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# Institutional Eligibility for Participation in Title IV Student Financial Aid Programs

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**Alexandra Hegji**

Analyst in Social Policy

## Institutional Eligibility for Participation in Title IV Student Financial Aid Programs

Title IV of the Higher Education Act (HEA) authorizes programs that provide financial assistance to students to aid them in obtaining a postsecondary education at qualifying institutions of higher education (IHEs). Title IV financial assistance is the largest source of federal aid to postsecondary students, and the Title IV eligibility and participation requirements for institutions establish a framework of federal oversight for a significant portion of the postsecondary schools. Thus, the framework serves as a vehicle to which a number of requirements affecting broad aspects of postsecondary education for all students have been attached. Qualifying IHEs include public, private nonprofit, and proprietary institutions. For students attending such institutions to be able to receive Title IV assistance, an institution must meet basic criteria, including offering at least one eligible program of education (e.g., programs leading to a degree or preparing a student for gainful employment in a recognized occupation).

An IHE also must satisfy the program integrity triad: state authorization, accreditation or preaccreditation, and certification by the Department of Education (ED). These requirements are intended to provide a balance between consumer protection, quality assurance, and oversight and compliance among postsecondary education providers participating in Title IV student aid programs.

Under state authorization, an IHE must be authorized to operate a postsecondary educational program in the state in which it is physically located. Special considerations apply for IHEs that offer distance or correspondence education.

With accreditation, generally, an IHE must be accredited (or preaccredited if public or private nonprofit) by an ED-recognized accrediting agency that meets HEA-specified standards. Accrediting agencies are nongovernmental entities that develop evaluation criteria for institutional quality and assess whether institutions meet those standards. Such standards relate to a variety of factors, including student achievement in relation to an institution's mission, fiscal and administrative capacity, and inputs such as faculty and facilities.

For certification, ED verifies an institution's state authorization and accreditation status and evaluates an institution's financial responsibility and administrative capability to administer the Title IV student aid programs. ED determines an IHE's financial responsibility based on its ability to provide the services described in its official publications, to administer the Title IV programs in which it participates, and to meet all of its financial obligations. ED determines an IHE's administrative capability by evaluating an IHE's processes, procedures, and personnel used in administering Title IV funds, and indicators of student success.

In addition, IHEs participating in the Title IV programs must have a current program participation agreement with ED. In the agreement, the IHE agrees to comply with the laws, regulations, and policies applicable to the Title IV programs. The agreement contains an array of additional Title IV requirements, such as provisions relating to institutional recruiting practices and student policies and procedures.

Additional criteria may apply to an institution depending on its control or the type of educational programs it offers. For example, proprietary institutions must meet HEA requirements that are otherwise inapplicable to public and private nonprofit institutions, including deriving at least 10% of their tuition and fees revenues from non-federal funds (also known as the *90/10 rule*).

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## Introduction

Title IV of the Higher Education Act (HEA; P.L. 89-329), as amended, authorizes programs that provide financial assistance to students to pursue postsecondary education at eligible institutions of higher education (IHEs). In academic year (AY) 2020-2021 (July 1, 2020-June 30, 2021), 6,063 domestic institutions had written agreements with the Department of Education (ED) that allow them to participate in any of the Title IV federal student financial assistance programs.<sup>1</sup> Of these IHEs, approximately 32% were public institutions, 30% were private nonprofit institutions, and 39% were proprietary (or private, for-profit) institutions.<sup>2</sup> It is estimated that \$115.6 billion was made available to students through Title IV federal student aid in FY2020.<sup>3</sup> Title IV financial assistance is the largest source of federal aid to postsecondary students, and the Title IV eligibility and participation requirements for institutions establish a framework of federal oversight for a significant portion of the postsecondary schools. Thus, the framework serves as a vehicle to which a number of requirements affecting broad aspects of postsecondary education for all students have been attached as conditions for receiving Title IV student financial assistance.

To receive Title IV assistance, students must attend an institution that participates in the Title IV programs. IHEs must meet a variety of requirements to be eligible to participate in the Title IV programs (eligibility requirements) and additional requirements to participate in those programs (participation requirements).<sup>4</sup> Both eligibility and participation requirements cover a range of institutional practices and operations but generally are intended to ensure that students are using Title IV funds to attend schools of sufficient quality and to ensure that schools are responsibly administering Title IV aid.

This report provides a general overview of HEA Title IV institutional eligibility requirements, as well as some institutional Title IV student aid program participation requirements. It first describes general eligibility criteria at both the institutional and programmatic level and then, in more detail, the program integrity triad. Next, it discusses several issues that are closely related to institutional eligibility: Program Participation Agreements, including the 90/10 rule and campus safety policies and crime reporting required under the Clery Act, and distance education.

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<sup>1</sup> These 6,063 institutions were located in the United States and other U.S. jurisdictions. Foreign institutions are also eligible to participate in the Title IV programs. Department of Education, National Center for Education Statistics, IPEDS Data Explorer, Table 1, “Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region; United States and other U.S. jurisdictions, academic year 2020-2021,” [https://nces.ed.gov/ipeds/search?query=Tables+Library%3Ddate\\_desc&query2=&resultType=all&page=1&sortBy=date\\_desc&overlayTableId=28457](https://nces.ed.gov/ipeds/search?query=Tables+Library%3Ddate_desc&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=28457).

<sup>2</sup> Percentages do not add to 100% due to rounding.

<sup>3</sup> This includes federal loans, work-study, and grants. See U.S. Department of Education, Federal Student Aid, *Annual Report 2018*, Washington, DC, November 19, 2021, p. 8, <https://www2.ed.gov/about/reports/annual/2021report/fsa-report.pdf>.

<sup>4</sup> Title IV eligible 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 previously borrowed. Department of Education, *2022-2023 Federal Student Aid Handbook*, vol. 2, p. 3, [https://fsapartners.ed.gov/sites/default/files/2022-2023/2022-2023\\_Federal\\_Student\\_Aid\\_Handbook/\\_knowledge-center\\_fsa-handbook\\_2022-2023\\_vol2.pdf](https://fsapartners.ed.gov/sites/default/files/2022-2023/2022-2023_Federal_Student_Aid_Handbook/_knowledge-center_fsa-handbook_2022-2023_vol2.pdf) (hereinafter, *FSA Handbook*).

## General Eligibility Criteria

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

### Eligible Institutions

The HEA contains two definitions of institution of higher education. Section 101 provides a general definition of IHE that applies to institutional eligibility for participation in HEA programs other than the Title IV programs.<sup>5</sup> The Section 102 definition of IHE is used only to determine institutional eligibility to participate in HEA Title IV programs.

#### Section 101 Institutions of Higher Education

Section 101 of the HEA provides a general definition of IHE. This definition applies to institutional eligibility to participate in non-Title IV HEA programs. Section 101 IHEs can be public or other nonprofit educational institutions (often referred to as *private nonprofit institutions*). Section 101 specifies criteria both public and other nonprofit educational institutions must meet to be considered IHEs.

##### *Public Institutions*

Neither the HEA nor regulations specifically define a public institution. However, in general, public institutions can be described as those whose educational programs are operated by states or other government entities and are primarily supported by public funds.<sup>6</sup>

##### *Private Nonprofit Institutions*

The HEA defines the term *nonprofit*. Under Section 103 of the HEA, nonprofit as applied to an institution means an “institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.”

Current regulations expand on this by defining a *nonprofit institution* as one that (1) meets the above criterion, (2) is determined by the Internal Revenue Service (IRS) to be a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code (IRC), and (3) is legally authorized to operate as a nonprofit organization by each state in which it is physically located.<sup>7</sup>

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<sup>5</sup> The Section 101 definition is commonly used as a reference in many other non-HEA programs.

<sup>6</sup> U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System, 2022-23 Glossary, “Public institution.”

<sup>7</sup> 34 C.F.R. §600.2. Under IRC Section 501(c)(3), an organization is exempt from federal taxation if no part of its earnings inures to the benefit of an individual or private shareholder and if it is organized and operated exclusively for, among other potential items, educational purposes.

Effective July 1, 2023, an updated regulatory definition of nonprofit institution<sup>8</sup> is to apply.<sup>9</sup> The new definition specifies that an institution is nonprofit if ED determines—based on the entirety of the relationship between the institution, entities in its ownership structure, and other parties—that no part of its net earnings benefit any private entity or natural person. It then lists several examples of relationships that might disqualify an institution as nonprofit.<sup>10</sup> The new definition would explicitly apply to both public and private institutions. The updated regulations then specify that a *private institution* is considered nonprofit only if it (1) meets the above criterion relating to inurement of net earnings, (2) is owned and operated by one or more nonprofit corporations or associations, (3) is legally authorized to operate as a nonprofit organization by each state in which it is physically located, and (4) is determined by the IRS to be a tax-exempt organization under IRC Section 501(c)(3).

### **Section 101 Institution of Higher Education**

To be considered a Section 101 IHE, a public or private nonprofit educational institution must

- admit as regular students only individuals with a high school diploma or its equivalent, individuals beyond the age of compulsory school attendance, or individuals who are dually or concurrently enrolled in both the institution and in a secondary school;
- be legally authorized to provide a postsecondary educational program within the state in which it is physically located;
- offer an associate’s, bachelor’s, graduate, or professional degree;<sup>11</sup> provide a program of at least two years that is acceptable for full credit toward a bachelor’s degree; or provide a training program of at least a one-year that prepares students for gainful employment in a recognized occupation<sup>12</sup>; and
- be accredited or preaccredited by an accrediting agency recognized by ED to grant accreditation or preaccreditation status.<sup>13</sup>

### **Section 102 Institutions of Higher Education**

Section 102 of the HEA defines IHE only for the purposes of institutional eligibility to participate in the Title IV programs. The Section 102 definition includes all institutions included in the Section 101 definition (i.e., public and private nonprofit IHEs) and also includes proprietary institutions, postsecondary vocational institutions, and foreign institutions that have been approved by ED.<sup>14</sup> Section 102 specifies that proprietary and postsecondary vocational

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<sup>8</sup> ED made these changes “to address risks that some changes in ownership of postsecondary institutions present to students and taxpayers and to address the growing complexity of those transactions.” Department of Education, “Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control,” *87 Federal Register* 65427 (October 28, 2022 (hereinafter “ED, 2022 Regulations”).

<sup>9</sup> ED, *2022 Regulations*, pp. 65485-65486.

<sup>10</sup> For example, the new regulations specify that a nonprofit institution is generally not an institution that “is an obligor ... on debt owed to a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution.” ED, *2022 Regulations*, pp. 65485-65486.

<sup>11</sup> 34 C.F.R. §600.4(a)(4).

<sup>12</sup> See the “Programs Required to Prepare Students for Gainful Employment” section.

<sup>13</sup> HEA §101; 20 U.S.C. §1001.

<sup>14</sup> HEA §102(a)(2); 20 U.S.C. §1002(a)(1). *FSA Handbook*, vol. 2, pp. 3-5.

institutions must meet many of the same Section 101 requirements that are applicable to public and private nonprofit institutions. In addition, Section 102 specifies other criteria that all types of educational institutions must meet to be considered Title IV eligible IHEs.

### ***Proprietary Institutions***

HEA Section 102 specifies that a proprietary IHE is an institution that is neither a public nor a private nonprofit institution.<sup>15</sup> In addition to the basic Title IV eligibility criteria that all IHEs must meet (e.g., types of students admitted as regular students, state authorization, accreditation by an ED-recognized accrediting agency<sup>16</sup>), proprietary IHEs must meet additional criteria to be considered Title IV eligible. Specifically, a proprietary IHE must (1) provide an eligible program of training “to prepare students for gainful employment in a recognized occupation”<sup>17</sup> or (2) provide a program leading to a baccalaureate degree in liberal arts that has been continuously accredited by an ED-recognized accrediting agency since October 1, 2007,<sup>18</sup> and has provided the program continuously since January 1, 2009. Additionally, a proprietary IHE must have been legally authorized to provide (and have continuously been providing) the same or a substantially similar educational program for at least two consecutive years.<sup>19</sup>

### ***Postsecondary Vocational Institutions***

HEA Section 102 defines a postsecondary vocational institution as a public or private nonprofit institution that provides an eligible program of training “to prepare students for gainful employment in a recognized occupation,”<sup>20</sup> and has been legally authorized to provide (and has continuously been providing) the same or a substantially similar educational program for at least two consecutive years.<sup>21</sup> In addition, a postsecondary vocational institution must meet the basic Title IV eligibility criteria that all IHEs must meet (e.g., types of students admitted as regular students, state authorization, accreditation or preaccreditation by an ED-recognized accrediting agency).

It is possible for a public or private nonprofit IHE that offers a degree program (e.g., an associate’s or bachelor’s degree) to also qualify as a postsecondary vocational institution by offering programs that are less than one academic year and that lead to a nondegree recognized credential such as a certificate.

### ***Foreign Institutions***

Institutional participation in Title IV student aid programs allows students from the United States to borrow through the federal Direct Loan program to attend postsecondary institutions located outside of the United States. In general, a foreign institution is eligible to participate in the Direct

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<sup>15</sup> HEA §102(b)(1)(C); 20 U.S.C. §1002(b)(1)(C).

<sup>16</sup> Unlike public, private nonprofit, and postsecondary vocational institutions, proprietary institutions may not be preaccredited for Title IV eligibility purposes.

<sup>17</sup> HEA §102(b)(1)(A); 20 U.S.C. §1002(b)(1)(A).

<sup>18</sup> The accrediting agency must have been one that previously was defined as a regional accrediting agency on October 1, 2007. 34 C.F.R. §668.8(d)(4)(i).

<sup>19</sup> HEA §102(b)(1)(E) and 34 C.F.R. § 600.5(b). See also *FSA Handbook*, vol. 2, p. 12.

<sup>20</sup> HEA §102(c); 20 U.S.C. §1002(c).

<sup>21</sup> HEA §102(c)(1)(C) and 34 C.F.R. § 600.6(b). See also *FSA Handbook*, vol. 2, p. 12.



Loan program if it is comparable to an IHE (as defined in HEA Section 101) within the United States, is a public or private nonprofit institution,<sup>22</sup> and has been approved by ED.

Foreign graduate medical schools, veterinary schools, and nursing schools are also eligible to participate in Title IV student aid programs, but must meet additional requirements. Freestanding foreign graduate medical schools, veterinary schools, and nursing schools may be proprietary institutions.<sup>23</sup> Hereinafter, this report generally will not discuss additional requirements for foreign institutions to participate in Title IV student aid programs, as they are beyond the scope of this report.

### ***Section 102 Institution of Higher Education***

The definitions of *proprietary institution* and *postsecondary vocational institution* contained in Section 102 have several overlapping components with the Section 101 definition of *IHE*.<sup>24</sup> For instance, both proprietary and postsecondary vocational institutions must (1) admit as regular students only those individuals with a high school diploma or its equivalent, individuals beyond the age of compulsory school attendance, or individuals who are dually or concurrently enrolled in both the institution and in a secondary school; (2) be legally authorized to provide a postsecondary education by the state in which they are located; and (3) be accredited or preaccredited, as applicable,<sup>25</sup> by an accrediting agency recognized by ED to grant such statuses.<sup>26</sup>

In addition, all types of institutions (including public and private nonprofit institutions) must meet requirements related to the course of study offered at the institution and student enrollment to be considered Title IV eligible under Section 102. In general, any type of institution is considered ineligible to participate in Title IV programs if more than 25% of its regular enrolled students are incarcerated,<sup>27</sup> or if more than 50% of its regular enrolled students do not have a secondary school diploma or equivalent and the institution does not provide a two-year associate's degree or a four-year bachelor's degree. Also, an institution generally is ineligible if more than 50% of the courses offered are correspondence courses or if 50% or more of its regular students are enrolled in correspondence courses. These *50% rules* are discussed in more detail in the distance education section of this report.<sup>28</sup> Finally, an institution is considered ineligible to participate in Title IV programs if the institution has filed for bankruptcy or the institution (or its owner or chief

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<sup>22</sup> Effective July 1, 2023, a foreign institution is nonprofit if, in addition to meeting criteria relating to inurement of net earnings, it is an institution that is owned and operated only by one or more nonprofit corporations or associations and (1) is determined to be a nonprofit educational institution by the ED-recognized tax authority of the institution's home country or (2) if there is no ED-recognized tax authority of the institution's home country, the institution demonstrates to ED that it is a nonprofit educational institution. ED, *2022 Regulations*, pp. 65485-65486.

<sup>23</sup> HEA §102(a)(2); 20 U.S.C. §1002(a)(2). 34 C.F.R. §600.54.

<sup>24</sup> Eligibility requirements differ somewhat for foreign institutions; a complete description of these differences is beyond the scope of this report.

<sup>25</sup> Proprietary institutions must be accredited by an ED-recognized accrediting agency; for Title IV purposes, they may not be preaccredited.

<sup>26</sup> HEA §102(b) and (c); 20 U.S.C. §1002(b) and (c).

<sup>27</sup> HEA Section 102(a)(3)(C) specifies that ED may waive this requirement for nonprofit institutions that provide a two- or four-year program of instruction for which the institution awards a bachelor's or associate's degree or a postsecondary diploma. Effective July 1, 2023, regulations will update the waivers available for this requirement to account for prison education programs (discussed later in this report). ED, *2022 Regulations*, p. 65486.

<sup>28</sup> HEA §102(a)(3); 20 U.S.C. §1002(a)(3).



executive officer) has been convicted of or pled no contest or guilty to a crime involving the use of Title IV funds.<sup>29</sup>

While the above-described criteria generally apply to most types of Section 102 institutions, specific criteria apply to individual types of Section 102 institutions. The following sections provide information on Title IV eligibility criteria that apply to all types of Section 102 institutions, as well as criteria that only apply to specific types of Section 102 IHEs (e.g., proprietary IHEs).

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

## **Eligible Programs**

To qualify as an eligible institution for Title IV participation, an institution must offer at least one eligible program. Not all of an institution's programs must meet program eligibility requirements for an IHE to participate in Title IV, but, in general, students enrolled solely in ineligible programs cannot receive Title IV student aid.<sup>30</sup> To be Title IV eligible, a program must lead to a degree (e.g., an associate's, bachelor's, or graduate degree) or certificate or prepare students for gainful employment in a recognized occupation.

Before awarding Title IV aid to students, an IHE must determine that the program in which a student is enrolled 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.<sup>31</sup>

In addition to the general criteria for all types of institutions, a program must meet specific eligibility requirements depending on whether the institution at which it is offered is a public or private nonprofit IHE, a proprietary IHE, or a postsecondary vocational institution.<sup>32</sup> Finally, postsecondary educational programs for confined or incarcerated individuals (known as prison education programs) must meet additional criteria to qualify to participate in the Pell Grant program.

## **Public and Private Nonprofit IHEs**

At a public or private nonprofit IHE, the following types of programs are Title IV eligible: (1) programs that lead to an associate's, bachelor's, professional, or graduate degree; (2) transfer programs that are at least two academic years<sup>33</sup> in length and for which the institution does not award a credential but that are acceptable for full credit toward a bachelor's degree; (3) programs that lead to a certificate or other recognized nondegree credential, that prepare students for gainful employment in a recognized occupation, and that are at least one academic year in length;

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<sup>29</sup> HEA §102(a)(4); 20 U.S.C. §1002(a)(4).

<sup>30</sup> HEA §484(a)(1); 20 U.S.C. §1091(a)(1). Students enrolled in certain preparatory or teacher certification courses may be eligible to receive limited forms of student aid. *FSA Handbook*, vol. 2, p. 18.

<sup>31</sup> *FSA Handbook*, vol. 2, p. 18.

<sup>32</sup> In general, many of the eligible program requirements discussed herein may also apply to foreign IHEs.

<sup>33</sup> In general, an academic year must be at least 30 weeks of instructional time for a program measured in credit hours or at least 26 weeks of instructional time for a program measured in clock hours. For both of these, an academic year must also require an undergraduate course of study to contain an amount of instructional time in which a full-time student is expected to complete at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours. HEA §481(a)(2); 20 U.S.C. §1088(a)(2). Regulations define the terms credit and clock hours. See 34 C.F.R. §600.2.

(4) certificate or diploma training programs that are less than one year in length, if the institution also meets the definition of a postsecondary vocational institution; and (5) programs consisting of courses required for elementary or secondary teacher certification in the state in which the student intends to teach.<sup>34</sup>

### **Proprietary IHEs and Postsecondary Vocational Institutions**

In general, eligible programs at proprietary IHEs and postsecondary vocational institutions must meet a specified number of weeks of instruction and must provide training that prepares students for gainful employment in a recognized occupation (described below).<sup>35</sup> At proprietary and postsecondary vocational institutions, the following types of programs are Title IV eligible:

- undergraduate programs that provide at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of instruction offered over a minimum of at least 15 weeks<sup>36</sup>; such programs may admit, as regular students, individuals who have not completed the equivalent of an associate's degree;
- programs that provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered over a minimum of 10 weeks; such programs must be graduate or professional programs or must admit as regular students only individuals who have completed the equivalent of an associate's degree;
- short-term programs that provide between 300 and 600 clock hours of instruction over a minimum of 10 weeks<sup>37</sup>; such programs must have been in existence for at least one year, have verified completion and placement rates of at least 70%, may not last more than 50% longer than the minimum training period required by the state or federal agency for the occupation for which the program is being offered, and must admit as regular students some individuals who have not completed the equivalent of an associate's degree; and
- programs offered by proprietary IHEs that lead to a bachelor's degree in liberal arts; the school must have been continuously accredited by an ED-recognized accrediting agency<sup>38</sup> since at least October 1, 2007, and must have provided the program continuously since January 1, 2009.<sup>39</sup>

### **Programs Required to Prepare Students for Gainful Employment**

Most nondegree programs offered by public and private nonprofit IHEs<sup>40</sup> and almost all programs offered by proprietary and postsecondary vocational institutions, regardless of whether they lead

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<sup>34</sup> These programs must be offered in credit or clock hours. 34 C.F.R. §668.8(c); *FSA Handbook*, vol. 2, p. 19.

<sup>35</sup> As with public and private nonprofit IHEs, an academic year for programs at proprietary IHEs and postsecondary vocational institutions must require an undergraduate course of study to contain an amount of instructional time in which a full-time student is expected to complete at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours over a period of at least 30 weeks for credit hour programs or 26 weeks for clock hour programs.

<sup>36</sup> Regulations define the terms clock hours, semester hours, trimester hours, and quarter hours. See 34 C.F.R. §§600.2 and 668.8

<sup>37</sup> Short-term programs are only eligible to participate in the Direct Loan Program. 34 C.F.R. §668.8(d)(3).

<sup>38</sup> The accrediting agency must have been one that previously was defined as a regional accrediting agency on October 1, 2007. 34 C.F.R. §668.8(d)(4)(i).

<sup>39</sup> 34 C.F.R. §668.8(d); *FSA Handbook*, vol. 2, pp. 19-20.

<sup>40</sup> The following types of nondegree programs offered by public and private nonprofit IHEs are not subject to gainful employment requirements: (1) preparatory classwork necessary for enrollment in a Title IV eligible program; (2)

to a degree, must prepare students for “gainful employment in a recognized occupation.”<sup>41</sup> Currently, neither the HEA nor regulations specify criteria to demonstrate that a program prepares students for gainful employment in a recognized occupation, but previous regulations have done so.

In early 2022, ED conducted negotiated rulemaking<sup>42</sup> to develop new gainful employment regulations.<sup>43</sup> Negotiators did not reach consensus on proposed gainful employment rules; thus, ED may now publish proposed gainful employment rules on its own, without conducting further negotiations with a negotiated rulemaking committee. ED has stated it intends to propose new gainful employment regulations by April 2023.<sup>44</sup>

### **History of Gainful Employment Regulations**

Prior to 2010, neither Congress nor ED had established specific parameters regarding when certain programs were considered to prepare students for “gainful employment in a recognized occupation,” as the term is used in the HEA. In response to concerns about the quality of programs intended to prepare students for gainful employment (gainful employment programs; GE programs) and the level of student debt assumed by individuals who attend these programs, ED issued a series of regulations in 2010 and 2011 relating to GE programs. Among other provisions, the regulations established student loan repayment rate and student loan debt-to-earnings performance metrics for GE programs to meet for continued participation in the Title IV aid programs<sup>45</sup> and required the disclosure of GE program performance information (e.g., program costs, placement rates, and median student loan debt for program completers) to prospective students.<sup>46</sup>

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; although, it upheld the disclosure requirements.<sup>47</sup> Rather than appealing the decision, ED promulgated new gainful employment regulations in 2014.

The 2014 gainful employment regulations<sup>48</sup> retained and updated the previous disclosure requirements and once again required that GE programs meet performance standards for Title IV participation. While some elements of the 2014 performance standards were similar to those of the 2010/2011 standards, others differed. Perhaps most

approved comprehensive transition and postsecondary programs for students with intellectual disabilities; (3) transfer programs that are at least two academic years in length and for which the school does not award a credential but that are designed to be acceptable for full credit toward a bachelor’s degree; and (4) teacher certification programs for which the institution does not award a credential. *FSA Handbook*, vol. 2, p. 21.

<sup>41</sup> HEA §§101(b)(1), 102(b)(1)(A)(i) and 102(c)(1)(A); 20 U.S.C. §§1001(b)(1), 1002(b)(1)(A)(i) and 1002(c)(1). The following programs offered by proprietary IHEs are not subject to gainful employment requirements: (1) programs that lead to a bachelor’s degree in liberal arts, if the school has been continuously accredited by an ED-recognized accrediting agency (that was defined as a regional accrediting agency on October 1, 2007) since at least October 1, 2007, and has provided the program continuously since January 1, 2009; (2) preparatory classwork necessary for enrollment in a Title IV eligible program; and (3) approved comprehensive transition and postsecondary programs for students with intellectual disabilities. *FSA Handbook*, vol. 2, p. 21.

<sup>42</sup> For information on negotiated rulemaking, see CRS Report R46756, *Negotiated Rulemaking: In Brief*.

<sup>43</sup> Department of Education, “Negotiated Rulemaking for Higher Education 2021-22: Institutional and Programmatic Eligibility Committee,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rr#ipecc>, accessed December 30, 2022.

<sup>44</sup> Department of Education, “Unified Agenda of Federal Regulatory and Deregulatory Actions,” 87 *Federal Register* 48273, August 8, 2022.

<sup>45</sup> Department of Education, “Program Integrity: Gainful Employment—Debt Measures,” 76 *Federal Register* 34385, June 13, 2011.

<sup>46</sup> Department of Education, “Program Integrity Issues,” 75 *Federal Register* 66831, October 29, 2010. See also Department of Education, “Program Integrity: Gainful Employment—New Programs,” 75 *Federal Register* 66665, October 29, 2010.

<sup>47</sup> *Association of Private Colleges & Universities v. Duncan*, 2012 U.S. Dist. LEXIS 90434 (D.C. 2012).

<sup>48</sup> Department of Education, “Program Integrity: Gainful Employment,” 79 *Federal Register* 64889, October 31, 2014.

notably, while both the 2014 and 2010/2011 standards contained debt-to-earnings performance measures, the 2014 standards did not contain a student loan repayment rate performance measure.

On July 1, 2019, before the 2014 gainful employment regulations could be fully implemented, ED rescinded the regulations in their entirety. In doing so, ED stated that the formula to determine the debt-to-earnings measures was, among other things, “fundamentally flawed” and “wrongfully target[ed] some academic programs and institutions while ignoring other programs that may result in lesser outcomes and higher student debt.”<sup>49</sup> Thus, since July 1, 2020, there have been no regulations delineating when ED considers a program to prepare students for gainful employment in a recognized occupation.<sup>50</sup>

## Prison Education Programs

In 2020, the FAFSA Simplification Act (Title VII, Division FF of P.L. 116-260) amended the HEA to newly authorize individuals in correctional institutions to receive Pell Grants<sup>51</sup> for enrollment in *prison education programs* (PEPs). Thus, effective July 1, 2023, qualifying confined or incarcerated individuals may receive Pell Grants while enrolled in PEPs offered by qualifying IHEs, so long as the programs meet specified requirements.<sup>52</sup>

For purposes of Pell Grant program eligibility, public, nonprofit, and postsecondary vocational institutions may offer PEPs. Proprietary institutions do not qualify. Along with meeting general programmatic eligibility criteria (e.g., leading to a degree or preparing students for gainful employment in a recognized occupation), PEPs must

- be offered by an institution that is approved to operate in a correctional facility by the relevant entity responsible for overseeing the correctional facility (oversight entity);
- have been determined by the relevant oversight entity to be operating “in the best interest of students”<sup>53</sup>;
- offer transferability of credits to at least one IHE in the state in which the correctional facility is located;
- satisfy any applicable educational requirements for professional licensure or certification in the state in which the correctional facility is located;

<sup>49</sup> Department of Education, “Program Integrity: Gainful Employment,” 84 *Federal Register* 31392, July 1, 2019.

<sup>50</sup> The 2014 gainful employment regulations became effective July 1, 2015, but leading up to the full rescission of the gainful employment regulations, various aspects of the 2014 gainful employment regulations were not fully implemented or were delayed in implementation for a variety of reasons. For example, ED delayed until July 1, 2019, some portions of the rule relating to certain disclosures requirements. (Department of Education, “Program Integrity: Gainful Employment,” 83 *Federal Register* 28177, June 18, 2018.) Additionally, to enable ED to calculate whether a program met the minimum performance standards, the 2014 regulations specified that ED was to obtain data from the Social Security Administration (SSA). However, a memorandum of understanding relating to data sharing between ED and SSA lapsed in 2018. (Emily Wilkins, “Student Loan, Gainful Employment Rules Delayed, Official Says,” *Bloomberg Government*, October 2, 2018, <https://about.bgov.com/blog/student-loan-rules-delayed-official-says/>.)

<sup>51</sup> Prior to 1994, certain incarcerated individuals were eligible to receive Pell Grants. The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) made them ineligible to receive Pell Grants. For additional information on this topic, see CRS Report R45737, *Prisoners’ Eligibility for Pell Grants: Issues for Congress*.

<sup>52</sup> ED, *2022 Regulations*, pp. 65495-65498.

<sup>53</sup> Regulations specify a variety of criteria for determining whether a PEP is operating in the best interest of students. For example, the relevant oversight entity must assess, among others, whether aspects of a PEP (such as instructor experience, transferability of credits, and academic and career advising services) are substantially similar to other programs offered by the IHE, accounting for the geographic and other constraints of the PEP. The oversight entity may also assess, for example, student recidivism rates, completion rates, and job placement rates.

- not offer education that is designed to lead to licensure or employment for a specific job in the state, if such job typically involves prohibitions on the licensure or employment of formerly confined or incarcerated individuals in the state where the correctional facility is located<sup>54</sup>; and
- meet the accreditation requirements of the IHE's accrediting agency.

## Program Integrity Triad

Title IV of the HEA establishes the program integrity triad, which comprises three requirements to ensure program integrity in postsecondary education. The three requirements are state authorization, accreditation by an accrediting agency recognized by ED, and certification by ED. This triad is intended to provide a balance in the Title IV eligibility and participation 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

For Title IV purposes, consumer protection is accomplished by states providing the legal authority for an institution to operate a postsecondary educational program in the state in which it is physically located.<sup>55</sup>

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

1. the state must authorize the IHE by name to operate postsecondary educational programs, and
2. the state must have in place a process to review and address complaints concerning IHEs physically located within the state, including enforcing applicable state law.<sup>56</sup>

A state may authorize an IHE by name through a state charter, statute, constitutional provision, or other action by an appropriate state agency (e.g., authorization to conduct business or operate as a nonprofit organization). Additionally, an institution must comply with any applicable state approval or licensure requirements.<sup>57</sup>

IHEs that offer postsecondary distance or correspondence education (discussed later in this

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<sup>54</sup> In the case of a federal correctional facility, this and the previous two requirements relate to the state where most of the confined or incarcerated individuals in the facility reside upon release, rather than the state in which the facility is located.

<sup>55</sup> 34 C.F.R. §600.9.

<sup>56</sup> These two requirements do not apply to (1) institutions authorized by the federal government by name to operate postsecondary educational programs and (2) institutions authorized by name by an Indian tribe to operate postsecondary educational programs, provided they are located on tribal lands and the tribal government has a process to review and address complaints concerning the IHEs and enforces applicable tribal law. Additionally, religious institutions are considered authorized to operate postsecondary educational programs within a state if they are exempt under state law from state authorization as religious institutions. *Federal Student Aid Handbook*, vol. 2, p. 5.

<sup>57</sup> States may exempt institutions established through a state charter, statute, or constitutional provision from state approval or licensure requirements based on the IHE's having been in operation for at least 20 years or based on its accreditation by one or more ED-recognized accrediting agencies. If the state authorized an IHE to conduct business or operate as a nonprofit organization, the state may not exempt the IHE from state approval or licensure requirements based on years in operation, accreditation, or comparable exemptions. *Federal Student Aid Handbook*, vol. 2, p. 6.

report) to students located in a state in which the IHE is not physically located must meet any requirements for the state in which the student is located.<sup>58</sup> An IHE may meet this requirement if it participates in a state authorization reciprocity agreement.<sup>59</sup>

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

- upon request, provide the Secretary of Education (the Secretary) with information about the process it uses to authorize institutions to operate within the state;
- notify the Secretary if it has evidence to believe that an institution within the state has committed fraud in the administration of Title IV programs; and
- notify the Secretary if it revokes an institution’s authorization to operate.<sup>60</sup>

## Accreditation

The second component of the program integrity triad is accreditation by an ED-recognized accrediting agency or association.<sup>61</sup> In higher education, accreditation is intended to help ensure an acceptable level of quality of education and training within IHEs and is a form of “quality review ... to scrutinize colleges, universities and programs for quality assurance and quality improvement.”<sup>62</sup> Rather than creating a centralized authority to assess quality, the federal government has chosen to rely, in part, on the existing expertise of accrediting agencies, which are nongovernmental entities that “develop evaluation criteria and conduct peer evaluations to assess whether or not those criteria are met” by institutions within parameters provided by the federal government.<sup>63</sup> For Title IV purposes, an institution must be accredited or, if applicable, preaccredited by an ED-recognized accrediting agency. Each accrediting agency must meet HEA-specified standards to be recognized by ED.

### **Institutional vs. Programmatic Accreditation**

*Institutional accrediting agencies* grant accreditation status to an entire institution. For Title IV purposes, an institution generally must be accredited or, if applicable, preaccredited by an ED-recognized institutional accrediting agency. Institutional accrediting agencies comprise accrediting agencies that stakeholders and practitioners refer to as *regional* and *national* accreditors. Regional accreditors generally concentrate on specific regions of the country; although, they are not required to do so. National accreditors operate across the United States and generally review either religiously affiliated or doctrinally based institutions, or proprietary institutions and career-based single purpose institutions.

<sup>58</sup> 34 C.F.R. §600.9(c).

<sup>59</sup> A state authorization reciprocity agreement is “an agreement between two or more states that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.” 34 C.F.R. §600.2.

<sup>60</sup> HEA §495; 20 U.S.C. §1099a.

<sup>61</sup> 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*.

<sup>62</sup> Judith S. Eaton, *An Overview of U.S. Accreditation*, Council for Higher Education Accreditation (CHEA), Washington, DC, November 2015, p. 1, <https://www.chea.org/overview-us-accreditation> (hereinafter “CHEA, *An Overview of U.S. Accreditation*”).

<sup>63</sup> Department of Education, “Accreditation in the United States: Overview of Accreditation in the United States,” <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview>, accessed January 3, 2023.



*Programmatic accrediting agencies grant accreditation status to individual educational programs and single-purpose institutions (e.g., freestanding law schools).*

A program is not required to be accredited by a programmatic accrediting agency for Title IV purposes<sup>64</sup>; rather, it only needs to be covered by the IHE's institutional accrediting agency.<sup>65</sup> 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.

## 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.<sup>66</sup> Alternatively, a public or private nonprofit IHE may be preaccredited by an agency recognized by ED to grant such preaccreditation,<sup>67</sup> and a public postsecondary vocational institution may be accredited by a state agency<sup>68</sup> that ED determines is a reliable authority. Proprietary institutions must be accredited by an ED-recognized accrediting agency.<sup>69</sup>

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.<sup>70</sup>

Typically, an institution seeking accreditation will first perform a self-assessment to determine whether its operations and performance meet the basic standards required by the relevant accrediting agency. Next, an outside group of higher education peers (e.g., faculty and administrators) and members of the public conduct an on-site visit at the institution during which the team determines whether the institution meets the accrediting organization's standards. Based on the results of the self-assessment and site visit, the accrediting organization determines whether to award, renew, deny, or provisionally award accreditation to an institution.<sup>71</sup>

An institution that has had its accreditation withdrawn, revoked, or terminated for cause is ineligible to participate in Title IV programs for 24 months following the loss of accreditation, unless the accrediting agency rescinds the loss. The same rules apply if an institution voluntarily withdraws its accreditation. The Secretary, however, can continue the eligibility of a religious

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<sup>64</sup> In limited circumstances, programmatic accreditation from an ED-recognized programmatic accrediting agency may be used by an institution to establish Title IV eligibility. This generally applies to single-purpose institutions. See Department of Education, "Accreditation in the United States: Programmatic Accrediting Agencies," [https://www2.ed.gov/admins/finaid/accred/accreditation\\_pg4.html#National\\_Institutional](https://www2.ed.gov/admins/finaid/accred/accreditation_pg4.html#National_Institutional), accessed January 3, 2023.

<sup>65</sup> In many instances, particular programs (e.g., medicine) are accredited by a programmatic accrediting agency, while the institution at which the program is offered is accredited by an institutional accrediting agency.

<sup>66</sup> Such an agency is known as the institution's primary accrediting agency. Some educational programs offered by the institution are not covered by an institution's accreditation. Such programs generally are not offered for credit. A noncredit course provides no credit applicable toward a degree, diploma, certificate, or other recognized postsecondary credential.

<sup>67</sup> HEA §101(a)(5); 20 U.S.C. §1001(a)(5).

<sup>68</sup> This requirement is distinct from the state authorization requirement. 34 C.F.R. §600.6(c)(5)(ii).

<sup>69</sup> HEA §102(b)(1)(D); 20 U.S.C. §1002(b)(1)(D). See also *FSA Handbook*, vol. 2, pp. 8-9.

<sup>70</sup> CHEA, *An Overview of U.S. Accreditation*, p. 4.

<sup>71</sup> CHEA, *An Overview of U.S. Accreditation*, pp. 4-5. Accrediting agency terms such as *award* or *deny* that are used in this report are meant to provide general descriptions of the types of actions taken by accrediting agencies, as accrediting agencies' definitions for these terms may vary.



institution whose loss of accreditation, whether voluntary or not, is related to its religious mission and not to the HEA accreditation standards.<sup>72</sup> If an institution's accrediting agency loses its recognition from ED, the institution has up to 18 months to obtain accreditation from another ED-recognized agency.<sup>73</sup>

## **Federal Recognition of Accrediting Agencies**

Although the federal government does not set specific standards for accrediting agencies, generally, it does require that institutions be accredited or, if applicable, 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.<sup>74</sup>

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

- IHE membership with the agency must be voluntary, and one of the primary purposes of the agency must be accreditation of the IHEs.<sup>75</sup>
- The agency must be a state agency approved by the Secretary as an accrediting agency on or before October 1, 1991.
- Either the agency must conduct accreditation through a voluntary membership of individuals in a profession, or it must have as its primary purpose the accreditation of programs within institutions that have already been accredited by another ED-recognized agency.

Agencies that meet the first or third criterion listed above must also be administratively and financially separate and independent of any related trade association or membership organization.<sup>76</sup> 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

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<sup>72</sup> HEA §496(j); 20 U.S.C. §1099b(j).

<sup>73</sup> HEA §498(h)(2); 20 U.S.C. §1099c(h)(2).

<sup>74</sup> HEA §496; 20 U.S.C. §1099b; 34 C.F.R. §602.1.

<sup>75</sup> ED also recognizes accrediting agencies for the purpose of participating in other federal programs. ED-recognition of accrediting agencies for purposes of participating in non-Title IV programs are beyond the scope of this report.

<sup>76</sup> Section 496 of the HEA (20 U.S.C. §1099b) sets forth four criteria for an accrediting agency to be considered "separate and independent." They are (1) members of the postsecondary education governing body of the agency cannot be elected or selected by the board or chief executive officer of any related or affiliated trade association or membership organization; (2) for every six members of the board of the agency, at least one must be a member of the public; (3) dues to the agency must be paid separately from dues to any related or associated trade association or membership organization; and (4) the agency's budget must be developed and determined by the agency, without review or consultation from another entity or organization.

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.<sup>77</sup>

Accrediting agencies must also meet requirements that focus on the review of an institution's operating procedures, including reviewing newly established branch campuses<sup>78</sup> and requiring IHEs to submit a teach-out plan in certain circumstances.<sup>79</sup> They must also perform regular on-site visits that focus on the quality of education and program effectiveness.<sup>80</sup>

## **Certification by ED**

The final component of the program integrity triad is certification by ED. Here, ED is responsible for verifying an institution's legal authority to operate within a state and its accreditation status. ED also evaluates an institution's financial responsibility and administrative capability to administer Title IV student aid programs. ED can certify an institution to participate in Title IV aid programs for up to six years.<sup>81</sup>

## **Financial Responsibility**

ED determines an IHE's financial responsibility based on its ability to provide the services described in its official publications, to administer the Title IV programs in which it participates, and to meet its financial obligations.<sup>82</sup> IHEs provide ED with the information necessary to evaluate their financial responsibility through annual audited financial statements.<sup>83</sup> A public IHE is financially responsible if its debts and liabilities are backed by the full faith and credit of the state or another government entity.<sup>84</sup> A proprietary or private nonprofit IHE is financially responsible if it meets specific financial ratios (e.g., equity ratio) established by ED,<sup>85</sup> has sufficient cash reserves to make any required return of unearned Title IV funds<sup>86</sup>, and is able to

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<sup>77</sup> HEA §496(a)(4)-(5); 20 U.S.C. §1099b(a)(4)-(5).

<sup>78</sup> HEA §496(c)(4) & (5); 20 U.S.C. §1099b(c)(4) & (5).

<sup>79</sup> A teach-out plan is a written plan developed by an institution that provides for the equitable treatment of its own students if it, or one of its locations that provides 100% of at least one program, ceases to operate before all students have completed their program of study. HEA §487(f)(2); 20 U.S.C. §1094(f)(2). Instances in which an IHE is required to submit a teach-out plan include, but are not limited to the following: (1) ED notifies the accrediting agency that ED has initiated a Title IV emergency, limitation, suspension, or termination action against the institution; (2) the accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution; and (3) the institution notifies the accrediting agency that the institution intends to cease operations. HEA §496(c)(3); 20 U.S.C. §1099b(c)(3).

<sup>80</sup> HEA §496(c)(1); 20 U.S.C. §1099b(c)(1).

<sup>81</sup> HEA §498(g)(1); 20 U.S.C. §1099c(g)(1).

<sup>82</sup> HEA §498(c); 20 U.S.C. §1099c(c); 34 C.F.R. §668, Subpart L.

<sup>83</sup> *FSA Handbook*, vol. 2, p. 69.

<sup>84</sup> 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. 79.

<sup>85</sup> In evaluating an IHE's financial responsibility, ED will calculate a composite score based on its equity, primary, and net income ratios. 34 C.F.R. §668.172.

<sup>86</sup> See the "Return of Title IV Funds" section.

meet all of its financial obligations and provide the administrative resources necessary to comply with Title IV requirements.<sup>87</sup>

Even if an institution meets the above requirements, ED does not consider it financially responsible if the IHE violates past performance requirements (e.g., failing to resolve satisfactorily any compliance issues identified in program reviews or audits)<sup>88</sup> and in the case of proprietary and private nonprofits institutions, if the IHE does not meet third-party financial audit standards.<sup>89</sup>

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 may include, for example, submitting an irrevocable letter of credit to ED that is equal to at least 50% of the Title IV student aid program funds that the IHE received during its most recently completed fiscal year, meeting specific monitoring requirements, or participating in the Title IV programs under provisional certification.<sup>90</sup>

## **Administrative Capability**

Along with demonstrating financial responsibility, an institution must demonstrate its ability to properly administer the Title IV programs in which it participates and to provide the education it describes in public documents (e.g., marketing brochures). Administrative capability focuses on the processes, procedures, and personnel used in administering Title IV funds and indicators of student success.<sup>91</sup>

Administrative capability standards address numerous aspects of Title IV administration. For example, to administer Title IV programs an institution must use ED's electronic processes<sup>92</sup> and develop a system to identify and resolve discrepancies in Title IV information received by various institutional offices. An 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, an IHE must have an adequate internal system of checks and balances that includes dividing the functions of authorizing payments and disbursing funds between two separate offices.<sup>93</sup>

Institutions are required to have a capable staff member to administer Title IV programs and coordinate those programs with other aid received by students.<sup>94</sup> This person must also have an adequate number of qualified staff to assist with aid administration. Before receiving Title IV

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<sup>87</sup> *FSA Handbook*, vol. 2, p. 80.

<sup>88</sup> 34 C.F.R. §668.171(b)(4), (g)(1)(ii), and (h).

<sup>89</sup> *FSA Handbook*, vol. 2, p. 80.

<sup>90</sup> *FSA Handbook*, vol. 2, pp. 88-92.

<sup>91</sup> HEA §498(d); 20 U.S.C. § 1099c(d); 34 C.F.R. §668.16.

<sup>92</sup> Some of the required electronic processes include establishment of a Student Aid Internet Gateway mailbox to transmit student data records to ED, use of the E-App to submit and update an institution's eligibility information, and use of the Default Management website to receive draft and official cohort default rate data. A list of required electronic processes can be found at *FSA Handbook*, vol. 2, pp. 58-59.

<sup>93</sup> 34 C.F.R. §668.16.

<sup>94</sup> ED considers an individual capable for purposes of Title IV administration if the individual: (1) is certified as a financial aid administrator, if the institution's state requires such certification; (2) has successfully completed an ED-provided or ED-approved Title IV training program; or (3) has previous experience and success in administering Title IV programs. This list is not definitive; ED may consider other relevant factors. 34 C.F.R. §668.16(b)(1).

funds, an IHE must certify that neither it nor its employees have been debarred or suspended by a federal agency; similar limitations apply to third parties with whom an IHE may contract to administer aspects of the IHE's Title IV participation.<sup>95</sup>

Relating to indicators of student success, an institution must have satisfactory academic progress (SAP) standards for students receiving Title IV funds. In general, IHEs must develop SAP standards that establish a minimum grade point average (or its equivalent) that students must meet at a specified point in their program and a maximum time frame in which students must complete their educational programs. A student who fails to meet the SAP requirements becomes ineligible to receive Title IV funds.<sup>96</sup> Also related to student success indicators, an institution that seeks to participate in Title IV programs for the first time may not have an undergraduate withdrawal rate for regular students that is greater than 33% during its most recently completed award year.<sup>97</sup>

### ***Cohort Default Rate***

ED may deem an institution administratively incapable if it has a high cohort default rate (CDR). In general, the CDR is the percentage of an IHE's qualifying Federal Family Education Loan (FFEL) program and Direct Loan program borrowers who enter repayment in a given fiscal year and who default within three years<sup>98</sup> after entering repayment.<sup>99</sup> Sanctions for high CDRs vary depending on the circumstances, and can include loss of eligibility to participate in some Title IV programs.

An IHE

- loses eligibility to participate in the Direct Loan program if its CDR is greater than or equal to 40% in a single fiscal year;<sup>100</sup> and
- loses eligibility to participate in the Direct Loan and Pell Grant programs if its CDR is greater than or equal to 30% for three consecutive fiscal years.<sup>101</sup>

Even if an IHE does not lose eligibility based on the above thresholds, it is not considered administratively capable if its CDR equals or exceeds 30% for two of the three most recent fiscal

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<sup>95</sup> *FSA Handbook*, vol. 2, pp. 48-53.

<sup>96</sup> For more information about SAP and student eligibility for FSA programs, see *FSA Handbook*, vol. 1.

<sup>97</sup> Withdrawal occurs when students drop out of all Title IV eligible coursework during an academic term. 34 C.F.R. §668.16(1). See also *FSA Handbook*, vol. 2, p. 14.

<sup>98</sup> For instance, the 2019 CDR represents the percentage of borrowers who entered repayment in FY2019 and defaulted in FY2019, FY2020, or FY2021. In 2022, the CDR for the 2019 cohort fiscal year was used to determine whether an institution is administratively incapable based on that information.

<sup>99</sup> For institutions with fewer than 30 borrowers entering repayment in a given cohort fiscal year, an "average rate" CDR is used, which is the percentage of borrowers who entered repayment in the current fiscal year or either of the two preceding fiscal years and defaulted within three years of the fiscal year in which they entered repayment. HEA §434(m)(1)(A); 20 U.S.C. §1085(m)(1)(A).

<sup>100</sup> This and the following CDR measure are calculated for FFEL program Subsidized and Unsubsidized Stafford Loans and Consolidation Loans used to repay those loans and Direct Loan program Subsidized and Unsubsidized Loans and Consolidation Loans used to repay those loans. 34 C.F.R. §668.187.

<sup>101</sup> A different CDR measure applies to institutional participation in the Perkins Loan program. For additional information, see 34 C.F.R. §674.5.

years.<sup>102</sup> When this happens, ED may grant provisional certification to an institution that would be deemed administratively capable except for its high cohort default rates.<sup>103</sup>

### **Provisional Certification**

Under provisional certification, ED certifies that an IHE has demonstrated it is capable of meeting HEA Title IV institutional participation standards within a specified time frame and is able to meet its responsibilities under its program participation agreement (discussed later in this report). If an institution is seeking initial certification, ED can grant it up to one year of provisional certification.<sup>104</sup> Other instances in which ED may grant an institution provisional certification include if the IHE has experienced a partial or total change in ownership that results in a change in control or if ED determines that the administrative or financial condition of the IHE may jeopardize its ability to meet its financial responsibilities. Additionally, if an accrediting agency loses its ED recognition, ED may grant provisional certification to an institution that was accredited by that agency for up to 18 months after ED's withdraws the agency's recognition.<sup>105</sup>

### **Program Reviews**

To ensure that an institution is conforming to eligibility and participation requirements, ED can conduct program reviews.<sup>106</sup> During a program review, ED evaluates an institution's compliance with Title IV requirements and identifies actions the IHE must take to correct any problem(s). ED gives review priority to those institutions with high cohort default rates; IHEs with significant fluctuations in Pell Grant awards or Direct Loan volume that are not accounted for by changes in those programs; IHEs that are reported to have deficiencies or financial aid problems by their state or accrediting agency; IHEs with high annual dropout rates;<sup>107</sup> and IHEs determined by ED to pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.<sup>108</sup> If, during a review, ED determines that an institution is not administratively capable or financially responsible or is violating Title IV program rules, ED may grant it provisional certification, take corrective actions, or impose sanctions.

### **Sanctions and Corrective Actions**

ED has the authority to impose a variety of sanctions and corrective actions on an institution that violates Title IV program rules, a Program Participation Agreement (discussed later in this report) or any other agreement made under the laws or regulations, or if it substantially misrepresents the nature of its educational programs, financial charges, or graduates' employability. Sanctions

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<sup>102</sup> An IHE similarly is not considered administratively capable if its CDR is 15% in a single year for loans made under the Federal Perkins Loan program.

<sup>103</sup> 34 C.F.R. §668.16(m)(2)(i).

<sup>104</sup> An IHE may be required to meet "additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification." These additional conditions may include, for example, meeting additional reporting requirements. 34 C.F.R. §668.13(c)(4)(ii).

<sup>105</sup> 34 C.F.R. §668.13(c).

<sup>106</sup> For additional information on program reviews, see *FSA Handbook*, vol. 2, pp. 179-184.

<sup>107</sup> "High annual dropout rates" is undefined.

<sup>108</sup> HEA §498A(a)(2); 20 U.S.C. §1099c-1(a)(2).

include fines, limitations, suspensions, emergency actions, and terminations. ED can also sanction third-party servicers performing tasks related to the institution's Title IV programs.<sup>109</sup>

### ***Fines, Limitations, and Suspensions***

ED may impose several types of sanctions on institutions for statutory and regulatory violations, including fines, limitations, and suspensions. ED can fine an institution up to \$59,017 for each statutory or regulatory violation it commits, depending on the size of the IHE and the seriousness of the violation.<sup>110</sup> Under a limitation, ED imposes specific conditions or restrictions on an institution related to its administration of Title IV funds. A limitation lasts for at least 12 months, and if an institution fails to abide by the limitation, ED may initiate a termination proceeding. Finally, under a suspension, an institution is not allowed to participate in Title IV programs for up to 60 days. Each of these sanctions may require an institution to take corrective actions as well, which may include repaying improperly used funds or making payments to eligible students from the IHE's own funds.<sup>111</sup>

### ***Emergency Action***

ED can take emergency action to withhold Title IV funds from an institution if it receives reliable information that an IHE is violating applicable laws or regulations, special arrangements, agreements, or limitations. ED must determine that the institution is misusing federal funds, that immediate action is necessary to stop misuse, and that the "potential losses outweigh[] the importance of using established procedures for limitation, suspension, or termination."<sup>112</sup> An emergency action suspends an institution's participation in Title IV programs and prohibits it from disbursing such funds. Typically, the emergency action may not last more than 30 days.<sup>113</sup>

### ***Termination of Title IV Participation***

The final action ED can take is the termination of an institution's participation in Title IV programs. Generally, an institution that has had its participation terminated cannot apply for recertification for at least 18 months. To request reinstatement, an institution must submit a fully completed application to ED and demonstrate that it has corrected the violation(s) for which its participation was terminated. ED may then approve, approve subject to limitations, or deny the institution's request.<sup>114</sup>

## **Other Related Issues**

Several other requirements affect institutional eligibility for and participation in Title IV programs. Some of these requirements are institution Program Participation Agreements (PPAs), which include provisions related to incentive compensation, campus crime reporting

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<sup>109</sup> *FSA Handbook*, vol. 2, p. 184.

<sup>110</sup> HEA Section 487(c)(3)(B) (20 U.S.C. § 1094(c)(3)(B)) specifies that fines may equal up to \$25,000 for each violation. However, the Inflation Adjustment Act (20 U.S.C. § 2461 note) requires that each federal agency annually adjust for inflation their civil monetary penalties. The \$59,017 fine for institutional Title IV violations represents ED's most recent adjustment to its civil monetary penalties. Department of Education, "Adjustment of Civil Monetary Penalties for Inflation," 87 *Federal Register* 23451, April 20, 2022.

<sup>111</sup> *FSA Handbook*, vol. 2, pp. 184-185.

<sup>112</sup> *FSA Handbook*, vol. 2, p. 185.

<sup>113</sup> *FSA Handbook*, vol. 2, pp. 184-185.

<sup>114</sup> *FSA Handbook*, vol. 2, p. 185.



requirements, and return of Title IV funds; and distance education. The failure to meet the requirements for any of these may result in the loss of Title IV eligibility or other sanctions.

## **Program Participation Agreements**

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

By signing a PPA, an institution agrees that it will use any funds received under a Title IV program (along with any interest or other earnings thereon) only for the purpose specified for the particular Title IV program, will not charge students a processing fee to determine a student's eligibility for such funds, and will establish and maintain administrative and fiscal procedures to ensure the proper administration of Title IV programs. The PPA reiterates many provisions required for institutional eligibility and ED certification discussed earlier in this report and contains several additional requirements that may affect an IHE's Title IV eligibility, some of which are described below. Along with the general participation requirements with which an institution must comply, a PPA may also contain institution-specific requirements.<sup>115</sup>

## **90/10 Rule**

Currently, as part of their PPAs, proprietary IHEs must agree that in any given institutional fiscal year, that they will not derive more than 90% of their tuition and fees revenues from Title IV funds (i.e., at least 10% of their tuition and fees revenues must come from non-Title IV sources). This is known as the 90/10 rule. Examples of non-Title IV funds include private education loans and some military and veterans' benefits, such as benefits provided under the Post-9/11 GI Bill program.

Effective July 1, 2023, for institutional fiscal years beginning on or after January 1, 2023, proprietary IHEs may not derive more than 90% of their tuition and fees revenues from federal education assistance funds.<sup>116</sup> Federal education assistance funds include HEA Title IV student aid, and "any other education assistance funds provided by a Federal agency directly to an institution or a student" but exclude non-Title IV federal funds provided directly to a student to cover expenses other than tuition, fees, and other institutional charges.<sup>117</sup> ED publishes in the *Federal Register* a list of the federal education assistance funds. These funds include, among others, benefits provided under the Post-9/11 GI Bill program, Department of Defense Military Tuition Assistance benefits, Chafee Education and Training Vouchers, and Trade Adjustment Assistance benefits,<sup>118</sup> to the extent they are not funds provided directly to a student to cover expenses other than tuition, fees, and other institutional charges.

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<sup>115</sup> 34 C.F.R. §668.14. See also *FSA Handbook*, vol. 2, pp. 14-17.

<sup>116</sup> HEA §487(a)(24); 20 U.S.C. §1094(a)(24).

<sup>117</sup> ED, *2022 Regulations*, p. 65491.

<sup>118</sup> Department of Education, "List of Federal Education Assistance for Proprietary Institutions of Higher Education to Include as Federal Revenue," *87 Federal Register* 78096, December 21, 2022.



Under both the current 90/10 rule and the updated rule, if an IHE violates the 90/10 rule for one institutional fiscal year,<sup>119</sup> ED provisionally certifies it for two years. If the IHE violates the 90/10 rule for two consecutive institutional fiscal years, it loses its Title IV eligibility for at least two years.<sup>120</sup>

## **Incentive Compensation**

In a PPA, an IHE must agree it will not provide any commission, bonus, or other incentive compensation to individuals or entities based directly or indirectly on their success in enrolling students or the enrolled students obtaining financial aid; however, some exceptions apply to this general rule. For instance, IHEs can provide incentive compensation to individuals for the recruitment of foreign students who are ineligible to receive Title IV funds.<sup>121</sup>

The ban on incentive compensation only applies to the activities of securing enrollment (recruitment) and securing financial aid. Other activities are not banned, and ED draws a distinction between activities that involve directly working with individual students and policy-level determinations that affect recruitment and financial aid awards. For instance, an individual who is responsible for contacting potential student applicants or assisting students in filling out an enrollment application cannot receive incentive compensation, but an individual who conducts marketing activities, such as the broad dissemination of informational brochures or the collection of contact information, can receive incentive compensation.<sup>122</sup>

## **Clery Act Requirements**

HEA Section 485(f), referred to as the Clery Act,<sup>123</sup> requires domestic Title IV participating IHEs to (1) collect and report to ED campus crime statistics and (2) create an annual security report (ASR) that contains those statistics, as well as information on campus safety and security policies. The ASR must be disseminated to current and prospective students and employees.

Campus crime statistics required to be reported to ED and included in an ASR include data on the on-campus<sup>124</sup> occurrence of a range of offenses specified in statute, including murder, burglary, robbery, domestic violence, and sex offenses (e.g., rape).

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

- procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and an IHE's response to such reports;
- security and access to campus facilities;

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<sup>119</sup> An institutional fiscal year is a one-year period that an IHE uses for financial reporting and budgeting. An IHE may set its own institutional fiscal year.

<sup>120</sup> HEA §487(a)(24) and (d)(2); 20 U.S.C. §1094(a)(24) and (d)(2).

<sup>121</sup> 34 C.F.R. §668.14(b)(22).

<sup>122</sup> For a detailed list of activities covered by the incentive compensation prohibition, see *FSA Handbook*, vol. 2, pp. 54-57, Tables 1-3 and U.S. Department of Education, "Higher Education: Program Integrity Questions and Answers—Incentive Compensation," <http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html>, accessed January 4, 2023.

<sup>123</sup> For additional information, see Department of Education, *Clery Act Appendix for the FSA Handbook*, October 2020, <https://www2.ed.gov/admins/lead/safety/cleryappendixfinal.pdf>.

<sup>124</sup> For purposes of the Clery Act, "campus" includes campus areas, noncampus areas, and public property, if certain criteria are met. HEA §485(f)(6)(A)(ii); 20 U.S.C. §1092(f)(6)(A)(ii).

- campus law enforcement, including the law enforcement authority of campus security personnel, and the working relationship between campus security personnel and state and local law enforcement;
- programs designed to inform students and employees about the prevention of crimes; and
- the possession, use, and sale of alcoholic beverages and illegal drugs; enforcement of state underage drinking laws; enforcement of federal and state drug laws; and any drug or alcohol abuse education programs required under the HEA.<sup>125</sup>

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

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

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

## **Return of Title IV Funds**

HEA Section 484B specifies that when a Title IV aid recipient withdraws from an IHE before the end of the payment or enrollment period for which funds were disbursed, the IHE and/or the student must return Title IV funds to ED according to a statutorily prescribed schedule. In general, when a student withdraws from an IHE, an IHE first determines the portion of Title IV aid considered to be *earned* by the student while enrolled and the portion considered to be *unearned*. Unearned aid must be returned to ED. Through the 60% point of a payment or enrollment period, unearned funds must be returned on a pro rata schedule. After the 60% point of a payment or enrollment period, the total amount of funds awarded is considered to have been earned by the student and no funds are required to be returned. Whether an IHE and/or the student is required to return the funds to ED depends on a variety of circumstances, including whether Title IV funds have been applied directly to a student's institutional charges.<sup>126</sup> Unearned funds must be returned to their respective programs in a specified order, with loans being returned first, followed by Pell Grants, and then other Title IV aid.<sup>127</sup> In some instances, a student may have

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<sup>125</sup> HEA Section 120 requires that IHEs adopt and implement a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees.

<sup>126</sup> Generally, institutional charges are charges for tuition and fees, institution-provided or contracted room and board, and other educational expenses that are paid directly to the institution (e.g., charges for supplies, equipment, and materials).

<sup>127</sup> Under certain circumstances, portions of Federal Supplemental Educational Opportunity Grants are excluded from the return of Title IV calculations. Federal Work-Study funds are not included in the calculation. *FSA Handbook*, vol.

earned more aid than has been disbursed, and the difference is disbursed to the student after the student withdraws.<sup>128</sup>

## **Distance Education and Correspondence Education**

Generally, distance education and correspondence education refer to educational instruction with a separation in time, place, or both between the student and instructor. They are ways in which institutions can increase student access to postsecondary education by offering alternatives to traditional on-campus instruction.

Section 103(7)(A) and (B) of the HEA and the accompanying regulations define distance education as education that uses one or more of several enumerated technologies, including the internet and audio conferencing, to deliver instruction to students separated from the instructor and to support “regular and substantive interaction between the students and the instructor.”<sup>129</sup> The definition of distance education excludes correspondence courses.<sup>130</sup> A correspondence course is one for which an institution provides instructional materials via mail or electronic transmission to students who are separated from their instructors but does not include those courses that are delivered with “regular and substantive interaction between the students and the instructor” via one of the above-described technologies.<sup>131</sup>

Specific Title IV requirements apply to IHEs with respect to distance and correspondence education. Among others, the *50% rules* affect both the eligibility of institutions offering correspondence courses and their students’ eligibility for Title IV aid. In general, under the rules, an institution is ineligible for Title IV aid if more than 50% of its courses are offered by

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5, p. 27.

<sup>128</sup> For additional information on the return of Title IV funds, including examples of how to calculate the amount of Title IV funds to be returned, see *FSA Handbook*, vol. 5.

<sup>129</sup> HEA §103(7); 20 U.S.C. §1003(7); 34 C.F.R. §600.2.

<sup>130</sup> HEA §484(l); 20 U.S.C. §1091(l). The original HEA definition of distance education did not reference correspondence courses and courses offered via telecommunications; rather, such courses were considered subsets of distance education. Before July 1, 2010, Section 484(l)(4) of the HEA defined a telecommunications course as one offered principally through television, audio, or computer transmission, and a correspondence course was defined as a home-study course in which an IHE provided students who were separated from their instructor with instructional materials, including examinations, either by mail or electronic transmission. For correspondence courses and telecommunications courses, students completed the instructional materials and corresponding examinations and returned the examinations to the IHE for grading. Interaction between the instructor and the student was not regular and substantive, and the correspondence course was predominantly offered by an IHE via print-based media. For the purposes of Title IV aid eligibility, telecommunications programs were treated the same as traditional on-campus programs, while correspondence courses were subject to stricter requirements. With the substantial growth in the use of technology for educational instruction, the separate definition of telecommunications courses became unnecessary. Therefore, in 2010, the Higher Education Opportunity Act (P.L. 110-315) eliminated the separate definition for telecommunications and incorporated the various technologies referenced in that definition into the definition of distance education. Department of Education, “Federal Student Aid Programs,” 71 *Federal Register* 45667, August 9, 2006.

<sup>131</sup> 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. 35-36.

correspondence,<sup>132</sup> or if 50% or more of its students are enrolled in correspondence courses.<sup>133</sup> In addition, as discussed earlier in this report, IHEs that offer postsecondary correspondence or distance education to students located in a state in which the IHE is not physically located must meet any state authorization requirements for the state in which the student is located.<sup>134</sup> An IHE may meet this requirement if it participates in a state authorization reciprocity agreement.<sup>135</sup>

## Author Information

Alexandra Hegji  
Analyst in Social Policy

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<sup>132</sup> HEA § 102(a)(3)(A) and (B); 20 U.S.C. § 1002(a)(3)(A) and (B). This rule does not apply to “a public nonprofit technical institution or career and technical education school used exclusively or principally for the provision of career and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market.” 20 U.S.C. § 2302(3)(C).

<sup>133</sup> 34 C.F.R. 600.7(a)(1)(i) and (ii). This second limitation may be waived if an IHE offers a two-year associate's degree or four-year bachelor's degree program and it demonstrates to ED that in the award year, students who were enrolled in correspondence courses received 5% or less of the total FSA funds received by all of the IHE's students. ED, *FSA Handbook*, vol. 2, p. 95.

<sup>134</sup> 34 C.F.R. § 600.9(c).

<sup>135</sup> A state reciprocity agreement is “an agreement between two or more states that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.” 34 C.F.R. § 600.2.