§ 600.7 Conditions of institutional ineligibility.

(a) General rule. For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if—

(1) For its latest complete award year—

(i) More than 50 percent of the institution's courses were correspondence courses as calculated under paragraph (b) of this section;

(ii) Fifty percent or more of the institution's regular enrolled students were enrolled in correspondence courses;

(iii) More than twenty-five percent of the institution's regular enrolled students were incarcerated;

(iv) More than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

(2) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution—

(A) Files for relief in bankruptcy, or

(B) Has entered against it an order for relief in bankruptcy; or

(3) The institution, its owner, or its chief executive officer—

(i) Has pled guilty to, has pled nolo contendere to, or is found guilty of, a crime involving the acquisition, use, or expenditure of title IV, HEA program funds; or

(ii) Has been judicially determined to have committed fraud involving title IV, HEA program funds.

(b) Special provisions regarding correspondence courses and students—(1) Calculating the number of correspondence courses and students.
courses. For purposes of paragraphs (a)(1)(i) and (ii) of this section—
(i) A correspondence course may be a complete educational program offered by correspondence, or one course provided by correspondence in an on-campus (residential) educational program;
(ii) A course must be considered as being offered once during an award year regardless of the number of times it is offered during that year; and
(iii) A course that is offered both on campus and by correspondence must be considered two courses for the purpose of determining the total number of courses the institution provided during an award year.

(2) Exceptions. (i) The provisions contained in paragraphs (a)(1)(i) and (ii) of this section do not apply to an institution that qualifies as a “technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market” under section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995.
(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor’s-degree program if the students enrolled in the institution’s correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

(c) Special provisions regarding incarcerated students—(1) Exception. The Secretary may waive the prohibition contained in paragraph (a)(1)(i) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma.

(2) Waiver for entire institution. If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) Other waivers. If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—
(i) For the four-year and two-year programs for which it awards a bachelor’s degree, an associate degree or a postsecondary diploma; and
(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(d) Special provision for a nonprofit institution if more than 50 percent of its enrollment consists of students who do not have a high school diploma or its equivalent. (1) Subject to the provisions contained in paragraphs (d)(2) and (d)(3) of this section, the Secretary waives the limitation contained in paragraph (a)(1)(iv) of this section for a nonprofit institution if that institution demonstrates to the Secretary’s satisfaction that it exceeds that limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(d) Special provision for a nonprofit institution if more than 50 percent of its enrollment consists of students who do not have a high school diploma or its equivalent. (1) Subject to the provisions contained in paragraphs (d)(2) and (d)(3) of this section, the Secretary waives the limitation contained in paragraph (a)(1)(iv) of this section for a nonprofit institution if that institution demonstrates to the Secretary’s satisfaction that it exceeds that limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

(2) Number of critical students. The Secretary grants a waiver under paragraph (d)(1) of this section only if no more than 40 percent of the institution’s enrollment of regular students consists of students who—
(i) Do not have a high school diploma or its equivalent; and
(ii) Are not served through contracts described in paragraph (d)(3) of this section.

(3) Contracts with Federal, State, or local government agencies. For purposes of granting a waiver under paragraph (d)(1) of this section, the contracts referred to must be with Federal, State, or local government agencies for the purpose of providing job training to low-income individuals who are in need of that training. An example of such a contract is a job training contract.
under the Job Training Partnership Act (JTPA).

(e) Special provisions. (1) For purposes of paragraph (a)(1) of this section, when counting regular students, the institution shall—
   (i) Count each regular student without regard to the full-time or part-time nature of the student's attendance (i.e., "head count" rather than "full-time equivalent");
   (ii) Count a regular student once regardless of the number of times the student enrolls during an award year; and
   (iii) Determine the number of regular students who enrolled in the institution during the relevant award year by—
      (A) Calculating the number of regular students who enrolled during that award year; and
      (B) Excluding from the number of students in paragraph (e)(1)(iii)(A) of this section, the number of regular students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees less any administrative fee that the institution is permitted to keep under its fair and equitable refund policy.

   (2) For the purpose of calculating a completion rate under paragraph (c)(3)(ii) of this section, the institution shall—
      (i) Determine the number of regular incarcerated students who enrolled in the other programs during the last completed award year;
      (ii) Exclude from the number of regular incarcerated students determined in paragraph (e)(2)(i) of this section, the number of those students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees, less any administrative fee the institution is permitted to keep under the institution's fair and equitable refund policy;
      (iii) Exclude from the total obtained in paragraph (e)(2)(i) of this section, the number of those regular incarcerated students who remained enrolled in the programs at the end of the applicable award year;
      (iv) From the total obtained in paragraph (e)(2)(i) of this section, determine the number of regular incarcerated students who received a degree, certificate, or other recognized educational credential awarded for successfully completing the program during the applicable award year; and
      (v) Divide the total obtained in paragraph (e)(2)(iv) of this section by the total obtained in paragraph (e)(2)(iii) of this section and multiply by 100.

(f)(1) If the Secretary grants a waiver to an institution under this section, the waiver extends indefinitely provided that the institution satisfies the waiver requirements in each award year.

   (2) If an institution fails to satisfy the waiver requirements for an award year, the institution becomes ineligible on June 30 of that award year.

(g)(1) For purposes of paragraph (a)(1) of this section, and any applicable waiver or exception under this section, the institution shall substantiate the required calculations by having the certified public accountant who prepares its audited financial statement under 34 CFR 668.15 or its title IV, HEA program compliance audit under 34 CFR 668.23 report on the accuracy of those determinations.

   (2) The certified public accountant's report must be based on performing an "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with or as part of the audit report referenced in paragraph (g)(1) of this section.

   (3) The certified public accountant's attestation report must indicate whether the institution's determinations regarding paragraph (a)(1) of this section and any relevant waiver or exception under paragraphs (b), (c), and (d) of this section are accurate; i.e., fairly presented in all material respects.

(h) Notice to the Secretary. An institution shall notify the Secretary—
   (1) By July 31 following the end of an award year if it falls within one of the prohibitions contained in paragraph
§ 600.8 Treatment of a branch campus.

A branch campus of an eligible proprietary institution of higher education or a postsecondary vocational institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1099c)


§ 600.9 State authorization.

(a)(1) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section.

(ii) If an institution loses its eligibility because of one of the prohibitions contained in paragraph (a)(1) of this section, to regain its eligibility, it must demonstrate—

(i) Compliance with all eligibility requirements;

(ii) That it did not fall within any of the prohibitions contained in paragraph (a)(1) of this section for at least one award year; and

(iii) That it changed its administrative policies and practices to ensure that it will not fall within any of the prohibitions contained in paragraph (a)(1) of this section.

(2) If an institution loses its eligibility because of any of the prohibitions contained in paragraphs (a)(2) and (a)(3) of this section, this loss is permanent. The institution’s eligibility cannot be reinstated.

(Approved by the Office of Management and Budget under control number 1840–0098)

(Authority: 20 U.S.C. 1088)