

## 20 U.S. Code § 1094 - Program participation agreements

**(a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS** In order to be an eligible institution for the purposes of any program authorized under this subchapter, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

- (1)** The institution will use funds received by it for any program under this subchapter and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.
- (2)** The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student's eligibility for assistance under this subchapter or the amount of such assistance.
- (3)** The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this subchapter, together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—
  - (A)** the Secretary;
  - (B)** the appropriate guaranty agency; and
  - (C)** the appropriate accrediting agency or association.
- (4)** The institution will comply with the provisions of subsection (c) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.
- (5)** The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this subchapter.
- (6)** The institution will not provide any student with any statement or certification to any lender under part B that qualifies the student for a loan or loans in excess of the amount that student is eligible to borrow in accordance with sections 1075(a), 1078(a)(2), and 1078(b)(1)(A) and (B) of this title.
- (7)** The institution will comply with the requirements of section 1092 of this title.

**(8)** In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application (A) the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, and (B) relevant State licensing requirements of the State in which such institution is located for any job for which the course of instruction is designed to prepare such prospective students.

**(9)** In the case of an institution participating in a program under part B or D, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from that State.

**(10)** The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

**(11)** In the case of any institution whose students receive financial assistance pursuant to section 1091(d) of this title, the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.

**(12)** The institution certifies that—

**(A)** the institution has established a campus security policy; and

**(B)** the institution has complied with the disclosure requirements of section 1092(f) of this title.

**(13)** The institution will not deny any form of Federal financial aid to any student who meets the eligibility requirements of this subchapter on the grounds that the student is participating in a program of study abroad approved for credit by the institution.

**(14)**

**(A)** The institution, in order to participate as an eligible institution under part B or D, will develop a Default Management Plan for approval by the Secretary as part of its initial application for certification as an eligible institution and will implement such Plan for two years thereafter.

**(B)** Any institution of higher education which changes ownership and any eligible institution which changes its status as a parent or subordinate institution shall, in order to participate as an eligible institution under part B or D, develop a Default Management Plan for approval by the Secretary and implement such Plan for two years after its change of ownership or status.

**(C)** This paragraph shall not apply in the case of an institution in which (i) neither the parent nor the subordinate institution has a cohort default rate in excess of 10 percent, and (ii) the new owner of such parent or subordinate institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

**(15)** The institution acknowledges the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and the State agencies under subpart 1 of part H to share with each other any information pertaining to the institution's eligibility to participate in programs under this subchapter or any information on fraud and abuse.

**(16)**

**(A)** The institution will not knowingly employ an individual in a capacity that involves the administration of programs under this subchapter, or the receipt of program funds under this subchapter, who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this subchapter, or has been judicially determined to have committed fraud involving funds under this subchapter or contract with an institution or third party servicer that has been terminated under section 1082 of this title involving the acquisition, use, or expenditure of funds under this subchapter, or who has been judicially determined to have committed fraud involving funds under this subchapter.

**(B)** The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

**(i)** convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this subchapter; or

**(ii)** judicially determined to have committed fraud involving funds under this subchapter.

**(17)** The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

**(18)** The institution will meet the requirements established pursuant to section 1092(g) of this title.

**(19)** The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this subchapter due to compliance with the provisions of this subchapter, or delays attributable to the institution.

**(20)** The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

**(21)** The institution will meet the requirements established by the Secretary and accrediting agencies or associations, and will provide evidence to the Secretary that the institution has the authority to operate within a State.

**(22)** The institution will comply with the refund policy established pursuant to section 1091b of this title.

**(23)**

**(A)** The institution, if located in a State to which section 20503(b) of title 52 does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution.

**(B)** The institution shall request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the

State, the institution shall not be held liable for not meeting the requirements of this section during that election year.

**(C)** This paragraph shall apply to general and special elections for Federal office, as defined in section 30101(3) of title 52, and to the elections for Governor or other chief executive within such State).<sup>[1]</sup>

**(D)** The institution shall be considered in compliance with the requirements of subparagraph (A) for each student to whom the institution electronically transmits a message containing a voter registration form acceptable for use in the State in which the institution is located, or an Internet address where such a form can be downloaded, if such information is in an electronic message devoted exclusively to voter registration.

**(24)** In the case of a proprietary institution of higher education (as defined in section 1002(b) of this title), such institution will derive not less than ten percent of such institution's revenues from sources other than funds provided under this subchapter, as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

**(25)** In the case of an institution that participates in a loan program under this subchapter, the institution will—

**(A)** develop a code of conduct with respect to such loans with which the institution's officers, employees, and agents shall comply, that—

**(i)** prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and

**(ii)** at a minimum, includes the provisions described in subsection (e);

**(B)** publish such code of conduct prominently on the institution's website; and

**(C)** administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

**(26)** The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

**(27)** In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this subchapter or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of subsection (h).

**(28)**

**(A)** The institution will, upon the request of an applicant for a private education loan, provide to the applicant the form required under section 1638(e)(3) of title 15, and the information required to

complete such form, to the extent the institution possesses such information.

**(B)** For purposes of this paragraph, the term “private education loan” has the meaning given such term in section 1650 of title 15.

**(29)** The institution certifies that the institution—

**(A)** has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents; and

**(B)** will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

**(b) HEARINGS**

**(1)** An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.

**(2)** The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

**(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS**

**(1)** Notwithstanding any other provisions of this subchapter, the Secretary shall prescribe such regulations as may be necessary to provide for—

**(A)**

**(i)** except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this subchapter or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this subchapter, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part H, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receive less than \$500,000 in loans under this subchapter during the award year preceding the audit period;

**(ii)** with regard to an eligible institution which is audited under chapter 75 of title 31, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

**(iii)** at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 1002(a)(1)(C) of this title) that has obtained less than \$200,000 in funds under this subchapter during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than ½ of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 1099c(g) of this title;

**(B)** in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this subchapter, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

**(C)**

**(i)** except as provided in clause (ii), a compliance audit of a third party servicer (other than with respect to the servicer's functions as a lender if such functions are otherwise audited under this part and such audits meet the requirements of this clause), with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this subchapter, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

**(ii)** with regard to a third party servicer that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by such audit;

**(D)**

**(i)** a compliance audit of a secondary market with regard to its transactions involving, and its servicing and collection of, loans made under this subchapter, at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

**(ii)** with regard to a secondary market that is audited under chapter 75 of title 31, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by the audit;

**(E)** the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 1078(a)(2)(A)(i) of this title, of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll;

**(F)** the limitation, suspension, or termination of the participation in any program under this subchapter of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B)

whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this subchapter, any regulation prescribed under this subchapter, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time;

**(G)** an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this subchapter, if the Secretary—

**(i)** receives information, determined by the Secretary to be reliable, that the institution is violating any provision of this subchapter, any regulation prescribed under this subchapter, or any applicable special arrangement, agreement, or limitation,

**(ii)** determines that immediate action is necessary to prevent misuse of Federal funds, and

**(iii)** determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

**(H)** the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution's student assistance program under this subchapter, or the imposition of a civil penalty under paragraph (3)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this subchapter, any regulation prescribed under this subchapter, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

**(I)** an emergency action against a third party servicer that has contracted with an institution to administer any aspect of the institution's student assistance program under this subchapter, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization's authority to act on behalf of an institution under any program under this subchapter, if the Secretary

**(i)** receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this subchapter, any regulation prescribed under this subchapter, or any applicable special arrangement, agreement, or limitation,

**(ii)** determines that immediate action is necessary to prevent misuse of Federal funds, and

**(iii)** determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (F), for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.

**(2)** If an individual who, or entity that, exercises substantial control, as determined by the Secretary in accordance with the definition of substantial control in subpart 3 of part H, over one or more institutions participating in any program under this subchapter, or, for purposes of paragraphs (1)(H) and (I), over one or more organizations that contract with an institution to administer any aspect of the institution's student assistance program under this subchapter, is determined to have committed one or more violations of the requirements of any program under this subchapter, or has been suspended or debarred in accordance with the regulations of the Secretary, the Secretary may use such determination, suspension, or debarment as the basis for imposing an emergency action on, or limiting, suspending, or terminating, in a single proceeding, the participation of any or all institutions under the substantial control of that individual or entity.

**(3)**

**(A)** Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this subchapter of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

**(B)**

**(i)** Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution—

**(I)** has violated or failed to carry out any provision of this subchapter or any regulation prescribed under this subchapter; or

**(II)** has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed \$25,000 for each violation or misrepresentation.

**(ii)** Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

**(4)** The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

**(5)** The Secretary shall make readily available to appropriate guaranty agencies, eligible lenders, State agencies notifying the Secretary under subpart 1 of part H, and accrediting agencies or associations the results of the audits of eligible institutions conducted pursuant to paragraph (1)(A).

**(6)** The Secretary is authorized to provide any information collected as a result of audits conducted under this section, together with audit information collected by guaranty agencies, to any Federal or State agency having responsibilities with respect to student financial assistance, including those referred to in subsection (a)(15) of this section.

**(7)** Effective with respect to any audit conducted under this subsection after December 31, 1988, if, in the course of conducting any such audit, the personnel of the Department of Education discover, or are informed of, grants or other assistance provided by an institution in accordance with this subchapter for which the institution has not received funds appropriated under this subchapter (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).

**(d) IMPLEMENTATION OF NON-SUBCHAPTER IV REVENUE REQUIREMENT**

**(1) CALCULATION** In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

**(A)** use the cash basis of accounting, except in the case of loans described in subparagraph (D)(i) that are made by the proprietary institution of higher education;

**(B)** consider as revenue only those funds generated by the institution from—

**(i)** tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under this subchapter;

**(ii)** activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

**(I)** conducted on campus or at a facility under the control of the institution;

**(II)** performed under the supervision of a member of the institution's faculty; and

**(III)** required to be performed by all students in a specific educational program at the institution; and

**(iii)** funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for funds under this subchapter, if the program

—

**(I)** is approved or licensed by the appropriate State agency;

**(II)** is accredited by an accrediting agency recognized by the Secretary; or

**(III)** provides an industry-recognized credential or certification;

**(C)** presume that any funds for a program under this subchapter that are disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

**(i)** grant funds provided by non-Federal public agencies or private sources independent of the institution;

**(ii)** funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

**(iii)** funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under title 26; or

**(iv)** institutional scholarships described in subparagraph (D)(iii);

**(D)** include institutional aid as revenue to the school only as follows:

**(i)** in the case of loans made by a proprietary institution of higher education on or after July 1, 2008 and prior to July 1, 2012, the net present value of such loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans—

**(I)** are bona fide as evidenced by enforceable promissory notes;

**(II)** are issued at intervals related to the institution's enrollment periods; and

**(III)** are subject to regular loan repayments and collections;

**(ii)** in the case of loans made by a proprietary institution of higher education on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for as specified in clause (i); and

**(iii)** in the case of scholarships provided by a proprietary institution of higher education, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds;

**(E)** in the case of each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 1078–8 of this title or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this subchapter, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before May 7, 2008; and

**(F)** exclude from revenues—

(i) the amount of funds the institution received under part C, unless the institution used those funds to pay a student's institutional charges;

(ii) the amount of funds the institution received under subpart 4 of part A;

(iii) the amount of funds provided by the institution as matching funds for a program under this subchapter;

(iv) the amount of funds provided by the institution for a program under this subchapter that are required to be refunded or returned; and

(v) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

## **(2) SANCTIONS**

### **(A) Ineligibility**

A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years shall be ineligible to participate in the programs authorized by this subchapter for a period of not less than two institutional fiscal years. To regain eligibility to participate in the programs authorized by this subchapter, a proprietary institution of higher education shall demonstrate compliance with all eligibility and certification requirements under section 1099c of this title for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

**(B) Additional enforcement** In addition to such other means of enforcing the requirements of this subchapter as may be available to the Secretary, if a proprietary institution of higher education fails to meet a requirement of subsection (a)(24) for any institutional fiscal year, then the institution's eligibility to participate in the programs authorized by this subchapter becomes provisional for the two institutional fiscal years after the institutional fiscal year in which the institution failed to meet the requirement of subsection (a)(24), except that such provisional eligibility shall terminate—

(i) on the expiration date of the institution's program participation agreement under this subsection that is in effect on the date the Secretary determines that the institution failed to meet the requirement of subsection (a)(24); or

(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

**(3) PUBLICATION ON COLLEGE NAVIGATOR WEBSITE** The Secretary shall publicly disclose on the College Navigator website—

**(A)** the identity of any proprietary institution of higher education that fails to meet a requirement of subsection (a)(24); and

**(B)** the extent to which the institution failed to meet such requirement.

**(4) REPORT TO CONGRESS** Not later than July 1, 2009, and July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of

higher education that receives assistance under this subchapter, as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of subsection (a)(24)—

(A) the amount and percentage of such institution's revenues received from sources under this subchapter; and

(B) the amount and percentage of such institution's revenues received from other sources.

(e) **CODE OF CONDUCT REQUIREMENTS** An institution of higher education's code of conduct, as required under subsection (a)(25), shall include the following requirements:

**(1) BAN ON REVENUE-SHARING ARRANGEMENTS**

**(A) Prohibition**

The institution shall not enter into any revenue-sharing arrangement with any lender.

**(B) Definition** For purposes of this paragraph, the term "revenue-sharing arrangement" means an arrangement between an institution and a lender under which—

(i) a lender provides or issues a loan that is made, insured, or guaranteed under this subchapter to students attending the institution or to the families of such students; and

(ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent.

**(2) GIFT BAN**

**(A) Prohibition**

No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.

**(B) Definition of gift**

**(i) In general**

In this paragraph, the term "gift" means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

**(ii) Exceptions** The term "gift" shall not include any of the following:

(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the

institution, if such training contributes to the professional development of the officer, employee, or agent.

**(III)** Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

**(IV)** Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by subsections (b) and (f) of section 1092 of this title, as long as—

**(aa)** the institution's staff are in control of the counseling, (whether in person or via electronic capabilities); and

**(bb)** such counseling does not promote the products or services of any specific lender.

**(V)** Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

**(VI)** State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

**(iii) Rule for gifts to family members** For purposes of this paragraph, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if—

**(I)** the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

**(II)** the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

### **(3) CONTRACTING ARRANGEMENTS PROHIBITED**

#### **(A) Prohibition**

An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

**(B) Exceptions** Nothing in this subsection shall be construed as prohibiting—

**(i)** an officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to education loans, or an

agent who does not have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) an officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or

(iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding education loans at the institution.

**(4) INTERACTION WITH BORROWERS** The institution shall not—

(A) for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(B) refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.

**(5) PROHIBITION ON OFFERS OF FUNDS FOR PRIVATE LOANS**

(A) **Prohibition** The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 1650 of title 15), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(i) a specified number of loans made, insured, or guaranteed under this subchapter;

(ii) a specified loan volume of such loans; or

(iii) a preferred lender arrangement for such loans.

**(B) Definition of opportunity pool loan**

In this paragraph, the term "opportunity pool loan" means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

**(6) BAN ON STAFFING ASSISTANCE**

**(A) Prohibition**

The institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

**(B) Certain assistance permitted** Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

- (i) professional development training for financial aid administrators;
- (ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or
- (iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary.

**(7) ADVISORY BOARD COMPENSATION**

Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

**(f) INSTITUTIONAL REQUIREMENTS FOR TEACH-OUTS**

**(1) IN GENERAL**

In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution of higher education in any program under this subchapter under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institution's accrediting agency or association in compliance with section 1099b(c)(3) of this title, the Secretary's regulations on teach-out plans, and the standards of the institution's accrediting agency or association.

**(2) TEACH-OUT PLAN DEFINED**

In this subsection, the term "teach-out plan" means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan.

**(g) INSPECTOR GENERAL REPORT ON GIFT BAN VIOLATIONS** The Inspector General of the Department shall—

- (1) submit an annual report to the authorizing committees identifying all violations of an institution's code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (e)(2); and
- (2) make the report available to the public through the Department's website.

**(h) PREFERRED LENDER LIST REQUIREMENTS**

**(1) IN GENERAL** In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will—

**(A)** clearly and fully disclose on such preferred lender list—

**(i)** not less than the information required to be disclosed under section 1019b(a)(2)(A) of this title;

**(ii)** why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

**(iii)** that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

**(B)** ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that—

**(i)** there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

**(ii)** the preferred lender list under this paragraph—

**(I)** specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

**(II)** if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

**(C)** prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

**(i)** payment of origination or other fees on behalf of the borrower;

**(ii)** highly competitive interest rates, or other terms and conditions or provisions of loans under this subchapter or private education loans;

**(iii)** high-quality servicing for such loans; or

**(iv)** additional benefits beyond the standard terms and conditions or provisions for such loans;

**(D)** exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

**(E)** not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this subchapter for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

**(2) LENDER AFFILIATES LIST**

**(A) In general**

The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

**(B) Use of most recent list**

An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

**(i) DEFINITIONS** For the purpose of this section:

**(1) AGENT**

The term “agent” has the meaning given the term in section 1019 of this title.

**(2) AFFILIATE** The term “affiliate” means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if—

**(A)** the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;

**(B)** the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

**(C)** the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person’s education loans.

**(3) EDUCATION LOAN**

The term “education loan” has the meaning given the term in section 1019 of this title.

**(4) ELIGIBLE INSTITUTION**

The term “eligible institution” means any such institution described in section 1002 of this title.

**(5) OFFICER**

The term “officer” has the meaning given the term in section 1019 of this title.

**(6) PREFERRED LENDER ARRANGEMENT**

The term “preferred lender arrangement” has the meaning given the term in section 1019 of this title.

**(j) CONSTRUCTION**

Nothing in the amendments made by the Higher Education Amendments of 1992 shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of

subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall not serve to delay the completion of the proceeding. The Secretary shall allow the institution to use any reasonable means, including stenographers, of recording the hearing.

(Pub. L. 89–329, title IV, § 487, as added Pub. L. 99–498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1488; amended Pub. L. 101–239, title II, §§ 2003(c)(2), 2006(c), Dec. 19, 1989, 103 Stat. 2114, 2118; Pub. L. 101–542, title II, § 205, Nov. 8, 1990, 104 Stat. 2387; Pub. L. 102–26, § 2(c)(3), Apr. 9, 1991, 105 Stat. 124; Pub. L. 102–325, title IV, § 490, July 23, 1992, 106 Stat. 625; Pub. L. 103–208, § 2(h)(42), (43), Dec. 20, 1993, 107 Stat. 2478; Pub. L. 105–244, title I, § 102(b)(4), title IV, § 489(a), (b)(1), (c), Oct. 7, 1998, 112 Stat. 1622, 1750, 1751; Pub. L. 106–113, div. B, § 1000(a)(4) [title III, § 314], Nov. 29, 1999, 113 Stat. 1535, 1501A–266; Pub. L. 110–315, title IV, § 493(a)(1)(A), (b)–(d), Aug. 14, 2008, 122 Stat. 3308, 3309–3317; Pub. L. 111–39, title IV, § 407(b)(8), July 1, 2009, 123 Stat. 1952.)

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[1] So in original. The closing parenthesis probably should not appear.

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