



LEXSTAT 20 U.S.C. 1091

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*** CURRENT THROUGH PL 111-10, APPROVED 3/20/2009 ***
*** WITH A GAP OF PL 111-8 ***

TITLE 20. EDUCATION
CHAPTER 28. HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE PROGRAMS
STUDENT ASSISTANCE
GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

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§ 1091. Student eligibility [Caution: See prospective amendment note below.]

(a) In general. In order to receive any grant, loan, or work assistance under this title, a student must--

(1) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 487 [20 USCS § 1094], except as provided in subsections (b)(3) and (b)(4), and not be enrolled in an elementary or secondary school;

(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of subsection (c);

(3) not owe a refund on grants previously received at any institution under this title, or be in default on any loan from a student loan fund at any institution provided for in part E [20 USCS §§ 1087aa et seq.], or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

(4) file with the Secretary, as part of the original financial aid application process, a certification,[,] which need not be notarized, but which shall include--

(A) a statement of educational purpose stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and

(B) such student's social security number, except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(5) be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, [or] a citizen of any one of the Freely Associated States; and

(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud.

(b) Eligibility for student loans.

(1) In order to be eligible to receive any loan under this title (other than a loan under section 428B or 428C [20 USCS § 1078-2 or 1078-3]) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this title [20 USCS §§ 1070a et seq.], shall--

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(A) (i) have received a determination of eligibility or ineligibility for a Pell Grant under such subpart 1 for such period of enrollment; and (ii) if determined to be eligible, have filed an application for a Pell Grant for such enrollment period; or

(B) have (A) filed an application with the Pell Grant processor for such institution for such enrollment period, and (B) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1 [20 USCS §§ 1070a et seq.].

(2) In order to be eligible to receive any loan under section 428A [20 USCS § 1078-1] for any period of enrollment, a student shall--

(A) have received a determination of need for a loan under section 428(a)(2)(B) of this *title* [20 USCS § 1078(a)(2)(B)];

(B) if determined to have need for a loan under section 428 [20 USCS § 1078], have applied for such a loan; and

(C) has applied for a loan under section 428H [20 USCS § 1078-8], if such student is eligible to apply for such a loan.

(3) A student who--

(A) is carrying at least one-half the normal full-time work load for the course of study that the student is pursuing, as determined by an eligible institution, and

(B) is enrolled in a course of study necessary for enrollment in a program leading to a degree or certificate, shall be, notwithstanding paragraph (1) of subsection (a), eligible to apply for loans under part B or D of this *title* [20 USCS §§ 1071 et seq. or 1087a et seq.]. The eligibility described in this paragraph shall be restricted to one 12-month period.

(4) A student who--

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution, and

(B) is enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State,

shall be, notwithstanding paragraph (1) of subsection (a), eligible to apply for loans under part B, D, or E [20 USCS §§ 1071 et seq., 1087a et seq., or 1087aa et seq.] or work-study assistance under part C of this *title* [42 USCS §§ 2751 et seq.].

(5) Notwithstanding any other provision of this subsection, no incarcerated student is eligible to receive a loan under this title.

(c) Satisfactory progress.

(1) For the purpose of subsection (a)(2), a student is maintaining satisfactory progress if--

(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and

(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

(2) Whenever a student fails to meet the eligibility requirements of subsection (a)(2) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) for a grant, loan, or work assistance under this title.

(3) Any institution of higher education at which the student is in attendance may waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on--

(A) the death of a relative of the student,

(B) the personal injury or illness of the student, or

(C) special circumstances as determined by the institution.

(d) Students who are not high school graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 3, and 4 of part A and parts B, C, D, and E of this *title* [20 USCS §§ 1070a et seq., 1070b et seq., 1070c et seq., and 1071 et seq., 42 USCS §§ 2751 et seq., 20 USCS §§ 1087a et seq., and 1087aa et seq.], the student shall meet one of the following standards:

(1) The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

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(2) The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves such process. In determining whether to approve or disapprove such process, the Secretary shall take into account the effectiveness of such process in enabling students without high school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing such process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

(3) The student has completed a secondary school education in a home school setting that is treated as a home school or private school under State law.

(4) The student shall be determined by the institution of higher education as having the ability to benefit from the education or training offered by the institution of higher education upon satisfactory completion of six credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the institution of higher education.

(e) Certification for GSL eligibility. Each eligible institution may certify student eligibility for a loan by an eligible lender under part B of this *title* [20 USCS §§ 1071 et seq.] prior to completing the review for accuracy of the information submitted by the applicant required by regulations issued under this title, if--

- (1) checks for the loans are mailed to the eligible institution prior to disbursements;
- (2) the disbursement is not made until the review is complete; and
- (3) the eligible institution has no evidence or documentation on which the institution may base a determination that the information submitted by the applicant is incorrect.

(f) Loss of eligibility for violation of loan limits.

(1) No student shall be eligible to receive any grant, loan, or work assistance under this title if the eligible institution determines that the student fraudulently borrowed in violation of the annual loan limits under part B, part D, or part E of this *title* [20 USCS §§ 1071 et seq., 1087a et seq. or 1087aa et seq.] in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits under such part B, part D, or part E [20 USCS §§ 1071 et seq. 1087a et seq. or 1087aa et seq.].

(2) If the institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, such institution shall allow the student to repay any amount borrowed in excess of such limits prior to certifying the student's eligibility for further assistance under this title.

(g) Verification of immigration status.

(1) In general. The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that such individual is in compliance with the requirements of subsection (a)(5) shall be verified prior to the individual's receipt of a grant, loan, or work assistance under this title.

(2) Special rule. The documents collected and maintained by an eligible institution in the admission of a student to the institution may be used by the student in lieu of the documents used to establish both employment authorization and identity under section 274A(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a) to verify eligibility to participate in work-study programs under part C of this *title* [42 USCS §§ 2751 et seq.].

(3) Verification mechanisms. The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.

(4) Review. In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)--

(A) the institution--
 (i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the institution determines constitute reasonable evidence indicating such status--

(i) the institution shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

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(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(h) Limitations of enforcement actions against institutions. The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status--

(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the institution, under subsection (h)(4)(A)(i) [(g)(4)(A)(i)], was required to provide a reasonable opportunity to submit documentation, or

(3) because the institution, under subsection (h)(4)(B)(i) [(g)(4)(B)(i)], was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student.

(i) Validity of loan guarantees for loan payments made before immigration status verification completed. Notwithstanding subsection (h) [(g)], if--

(1) a guaranty is made under this title for a loan made with respect to an individual,

(2) at the time the guaranty is entered into, the provisions of subsection (h) had been complied with,

(3) amounts are paid under the loan subject to such guaranty, and

(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date the entity receives the notice.

(j) [Deleted]

(k) Special rule for correspondence courses. A student shall not be eligible to receive grant, loan, or work assistance under this title for a correspondence course unless such course is part of a program leading to an associate, bachelor or graduate degree.

(l) Courses offered through telecommunications.

(1) Relation to correspondence courses.

(A) In general. A student enrolled in a course of instruction at an institution of higher education that is offered in whole or in part through telecommunications and leads to a recognized certificate, or a recognized associate, baccalaureate, or graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.

(B) Exception. Subparagraph (A) shall not apply to an institution or school described in section 3(C) [3(3)(C)] of the Carl D. Perkins Career and Technical Education Act of 2006 [20 USCS § 2302(3)(C)].

(2) Restriction or reductions of financial aid. A student's eligibility to receive grants, loans, or work assistance under this title shall be reduced if a financial aid officer determines under the discretionary authority provided in section 479A [20 USCS § 1087tt] that telecommunications instruction results in a substantially reduced cost of attendance to such student.

(3) Special rule. For award years prior to the date of enactment of this subsection [enacted July 23, 1992], the Secretary shall not take any compliance, disallowance, penalty, or other action against a student or an eligible institution when such action arises out of such institution's prior award of student assistance under this title if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.

(4) Definition. For the purposes of this subsection, the term "telecommunications" means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution.

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(m) Students with a first baccalaureate or professional degree. A student shall not be ineligible for assistance under parts B, C, D, and E of this *title* [20 USCS §§ 1071 et seq., 42 USCS §§ 2751 et seq., 20 USCS §§ 1087a et seq., 20 USCS §§ 1087aa et seq.] because such student has previously received a baccalaureate or professional degree.

(n) Data base matching. To enforce the Selective Service registration provisions of section 1113 of Public Law 97-252 [50 USCS Appx. § 462(f)], the Secretary shall conduct data base matches with the Selective Service, using common demographic data elements. Appropriate confirmation, through an application output document or through other means, of any person's registration shall fulfill the requirement to file a separate statement of compliance. In the absence of a confirmation from such data matches, an institution may also use data or documents that support either the student's registration, or the absence of a registration requirement for the student, to fulfill the requirement to file a separate statement of compliance. The mechanism for reporting the resolution of nonconfirmed matches shall be prescribed by the Secretary in regulations.

(o) Study abroad. Nothing in this Act shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive grant, loan, or work assistance under this title, without regard to whether such study abroad program is required as part of the student's degree program.

(p) Verification of social security number. The Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, shall verify any social security number provided by a student to an eligible institution under subsection (a)(4) and shall enforce the following conditions:

(1) Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this part because social security number verification is pending.

(2) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant, loan, or work assistance under this title until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

(3) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, and a correct social security number cannot be provided by such student, and a loan has been guaranteed for such student under part B of this *title* [20 USCS §§ 1071 et seq.], the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, but such guaranty shall not be voided or otherwise nullified with respect to such disbursements made before the date that the lender and the guaranty agency receives such notice.

(4) Nothing in this subsection shall permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against--

(A) any institution of higher education with respect to any error in a social security number, unless such error was a result of fraud on the part of the institution; or

(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.

(q) Verification of income data.

(1) Confirmation with IRS. The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the information specified in *section 6103(l)(13) of the Internal Revenue Code of 1986* [26 USCS § 6101(l)(13)] reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.

(2) Notification. The Secretary shall establish procedures under which an applicant is notified that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under *section 6103(l)(13) of the Internal Revenue Code of 1986* [26 USCS § 6103(l)(13)].

(r) Suspension of eligibility for drug-related offenses.

(1) In general. A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:

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If convicted of an offense involving:

The possession of a controlled substance: Ineligibility period is:
 First offense 1 year
 Second offense 2 years
 Third offense Indefinite.

The sale of a controlled substance: Ineligibility period is:
 First offense 2 years
 Second offense..... Indefinite

(2) Rehabilitation. A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if--

(A) the student satisfactorily completes a drug rehabilitation program that--

(i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and

(ii) includes two unannounced drug tests; or

(B) the conviction is reversed, set aside, or otherwise rendered nugatory.

(3) Definitions. In this subsection, the term "controlled substance" has the meaning given the term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(s) Students with intellectual disabilities.

(1) Definitions. In this subsection the terms "comprehensive transition and postsecondary program for students with intellectual disabilities" and "student with an intellectual disability" have the meanings given the terms in section 760 [20 USCS § 1140].

(2) Requirements. Notwithstanding subsections (a), (c), and (d), in order to receive any grant or work assistance under section 401 [20 USCS § 1070a], subpart 3 of part A [20 USCS §§ 1070b et seq.], or part C [42 USCS §§ 2751 et seq.], a student with an intellectual disability shall--

(A) be enrolled or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an institution of higher education;

(B) be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and

(C) meet the requirements of paragraphs (3), (4), (5), and (6) of subsection (a).

(3) Authority. Notwithstanding any other provision of law unless such provision is enacted with specific reference to this section, the Secretary is authorized to waive any statutory provision applicable to the student financial assistance programs under section 401 [20 USCS § 1070a], subpart 3 of part A [20 USCS §§ 1070b et seq.], or part C [42 USCS §§ 2751 et seq.] (other than a provision of part F [20 USCS §§ 1087kk et seq.] related to such a program), or any institutional eligibility provisions of this title, as the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection may receive such financial assistance.

(4) Regulations. Notwithstanding regulations applicable to grant or work assistance awards made under section 401 [20 USCS § 1070a], subpart 3 of part A [20 USCS §§ 1070b et seq.], and part C [42 USCS §§ 2751 et seq.] (other than a regulation under part F [20 USCS §§ 1087kk et seq.] related to such an award), including with respect to eligible programs, instructional time, credit status, and enrollment status as described in section 481 [20 USCS § 1088], the Secretary shall promulgate regulations allowing programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection to receive such awards.

HISTORY:

(Nov. 8, 1965, P.L. 89-329, Title IV, Part G[F], § 484, as added Oct. 3, 1980, P.L. 96-374, Title IV, Part E, § 451(a) in part, 94 Stat. 1448; April 7, 1986, P.L. 99-272, Title XVI, Subtitle C § 16032(a), (b), 100 Stat. 354; Oct. 17, 1986, P.L. 99-498, Title IV, §§ 406(a), 407(a), 100 Stat. 1454, 1479; Nov. 6, 1986, P.L. 99-603, Title I, Part C, § 121(c)(3), 100 Stat. 3388; June 3, 1987, P.L. 100-50, § 15(7)-(9), 101 Stat. 356, 357; July 18, 1988, P.L. 100-369, §§ 1, 2, 6, 102 Stat. 835, 836; Oct. 24, 1988, P.L. 100-525, § 2(g), 102 Stat. 2611; Nov. 5, 1990, P.L. 101-508, Title III, Subtitle A, § 3005(b), 104 Stat. 1388-27; April 9, 1991, P.L. 102-26, § 2(b), (c)(2), (d)(2), 105 Stat. 123, 124; July 25, 1991, P.L. 102-73, Title VIII, § 801(a), 102 Stat. 359; July 23, 1992, P.L. 102-325, Title IV, Part G, § 484, 106 Stat. 615; Dec. 20, 1993, P.L. 103-208,

§ 2(h)(13)-(25), 107 Stat. 2476; Oct. 20, 1994, P.L. 103-382, Title III, Part E, § 360A, 108 Stat. 3969; Sept. 30, 1996, P.L. 104-208, Div C, Title V, Subtitle A, § 507(b), 110 Stat. 3009-673; Oct. 7, 1998, P.L. 105-244, Title IV, Part G, § 483, 112 Stat. 1735.)

(As amended Feb. 8, 2006, P.L. 109-171, Title VIII, Subtitle A, §§ 8020(c), 8021, 120 Stat. 178; Aug. 12, 2006, P.L. 109-270, § 2(c)(2), 120 Stat. 746; Aug. 14, 2008, P.L. 110-315, Title IV, Part G, § 485(a), 122 Stat. 3287.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title IV of Act Nov. 8, 1965, P.L. 89-329, which appears as *20 USCS §§ 1070* et seq. and *42 USCS §§ 2751* et seq.

"This Act", referred to in this section, is Act Nov. 8, 1965, P.L. 89-329, 79 Stat. 1219, popularly known as the Higher Education Act of 1965, which appears generally as *20 USCS §§ 1001* et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The second comma following "certification" has been enclosed in brackets in subsec. (a)(4) to indicate the probable intent of Congress to delete such punctuation.

The word "or" has been inserted in brackets in subsec. (a)(5) to indicate the probable intent of Congress to include such word.

The bracketed reference "(g)" has been inserted in subsecs. (h)(2), (3), and (i) in order to effectuate the probable intent of Congress, as subsec. (h) was redesignated subsec. (g) by Act Dec. 20, 1993, P.L. 103-208.

The bracketed section number "3(3)(C)" has been inserted in subsec. (l)(1)(B) to indicate the number probably intended by Congress.

A prior § 1091 (Act Nov. 8, 1965, P.L. 89-329, Title IV, § 501, as added June 29, 1967, P.L. 90-35, § 2(c), 81 Stat. 82; June 23, 1972, P.L. 92-318, Title I, § 141(b)(1), 86 Stat. 285) was repealed by Act Oct. 12, 1976, P.L. 94-482, Title I, § 151(a)(2), 90 Stat. 2151. Such section provided for statement of purpose and authorization of appropriations for an education assistance program.

Prospective amendment:

Amendment of section, effective July 1, 2010. Act Aug. 14, 2008, P.L. 110-315, Title IV, Part G, § 485(a)(1), (2), (5)-(7), (9), 122 Stat. 3287, 3288, 3289, provides: "Section 484 (*20 U.S.C. 1091*) is amended--

"(1) in subsection (a)--

"(A) in paragraph (4)(B), by striking 'number,' and all that follows through the semicolon and inserting 'number;'; and

"(B) in paragraph (5)--

"(i) by inserting 'or' after 'a permanent resident of the United States,'; and

"(ii) by striking 'citizen or permanent resident' and all that follows through the semicolon and inserting 'citizen or permanent resident;';

"(2) in subsection (b)(1), by inserting ', or under section 428H [*20 USCS § 1078-8*] pursuant to an exercise of discretion under section 479A [*20 USCS § 1087tt*]' after '428C';

** * * * *

"(5) by striking subsection (l) and inserting the following:

" '(l) Courses offered through distance education.

(1) Relation to correspondence courses.

(A) In general. A student enrolled in a course of instruction at an institution of higher education that is offered principally through distance education and leads to a recognized certificate, or recognized associate, recognized baccalaureate, or recognized graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.

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" (B) Exception. An institution of higher education referred to in subparagraph (A) shall not include an institution or school described in section 3(3)(C) of the Carl D. Perkins Career and Technical Education Act of 2006 [20 USCS § 2302(3)(C)].

" (2) Reductions of financial aid. A student's eligibility to receive grants, loans, or work assistance under this title shall be reduced if a financial aid officer determines under the discretionary authority provided in section 479A [20 USCS § 1087tt] that distance education results in a substantially reduced cost of attendance to such student.

" (3) Special rule. For award years beginning prior to July 1, 2008, the Secretary shall not take any compliance, disallowance, penalty, or other action based on a violation of this subsection against a student or an eligible institution when such action arises out of such institution's prior award of student assistance under this title if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.;

"(6) by striking subsection (q) and inserting the following:

" (q) Use of income data.

(1) Matching with IRS. The Secretary, in cooperation with the Secretary of the Treasury, is authorized to obtain from the Internal Revenue Service such information reported on Federal income tax returns by applicants, or by any other person whose financial information is required to be provided on the Federal student financial aid application, as the Secretary determines is necessary for the purpose of--

" (A) prepopulating the Federal student financial aid application described in section 483 [20 USCS § 1090]; or

" (B) verifying the information reported on such student financial aid applications.

" (2) Consent. The Secretary may require that applicants for financial assistance under this title provide a consent to the disclosure of the data described in paragraph (1) as a condition of the student receiving assistance under this title. The parents of an applicant, in the case of a dependent student, or the spouse of an applicant, in the case of an applicant who is married but files separately, may also be required to provide consent as a condition of the student receiving assistance under this title.;

"(7) in subsection (r)(2)--

"(A) in subparagraph (A), by striking 'or' at the end of clause (ii);

"(B) by redesignating subparagraph (B) as subparagraph (C); and

"(C) by inserting after subparagraph (A) the following new subparagraph:

" (B) the student successfully passes two unannounced drug tests conducted by a drug rehabilitation program that complies with such criteria as the Secretary shall prescribe in regulations for purposes of subparagraph (A)(i); or';

"* * * * *

"(9) by adding after subsection (s) (as added by paragraph (7)) the following:

" (t) Data analysis on access to Federal student aid for certain populations.

(1) Development of the system. Within one year of enactment of the Higher Education Opportunity Act [enacted Aug. 14, 2008], the Secretary shall analyze data from the FAFSA containing information regarding the number, characteristics, and circumstances of students denied Federal student aid based on a drug conviction while receiving Federal aid.

" (2) Results from analysis. The results from the analysis of such information shall be made available on a continuous basis via the Department website and the Digest of Education Statistics.

" (3) Data updating. The data analyzed under this subsection shall be updated at the beginning of each award year and at least one additional time during such award year.

" (4) Report to Congress. The Secretary shall prepare and submit to the authorizing committees, in each fiscal year, a report describing the results obtained by the establishment and operation of the data system authorized by this subsection.;"

Effective date of section:

This section took effect on October 1, 1980, pursuant to § 1393(a) of Act Oct. 3, 1980, P.L. 96-374, which appears as 20 USCS § 1001 note.

Amendments:

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1986. Act April 7, 1986 (effective on enactment as provided by § 16041 of such Act, which appears as *20 USCS § 2071* note), in subsec. (a), in para. (4), substituted "any" for "such" wherever appearing, and, in para. (5), substituted "(which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number)" for "which need not be notarized" redesignated former subsec. (b) as subsec. (c); and added new subsec. (b).

Act Oct. 17, 1986 (effective on enactment as provided by § 2 of such Act, which appears as *20 USCS § 1001* note) substituted the text of this section for text which read:

"(a) In order to receive any grant, loan, or work assistance under this title, a student must--

"(1) be enrolled or accepted for enrollment at an institution of higher education that is an eligible institution in accordance with the provisions of section 487;

"(2) except as otherwise specifically provided, be carrying or planning to carry at least one-half the normal full-time workload for the course of study the student is pursuing, as determined by the institution;

"(3) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing according to the standards and practices of the institution at which the student is in attendance;

"(4) not owe a refund on grants previously received at any institution under this title, or be in default on any loan from a student loan fund at any institution provided for in part E, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution; and

"(5) file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution.

"(b) In order to be eligible to receive any loan under this title (other than a loan under section 428B or 428C) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this title, shall--

"(1) have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or

"(2) have (A) filed an application with the Pell Grant processor for such institution for such enrollment period; and (B) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1.

"(c) Any permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands shall be eligible for assistance under this title to the same extent that citizens of the United States are eligible for such assistance."

Act Nov. 6, 1986 (effective Oct. 1, 1988 except as provided in § 121(c)(4) of such Act, which appears as *42 USCS § 1320b-7* note), added subsecs. [h](c), [i](d) and [j](e).

1987. Act June 3, 1987 (effective as if enacted as part of the Higher Education Amendments of 1986, as provided by § 27 of the 1987 Act, which appears as *20 USCS § 1001* note), in subsec. (a)(1), inserted ", except as provided in subsection (b)(2)"; in subsec. (b), designated the former introductory matter as new para. (1), redesignated former paras. (1) and (2) as new subparagraphs (A) and (B), respectively, and added new para. (2); in subsec. (d), in para. (1), deleted "or" following the semicolon, substituted para. (2) for one which read:

"(2)

(A) be counseled prior to admissions or be administered a nationally recognized standardized or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which he has applied; and

(B) with respect to applicants who are unable to satisfy the institution's admissions testing requirements specified in subparagraph (A), be enrolled in an institutionally prescribed program or course of remedial or developmental education, not to exceed one academic year or its equivalent."

and added para. (3) and the concluding matter; and in subsec. (f), added the sentence beginning "In carrying out the provisions . . .".

1988. Act July 18, 1988 (effective on enactment as provided by § 13(b)(2) of such Act, which appears as a note to this section), in subsec. (a)(1), substituted "subsections (b)(3) and (b)(4)" for "subsection (b)(2)".

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Such Act further (effective as provided by § 13(a) of such Act which appears as a note to this section), in subsec. (b)(1), substituted "section 428B or 428C" for "section 428A, 428B, or 428C", substituted subpara. (A) for one which read: "have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or ", redesignated para. (2) as para. (3), added a new para. (2), and added para. (4).

Act Oct. 24, 1988 (effective as if included in Act Nov. 6, 1986, as provided by § 2(s) of such Act, which appears as 8 *USCS* § 1101 note) redesignated subsecs. (c)[(h)]-(e)[(j)] as subsecs. (h)-(j), respectively, and inserted headings for such subsections; and, in subsec. (i) as redesignated, in paras. (2)-(4), substituted "(h)(4)(A)(ii)", "(h)(4)(B)(ii)" and "(h)(5)(B)" for "(c)(4)(A)(ii)", "(c)(4)(B)(ii)" and "(c)(5)(B)", respectively; and, in subsec. (j) as redesignated, in the introductory matter and in para. (2), substituted "subsection (h)" for "subsection (c)" and, in the concluding matter, deleted "of" preceding "the entity".

1990. Act Nov. 5, 1990 (applicable as provided by § 3005(c) of such Act, which appears as 20 *USCS* § 1088 note, and repealed by Act April 9, 1991) substituted subsec. (d) for one which read:

"(d) A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this title shall--

"(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

"(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

"(3)

(A) be administered a nationally recognized, standardized, or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which the applicant has applied; and

(B) with respect to applicants who are unable to satisfy the institutions' admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

"In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school."

1991. Act April 9, 1991 (applicable as provided by § 2(d)(1) of such Act, which appears as 20 *USCS* § 1085 note), in subsec. (a)(1), inserted ", and not be enrolled in an elementary or secondary school"; and substituted subsec. (d) for one which read:

"(d) Ability to benefit. A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this title shall--

"(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

"(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

"(3)

(A) be administered a nationally recognized, standardized, or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which the applicant has applied; and

(B) with respect to applicants who are unable to satisfy the institutions' admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

"In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school."

Such Act further (applicable as above) repealed § 3005(a) of Act Nov. 5, 1990, P.L. 101-508, 104 Stat. 1338-27, applicable to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after Jan 1, 1991. Such section amended subsec. (d) to read as follows:

"(d) Ability to benefit. In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary."

Act July 25, 1991 added subsec. (k).

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1992. Act July 23, 1992 (effective on and after 12/1/87, as provided by § 484(b)(2) of such Act, which appears as a note to this section), in subsec. (b), in para. (4), substituted "part B, D, or E or work-study assistance under part C" for "part B", and added para. (5).

Such Act further (effective on enactment, as provided by § 498 of such Act, which appears as *20 USCS § 1088* note), in subsec. (a), in para. (1), inserted "(including a program of study abroad approved for credit by the eligible institution at which such student is enrolled)", and substituted para. (4) for one which read: "file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and"; substituted subsec. (d) for one which read: "(d) Testing of students who are not high school graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 2, and 3 of part A and parts B, C, D and E of this title, the student shall pass an independently administered examination approved by the Secretary."; in subsec. (f), added the sentence beginning "Nothing in this subsection shall preclude . . ."; in subsec. (g), designated the existing provisions as para. (1) and in such para., inserted ", part D" in two places and "fraudulently" in two places, and added para. (2); substituted subsec. (h) for one which read:

"(h) Immigration status verification required. The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

"(1)

(A) There must be a declaration in writing to the institution by the student, under penalty of perjury, stating whether or not the student is a citizen or national of the United States, and, if the student is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the student ineligible for a grant, loan, or work assistance under this title.

"(2) If the student is not a citizen or national of the United States, there must be presented to the institution either--

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the institution determines (in accordance with guidelines of the Secretary) constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the institution shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with institutions) that--

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)--

"(A) the institution--

"(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the institution determines constitutes reasonable evidence indicating such status--

"(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

"(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

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"(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status--

"(A) the institution shall deny or terminate the individual's eligibility for such grant, loan, or work assistance, and

"(B) the fair hearing process (which includes, at a minimum, the requirements of paragraph (6)) shall be made available with respect to the individual.

"(6) The minimal requirements of this paragraph for a fair hearing process are as follows:

"(A) The institution provides the individual concerned with written notice of the determination described in paragraph (5) and of the opportunity for a hearing respecting the determination.

"(B) Upon timely request by the individual, the institution provides a hearing before an official of the institution at which the individual can produce evidence of a satisfactory immigration status.

"(C) Not later than 45 days after the date of an individual's request for a hearing, the official will notify the individual in writing of the official's decision on the appeal of the determination."

Such Act further (effective as above, except for the addition of subsec. (m)(1), which is effective 10/1/92, as provided by § 498 of such Act, which appears as *20 USCS § 1088* note, and subsec. (n), which is effective 12/1/87, as provided by § 484(i) of such Act, as added by § 2(k)(8) of Act Dec. 20, 1993, P.L. 103-208, which appears as a note to this section), added subsecs. (l)-(q).

Such Act further amended the directory language of Act July 25, 1991, P.L. 102-73, Title VIII, § 801(a), 102 Stat. 359, without affecting the text of this section.

1993. Act Dec. 20, 1993, § 2(h)(13)-(25) (effective as if included in Act July 23, 1992, P.L. 102-325, except that *20 USCS § 1098a* shall not apply to the amendments made by this Act, as provided by § 5(a) of such Act, which appears as *20 USCS § 1003* note), in subsec. (a), in para. (4)(B), inserted ", except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau", in para. (5), substituted "able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident" for "in the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident"; in subsec. (b), in para. (2), in subpara. (A), deleted "and" after the concluding semicolon, in subpara. (B), substituted "; and" for the concluding period, and added subpara. (C), and, in para. (3), substituted "part B or D" for "part B"; deleted subsec. (f), which read: "(f) Verification limitations. Notwithstanding any other provision of law, the Secretary may not require, or prescribe regulations that require, institutions to verify the accuracy of data used to determine the eligibility for any program under this title for more than 30 percent of the applicants in any award year. In carrying out the provisions of this subsection no eligible institution shall be required to verify more than 30 percent of such applicants in any award year. Nothing in this subsection shall preclude the Secretary from verifying all applications for aid through the use of any means available, including through the exchange of information with any other Federal agency."; in subsec. (g), inserted a comma after "Part D" in two places; in subsec. (h)(4)(B), substituted "constitute" for "constitutes"; in subsec. (i), in para. (2), and substituted "documentation, or" for "documentation,", in para. (3), substituted "(h)(4)(B)(i)" for "(h)(4)(B)(ii)" and substituted the concluding period for ", or", and deleted para. (4), which read: "(4) because of a fair hearing process described in subsection (h)(5)(B)."; in subsec. (n), substituted "parts B, C," for "part B, C,"; in subsec. (q)(2), substituted "documented evidence of a social security number that is determined by the institution to be correct" for "a correct social security number"; and redesignated subsecs. (g)-(q) as subsecs. (f)-(p), respectively.

1994. Act Oct. 20, 1994, substituted subsec. (j), for one which read: "(j) Students attending institutions in the freely associated states and eligibility for trio programs. Notwithstanding any other provision of law, a student who meets the requirements of paragraph (a)(5) of this section or who is a resident of the freely associated states, and who attends a public or nonprofit institution of higher education located in any of the freely associated states rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 1, 2, or 4 of part A or part C of this title."

1996. Act Sept. 30, 1996 (effective on enactment as provided by § 591 of such Act, which appears as *8 USCS § 1101* note), in subsec. (g)(4)(B), substituted cl. (i) for one which read: "(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,".

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1998. Act Oct. 7, 1998 (effective on 10/1/98, as provided by § 3 of such Act, which appears as *20 USCS § 1001* note), in subsec. (a), in para. (4), in the introductory matter, substituted "the Secretary, as part of the original financial aid application process, a certification," for "the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a document" and, in para. (5), substituted "a citizen of any one of the Freely Associated States" for "or a permanent resident of the Trust Territory of the Pacific Islands, Guam, or the Northern Mariana Islands"; in subsec. (d), in the introductory matter, deleted "either" preceding "one", and added para. (3); substituted subsec. (j) for one which read:

"(j) Assistance under subparts 1, 3, and 6, and chapter 1 of subpart 2, of part A, and part C. Notwithstanding any other provision of law, a student shall be eligible, if otherwise qualified, for assistance under subparts 1, 3, and 6, and chapter 1 of subpart 2, of part A, and part C, of this title, and 1070d-31 et seq., and 1070a-11 et seq., and, if the student is otherwise qualified and--

"(1) is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, and attends an institution of higher education in a State or a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau; or

"(2) meets the requirements of subsection (a)(5) and attends a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.";

in subsec. (l), substituted para. (1) for one which read: "(1) elation to correspondence courses. A student enrolled in a course of instruction at an eligible institution of higher education (other than an institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by such institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of such courses."; and added subsec. (q).

Such Act further (applicable as provided by § 483(f)(2) of such Act, which appears as a note to this section) added subsec. (r).

2006. Act Feb. 8, 2006 (effective 7/1/2006, as provided by § 8001(c) of such Act, which appears as *20 USCS § 1002* note), in subsec. (a), in para. (5), substituted "; and" for a concluding period, and added para. (6); in subsec. (l)(1), in subpara. (A), deleted "for a program of study of 1 year or longer" following "certificate" and deleted "unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of the total amount of all courses at the institution" following "corresponding courses", and substituted subpara. (B) for one which read:

"(B) Requirement. An institution of higher education referred to in subparagraph (A) is an institution of higher education--

"(i) that is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act; and

"(ii) for which at least 50 percent of the programs of study offered by the institution lead to the award of a recognized associate, baccalaureate, or graduate degree.";

in subsec. (q), substituted para. (1) for one which read: "(1) Confirmation with IRS. The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the adjusted gross income, Federal income taxes paid, filing status, and exemptions reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications."; and, in subsec. (r)(1), substituted the introductory matter for matter which read: "A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:".

Act Aug. 12, 2006, purported to amend subsec. (l)(1)(B)(i) by substituting "section 3(C) of the Carl D. Perkins Career and Technical Education Act of 2006" for "section 521(4)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998", but the amendment was made by substituting "section 3(C) of the Carl D. Perkins Career and Technical Education Act of 2006" for "section 3(3)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998" in subsec. (l)(1)(B) in order to effectuate the probable intent of Congress.

2008. Act Aug. 14, 2008 (effective on enactment as provided by § 485(b) of such Act, which appears as a note to this section), in subsec. (d), added para. (4); deleted subsec. (j), which read:

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"(j) Assistance under Subparts 1 and 3 of Part A, and Part C. Notwithstanding any other provision of law, a student shall be eligible until September 30, 2004, for assistance under subparts 1 and 3 of part A, and part C if the student is otherwise qualified and--

"(1) is a citizen of any one of the Freely Associated States and attends an institution of higher education in a State or a public or nonprofit private institution of higher education in the Freely Associated States; or

"(2) meets the requirements of subsection (a)(5) and attends a public or nonprofit private institution of higher education in any one of the Freely Associated States.";

and added subsec. (s).

Redesignation:

Part F of Title IV of Act Nov. 8, 1965, P.L. 89-329, was redesignated Part G of such Title by Act Oct. 17, 1986, P.L. 99-498, Title IV, § 406(a), 100 Stat. 1454, effective on enactment, as provided by § 2 of such Act, which appears as *20 USCS § 1001* note.

Other provisions:

Financial aid to students not deemed income or resources for purposes of certain Social Security Act programs. Act Oct. 16, 1968, P.L. 90-575 Title V, § 507, 82 Stat. 1063; Oct. 17, 1979, P.L. 96-88, Title III, § 301(a)(1), 93 Stat. 677, provided that: "For the purpose of any program assisted under title I, IV, X, XIV, XVI, or XIX of the Social Security Act [*42 USCS §§ 301 et seq., 601 et seq., 1201 et seq., 1351 et seq., 1381 et seq., or 1396 et seq.*], no grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Secretary of Education shall be considered to be income or resources."

Application of Act Oct. 17, 1986. Act Oct. 17, 1986, P.L. 99-498, Title IV, § 407(b), 100 Stat. 1494, provides:

"(1) Sections 483(e) and 484(d) of the Act [*20 USCS § 1090(e)*, subsec. (d) of this section] as amended by this section shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

"(2) The changes made in section 484(a)(1) of the Act [subsec. (a)(1) of this section] shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

"(3) Section 484(c) of the Act [subsec. (c) of this section] as amended by this section shall apply only to student assistance awarded for periods of enrollment beginning on or after July 1, 1987, to individuals who were not awarded such assistance for any preceding period of enrollment.

"(4) Sections 484(f), 485(b), and 487(a)(10) of the Act [subsec. (f) of this section and *20 USCS §§ 1092(b), 1094(a)(10)*] as amended by this section shall apply only to periods of enrollment beginning on or after July 1, 1987."

Repeal of provision for studies and evaluations. Act Oct. 17, 1986, P.L. 99-498, Title XIII, Part A, § 1301, 100 Stat. 1579; June 3, 1987, P.L. 100-50, § 23(1), 101 Stat. 362, which formerly appeared as a note to this section, was repealed by Act Oct. 31, 1998, P.L. 105-332, § 6(a), 112 Stat. 3127. Such note provided for a survey on grades of students.

Repeal of provision relating to Alien Youth Education Opportunity Panel. Act Oct. 17, 1986, P.L. 99-498, Title XII, Part G, § 1361, 100 Stat. 1588, which formerly appeared as a note to this section, was repealed by Act Oct. 31, 1998, P.L. 105-332, § 6(a), 112 Stat. 3127. Such note provided for establishment of an Alien Youth Education Opportunity panel.

Effective date of July 18, 1988 amendments. Act July 18, 1988, P.L. 100-369, § 13, 102 Stat. 838, provides:

"(a) General Rule. Except as otherwise provided, the amendments made by this Act to title IV of the Higher Education Act of 1965 [amending this section and former *20 USCS § 1078-1*] shall be effective for any loan for which the eligibility of the borrower is certified by the institution 30 days after the date of enactment of this Act.

"(b) Special Rules.

(1) The amendments made by section 5 [amending this section and *20 USCS §§ 1077, 1078*] shall be effective with respect to loans made on or after October 1, 1988.

"(2) The amendments made by sections 6, 7, 8, 9, 10, 11, and 12 [amending this section, *20 USCS §§ 1058, 1061, 1062, 1070a-1, 1070a-3, 1070a-4, 1070a-6, 1071, 1077, 1078, 1087-2, 1087dd, 1087ee, 1087nm, 1087ss, 1087vv, 1132d-1, 1132g-1, 1134m*, and *48 USCS § 1905*] shall take effect on the date of enactment of this Act."

Effective date of July 23, 1992 amendment of subsec. (b). Act July 23, 1992, P.L. 102-325, Title IV, Part G, § 484(b)(2), 106 Stat. 615, provides: "The amendments made by paragraph (1)(A) of this subsection shall be effective on and after December 1, 1987."

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Effective date of subsec. (n). Act July 23, 1992, P.L. 102-235, Title IV, Part G, § 484(i), as added Dec. 20, 1993, P.L. 103-208, § 2(k)(8), 107 Stat. 2486 (effective as if included in Act July 23, 1992, P.L. 102-325, except that *20 USCS § 1098a* shall not apply to the amendments made by this Act, as provided by § 5(a) of such Act, which appears as *20 USCS § 1003* note), provides: "The amendments made by subsection (g) [adding subsecs. (m)-(q) of this section] with respect to the addition of subsection (n) shall be effective on and after December 1, 1987."

Application of Oct. 7, 1998 amendment adding subsec. (r). Act Oct. 7, 1998, P.L. 105-244, Title IV, Part G, § 483(f)(2), 112 Stat. 1737, provides: "The amendment made by paragraph (1) [adding subsec. (r) of this section], regarding suspension of eligibility for drug-related offenses, shall apply with respect to financial assistance to cover the costs of attendance for periods of enrollment beginning after the date of enactment of this Act."

Effective date of Aug. 14, 2008 amendments. Act Aug. 14, 2008, P.L. 110-315, Title IV, Part G, § 485(b), 122 Stat. 3290, provides: "The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010, except that the amendments made by paragraphs (3), (4), and (8) of such subsection [adding subsec. (d)(4), deleting subsec. (j), and adding subsec. (s) of this section] shall take effect on the date of enactment of this Act."

NOTES:

Code of Federal Regulations:

Office of Postsecondary Education, Department of Education--Institutional eligibility under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

Office of Postsecondary Education, Department of Education--Student assistance general provisions, 34 CFR Part 668.

Office of Postsecondary Education, Department of Education--Federal Perkins loan program, 34 CFR Part 674.

Office of Postsecondary Education, Department of Education--Federal supplemental educational opportunity grant program, 34 CFR Part 676.

Related Statutes & Rules:

This section is referred to in *20 USCS §§ 1002, 1070, 1070a, 1070a-34, 1070b-1, 1070b-2, 1077, 1078, 1078-2, 1078-6, 1078-8, 1087dd, 1088, 1092, 1093, 1094, 1096, 1135c, 2753; 25 USCS § 3353, 42 USCS §§ 2753, 12591, 12602.*

Research Guide:

Federal Procedure:

17A Fed Proc L Ed, Health, Education, and Welfare § 42:1887.

Am Jur:

3A *Am Jur 2d, Aliens and Citizens* § 20.

3C *Am Jur 2d, Aliens and Citizens* § 2208.

25 *Am Jur 2d, Drugs and Controlled Substances* § 207.

Law Review Articles:

David. The Revenue Reconciliation Act of 1990: practical considerations. 5 *Prac Tax Law* 15, Spring 1991.

Interpretive Notes and Decisions:

Regulations promulgated by Secretary of Education governing amount of tuition and other fees post secondary schools must refund when student receiving federal aid under Title IV of Higher Education Act, *20 USCS §§ 1070-1099*,

20 USCS § 1091

withdraws from school violated § 1091 where they utilized entirely different method of computing amount of money schools could retain upon student withdrawal rather than simply effecting statutory scheme. *California Cosmetology Coalition v Riley* (1997, CA9 Cal) 110 F3d 1454, 97 CDOS 2659, 97 Daily Journal DAR 4763 (criticized in *Coalition of New York State Career Sch. v Riley* (1997, CA2 NY) 129 F3d 276).

20 USCS § 1091(r), which renders students convicted of drug offenses ineligible to receive federal education grants, loans, or work assistance, does not violate Double Jeopardy Clause because nothing on face of statute suggests that Congress intended to create anything other than civil remedy, mere fact that it has some punitive or deterrent effect does not place its civil penalties within purview of Double Jeopardy Clause, and it is rationally related to several nonpunitive purposes, including rehabilitation of student drug offenders, promotion of school safety and drug-free learning environments, and ensuring that public money is spent on providing educational opportunities for law-abiding students. *Students for Sensible Drug Policy Found. v Spellings* (2008, CA8 SD) 523 F3d 896.

District court properly dismissed suit that asserted constitutional challenges to 20 USCS § 1091(r), statute that rendered students convicted of drug offenses ineligible to receive federal education grants, loans, or work assistance, because suit did not assert any legally actionable claims; 20 USCS § 1091(r) did not violate Double Jeopardy Clause because nothing on face of statute suggested that Congress intended to create anything other than civil remedy, mere fact that it had some punitive or deterrent effect did not render statute punitive for double jeopardy purposes, and statute was rationally related to several nonpunitive purposes, including rehabilitation of student drug offenders, promotion of school safety and drug-free learning environments, and ensuring that public money was spent on educating law-abiding students. *Students for Sensible Drug Policy Found. v Spellings* (2008, CA8 SD) 523 F3d 896.

Secretary of Education's refund regulation, 34 CFR § 688.22, under which refund calculation is not affected by any unpaid charges of government but only by student's unpaid charges, is reasonable interpretation of conflicting statutory mandates found in 20 USCS §§ 1091 and 1092. *Career College Ass'n v Riley* (1996, App DC) 317 US App DC 232, 82 F3d 476.

Alien's claim against United States Department of Education arising from university's cancellation of alien's student financial aid after alien was unable to provide university proof of her citizenship is dismissed, where although Secretary of Education is responsible for administering higher education financial assistance programs, participating institutions are responsible for actual award and payment of financial assistance to individual students in accordance with regulations established by Secretary, because alien's claim arising from university's cancellation of aid did not state claim against Department of Education or its agencies. *Taha v INS* (1993, ED Pa) 828 F Supp 362.

Student's action against loan servicers, seeking injunction compelling them to provide him additional guaranteed student loans, is denied summarily, where notwithstanding default status of 1986 student loan, student stated on subsequent applications that he had never defaulted on student loan, and where defendants demanded return of funds loaned on basis of incorrect applications, because defendants complied with applicable federal law and regulations by demanding return of funds and filing default claim with guarantee agency for entire unpaid balance. *Pace v Suntech, Inc.* (1995, SD Miss) 900 F Supp 20.

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