

# Federal Update



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# Regulatory Activity

# Accreditation Innovation and Other Issues

- The Accreditation and Innovation Negotiated Rulemaking Committee addressed the Secretary's recognition of accrediting agencies and related institutional eligibility issues, including:
  - Requirements for accrediting agencies in their oversight of member institutions and programs
  - Criteria used by the Secretary to recognize accrediting agencies
  - Simplification of the Department's recognition and review of accrediting agencies

# Accreditation Innovation and Other Issues

- The Department established three subcommittees that would make recommendations to the Negotiated Rulemaking Committee on:
  1. Distance Learning and Innovation
  2. Eligibility of faith-based entities and activities
  3. TEACH Grants

# Accreditation and Innovation

A decorative graphic at the top of the slide features a dark blue horizontal bar. Below it, several colorful stars (red, blue, yellow, and red) and pink rectangular bars are scattered across the white background.

**The Committee Reached Consensus On All Issues**

# June 12, 2019 Notice of Proposed Rulemaking

## Highlights of Proposed Regulations from the Accreditation and Innovation Negotiated Rulemaking Committee:

- Revise accreditation oversight process
- Revise Department's process for recognition/review of accrediting agencies
- Establish the roles and responsibilities of institutions and accrediting agencies in the teach-out process
- Establish that the Department recognizes an institution's legal authorization to operate postsecondary educational programs when it is exempt from State authorization under the State constitution or by State law as a religious institution with a religious mission

# June 12, 2019 Notice of Proposed Rulemaking

## Highlights of Proposed Regulations from the Accreditation and Innovation Negotiated Rulemaking Committee:

- Revise the State authorization requirements for institutions offering distance education or correspondence courses; and
  - ED has since reconsidered the policy of requiring documentation of a complaint process associated with distance education and has proposed this reg that eliminates the complaint documentation requirement
- Remove regs related to Byrd Honors Scholarship Program

*Department anticipates publishing final regulations by 10/31/19*

# Accreditation and Innovation

- The Department anticipates publishing additional NPRMs on the remaining topics on a later schedule:
  - Distance Learning and Educational Innovation
  - TEACH Grants/Faith-Based Issues

# 2016 State Authorization Regulations

- On 12/19/16, ED published final regulations on state authorization and distance education which, in part, required the following:
  - If an institution of higher education offers distance education or correspondence courses to students residing in a State, and the institution is not physically located in that State, the institution must document that the State (in which the student resides) has a process for reviewing and taking appropriate action on complaints against the institution by those students (or that the State in which the student resides participates in a State authorization reciprocity agreement which addresses the issue)
    - For example, members of the National Council for State Authorization Reciprocity (NC-SARA)

# 2016 State Authorization Regulations

- Originally, the 2016 state authorization regs were to become effective July 1, 2018
- ED delayed the effective date until July 1, 2020
- However, by order of the U.S. District Court for the Northern District of California, the 2016 Final Regulations *took effect on May 26, 2019*
  - July 29, 2019 Federal Register

# 2016 State Authorization Regulations

- On July 22, 2019, ED posted an electronic announcement with a series of questions and answers to help address school concerns
  - Q & As discussed the requirements of a state complaint process, California's evolving state complaint process as described in the Under Secretary's letter, student Title IV eligibility and the National Council for State Authorization Reciprocity (NC-SARA)

# Borrower Defense to Repayment (BDTR)

- On November 1, 2016, the Department published final regulations
- After a delay, these regulations became effective on October 16, 2018
  - *U.S. District Court for the District of Columbia invalidated the delay and the 2016 Borrower Defense regulations became effective*

# 2016 Borrower Defense to Repayment Regs

## March 15, 2019 – Electronic Announcement

- Federal standard for BDTR applications will be applied for borrower defense to repayment claims asserted to loans first disbursed on or after July 1, 2017
- Institutions need to notify the Secretary within specified timeframes about certain issues such as specific debts, lawsuits, 90/10 violations, stock exchange actions, accreditation probation or show-cause or loan agreement violations that occur on or after July 1, 2017
- Provided language and steps to resolve prohibited class action bans and predispute arbitration agreements
- Repayment rate warnings and financial protection disclosures guidance coming in the future

# 2016 Borrower Defense to Repayment Regs

## June 3, 2019 – Electronic Announcement

- Several Q and As pertaining to the reporting requirements outlined in the final regulations published by the Department in the *Federal Register on November 1, 2016*
- Questions discuss reporting requirements for public institutions, and types of settlements and litigation to report
- Institutions are expected to submit any necessary supplemental reporting as a result of any information included in this Q&A document *within 10 calendar days of the date that the information was posted*

# Borrower Defense to Repayment

- **In 2017**, the Department formed a Negotiated Rulemaking Committee to revise the 2016 Borrower Defense rules. The committee negotiated the following issues:
  - Federal Standard for BDTR
  - BDTR Process
  - Limited Aspects of Financial Responsibility and Administrative Capability
  - Pre-dispute Arbitration Agreements, Class Action Waivers, and Internal Dispute Processes
  - Closed School Discharges
  - False Certification Discharges
  - Guaranty Agency Collection Fees
  - Subsidized Usage Period Recalculation

# Borrower Defense to Repayment

- Negotiations concluded without consensus being reached
- Notice of Proposed Rulemaking (NPRM) was published July 31, 2018
  - The Department received nearly 32,000 comments in response
- Anticipate publishing final regulations before November 1, 2019

# Gainful Employment (GE)

- In 2017, a negotiated rulemaking committee was formed to consider the Gainful Employment rules
- A Notice of Proposed Rulemaking (NPRM) was published Aug. 14, 2018
- Final regulations were published July 1, 2019 rescinding GE regulations

# Rescission of Gainful Employment

- Official implementation date of the GE rescission is July 1, 2020
- Schools have the option to early implement the rescission
  - An institution that early implements the rescission must document its early implementation internally and make such documentation available upon request by the Department
    - Documentation must be signed and dated
  - Institutions that do not early implement the rule are expected to comply with current GE rules until rescission becomes effective

# Rescission of Gainful Employment

- Institutions that early implement the rescission of the GE rule will not be required to:
  - Report GE data for the 2018-2019 award year to NSLDS, which will be due October 1, 2019
  - Comply with the current requirements in 34 CFR 668.412 (d) and (e) that require institutions to include the disclosure template, or a link thereto, in their GE program promotional materials and directly distribute the disclosure template to prospective students, which became effective July 1, 2019
  - Post the GE Disclosure Template
  - Comply with the certification requirements for GE programs under 34 CFR 668.414 (E-App requirements)

# Perkins Loans

# Distribution of Assets

- ED has decided NOT to require a distribution of assets from the institution's Perkins Fund for the 2018–2019 Award Year
  - *Institutions are not required to return the federal share of their Perkins Fund to ED and should not remove the institutional share from their Perkins Fund and return it to their institution*
- For the October 1, 2019 FISAP and contact information, please see the *May 24, 2019 Electronic Announcement*

# Perkins Loans

September 10, 2019 Electronic Announcement - the Department determined it has the authority to reimburse institutions for service cancellations

- The Department will send will be sending a letters to institutions regarding the amount and deadline you should return as the Federal share and the amount of the institution's reimbursement for the Perkins Loan Service Cancellations.

**DO NOT remove and return any funds to the Department or the institution until you have been notified to do so. EA 10/15/2019**

# Assignment of Perkins in Default

- Unless the institution provides documentation of an acceptable collection record for loans **that have been in default for 2 or more years**, the Secretary will require institutions to assign these defaulted Perkin loans to the Department.
- Notifications will be sent after the October 2019 FISAPs
- You may still voluntarily assign Perkins, including those that have an acceptable collection record or are not in default, at any time.

**EA 9/16/2019**

# 2020-2021 Verification

# 2020-2021 Verification

- May 24, 2019 Federal Register
  - Outlines federal verification items and documentation requirements
- Dear Colleague Letter - GEN-19-02
  - Supplemental verification information
- July 31, 2019 Electronic Announcement
  - Suggested text for 2020-2021 verification included in App. A
  - Schools only required to use exact language for the Statement of Educational Purpose

# 2020-2021 Verification

- May 24, 2019 Federal Register
  - No verification tracking group changes
  - Includes option to use signed paper tax returns AND THEIR SCHEDULES to satisfy verification requirements under:
    - V1 or V5
    - Amended tax returns
    - IRS identity theft
  - Provides in footnotes the ability for a school to accept a signed statement that a nonfiler (or tax filer with an IRS approved extension) tried but was unable to obtain IRS verification of nonfiling (not required for dependent students)

# Changes to IRS Tax Transcript

- New IRS Tax Transcripts Redacted Data:
- Effective 9/23/18, IRS tax transcripts display a reduced number of digits/characters for SSN, EIN, account/phone #, last name, address
- *Revised IRS tax transcript is acceptable for verification*
- Filers can create “customer file numbers” when requesting transcripts via 4506T/T-EZ, Get Transcripts Online or Online by Mail
- Effective June 28, 2019, the IRS will no longer fax tax transcripts to tax filers or third-parties

# Changes to IRS Tax Transcript

- Changes to Third-Party Mailings
  - Effective July 1, 2019, option for requesting 3rd-party receipt of tax data on Form 4506, Form 4506-T and Form 4506T-EZ will no longer be available and transcripts only mailed to taxpayer
  - Schools can receive transcripts directly by participating in IRS' Income Verification Express Services [IVES] by registering for e-Services on IRS.gov

# 2020-21 FAFSA® Form

# 2018 Tax Form Changes

FAFSA form is being updated to reflect changes in the 2018 IRS tax forms

- Eliminated references to 1040-A/EZ
- Added Schedule 1 question
- Removed exemptions questions
- Adjusted Foreign Tax return type answer response
- Combined untaxed pensions and untaxed portions of IRA distributions questions

# Elimination of 1040-A/EZ

- Type of tax return filed questions (33 and 80) modified to remove eliminated forms
- Eligible to file 1040-A or 1040-EZ questions (35 and 82) replaced with Schedule 1 question



# Schedule 1 Question

The elimination of IRS Forms 1040-A and 1040-EZ required FSA to develop a reasonable proximation for automatic zero (AZ) and simplified needs test (SNT) EFC calculations

- Questions 35 and 82 repurposed to ask whether the applicant or parent did or will file a Schedule 1 with their 2018 tax return

# IRS Changes

- Exemptions field eliminated on tax forms, therefore exemptions questions (38 and 87 on 2019-20 FAFSA form) were removed
- Addition of IRS Form 1040-NR and 1040-NR-EZ to response options for type of tax return filed questions (33 and 80)

If someone indicates they filed an IRS Form 1040 and uses IRS DRT but IRS indicates user filed IRS Form 1040NR/NR-EZ

- System treats it as a foreign tax return and therefore not eligible to have used IRS DRT
- IRS data does not get transferred
- Message displays indicating no data transferred and user must manually provide data

# IRS Changes

IRS has combined untaxed portions of IRA distributions with untaxed pensions on IRS forms

- Untaxed IRA distributions questions (44e & 92e) will now also include untaxed pensions
- “Untaxed portions of IRA distributions and pensions from IRS Form 1040 – line 4a minus line 4b.  
**Exclude rollovers.** If negative, enter a zero here.”

# Improvements

## Notable changes resulting from FAFSA<sup>®</sup> form public comment period

- Income tax paid – adding language to report zero if taxes paid is negative number
- Assets – adding language to exclude ABLE (Achieving a Better Life Experience) accounts from assets
- Other untaxed income – adding language that untaxed foreign income not taxed by any government should be reported as untaxed income in questions 44h and/or 92h
- Questions 29 and 30 will be modified to provide more clarity

# Federal Student Aid Updates and Reminders

# Compliance Reminders

- Timely audit and financial statement submissions
  - Submitting audits and financial statements on the last day is NOT timely if the submission is rejected
  - Submission date is the date an ACCEPTABLE submission is made
- Nonprofit and public institutions that receive less than \$750K in total federal funding and are eligible for a compliance audit exemption must submit the request within six months after the end of the institution's fiscal year
  - Nonprofit institutions that get the audit exemption must still submit their financial statements (within nine months)

# Compliance Reminders

- Additional locations
  - School Participation Division wants to remind schools to properly report additional locations as required under our school eligibility requirements listed in the FSA Handbook Volume 2, Chapter 5
    - All schools are required to report (using the E-App) to the Department when adding an additional accredited and licensed location where they will be offering 50% or more of an eligible program if the school wants to disburse FSA program funds to students enrolled at that location
    - If required, schools may have to await ED's approval prior to disbursing Title IV funds

# Items to Avoid with Financial Aid Offers

## 4/15/19 – Electronic Announcement

- ED guidance on what schools should avoid when issuing financial aid offers:
  - Avoid calling your financial aid offer an “award” and avoid calling it a “letter”
  - Avoid issuing a financial aid offer that does not include cost of attendance
  - Avoid listing the cost of attendance without breaking it down into clear components
  - Avoid listing grant and/or scholarship aid, loans, and work-study together
  - Avoid listing student loans without clarifying the source (federal, state, institutional, or private)
  - Avoid listing Parent PLUS loans with student loans
  - Avoid issuing a financial aid offer without CRITICAL next steps
  - Avoid issuing a financial aid offer without net cost calculated

# Disclosures of Foreign Gifts

- Section 117 of the Higher Education Act of 1965 (HEA), as amended, requires most institutions that participate in the Title IV student assistance programs to submit to the Secretary disclosure reports containing information about:
  - Gifts received from any foreign source;
  - Contracts with a foreign entity; and
  - Any ownership interests in or control over the institution by a foreign entity

# Disclosures of Foreign Gifts

- Foreign Gift Reporting Resources
  - Reporting requirements and timelines are discussed in [Volume 2](#) – School Eligibility and Operations of the FSA Handbook
  - Additional Q&As are discussed in [GEN-04-11](#): Reporting of Foreign Gifts, Contracts, and Relationships by Institutions

If you have questions, please reach out to your regional school participation division.

# Federal Student Aid E- Training (FSA E-Training)

<https://fsatraining.ed.gov>

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# 2019 Federal Student Aid Training Conference

We look forward to seeing you at the FSATC in Reno, NV  
Dec. 3 – Dec. 6, 2019 at the Reno-Sparks Convention Center.

<https://fsaconferences.ed.gov/>



# Ask A Fed goes online!

FSA has implemented a new resource to assist Financial Aid Administrators obtain guidance about the FSA programs. Based on the popularity and effectiveness of the Ask A Fed desk at the annual FSA Training Conference, we have instituted a similar process using email.

Please send your inquiries about Title IV regulations to [AskAFed@ed.gov](mailto:AskAFed@ed.gov).



The Ask A Fed email box is staffed every business day by a team of FSA Training Officers ready to assist schools with their questions.

# Training Feedback

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