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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 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 three requirements are known as the program integrity triad and are intended to provide a balance between consumer protection, quality assurance, and oversight and compliance in postsecondary education.

Institutions also must offer at least one eligible program. Eligible programs are those that lead to certain defined degrees or certificates, prepare students for gainful employment, and fulfill durational requirements.

Proprietary institutions must meet additional HEA requirements that are otherwise inapplicable to nonprofit institutions, including deriving at least 10% of their revenues from non-Title IV funds (also known as the 90/10 rule).

Specific criteria are required for Title IV participation if an institution offers distance or correspondence education. In addition to being authorized to operate within the state in which it is located, an institution offering distance or correspondence education must also be accredited by an agency recognized by ED as an accrediting agency able to evaluate distance education programs. Finally, 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.

As the 114th Congress begins to consider HEA reauthorization, several issues related to institutional eligibility for Title IV programs may become a focus. These issues may include the sources from which proprietary institutions derive their revenue and whether current requirements should be applied or modified to address new types of postsecondary educational offerings.

This report first describes the types of institutions eligible to participate in Title IV programs and discusses the program integrity triad. Next, it discusses additional issues related to institutional eligibility, including recent statutory and regulatory changes pertaining to institutional eligibility requirements. Finally, this report explores some of the emerging issues that the 114th Congress might consider.

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Overview

Title IV of the Higher Education Act (HEA) authorizes programs that provide financial assistance to students to attend certain institutions of higher education (IHEs). In academic year (AY) 2013-2014, 7,397 institutions were classified as Title IV eligible IHEs.[1] Of those IHEs eligible to participle in Title IV programs, approximately 27.1% were public institutions, 25.6% were private nonprofit institutions, and 47.3% were private for-profit (or proprietary) institutions. It is estimated that $133.8 billion was made available to students through Title IV federal student aid (FSA) in FY2014.[2]

To be able to receive Title IV assistance, students must attend an institution that is

- 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 three requirements—state licensure, accreditation, and certification of eligibility—are known as the program integrity triad. The state licensure and accreditation components were developed independently to address the issues of quality assurance and consumer protection, and the federal government (ED specifically) 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. This component of the program integrity triad focuses on an institution's fiscal responsibility and administrative capacity to administer Title IV funds.

This report provides a general overview of HEA provisions that affect a postsecondary institution's eligibility for participation in Title IV FSA programs and discusses in more detail some issues that may be of interest in the forthcoming HEA reauthorization process. This report 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, the return of Title IV funds, and distance education. Finally, this report highlights major regulatory and statutory changes to institutional eligibility requirements made in recent decades and concludes by exploring some of the emerging issues that Congress may consider in the future.

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[1] Although 7,397 institutions were eligible to participate in Title IV FSA programs in AY2013-2014, only 6,142 institutions participated in and received funds through Title IV FSA programs. U.S. Department of Education, National Center for Education Statistics, *Postsecondary Institutions and Cost of Attendance in the United States: 2013-14; Degrees and Other Awards Conferred: 2012-13; and 12-Month Enrollment: 2012-13*, *First Look (Provisional Data)*, NCES 2014-066rec, Table 1, http://nces.ed.gov/pubs2014/2014066rev.pdf and U.S. Department of Education, Federal Student Aid, *Annual Report FY 2014*, Washington, DC, November 14, 2014, p. 2, https://studentaid.ed.gov/sites/default/files/FY2014_FSA_Annual_Report_508.pdf.

[2] This includes federal loans, work-study, and grants. See U.S. Department of Education, Federal Student Aid, *Annual Report 2014*, Washington, DC, November 14, 2013, p. 7, https://studentaid.ed.gov/sites/default/files/FY2014_FSA_Annual_Report_508.pdf.

Eligibility Criteria

To be eligible to participate in HEA Title IV FSA programs, institutions must meet certain 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 IHEs that is used to determine institutional eligibility for participation in HEA programs other than Title IV programs.[3] The Section 102 definition of IHEs 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 IHEs. This definition applies to institutional participation in non-Title IV HEA programs. Section 101 IHEs can be public or private nonprofit educational institutions. They must

- only admit individuals with a high school diploma or its equivalent, individuals beyond the age of compulsory school attendance, or individuals who are dually enrolled in both the institution and as regular students in secondary schools;
- be authorized to offer a postsecondary education within the state in which they are located;
- offer a bachelor's degree, provide at least a two-year program that is accepted as credit toward a bachelor's degree, award a degree that is accepted for admission to a graduate or professional program, or provide at least a one-year training program that prepares students for gainful employment in a recognized occupation; and
- be accredited or preaccredited by an accrediting agency recognized by ED to grant such statuses.[4]

Section 102 Institutions

Section 102 of the HEA defines IHEs only for the purposes of Title IV participation. Section 102 IHEs must meet the Section 101 criteria. However, unlike Section 101, the Section 102 definition of IHEs includes proprietary institutions of higher education (or for-profit institutions), postsecondary vocational institutions, and foreign institutions that have been approved by ED.[5]

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

[4] 20 U.S.C. §1001.

[5] 20 U.S.C. §1002(a)(1). Department of Education, *2014-2015 Federal Student Aid Handbook*, vol. 2, pp. 2-3 through 2-5, http://ifap.ed.gov/fsahandbook/1415FSAHandbookCompleteActiveIndex.html (hereinafter *FSA Handbook*).

Title IV-eligible IHEs must meet requirements related to the course of study offered at the institution and student enrollment. Any type of Section 102 institution becomes ineligible to participate in Title IV FSA programs if more than 25% of its enrolled students are incarcerated, if more than 50% of its enrolled students do not have a secondary school diploma or equivalent, or if it does not provide a two- or four-year course of study (or both) that leads to an associate's or bachelor's degree, respectively. 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.[6]

Finally, all eligible IHEs must meet other additional criteria to participate in Title IV programs. An institution must certify to ED that it has adopted and implemented a program to prevent alcohol abuse and illicit drug use by students,[7] and an institution's owner or chief executive officer must not have been convicted of or pled no contest or guilty to a crime involving the use of Title IV FSA funds.[8]

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

Proprietary Institutions of Higher Education

Proprietary institutions of higher education are private, for-profit educational institutions. To participate in Title IV programs, they must provide training for gainful employment in a recognized occupation or must provide a program leading to a baccalaureate degree in liberal arts that it has been continuously accredited by a regional accrediting agency since October 1, 2007, and have provided the program continuously since January 1, 2009. Additionally, it must have been legally authorized to give the same postsecondary instruction for at least two years.

Proprietary IHEs must 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).[9] Hereinafter, this is referred to as the 90/10 rule. However, if an institution violates this rule in one year, it does not immediately lose its eligibility. Rather, it is placed on a provisional eligibility status for two years. If the proprietary IHE violates the 90/10 rule for two consecutive years, then it loses its eligibility for at least two years.[10]

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[6] 20 U.S.C. §1002(a)(3).

[7] 20 U.S.C. §1011i.

[8] 20 U.S.C. §1002(a)(4)(B).

[9] Examples of non-Title IV funds include private education loans and some military and veterans' benefits, such as the Post-9/11 GI Bill Program.

[10] 20 U.S.C. §1094(a)(24) & (d)(2). Of the 1,948 IHEs reporting revenues for purposes of the 90/10 rule, between July 1, 2012, and June 30, 2013, 27 had Title IV revenues that were greater than 90%. Twenty-six of these institutions remained eligible for Title IV participation because they had met the 90/10 rule requirement for the previous year. One institution did not meet the requirements for two consecutive years, but did not lose its Title IV eligibility due to its failure to meet the 90/10 rule requirements, as it had lost Title IV eligibility previously for loss of accreditation. Letter from Lynn B Mahaffie, Acting Assistant Secretary for Postsecondary Education, to John Kline, Chairman, Committee on Education and the Workforce, U.S. House of Representatives, September 30, 2014, https://studentaid.ed.gov/sites/default/files/fsawg/datacenter/library/9010Report2014Kline.pdf.

Postsecondary Vocational Institutions

Postsecondary vocational institutions are public or private nonprofit education institutions. To participate in Title IV programs, they must provide training for gainful employment in a recognized occupation and meet the additional program criteria listed for proprietary IHEs, which include having been legally authorized to give the same postsecondary instruction for at least two years;[11] however, the 90/10 rule does not apply to these institutions.

Foreign Institutions

Institutional participation in Title IV FSA programs allows students from the United States to borrow through the federal Direct Loan (DL) Program to attend IHEs located outside of the United States.[12] In general, a foreign institution may participate in the DL Program if it is comparable to an eligible IHE within the United States (i.e., it meets Section 101 requirements) and has been approved by ED. ED recognizes foreign public, private nonprofit, and proprietary institutions.[13] Foreign proprietary institutions are subject to the same 90/10 rule as domestic proprietary IHEs.[14]

Eligible Programs

To qualify as an eligible institution for Title IV FSA participation, an institution must offer at least one eligible program, but overall institutional eligibility does not necessarily extend to all programs offered. Not all of an institution's programs need to meet program eligibility requirements for an IHE to participate in Title IV, but students enrolled in ineligible programs cannot receive Title IV FSA.[15] To be Title IV eligible, a program must lead to certain defined degrees or certificates or prepare students for gainful employment. Programs must also fulfill durational requirements to be eligible for Title IV participation.

Before awarding FSA 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 it is authorized by the appropriate state to offer the program.

In addition to the general criteria for all types of institutions, a program must meet 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.

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[11] *FSA Handbook*, vol. 2, p. 2-9.

[12] Foreign 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 taken out.

[13] 34 C.F.R. §600.54. Foreign medical, nursing, and veterinary institutions must meet additional requirements. See Department of Education, *Foreign School Eligibility Criteria*, Washington, DC, May 2010, p. 1, http://ifap.ed.gov/ForeignSchoolInfo/attachments/FSEligEligibilityCriteria.pdf.

[14] Ibid.

[15] *FSA Handbook*, vol. 2, p. 2-15.

Programs Required to Prepare Students for Gainful Employment

To be eligible for funding under Title IV, the HEA provides that an educational program at an IHE must lead to a degree (e.g., associate's degree, bachelor's degree) or prepare students for "gainful employment in a recognized occupation."[16] While the gainful employment requirement applies to some programs offered by public and private nonprofit IHEs, virtually all programs offered by proprietary IHEs must be gainful employment programs.[17]

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 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.[18]

ED decided not to appeal the court's decision.[19] Rather, it held a new round of negotiated rulemaking and published new final regulations for the gainful employment rules on October 31, 2014.[20] Effective July 1, 2015, the regulations establish a framework within which IHEs must meet minimum performance standards. Under the framework, the Secretary of Education (the Secretary) will calculate two debt-to-earnings rates, the discretionary income rate and the annual earnings rate. Using these measures, institutions will be determined to be "passing", "in the zone", or "failing." Thresholds for each category are as follows:

- **Passing**: Programs whose completers have annual loan payments[21] less than or equal to 8% of total earnings *or* less than or equal to 20% of discretionary income.

[16] 20 U.S.C. §1002(b)(1).

[17] Programs that lead to a bachelor's degree in liberal arts at a proprietary IHE accredited by an ED-recognized regional accrediting agency are not subject to the gainful employment requirements. IHEs offering such programs must have been continuously accredited by a regional accrediting agency since at least October 1, 2007 and have provided the program continuously since January 1, 2009. Additional requirements apply to foreign medical, veterinary, and nursing schools. Those additional requirements are beyond the scope of this report. For additional information, see 34 C.F.R. §600.54(e)(3)(i).

[18] *Association of Private Colleges & Universities v. Duncan*, 2012 U.S. Dist. LEXIS 90434 (D.C. 2012). The court invalidated the performance measures proposed by ED because it found they did not provide a meaningful way of measuring a program's eligibility to prepare students for gainful employment. The performance measures would have examined the income earned and the debt repaid by students after leaving a program. The court, however, did uphold some of the rule's disclosure provisions, including requiring IHEs to disclose the occupation for which the program prepares students, the on-time completion rate of students who completed the program, the tuition and fees charged, and the placement rate and median loan debt for students who completed the program. See U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, Gainful Employment Electronic Announcement #42—2011-2012 Disclosures for Gainful Employment Programs, November 23, 2012, http://www.ifap.ed.gov/eannouncements/112312GEAnnounce42DisclosureofGEPrograms1112.html.

[19] Nick DeSantis, "U.S. Won't Appeal Decision on Controversial Gainful-Employment Rule," *The Chronicle of Higher Education*, May 22, 2013, http://chronicle.com/blogs/ticker/u-s-wont-appeal-decision-on-controversial-gainful-employment-rule/60783.

[20] Department of Education, "Program Integrity: Gainful Employment," 79 *Federal Register* 64890, October 31, 2014.

[21] 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 the enrollment size of the program) and amortizing the median loan debt over a specified repayment period, depending on the credential offered by the program (e.g., over a 10-year repayment for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a (continued...)

- **In the zone:** Programs whose completers have annual loan payments greater than 8% but less than or equal to 12% of total 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 total 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. For any year in which the Secretary 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), an IHE must provide a warning to current and prospective students that the IHE does not meet the gainful employment standards and that if the IHE does not meet the standards in the future, students may not be able to receive Title IV FSA.[22]

The new rules also contain several disclosure requirements. Beginning January 1, 2017, 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:

- 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;
- FFEL and DL 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;[23]
- the program tuition, fees, and additional costs incurred by a student who completes the program within the program's length;
- the 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;

(...continued)

graduate certificate). 34 C.F.R. §668.404(b).

[22] Additional information required in the warning includes describing 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.

[23] This calculation is completed using a two-year cohort period.

- 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.[24]

Institutions must also certify that each of their gainful employment programs is included in the institution'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. Finally, the new rules require IHEs to report information to ED necessary to calculate the debt-to-earnings ratios.[25]

Durational Requirements

Many programs must fulfill requirements related to how much instructional time is provided to students. Some programs are measured by academic year, while others are measured by clock or credit hours.

Definitions

Clock and credit hours are used as measurements to determine how much instruction time a program must provide to students for it to be Title IV eligible.

A clock hour is a period of time comprising

- a 50- to 60-minute class, lecture, or recitation within a 60-minute period;
- a 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or
- 60 minutes of preparation in a correspondence course.[26]

A credit hour is an amount of student work that reasonably approximates at least

- for one semester or trimester hour of credit, one hour of classroom or direct faculty instruction and at least two hours of out-of-class work each week for approximately 15 weeks;

[24] The annual earnings rate is the percentage of a gainful employment program's annual loan payment (see footnote 21) divided by the higher of the mean or median annual earnings of the program's completers during the applicable cohort period.

[25] A week after the final rules were published, the Association of Sector Colleges and Universities, the same association that filed the lawsuit challenging the prior gainful employment regulations, filed a lawsuit in the U.S. District Court of the District of Columbia seeking to overturn the newest gainful employment regulations, asserting, among other arguments, that the rules single out private, for-profit IHEs and that they lack a reasoned basis. See *Association of Private Sector Colleges and Universities v. Duncan*, (D.C. 2014). http://www.career.org/news-and-media/press-releases/upload/APSCU-v-Duncan-DDC-2014-11-06-Plaintiff-s-Complaint.pdf.

[26] 34 C.F.R. §600.2, Clock Hour.

- for one quarter hour of credit, one hour of classroom or direct faculty instruction and at least two hours of out-of-class work each week for 10 to 12 weeks (or at least the equivalent amount of work over a different amount of time); or
- the equivalent amount of work listed in either bullet above for other institution-established academic activities, including internships, practica, and studio work.[27]

In addition to measuring instructional time in clock and credit hours, many programs must meet a minimum number of weeks of instructional time to be eligible to participate in Title IV programs. For programs that measure instructional time in credit hours, an academic year must provide at least 30 weeks of instructional time; programs that measure instructional time in clock hours must provide at least 26 weeks of instructional time.[28] 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.[29]

In addition to the general durational criteria and educational offerings criteria (e.g., degree or gainful employment program) described above, a program must meet 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.

Public and Private Nonprofit Institutions

At a public or private nonprofit institution, the following programs are Title IV eligible: (1) programs that lead to an associate's, bachelor's, professional, or graduate degree; (2) programs that are acceptable for full credit toward a bachelor's degree and at least two academic years in length; (3) programs that lead to a certificate or other recognized non-degree credential, that prepare students for gainful employment, and that are at least one academic year in length; and (4) certificate or diploma training programs that are less than one year in length.[30]

Proprietary and Postsecondary Vocational Institutions

At proprietary and postsecondary vocational institutions, the following programs are Title IV eligible:

- programs that provide at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of undergraduate instruction offered over a minimum of at least

[27] 34 C.F.R. §600.2, Credit Hour.

[28] For both credit and clock hours, a week of instructional time is any seven-day period in which at least one day is devoted to regularly scheduled educational activity. 20 U.S.C. §1088(a)(2).

[29] 34 C.F.R. §668.3(a)(2). For individual educational programs within an IHE, the Secretary may approve academic years of 26 to 29 weeks of instructional time if the IHE offers a two-year program leading to an associate's degree or a four-year bachelor's degree. The IHE must submit a written request to ED that identifies each program for which it is requesting a reduction in instructional time and the requested number of weeks of instructional time for the program. The IHE must also show good cause for the reduction in instructional time, and the licensing agency for the state in which the IHE is located must have approved the request.

[30] *FSA Handbook*, vol. 2, p. 2-16.

15 weeks. Such programs may admit, as regular students, individuals who have not completed the equivalent of an associate's degree;

- graduate or professional programs that only admit, as regular students, individuals who have completed the equivalent of an associate's degree and that provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered over a minimum of 10 weeks; and
- short-term programs that provide between 300 and 600 clock hours of instruction over a minimum of 10 weeks.[31] Such programs 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.[32]

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 located.[33] This authorization is given through a charter, license, or other written document by the appropriate state agency or licensing authority. An institution must also comply with any applicable state approval or licensure requirements.[34]

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[31] Short-term programs are only eligible to participate in the Direct Loan Program. 34 C.F.R. §668.8.

[32] Additionally, short-term programs must have verified student completion and job placement rates of at least 70%, not be more than 50% longer than the minimum training period required by a federal or state agency for the occupation for which an instructional program is intended, and have been in existence for at least one year. *FSA Handbook*, vol. 2, pp. 2-16 through 2-17.

[33] 34 C.F.R. §600.9.

[34] Until recently, an IHE was not required to comply with applicable state approval or licensure requirements if the state exempted it from those requirements based on the IHE's having been in operation for at least 20 years or upon its accreditation by one or more ED-recognized accrediting agencies. However, new regulations finalized in 2010 removed this exemption for IHEs established by a state "on the basis of an authorization to conduct or to operate as a nonprofit charitable organization". The new regulations also required states to have processes in place to review and appropriately respond to complaints concerning IHEs. ED has delayed implementation of these regulations multiple times. Most recently, ED decided to further delay the implementation of the requirements until July 1, 2015, if an institution can provide, from its state, an explanation of how an additional one-year extension will permit the state to modify its authorization procedures to comply with regulations. *FSA Handbook*, vol. 2, p. 2-6, and Department of Education, "Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Delay of Implementation Date," 79 *Federal Register* 35692, June 23, 2014.

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 FSA programs; and
- notify the Secretary if it revokes an institution's authorization to operate.[35]

An IHE offering distance education programs may also be required to receive state authorization to operate within states in which it offers the programs. Those requirements are discussed later in this report.

Accreditation

The second component of the program integrity triad is accreditation by an ED-recognized accrediting agency or association.[36] In higher education, accreditation is used 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 certain standards to be recognized by ED, and ED must follow specified procedures when determining whether to recognize an accrediting agency. The National Advisory Committee on Institutional Quality and Integrity advises the Secretary of Education (Secretary) on matters related to accreditation and agency recognition.

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."[37]

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 a 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 on the existing expertise of accrediting agencies.[38] Today, ED's formal recognition of accrediting agencies is important,

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[35] 20 U.S.C. §1099a.

[36] 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.

[37] Judith S. Eaton, *An Overview of U.S. Accreditation*, Council for Higher Education Accreditation, Washington, DC, August 2012, p. 1, http://www.chea.org/pdf/Overview%20of%20US%20Accreditation%202012.pdf (hereinafter CHEA, *An Overview of U.S. Accreditation*).

[38] CRS Report RL33909, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Reauthorization Issues*, by Rebecca R. Skinner (hereinafter, CRS Report RL33909, *Institutional Eligibility*).

because an IHE's Title IV eligibility is conditioned upon accreditation from a federally recognized accreditation organization.[39]

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

- **Regional accrediting agencies.** These operate in six specific regions of the United States, with each agency concentrating on specific regions of the country. Accreditation is granted to entire institutions but does not guarantee the quality of individual programs or of the students who graduate from those programs. In 2010-2011, 3,050 institutions were accredited by regional agencies, and all of those institutions were degree-granting.
- **National accrediting agencies.** These operate across the United States and also accredit entire institutions. There are two types of national accrediting agencies: four faith-based agencies that accredit religiously-affiliated or doctrinally-based institutions and seven private career-related agencies. In 2010-2011, approximately 470 institutions were accredited by faith-based agencies. 4,298 institutions were accredited by career-related agencies, of which approximately 67% of were non-degree-granting institutions and 88.4% were proprietary institutions.
- **Specialized or programmatic accrediting agencies.** These operate throughout the United States; 22,654 programs are accredited through these agencies. Specific programs (e.g., law) 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.[40]

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.[41] Alternatively, a public or private nonprofit IHE may be preaccredited by an agency recognized by ED to grant such preaccreditation, and a public postsecondary educational institution may be accredited by a state agency that ED determines is a reliable authority. Proprietary institutions must be accredited by an ED-recognized accrediting agency.[42]

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.[43]

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

[39] 20 U.S.C. §1001(a)(5).

[40] Council for Higher Education Accreditation, *Fact Sheet #1*, August 2012, http://www.chea.org/pdf/Fact%20Sheet%201%20Revised%202012.pdf.

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

[42] *FSA Handbook*, vol. 2, p. 2-7.

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

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, in fact, 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.[44]

Programs within institutions can be accredited by programmatic accrediting agencies; however, a program does not need 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.[45] Frequently, programmatic accrediting agencies review a specific program within an IHE that is accredited by a regional or national accrediting agency.

If an IHE wants to change accrediting agencies, it must submit to ED materials related to its current accreditation and documents that show reasonable cause for the change. If the IHE does not do so, ED will no longer recognize the institution's existing accreditation and the IHE would no longer be eligible for Title IV participation. If an IHE wishes to be accredited by two agencies at the same time, it must designate which agency's accreditation will be used in determining its Title IV eligibility. The institution must also provide to ED and both accrediting agencies materials documenting the reasons for dual accreditation.[46] 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.

An institution that has had its accreditation revoked or terminated for cause cannot be recertified as an IHE eligible to participate in Title IV FSA 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.[47]

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 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.[48]

[44] Ibid., pp. 4-5.

[45] 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.

[46] 20 U.S.C. §1099b(h) & (i).

[47] 20 U.S.C. §1099b(j).

[48] 20 U.S.C. §1099b; 34 C.F.R. §602.1.

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:

- To participate in Title IV programs, IHE membership with the agency must be voluntary, and one of the primary purposes of the agency must be accreditation of the IHEs or, for the purposes of participation in other ED or other federal programs, the agency must have a voluntary membership and have as its primary purpose accrediting IHEs or programs.
- The agency must be a state agency approved by the Secretary as an accrediting agency on or before October 1, 1991.
- For the purposes of determining eligibility for Title IV programs, the agency must either conduct accreditation through a voluntary membership of individuals in a profession, or it must have as its primary purpose to accredit 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.[49] 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 coursework,[50] and reviewing any newly established branch campuses. They must also perform regular on-site visits that focus on the quality of education and program effectiveness.

[49] Section 496 of the HEA 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.

[50] The requirement that accrediting agencies review an institution's policies and procedures for determining credit hours was added to regulations in October 2010 and became effective July 1, 2011. ED-recognized accrediting agencies (continued...)

Department of Education Procedures for Recognition

ED must follow certain HEA-prescribed procedures for recognizing an accrediting agency. Those requirements include conducting an independent evaluation of the agency, soliciting third party information, making publicly available records of the decision making process, and publishing any reasons for denying recognition. ED is explicitly prohibited from basing recognition decisions on any reason other than the requirements set forth in the HEA, but accrediting agencies are permitted to set additional standards.[51]

National Advisory Committee on Institutional Quality and Integrity

Although ED makes the final decision on whether to recognize an accrediting agency, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) advises the Secretary on matters related to accreditation, including on whether to recognize an agency and the enforcement of criteria for recognition.[52]

The NACIQI was originally composed of 15 members, but the Higher Education Opportunity Act of 2008 (HEOA; P.L. 110-315) provided for an 18 member committee, with six members appointed by the Speaker of the U.S. House of Representatives,[53] six appointed by the President pro tempore of the U.S. Senate,[54] and six appointed by the Secretary. The appointed members will serve staggered terms. Initially, the members appointed by the Secretary served for three years, those appointed by the U.S. House of Representatives served for four years, and those appointed by the U.S. Senate will serve for six years. After the initial round of NACIQI members, each subsequent member will serve a six-year term.[55]

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 must also evaluate an institution's financial responsibility and administrative capability to administer Title IV FSA programs. An institution can be certified to participate in Title IV for up to six years before applying for recertification.

(...continued)

are required to use the recently amended definition of credit hour (34 C.F.R. §600.2) for federal program purposes, including Title IV funding. 34 C.F.R. §602.24(f).

[51] 20 U.S.C. §1099b.

[52] The HEA authorized NACIQI through September 30, 2014. Its authorization was extended by one year through September 30, 2015. P.L. 113-174.

[53] Section 114(b)(1)(B) of the HEA specifies that three of these appointments will be made at the recommendation of the majority leader of the House of Representatives and three will be made at the recommendation of the minority leader of the House of Representatives.

[54] Section 114(b)(1)(C) of the HEA specifies that three of these appointments will be made at the recommendation of the majority leader of the Senate and three will be made at the recommendation of the minority leader of the Senate.

[55] For additional information on the NACIQI, see The Department of Education, "Boards & Commissions: National Advisory Committee on Institutional Quality and Integrity," http://www2.ed.gov/about/bdscomm/list/naciqi.html.

Financial Responsibility

ED determines an IHE's financial responsibility based on its ability to provide the services described in its official publications, to administer FSA programs in which it participates, and to meet all of its financial obligations. 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.[56] A proprietary or private nonprofit IHE is financially responsible if it meets specific financial ratios (e.g., equity ratio) established by ED,[57] 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.

Even if an institution meets all of the requirements, ED does not consider it financially responsible if a third-party financial audit is adverse or expresses doubt about the institution's continued existence or if the IHE violated past performance requirements, such as failing to satisfactorily resolve any compliance issues identified in program reviews or audits.

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 FSA under provisional certification.[58]

Administrative Capability

Along with demonstrating financial responsibility, an institution must demonstrate its ability to properly administer the FSA 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 FSA funds and indicators of student success.[59]

To administer Title IV FSA, an institution must use ED's FSA programs electronic processes[60] 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

[56] 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. 2-67.

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

[58] *FSA Handbook*, vol. 2, pp. 2-67 through 2-75.

[59] See 34 C.F.R. §668.16.

[60] Some of the required electronic processes include establishment of a Student Aid Internet Gateway data 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. 2-46.

system of checks and balances that includes dividing the functions of authorizing payments and disbursing funds between two separate offices.

Institutions are required to have a capable staff member to administer Title IV programs and coordinate those programs with other aid received by students.[61] This person must also have an adequate number of qualified staff to assist with FSA administration. Before receiving FSA 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.[62]

An institution must have satisfactory academic progress (SAP) standards in place for students receiving FSA funds that are at least as strict as its standards for students not receiving FSA funds. In measuring SAP, an IHE must establish a minimum grade point average (or its equivalent) for students and a maximum timeframe in which students must complete their educational program; a student who fails to meet the SAP requirements becomes ineligible to receive Title IV funds.[63] For instance, students enrolled in a program that is more than two academic years in length must have at least a "C" grade point average or its equivalent, and for an undergraduate program, the institution's completion timeframe cannot be longer than 150% of the published length of the program. Additionally, an institution that wishes to participate in Title IV programs for the first time must have an undergraduate withdrawal rate for regular students that is no more than 33% during its most recently completed award year.[64]

Cohort Default Rate

An institution may be deemed administratively incapable if it has a high cohort default rate (CDR). 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 time after entering repayment (cohort default period; CDP), *divided by* the total number of borrowers who entered repayment in the cohort fiscal year.[65]

Starting with the 2011 cohort fiscal year, ED will find an IHE administratively incapable using a three-year CDP in calculating the institution's CDR.[66] As of 2014, an IHE will be found administratively incapable if one of the following conditions is met:

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[61] 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 a 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. §668.12.

[62] *FSA Handbook*, vol. 2, pp. 2-37 through 2-41.

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

[64] *FSA Handbook*, vol. 2, p. 2-12.

[65] 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, divided by the number who defaulted in the CDP for the cohort fiscal year in which they entered repayment. 20 U.S.C. §1085(m)(1)(A).

[66] This means that the CDR for 2011 includes the number of borrowers who entered repayment in 2011 and who defaulted in 2011, 2012, and 2013. In 2014, the CDR for the 2011 cohort fiscal year was published and ED is using them to determine whether an institution is administratively incapable based on that information. Prior to using the new three-year CDP, ED used a two-year CDP in calculating an institution's CDR.

- an institution's CDR is 30% or greater for each of the three most recent fiscal years;
- an institution's CDR is greater than 40% in one year;[67] or
- 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 DL, Pell Grant, or Perkins Loan 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.

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.[68]

Program Reviews

Before granting Title IV eligibility or to ensure that a certified institution is conforming to eligibility requirements, ED can conduct site visits, or program reviews. During a program review, ED evaluates an institution's compliance with FSA requirements and identifies actions the IHE must take to correct the problem(s). Review priority is given to those institutions with high cohort default rates; IHEs with significant fluctuations in Pell Grant awards or FSA 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 accrediting agency; IHEs with high annual dropout rates; and IHEs determined by ED to pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.[69] If, during a review, ED determines that an institution is not administratively capable or financially responsible or is violating FSA program rules, ED may give it provisional certification, take corrective actions, or impose sanctions.

[67] 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. 34 C.F.R. §668.16(m)(a). Additionally, beginning in September 2014, an institution may be subject to provisional certification if two of the three of its most recent CDRs are 30% or greater. Department of Education, Federal Student Aid, *Cohort Default Rate Guide*, September 2014, pp. 4.2-3, http://ifap.ed.gov/DefaultManagement/guide/attachments/CDRMasterFile.pdf.

[68] 34 C.F.R. §668.13(c).

[69] *FSA Handbook*, vol. 2, p. 2-98.

Sanctions and Corrective Actions

ED has the authority to impose a variety of sanctions and corrective actions on an institution that violates FSA program rules; a Program Participation Agreement 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, terminations, and emergency actions. ED can also sanction third-party servicers performing tasks related to the institution's FSA programs.

Fines, Limitations, and Suspensions

ED has several sanctions it can impose on institutions for statutory and regulatory violations, including fines, limitations, and suspensions. ED can fine an institution up to $27,500 for each statutory or regulatory violation it commits, depending on how large the IHE is and the seriousness of the violation.

Under a limitation, ED imposes specific conditions or restrictions on an institution related to its administration of FSA 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 FSA 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.[70]

Emergency Action

ED can take emergency action to withhold FSA 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 institution's participation in FSA programs and prohibits it from disbursing FSA funds. Typically, the emergency action may not last more than 30 days.[71]

Termination of FSA Participation

The final action ED can take is the termination of an institution's participation in FSA 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

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[70] *FSA Handbook*, vol. 2, p. 2-153.

[71] Ibid.

was terminated. ED may then approve, approve subject to limitations, or deny the institution's request.[72]

Loss of Title IV Eligibility

An institution's participation in Title IV programs can end for one of several reasons, including

- institutional closure;
- failure to meet eligibility requirements (e.g., loss of accreditation, high cohort default rate);
- voluntary withdrawal; and
- expiration of eligibility to participate and no subsequent renewal by the institution.[73]

Table 1 details the types of IHEs that lost Title IV eligibility from January 1, 2007, through December 31, 2014. During this time period, 952 institutions lost their Title IV eligibility. Over the eight-year period, approximately 59.7% of the institutions that lost Title IV eligibility were domestic proprietary institutions. Domestic private nonprofit institutions followed next, making up approximately 16.5% of the IHEs that lost Title IV eligibility in the eight-year timeframe.

Table 1. Loss of Title IV Institutional Eligibility, by Institution Type: 2007-2014

Institution Type	2007	2008	2009	2010	2011	2012	2013	2014	Total
Domestic Public	11	8	11	13	16	9	14	15	97
Domestic Private Nonprofit	25	15	18	17	19	16	24	23	157
Domestic Proprietary	64	62	57	64	58	61	118	84	568
Foreign Public	6	22	4	16	9	6	4	5	72
Foreign Private Nonprofit	11	19	4	7	6	4	2	3	56
Foreign Proprietary	0	1	0	0	0	0	1	0	2
Total	**117**	**127**	**94**	**117**	**108**	**96**	**163**	**130**	**952**

Source: Compiled by CRS using the U.S. Department of Education, Postsecondary Education Participants System at http://www2.ed.gov/offices/OSFAP/PEPS/index.html.

Other Related Issues

Several other issues affect institutional eligibility for Title IV FSA programs. Some of these issues include institution Program Participation Agreements, which include provisions related to incentive compensation and teach-out plans; return of Title IV funds; and distance education. The failure to meet the requirements for each of these may result in the loss of Title IV eligibility.

[72] Ibid.

[73] 34 C.F.R. §600.40.

Program Participation Agreements

Each institution wanting to participate in FSA 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 FSA programs; it applies to all of an IHE's branch campuses, as well as its main campus. It also lists all of the FSA 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 FSA funds, will not charge students a processing fee to determine a student's eligibility for FSA funds, and will establish and maintain administrative and fiscal procedures to ensure the proper administration of FSA programs. The PPA reiterates many provisions required for institutional eligibility discussed earlier in this report, including certifying that the institution has a drug and alcohol abuse program and reporting general institutional information. Along with the general participation requirements with which an institution must comply, a PPA may also contain institution-specific requirements.[74]

Incentive Compensation

One specific provision of a PPA is that the institution agrees it will not provide any commission or incentive compensation to individuals based directly or indirectly on their success in enrolling students or obtaining financial aid; however, several 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 FSA funds or they can provide incentive compensation through a profit-sharing plan.[75]

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 enrollment 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.[76]

[74] 34 C.F.R. §668.14.

[75] 34 C.F.R. §668.14(22). Congress banned incentive compensation in 1992 as a way to eliminate abusive recruiting practices in which institutions were enrolling unqualified applicants to receive Title IV funds. In 2003, ED issued regulations offering some exceptions or "safe harbors" to the rule, as ED and Congress recognized that a strict application of the rule could be interpreted to cover almost every type of compensation arrangement. See Department of Education, "Federal Student Aid programs," 67 *Federal Register* 67053, November 1, 2002, http://www2.ed.gov/legislation/FedRegister/finrule/2002-4/110102a.pdf. On October 29, 2010, the Department of Education published the current regulations pertaining to incentive compensation in *75 Federal Register 66837*. See Department of Education, GEN 11-05, March 17, 2011, http://ifap.ed.gov/dpcletters/attachments/GEN1105.pdf.

[76] For a detailed list of activities covered by the incentive compensation prohibition, see *FSA Handbook*, vol. 2, pp. 2-44 through 2-45, Tables 2-3 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.

Teach-Out Plans

In 2008, the Higher Education Opportunity Act (P.L. 110-315) amended the HEA to require institutions to agree, in their PPAs, to prepare a teach-out plan for submission to their accrediting agencies in certain circumstances. A teach-out plan is a "written plan that provides for the equitable treatment of students if an [IHE] ceases to operate before all students have completed their program of study."[77] An IHE must submit a teach-out plan to its accrediting agency if

- ED initiates an emergency action or initiates the limitation, suspension, or termination of the IHE's participation in an FSA program;
- the institution's accrediting agency acts to withdraw, terminate, or suspend the IHE's accreditation or preaccreditation;
- the institution's legal authorization to operate within a state is revoked;
- the institution intends to close a location that provides 100% of at least one program; or
- the institution intends to otherwise cease operations.

As part of a teach-out plan, an institution may enter a teach-out agreement with another institution, under which the new institution must

- provide students with an educational program that is of an acceptable quality and is reasonably similar in content, structure, and scheduling to that provided by the closing institution;
- be accredited or preaccredited by a nationally recognized accrediting agency, remain stable, and carry out its mission; and
- demonstrate that it can provide students with access to its services without requiring students to move or travel a substantial distance.[78]

Return of Title IV Funds

Title IV funds must be returned to the federal government if a student withdraws from an institution before the end of the payment period for which funds were disbursed.[79] Regulations do not dictate the institutional refund policy, but IHEs must follow a schedule for the return of Title IV funds based on the pro-rata calculation of the amount of Title IV aid a student earned while enrolled, through the 60% point in each payment or enrollment period.[80] These procedures are described below.

[77] 20 U.S.C. §1094(f).

[78] 34 C.F.R. §602.25(c).

[79] 20 U.S.C. §1091b.

[80] For examples on how to calculate the amount of Title IV funds to be returned to the federal government, see *FSA Handbook*, vol. 5, pp. 5-127 through 5-201.

Percentage of Payment or Enrollment Period

As the first step in calculating how much Title IV funds should be returned, institutions must first determine how much aid was received by the student in the relevant payment or enrollment period.[81] IHEs must then determine the date of the student's withdrawal.[82]

If an institution is required to take attendance,[83] its determination of the student's withdrawal date should be no later than 14 days after the student's last date of attendance, as determined by the IHE's attendance records. If an IHE is not required to take attendance and the student formally notifies it of their withdrawal, the date of withdrawal is the date on which the student began the official withdrawal process. If a student does not formally withdraw from an IHE not required to take attendance, the withdrawal date is no later than 30 days after the end of the earlier of (1) the payment or enrollment period; (2) the academic year; or (3) the student's educational program. If a student formally notifies an institution of their withdrawal, the date of withdrawal is the date on which the student began the official withdrawal process.[84]

Credit Hour and Clock Hour Programs

The calculation of the percentage of the payment or enrollment period varies depending on whether an institution measures its programs in credit or clock hours. If an IHE measures its programs in credit hours, then the percentage of Title IV aid earned by the student is equal to the percentage of the payment or enrollment period completed. This is determined by dividing the number of calendar days in the payment or enrollment period that the student completed by the total number of calendar days in the payment or enrollment period. If a student completed over 60% of the payment or enrollment period, the student has earned 100% of the Title IV aid, and neither the institution nor the student is required to repay the funds. If the student completed 60% or less of the payment or enrollment period, then the percentage of Title IV aid is prorated. For example, if a student withdrew at the 25% mark, the student earned 25% of the Title IV aid.

If an institution uses clock hours to measure its programs, then the percentage of the payment or enrollment period is equal to the percentage of scheduled hours that a student actually completed. This is determined by dividing the total number of clock hours scheduled to have been completed, as of the date a student withdraws,[85] by the total number of hours included in the payment or

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[81] This determination includes the amount that *could have been* disbursed if the student was eligible for a later disbursement. For information on late disbursements, see *FSA Handbook*, vol. 4, pp. 4-51 through 4-54.

[82] A student is considered to have withdrawn if: (1) in a program measured in credit hours, the student does not complete all of the days in the payment or enrollment period; (2) in programs measured in clock hours, the student does not complete all the clock hours and weeks of instructional time in the payment or enrollment period; or (3) in a non-term or nonstandard-term program, the student is not scheduled to begin another course within a payment or enrollment period for more than 45 calendar days after the end of the module that the student stopped attending. *FSA Handbook*, vol. 5, p. 5-4.

[83] An IHE is required to take attendance if: (1) an outside entity (e.g., the IHE's accrediting agency or a state licensing agency) requires that it do so; (2) the IHE itself has a requirement that instructors take attendance; or (3) the IHE or an outside entity has a requirement that can only be met by taking attendance (e.g., requiring students in a program to demonstrate attendance in the classes of that program). 34 C.F.R. §668.22(b)(3).

[84] 34 C.F.R. §668.22.

[85] In a credit hour program, the total number of calendar days in a period may depend on the pace at which a student progresses through the program. An institution must project a completion date based on a student's progress as of the date of withdrawal.

enrollment period. As with credit hours, if a student completed over 60% of the payment or enrollment period, the student has earned 100% of the Title IV aid, and neither the institution nor the student is required to repay the funds.[86]

Amount of Title IV Aid Earned

The amount of Title IV aid earned by a student is equal to the percentage of the payment or enrollment period completed, multiplied by the sum of the Title IV aid disbursed to a student and the Title IV aid that *could have been* disbursed to the student. If a student received less Title IV aid than the amount earned, then the institution must make a post-withdrawal disbursement to the student, which is equal to the difference between the amount of aid a student earned and the amount the student received.[87] If a student received more Title IV aid than they earned, then the institution, the student, or both must return the unearned funds. The amount of aid to be returned is equal to the difference between the amount of Title IV aid earned and the amount of Title IV aid that was disbursed.[88]

Funds Returned by the Institution

Institutions must return the lesser of (1) the amount of Title IV funds not earned by the student or (2) the amount of institutional charges[89] incurred by the student during the payment or enrollment period, multiplied by the percentage of unearned funds. Title IV funds must be returned to the programs from which a student received aid during the applicable time period, up to the net amount disbursed.[90] Funds must be returned to their respective programs within 45 days of an IHE's determination that a student has withdrawn and in the following order:

1. Unsubsidized Direct Stafford loans (other than PLUS loans),
2. Subsidized Direct Stafford loans,
3. Federal Perkins loans,
4. Federal PLUS loans,
5. Direct PLUS loans,
6. Federal Pell Grants for which a return is required,
7. Federal Supplemental Educational Opportunity Grants for which a return is required,
8. Federal TEACH Grants for which a return is required, and
9. Iraq and Afghanistan Service Grants for which a return is required.

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[86] 34 C.F.R. §668.22.

[87] Post-withdrawal disbursements must be made within 180 days of the date the institution determined that a student withdrew. If a post-withdrawal disbursement is made, an institution must contact the student, explain the student's repayment obligations associated with accepting the funds, and confirm that the student still needs the loan funds.

[88] *FSA Handbook*, vol. 5, pp. 5-85 through 5-89.

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

[90] 20 U.S.C. §1091b.

An institution has up to 45 days after the date on which a student withdrew to return its share of the funds.

Funds Returned by the Student

The student is responsible for all unearned Title IV funds that the institution is not required to return. This initial amount due from the student is equal to the difference between the total amount of unearned Title IV funds to be returned and the amount returned by the institution. This is called the initial amount due from the student because a student is not required to return the full amount of a Title IV grant repayment that is due. Therefore, a student may not be required to return the full initial amount due. The maximum amount of unearned Title IV grant funds (overpayment) that a student is required to repay is the amount by which the original Title IV grant overpayment exceeds 50% of the total Title IV grant funds disbursed or that could have been disbursed to the student.[91] However, a student is not required to repay a Title IV grant overpayment of $50 or less.[92]

Distance Education

Generally, distance 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. Some programs may be full-time distance education programs in which the student and instructor are always separated by time, place, or both. Other programs may be hybrids, including both traditional (e.g., in-person classroom time) and distance education components.

Institutions that provide distance education are subject to the same Title IV eligibility requirements as other IHEs, but may also be subject to additional requirements.

Distance Education Definition

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

[91] 34 C.F.R. §668.22(h).

[92] Students who must return Title IV loan funds must repay any outstanding loans according to the terms of the student's promissory note. Students who must return Title IV grant funds can do so through (1) full and immediate repayment of funds to the institution; (2) repayment arrangements that are satisfactory to the institution; or (3) overpayment collection procedures negotiated with ED's Debt Resolution Services. Students who owe grant overpayments as a result of withdrawal initially retain their Title IV eligibility for a maximum of 45 days from the earlier of when the institution sends the student notice of the overpayment or the date the institution was required to notify the student of the overpayment. Students can retain their Title IV eligibility after the initial 45 day period if they take one of the three actions for repayment listed above. *FSA Handbook*, vol. 5, pp. 5-99 through 5-100.

used to support student-instructor interaction. Any of the technologies must be used to support "regular and substantive interaction between the students and the instructor."[93]

Correspondence and Telecommunications Courses

The original HEA definition of distance education did not reference the above-mentioned technologies; rather, correspondence courses and telecommunications 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. 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 course was predominantly offered by an IHE via print-based media.[94] 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.[95]

With the substantial growth in the use of technologies 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. Correspondence courses were expressly excluded from the definition of distance education. Thus, 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 in support of "regular and substantive interaction between the students and the instructor" via the Internet; one- and two-way transmissions through open broadcast, satellite, or other such communications devices; and technologies such as DVDs and CD-ROMs. IHEs offering correspondence courses are still subject to additional Title IV requirements.[96]

50% Rules

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 correspondence institutions' eligibility and their students' eligibility for Title IV aid.[97]

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[93] 20 U.S.C. §1003(7); 34 C.F.R. §600.2.

[94] CRS Report RL33909, *Institutional Eligibility*.

[95] Department of Education, "Federal Student Aid Programs," 71 *Federal Register* 45667, August 9, 2006. See CRS Report RL33909, *Institutional Eligibility*.

[96] 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, pp. 2-26 through 2-27.

[97] CRS Report RL33909, *Institutional Eligibility*.

Under the rules, an institution is ineligible for Title IV aid if more than 50% of its courses are offered by correspondence[98] or if 50% or more of its students are enrolled in correspondence courses.[99]

State Authorization

Generally, for an institution to be eligible to participate in Title IV programs, it must be legally authorized by the state in which it is physically located to provide postsecondary educational services within that state.[100]

In final regulations issued on October 29, 2010, ED required an institution offering postsecondary distance or correspondence education in a state in which it is not physically located to meet any requirements within that state, thus requiring it to obtain permission to operate in every state in which it enrolled at least one student.[101] However, in a July 2012, "Dear Colleague" letter, in response to a ruling by the U.S. Court of Appeals for the District of Columbia, which vacated the provision on procedural grounds,[102] ED announced it will not enforce this provision against institutions offering distance education programs.[103] These institutions are, however, still required to obtain permission to operate within their home states.[104]

Distance Education Program 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.[105] A program offered by a foreign

[98] 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).

[99] 34 C.F.R. 600.7(a)(1)(i) & (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. 2-78.

[100] 34 C.F.R. §600.4(a)(3).

[101] 34 C.F.R. §600.9(c).

[102] The court vacated this provision of the state authorization regulations on procedural grounds. *Career Colleges Association d/b/a Association of Private Sector Colleges and Universities*, 796 F. Supp. 2d (D.C. 2011).

[103] ED recently completed a negotiated rulemaking to determine what regulations it might propose for state authorization of IHEs offering distance education. A consensus was not reached, thus, ED now has the authority to issue its own rule for comment but recently stated it would not do so in the near future. See Michael Stratford, "No Consensus on Debit Cards, State Authorization," *Inside Higher Ed*, May 21, 2014.

[104] Department of Education, GEN-12-13, July 27, 2012, pp. 2-3, http://ifap.ed.gov/dpcletters/attachments/GEN1213Attach.pdf. ED recently announced that it is likely to consider the issue of state authorization for programs offered through distance education or correspondence education during a planned negotiated rulemaking for regulations related to the program integrity triad. See Department of Education, "Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Title IV Federal Student Aid Programs, Program Integrity and Improvement," 78 *Federal Register* 69613, November 20, 2013.

[105] *FSA Handbook*, vol. 2, p. 2-26.

IHE, in whole or in part, through distance education (including telecommunications) or correspondence is ineligible for Title IV participation.[106]

Major Amendments

This section briefly highlights major statutory and regulatory provisions adopted in recent decades pertaining to institutional eligibility to participate in Title IV programs. It is presented to provide contextual information on institutional eligibility-related issues that have received attention in congressional deliberations in the recent past, and to provide a backdrop for a subsequent discussion of issues that may receive attention in an upcoming reauthorization. Typically, provisions that have been adopted have addressed issues related to program integrity, fiscal accountability, fraud and abuse, and, most recently, program outcome measures.

Since its enactment in 1965, the HEA has undergone several reauthorizations and amendments. In the Higher Education Amendments of 1992 (P.L. 102-325), several amendments were made to the HEA, which were intended to strengthen program integrity in the wake of reported problems of Title IV fraud and abuse.[107] These amendments excluded from Title IV participation institutions offering more than 50% of courses through correspondence or enrolling more than 50% of its students in correspondence courses (i.e., the "50% rules); denied Title IV participation to proprietary institutions that derived more than 85% of their revenues from Title IV funds; and reformed the process through which institutions became eligible to participate in Title IV programs.

The Higher Education Act Amendments of 1998 (P.L. 105-244) also made several changes to the HEA. Key provisions that related to institutional eligibility included requiring that proprietary institutions derive at least 10% of their revenues from non-Title IV sources[108] and eliminating the requirement that accrediting agencies make unannounced visits to institutions. The Higher Education Reconciliation Act of 2006 (Title VIII of the Deficit Reduction Act of 2005; P.L. 109-171) amended the rules governing the percentage of courses offered through telecommunications courses and students participating therein and the return of Title IV funds requirements.

In 2008, the HEA was reauthorized under the Higher Education Opportunity Act of 2008 (HEOA; P.L. 110-315), and several changes were made that affected institutional eligibility to participate in Title IV programs. These changes included extending eligibility to certain foreign proprietary institutions; creating a more stringent cohort default rate; including additional requirements in an institution's program participation agreement; changes to the 90/10 rule for proprietary institutions; and requiring institutions to prepare teach-out plans under certain circumstances, such as an institution's closure or termination of its Title IV participation.[109]

Most recently, in 2010, ED regulations required an institution offering distance or correspondence education to students in a state in which it was not physically located to meet any state requirements for it to legally offer such courses in that state. Subsequently, in response to a ruling

[106] 34 C.F.R. §600.51(d).

[107] CRS Report RL33909, *Institutional Eligibility*.

[108] Prior to these amendments, 15% was the threshold.

[109] For information on changes made to each Title of the HEA under the HEOA, see CRS Report RL34654, *The Higher Education Opportunity Act: Reauthorization of the Higher Education Act*, by David P. Smole et al.

by the U.S. District Court of Appeals for the District of Columbia, ED announced it would no longer enforce the provision against institutions offering distance or correspondence education. However, ED stated it would still require such institutions to obtain permission to operate within the states in which they were physically located.[110] Subsequently, ED announced it intended to address the issue in a negotiated rulemaking, but has not yet done so[111]

Finally, in 2014, ED issued regulations that require, among other provisions, the use of established performance metrics to measure how effectively individuals in gainful employment programs offered by institutions are able to repay the student loans borrowed to attend such programs. Most of the regulations' provisions will go into effect on July 1, 2015.

Emerging Issues

As the 114th Congress considers general issues that may be addressed during the reauthorization of the Higher Education Act,[112] it may explore specific issues related to institutional eligibility to participate in HEA Title IV FSA programs. Some of these issues (e.g., institutional transparency) were of particular interest in the 113th Congress and could be revisited by the 114th Congress, while others (e.g., direct-assessment programs) have garnered some attention in the most recent sessions of Congress, and may become of increasing interest to the 114th Congress.

Proprietary Institutions

In general, proprietary IHEs have been subjected to congressional and media scrutiny over the past several years. Much of the concern has focused on the quality of education offered, withdrawal and completion rates, high default rates on student loans, and recruitment and advertising practices. One area of interest for the 113th Congress as it related to proprietary institutions was the 90/10 rule. As discussed earlier, proprietary IHEs must derive at least 10% of their revenue from sources other than Title IV funds, which may include federal revenues from military and veterans' education benefits.

In response to reports that some proprietary IHEs were recruiting individuals receiving military and veterans' education benefits as a way to meet the 10% revenue requirement, the 113th Congress introduced bills that would have amended the current 90/10 rule. For example, S. 1659 would have created a new federal funds provision that would have included revenue from most federal sources, including most military and veterans' education benefits. In addition, this new federal funds limit would be capped at 85%, effectively requiring proprietary institutions to derive at least 15% of the revenue from nonfederal funds. None of the proposed legislation was

[110] Department of Education, GEN-12-13, July 27, 2012, pp. 2-3, http://ifap.ed.gov/dpcletters/attachments/GEN1213Attach.pdf.

[111] Department of Education, "Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Title IV Federal Student Aid Programs, Program Integrity and Improvement," 78 Federal Register 69613, November 20, 2013.

[112] Authorization for the appropriations for many HEA programs expired at the end of FY2014 and was automatically extended through the end of FY2015 under Section 422 of the General Education Provisions Act (GEPA), these authorizations were extended for an additional year, through FY2015. Some programs in the HEA are authorized beyond FY2014.

enacted,[113] but Congress might consider whether to reintroduce legislation that would amend the 90/10 rule. Moreover, Congress might consider other ways to address concerns associated with quality and outcome measures that are specific to proprietary institutions.

Accreditation

An institution as a whole must be accredited by an ED-recognized accrediting agency to be eligible to participate in Title IV programs. ED began formally recognizing accrediting agencies in 1952 as a way of associating institutional eligibility for Title IV programs with an indicator of an institution's educational quality, and this federal interaction with accreditation has remained largely unchanged since that time. In the past several years, however, there have been calls to incorporate student outcome measures, such as graduation and retention rates, into the accreditation process or to restructure the accreditation system to better reflect and serve the variety of students and institutions in U.S. postsecondary education.[114] It is possible that some of these ideas will be the focus of deliberations in the 114th Congress.

In addition to agencies that accredit entire institutions, thereby acting as gatekeepers to Title IV funds, there are many programmatic accrediting agencies that accredit individual programs within IHEs (e.g., law). While programmatic accreditation generally is not a requirement for Title IV eligibility,[115] IHEs may wish to have a program accredited, as programmatic accreditation can demonstrate that a specific educational program meets established standards for a field of study. For example, many employers require prospective employees to have graduated from an accredited program, and licensure requirements for some occupations in certain states require graduation from an accredited program. Because programmatic accreditation is often viewed as a means of determining educational quality and because access to some employers hinges on programmatic accreditation, Congress may examine whether it is desirable to support attendance (through FSA) at programs that lack professional recognition, but for which FSA is available.

Alternative Delivery of Educational Services

Online Education Providers

In light of efforts to provide access to postsecondary education to a variety of students (e.g., nontraditional or low-income students) and potentially reduce postsecondary educational costs, many alternative ways to deliver educational services have been receiving additional attention, and Congress may explore modifying regulations for such educational offerings.

Perhaps most notably, the use of online distance educational services has increased dramatically in recent years. Generally, online distance education comprises Internet-enabled courses using

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[113] Other bills introduced in the 113th Congress that would have amended the 90/10 Rule include H.R. 3496. Additionally, Section 102 of S. 2954, the proposed Higher Education Affordability Act, would have amended the 90/10 Rule in similar ways.

[114] For additional information on these and other issues for consideration related to accreditation, see CRS Report R43826, *An Overview of Accreditation of Higher Education in the United States*, by Alexandra Hegji.

[115] As discussed earlier in this report, effective July 1, 2015, institutions will be required to certify that each gainful employment program it offers meets any relevant state and federal entity accreditation requirements for those gainful employment programs to be eligible to participate in Title IV FSA programs.

computer-based or computer-mediated instruction. Primarily, students are off-campus in distant locations when participating in online education. For instance, many institutions now offer the same courses they offer on campus online and accordingly charge similar tuition and fees and award the same credentials. However, free or low-cost online versions of college courses (e.g., Massive Open Online Courses (MOOCs)) have recently become available to individuals not enrolled at an institution and are starting to be used in a number of ways. For example, some providers of MOOC-type offerings now give students the opportunity to earn certificates of completion or "badges" that signify their mastery of a skill.[116] Some IHEs have begun exploring whether to award transfer of credit for obtaining badges and some employers may consider them when determining whether to employ an individual.[117]

While many of these offerings are currently free-of-charge or incorporated into traditional classes, with some providers there may be fees associated with assessment to certify the mastery of a skill. For instance, providers may charge students a fee for certification of course completion or IHEs may charge students a fee for assessing a course before allowing them to transfer credits. Such charges are currently ineligible for coverage with Title IV aid.

Congress may begin to consider how education delivered by MOOCs and similar offerings could affect program and institutional eligibility requirements for Title IV participation. If education provided by MOOCs and similar offerings is considered distance education, the future growth and availability of these offerings may have broader implications on Title IV programs and institutional eligibility requirements, including whether institutions offering MOOCs must be authorized to operate in every state in which an enrolled student is located and whether standards related to ED's recognition of accrediting agencies that evaluate distance education should be updated to address any new quality concerns linked to this new educational medium. These are all issues that may garner attention during the 114th Congress.

Direct-Assessment Programs

Another alternative delivery method of educational services is direct-assessment education (a form of competency-based education), and several postsecondary institutions have been actively exploring incorporating such programs into their curriculum.[118] In direct-assessment programs, students are not assessed on how many credit or clock hours they complete but rather on their demonstration of skills and knowledge. Generally, to receive a degree or credential, students must master a set of competencies (skills) that are assessed by faculty reviewers. IHEs that offer direct-assessment programs are eligible to participate in Title IV programs but must establish a method to reasonably equate the direct assessment program to credit or clock hours. Several types of programs that might otherwise be eligible for Title IV purposes are not eligible if they involve direct assessment; these include programs at foreign IHEs, preparatory coursework required for entry into an eligible program, courses necessary for an elementary or secondary institution teaching credential or certification, and remedial coursework.[119] Because more institutions are

[116] Mastery of a skill can be illustrated in a number of ways, such as the passing of an exam, completing a project, or attending classes.

[117] Fiona M. Hollands and Devayani Tirthali, *MOOCs: Expectations and Reality*, Center for Benefit-Cost Studies of Education, Teachers College, Columbia University, May 2014, p. 49.

[118] Paul Fain, "Taking the Direct Path," *Inside Higher Ed*, February 21, 2014.

[119] *FSA Handbook*, vol. 2, pp. 2-21 through 2-22. In 2013, ED released guidance outlining how institutions can have direct-assessment programs approved under current regulations for Title IV eligibility. U.S. Department of Education, (continued...)

exploring and using direct assessment programs, Congress may consider whether to continue tying eligibility of direct assessment programs for Title IV funds to credit and clock hours and whether to expand the Title IV eligibility to those types of direct assessment programs that are currently excluded from Title IV eligibility.

Other Possible Reauthorization Considerations

Congress may consider whether to implement reforms that affect an institution's eligibility to participate in Title IV programs. Some issues for consideration are listed below.

1. Consider new eligibility standards and reporting requirements that align with greater accountability and transparency goals:

   Creating a performance-based model of institutional eligibility: Congress may explore whether to condition an institution's eligibility to participate in Title IV programs on the use of metrics that tie Title IV eligibility to student performance. This could be accomplished in a variety of ways, including establishing a comprehensive educational quality index that takes into consideration a variety of student performance outcomes such as cohort default rates, job placement rates, and persistence and completion rates.

   Establishing broader consumer protection reporting requirements: Although institutions must meet a variety of disclosure and reporting requirements regarding general institutional information (e.g., cost of attendance, descriptions of an institution's academic programs, and net price), Congress may consider streamlining or adding additional reporting requirements that provide more performance accountability to consumers. Potential institutional requirements that could be considered include providing consistent information to students regarding the average salaries for graduates with specific degrees, job placement data, and additional loan counseling.

2. Examine existing institutional eligibility requirements under Title IV:

   Cohort default rate: An institution's CDR is oftentimes used as a measure of institutional quality, as it is believed that well-prepared graduates should be able to find employment and earn income adequate to repay their student loans. One criticism of the CDR, however, is that it only reflects the share of an institution's student loan borrowers who default within the first three years of entering repayment but does not take into account the total number of students who actually borrow loans, which may not accurately portray a student's risk of defaulting on a loan at a particular IHE. Additionally, there is no mechanism to account for individuals who do not immediately repay their loans because they are in deferment or forbearance. While these individuals are not in default on

(...continued)

Office of Postsecondary Education, General Announcement, Applying for Title IV Eligibility for Direct Assessment (Competency-Based) Programs, GEN-13-10, March 19, 2013, http://ifap.ed.gov/dpcletters/GEN1310.html. In December 2014, ED released additional guidance on further discussing direct assessment program and Title IV eligibility. U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, Competency-Based Education Programs—Questions and Answers, GEN-14-23, December 19, 2014.

their student loans, the current method for calculating a CDR, which does not include individuals in deferment or forbearance, may not be completely representative of a cohort's ability to repay student loans.[120] Congress may consider whether to amend the CDR to account for the full number of students at an institution who take on loans to fund their education and whether to amend the CDR to account for individuals within a cohort who are in deferment or forbearance. Finally, Congress may consider whether the current CDR and CDP thresholds for maintaining institutional eligibility should be changed or eliminated.

Return of Title IV funds: Institutions must establish a return policy that provides for the return of Title IV funds if a student withdraws before the end of a payment or enrollment period. Among the requirements for such a return policy, institutions must return funds to the various Title IV programs in a certain order, with student loan funds being returned first (see the section of this report titled "Funds Returned by the Institution"). Congress might, however, consider changing or eliminating the order of return for Title IV funds. For example, the amount of aid returned could be based on the proportion of each type of Title IV aid making up a student's Title IV financial aid package. Congress might also consider amending the HEA provisions that reduce students' required Title IV grant overpayments by 50%. Finally, Congress might consider changing the point at which Title IV funds are considered earned by students and the date on which an official withdrawal is determined by the institution.

3. Provide regulatory relief and incentives to participating Title IV institutions:

Reducing regulatory burden on institutions: Congress may also consider ways to reduce the burdens institutions face in complying with regulations to establish and maintain their Title IV eligibility.[121] Some reports show that the higher education community feels the Title IV eligibility regulations to be unnecessarily burdensome and that many of the relevant regulations can be streamlined, which could generate institutional savings and a more efficient system that better benefits students. For instance, a report by the Advisory Committee on Student Financial Assistance—a committee chartered by Congress—found that 89% of office administrators found the regulations related to the return of Title IV funds to be burdensome or very burdensome, and 89% found the scope and volume of reporting requirements to be burdensome or very burdensome.[122] Members from the same group of administrators also suggested that to reduce these burdens, institutions could be given greater discretion in determining the order in which certain Title IV funds must be returned, which could be tailored to individual

[120] Moreover, there is concern that some institutions may encourage their students to enter into deferment or forbearance, which may help delay default but ultimately does not necessarily prevent it. See Libby A. Nelson, "Default Rates Continue Climb, Mostly," *Inside Higher Ed*, October 1, 2012, http://www.insidehighered.com/news/2012/10/01/two-year-default-rates-student-loans-increase-again.

[121] For information on reporting and disclosure requirements for participating Title IV institutions, see CRS Report R40789, *Reporting and Disclosure Requirements for Institutions of Higher Education to Participate in Federal Student Aid Programs Under Title IV of the Higher Education Act*, by David P. Smole.

[122] Advisory Committee on Student Financial Assistance, Higher Education Regulations Study, Final Report, Washington, DC, November 2011, p. 15, Table 5, https://www2.ed.gov/about/bdscomm/list/acsfa/hersfinalrpt.pdf.

student circumstances, and that data required to be reported could be compiled at a central location, rather than across several state and federal platforms.[123]

Incentivizing institutions to provide more comprehensive student support services: Aside from placing additional requirements on institutions, Congress may also wish to explore providing incentives to IHEs to help ensure student success. Options could include tying some percentage of Title IV financial aid to an institution's commitment to providing additional student support services, such as tutoring or additional loan counseling. Additionally, Congress may consider ways to incentivize institutions to provide additional outreach and support services to first generation low-income students, who may be less well-prepared for a postsecondary education or who may be facing additional demands, such as maintaining employment to help meet the costs of attending an institution.

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[123] Ibid., pp. 37-39.