from Diane Auer Jones, Principal Deputy Under Secretary, Delegate the Duties of Under Secretary, U.S. Department of Education, to Virginia Foxx, Chairwoman, Committee on Education and the Workforce, U.S. House of Representatives, December 10, 2018, and Office of Federal Student Aid, Data Center, 2016-2017 Award Year: Report and Summary Chart.

[99] 34 C.F.R. §668.14(22).

[100] For a detailed list of activities covered by the incentive compensation prohibition, see *FSA Handbook*, vol. 2, pp. 59-62, Tables 1-3 and U.S. Department of Education, "Higher Education: Program Integrity Questions and Answers—Incentive Compensation," http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html.

[101] For additional information, see Department of Education, *The Handbook for Campus Safety and Security Report*: *2016 Edition*, June 2016.

[102] For purposes of the Clery Act, "campus" includes campus areas, noncampus areas, and public property, if certain criteria are met. HEA §485(f)(6)(A)(ii); 20 U.S.C. §1092(f)(6)(A)(ii).

- procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and an IHE's response to such reports;
- security and access to campus facilities;
- campus law enforcement, including the law enforcement authority of campus security personnel, and the working relationship between campus security personnel and state and local law enforcement;
- programs designed to inform students and employees about the prevention of crimes; and
- the possession, use, and sale of alcoholic beverages and illegal drugs; enforcement of state underage drinking laws; enforcement of federal and state drug laws; and any drug or alcohol abuse education programs required under the HEA.[103]

An ASR must also include statements of policies specifically relating to incidence of domestic and sexual violence. For example, an ASR must include statements of policy regarding

- programs to prevent such incidents;
- procedures a victim should follow if such an incident as occurred;
- procedures an IHE will follow once such an incident has been reported and procedures for institutional disciplinary actions in cases of alleged incidents (including a statement of the standard of evidence that will be used in any school proceeding arising from the incident report); and
- possible sanctions and protective measures that an IHE may impose following a final determination in an institutional proceeding regarding such incidences.

The Clery Act prohibits the Secretary of Education from requiring IHEs to adopt particular policies, procedures, or practices; and prohibits retaliation against anyone exercising his or her rights or responsibilities under the act.

Return of Title IV Funds

HEA Section 484B specifies that when a Title IV aid recipient withdraws from an IHE before the end of the payment or enrollment period for which funds were disbursed, Title IV funds must be returned to ED according to a statutorily prescribed schedule. In general, when a student withdraws from an IHE, an IHE first determines the portion of Title IV aid considered to be "earned" by the student while enrolled and the portion considered to be "unearned." Unearned aid must be returned to ED. Up to the 60% point of a payment or enrollment period, unearned funds must be returned on a pro rata schedule. After the 60% point of a payment or enrollment period, the total amount of funds awarded is considered to have been earned by the student and no funds are required to be returned. Whether an IHE and/or the student is required to return the funds to ED depends on a variety of circumstances, including whether Title IV funds have been applied directly to a student's institutional charges.[104] Unearned funds must be returned to their respective programs in a specified order, with loans being returned first, followed by Pell Grants, and then

[103] HEA Section 120 requires that IHEs adopt and implement a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees.

[104] Generally, institutional charges are defined as charges for tuition and fees, institution-provided or contracted room and board, and other educational expenses that are paid directly to the institution (e.g., charges for supplies, equipment, and materials).

other Title IV aid.[105] In some instances, a student may have earned more aid than has been disbursed, and the difference is disbursed to the student after the student withdraws.[106]

Distance Education and Correspondence Education

Generally, distance education and correspondence education refers to educational instruction with a separation in time, place, or both between the student and instructor. It is a way in which institutions can increase student access to postsecondary education by offering alternatives to traditional on-campus instruction. Recently, due to the greater availability of new technologies, there has been substantial growth in the amount and types of courses institutions offer.

Section 103(7)(A) and (B) of the HEA and the accompanying regulations define distance education as instruction that uses "(1) the internet; (2) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices; [or] ... (3) audio conferencing" to deliver instruction to students separated from the instructor. A course taught through a video cassette, DVD, or CD-ROM is considered a distance education course if one of the above-mentioned technologies is used to support student-instructor interaction. Regardless of the technology used, "regular and substantive interaction between the students and the instructor" must be ensured.[107]

Correspondence courses are expressly excluded from the definition of distance education.[108] A correspondence course is one for which an institution provides instructional materials and exams for students who do not physically attend classes at the IHE, but does not include those courses that are delivered with "regular and substantive interaction between the students and the instructor" via one of the above-described technologies.[109]

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[105] Under certain circumstances, portions of Federal Supplemental Educational Opportunity Grants are excluded from the return of Title IV calculations. Federal Work-Study funds are not included in the calculation. *FSA Handbook*, vol. 5, p. 27.

[106] For additional information on the return of Title IV funds, including examples of how to calculate the amount of Title IV funds to be returned, see *FSA Handbook*, vol. 5.

[107] HEA §103(7); 20 U.S.C. §1003(7); 34 C.F.R. §600.2.

[108] The original HEA definition of distance education did not reference correspondence courses and courses offered via telecommunications; rather, such courses were considered subsets of distance education. Before July 1, 2010, Section 484(l)(4) of the HEA defined a telecommunications course as one offered principally through television, audio, or computer transmission, and a correspondence course was defined as a home-study course in which an IHE provided students who were separated from their instructor with instructional materials, including examinations, either by mail or electronic transmission. For correspondence courses and telecommunications courses, students completed the instructional materials and corresponding examinations and returned the examinations to the IHE for grading. Interaction between the instructor and the student was not regular and substantive, and the correspondence course was predominantly offered by an IHE via print-based media. For the purposes of Title IV aid eligibility, telecommunications programs were treated the same as traditional on-campus programs, while correspondence courses were subject to stricter requirements. With the substantial growth in the use of technology for educational instruction, the separate definition of telecommunications courses became unnecessary. Therefore in 2010, the Higher Education Opportunity Act (P.L. 110-315) eliminated the separate definition for telecommunications and incorporated the various technologies referenced in that definition into the definition of distance education. Department of Education, "Federal Student Aid Programs," 71 *Federal Register* 45667, August 9, 2006.

[109] 34 C.F.R. §600.2. In certain instances, elements of a correspondence course may be combined with non-correspondence course elements. These multi-component courses may or may not be considered correspondence courses for the purposes of Title IV eligibility. For specific examples of such courses, see *FSA Handbook*, vol. 2, p. 37.

50% Rule for Correspondence Courses

In 1992, partially in response to cases of some correspondence institutions' fraudulent and abusive practices used to attract unqualified students to enroll in programs of poor or questionable quality, Congress incorporated provisions referred to as the "50% rules" into the HEA. The rules affected both the eligibility of institutions offering correspondence courses and their students' eligibility for Title IV aid. In general, under the rules, an institution is ineligible for Title IV aid if more than 50% of its courses are offered by correspondence,[110] or if 50% or more of its students are enrolled in correspondence courses.[111]

State Authorization for Correspondence and Distance Education Courses

As discussed earlier in this report, rules promulgated in 2016 would have required an IHE offering postsecondary distance or correspondence education in a state in which it is not physically located to meet any state authorization requirements within that state. Under the regulations, an IHE could meet this requirement if it participates in a state authorization reciprocity agreement. These regulations were scheduled to become effective July 1, 2018. However, on July 3, 2018 (and effective June 29, 2018), the Secretary of Education issued a final rule delaying the implementation of these requirements until July 1, 2020.[112]

Foreign IHE Eligibility

The distinction between distance education and traditional instruction is also important for the purposes of Title IV program eligibility. Distance education programs provided by domestic IHEs are eligible for Title IV participation if they have been accredited by an accrediting agency recognized by ED to evaluate distance education programs.[113] A program offered by a foreign IHE, in whole or in part, through distance education (including telecommunications) or correspondence is ineligible for Title IV participation.[114]

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[110] HEA § 102(a)(3)(A) and (B); 20 U.S.C. §1002(a)(3)(A) and (B). This rule does not apply to "a public nonprofit technical institution or career and technical education school used exclusively or principally for the provision of career and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market." 20 U.S.C. §2302(3)(C).

[111] 34 C.F.R. 600.7(a)(1)(i) and (ii). This second limitation may be waived if an IHE offers a two-year associate's degree or four-year bachelor's degree program and it demonstrates to ED that in the award year, students who were enrolled in correspondence courses received 5% or less of the total FSA funds received by all of the IHE's students. ED, *FSA Handbook*, vol. 2, p. 103.

[112] Department of Education, "Program Integrity and Improvement," 83 *Federal Register* 31296, July 3, 2018.

[113] *FSA Handbook*, vol. 2, 36.

[114] 34 C.F.R. §600.51(d).

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