

JULY 2022 NEWSLETTER

IMPORTANT DATES:

July 1
22/23 Award Year STARTS!

July 4
DJA Closed (CPS and COD also closed)



July 13
DJA Monthly Webinar
11:00 a.m. CDT
Campus Crime Report

July 31
Deadline for 20/21 DL Closeout

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- In the News: Biden Administration Pushes New Gainful Employment Rule (As Well as Several Other Proposed Rules) into Spring 2023
- Final Forms, Desk Reference and Technical Reference for the 2023/24 FISAP Released
- Federal Register Releasing 22/23 Deadlines
- Inability to Submit Corrections after Dependency Status Change on the 22/23 FAFSA
- Department Releases Proposed Changes to Title IX
- FSA's New Cybersecurity Newsletter
- Compliance Corner
- DJA Calendar

July 1, 2022 started the new award year- although we have been processing 22/23 for quite some time. To assist in the packaging of the present award year, the Department announced the posting of EdExpress for Windows 2022-23, Release 3.0 the middle of last month.

In this edition of the newsletter, we cover the recent announcement of several proposals of Negotiated Rulemaking being pushed back to April 2023- most notably Gainful Employment. This delay means that the earliest any of these items could be effective for implementation is July 2024.

As we start the new award year, a Federal Register was released with the deadlines for the 2022/2023 award year. Please note, while we are currently still closing out past award years, there are several upcoming deadlines to watch out for. Later this month, the 20/21 Direct Loan program will be need to be closed out by July 31st and come September, all corrections for 21/22 will need to be processed by September 10th, with the 21/22 Pell Disbursements completed by September 30th.

DJA has also heard through one of our special interest groups that the Department of Education has decided to retire the myStudentAid Mobile App. Less than four years after his launch, the Department cites low consumer engagement as a pressing reason for this change. Starting this month, when users open the mobile app, they'll be informed the application is no longer available and instead be directed to the StudentAid.gov website. According to ED, fewer than 2% of applicants submit their FAFSA using the mobile app, while more than 15% use StudentAid.gov through a mobile device.

DJA wishes you a happy, festive and safe 4th of July holiday. As we celebrate our Nation's independence, remember to honor those who are dedicated to preserving our freedom. Thank you to all members of our armed forces and their families for their service and sacrifice. To allow our staff time to celebrate this holiday and spend time with their families, we have decided to close our office Monday, July 4th.

Thank you and until next time, have fun!
Deborah John, President



IN THE NEWS: BIDEN ADMINISTRATION PUSHES NEW GAINFUL EMPLOYMENT RULE INTO SPRING 2023 (AS WELL AS SEVERAL OTHER PROPOSED RULES OF NOTE IN RECENT NEGOTIATED RULEMAKING)

On June 21, 2022, the U.S. Department of Education updated its regulatory agenda in the White House Office of Management and Budget’s [Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions](#) and has pushed the formal proposal for a new “gainful employment” rule back to April 2023. Previously, Department officials had indicated through Negotiated Rulemaking that the administration had expected to release the proposal this summer. Also noted in the recently released agenda, proposed rules on ability to benefit, standards of administrative capability, factors of financial responsibility, and certification procedures are also postponed until April 2023.

Under the Higher Education Act’s master calendar requirement, the delay means the earliest any new GE regulations can go into effect is July 1, 2024 – a full year later than originally expected. “The Gainful Employment rule is a cornerstone of our ambitious regulatory agenda,” an Education Department spokesperson said in a statement. “We look forward to publishing a notice of proposed rulemaking in Spring 2023 to produce the best, most durable rule possible to protect students and borrowers.”

[POLITICO Pro | Article | Biden administration pushes new ‘gainful employment’ rule into spring](#)

FINAL FORM, INSTRUCTIONS, DESK REFERENCE AND TECHNICAL REFERENCE FOR 2023-2024 FISAP

On May 31, 2022 Federal Student Aid released an Electronic Announcement indicating the Fiscal Operations Report for 2021–22 and Application to Participate for 2023-24 (FISAP) has been approved by the Office of Management and Budget (OMB). It has been posted the [FISAP Form, Instructions, and Desk Reference](#) to the Knowledge Center. The online FISAP will be made available on the [Common Origination and Disbursement \(COD\) website](#) by Aug. 1, 2022 and submission will be due on September 30, 2022.

Also posted was the [2023–24 FISAP Technical Reference](#) that provides the technical specifications and record layouts for schools or other organizations who wish to design custom software systems.

These documents and the reminders below will assist schools in completing the 2023–24 FISAP.

Check Access to FISAP on the Web

If it has been more than 90 days since a user has logged on to the [COD website](#), the user’s password will need to be reset. Information on how to reset a password, register a Destination Point Administrator, and contact information for assistance is provided in the Desk Reference. All users should ensure their access to this website application is functional before needing to enter data to file the FISAP.



Changes to the FISAP

In addition to award year and date references, the following FISAP fields have been updated and/or added:

Part II, Section E, Field 24

- Field 24 shall be disabled for the 2023–24 Application Year and Forward.

Part III, Section A, Field 28.3

- Field 28.3 in Section A shall be renamed from “Total of fields 28.1 and 28.2” to “Total FCC Offset (repayments of FCC + amount retained by school as reimbursement for cancellations)”.

Part III, Section B, Field 9

- Field 9 shall be split into two lines, fields 9.1 and 9.2. Field 9.1 shall be titled “total principal repaid by borrowers from all sources during the 2021–22 award year” and Field 9.2 shall be titled “total interest repaid by borrowers from all sources during the 2021–22 award year”.

Part III, Section F, Fields 1.1 and 2.1

- Field 1.1 has been renamed to “Total FCC offset” to align with the renaming of Section A, Field 28.3. Field 2.1 has been renamed to “Total repayments of fund capital to the school” to align with Section A, Field 30.3.

Changes to FISAP Instructions

In addition to updates to the annual award year, date references, acronyms, and hyperlinks, the following changes have been made to the FISAP Instructions:

Introduction to the FISAP

- The due date for the FISAP has been updated to Friday, Sept. 30, 2022, and the correction deadline has been updated to Dec. 15, 2022.
- The deadline for **new** Work Colleges applicants for the 2023–24 application year has been changed to Nov. 1, 2022, while the deadline for returning applicants remains in March, and has been updated to March 6, 2023.
- The section, ‘*How do I report transfers of FWS and FSEOG between programs and funds carried forward or carried back?*’ has been updated to remove the restriction that carried forward and carried back funds must only be spent in the same program.
- Additional instructions have been added to the section, ‘*When will I hear from the Department about my school’s award amounts?*’ to clarify the impact of reporting year data (in Part II of the FISAP) on the calculation of awards for the application year, with a reminder about the importance of reviewing tentative awards worksheets and identifying discrepancies timely.

Part I

- Section A:** Instructions have been added stating schools that have recently applied for a conversion or change in ownership should report the school’s current, approved type.

Part II

- Section E:** Instructions have been updated for Field 24a to state that data can no longer be entered in this field.
- Section F:** Instructions have been updated to remove the definition of an Independent student and refers directly to the FAFSA for this definition.

Part IV



- **Section C:** Instructions for field 13 have been updated to remove references to the waiver of the institutional-match requirement. This waiver has not been extended into the 2021–22 award year.

Part V

- **Section B:** Instructions have been updated for field 4 to state that, for the 2021–22 award year, schools were permitted to transfer up to 100% of their unexpended FWS to FSEOG.
- **Section C:** Instructions for field 13 have been updated to remove references to the waiver of the institutional-match requirement. This waiver has not been extended into the 2021–22 award year.
- **Section G:** Instructions have been updated to confirm that the automatic waiver of the FWS Community Service requirements due to the pandemic was extended for the 2021–22 award year.

Part VI, Section A

- Instructions have been added to clarify reporting expectations in Part VI, Section A.

All Sections

- References to the IFAP website have been replaced with references to the Knowledge Center website.

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-05-31/final-form-instructions-desk-reference-and-technical-reference-2023-24-fisap>

FEDERAL REGISTER RELEASED WITH UPCOMING DEADLINES

In a Federal Register published on June 1st, the Secretary announced deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2022-2023 award year. The Federal student aid programs (title IV, HEA programs) covered by this deadline date notice are the Pell Grant, Direct Loan, TEACH Grant, Iraq and Afghanistan Service Grant, and campus-based (FSEOG and FWS) programs.

To view the tables and outlined deadlines, please review the Federal Register linked below:

<https://www.federalregister.gov/documents/2022/06/01/2022-11721/2022-2023-award-year-deadline-dates-for-reports-and-other-records-associated-with-the-free>

INABILITY TO SUBMIT CORRECTIONS AFTER DEPENDENCY STATUS CHANGE FOR THE FAFSA FORM

Federal Student Aid (FSA) has become aware of an issue that prevents certain users from being able to submit a correction to their *Free Application for Federal Student Aid* (FAFSA®) form using fafsa.gov. This happens when a user is attempting to change the dependency status to independent and the student's parents used the IRS Data Retrieval Tool (DRT) in a previous transaction.



Users who encounter this issue have two workaround options:

- Contact their Financial Aid Administrator (FAA) and request the FAA submit the necessary correction, or
- Call the Federal Student Aid Information Center at 1-800-4FED-AID (1-800-433-3243) and request a paper *Student Aid Report* (SAR). Once the SAR is received, they can make the correction on the paper SAR and submit it for processing.

FSA is currently working on a solution for this issue and will update in subsequent Electronic Announcements once a fix has been implemented.

<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-06-16/inability-submit-corrections-after-dependency-status-change-fafsa-form>

DEPARTMENT OF EDUCATION RELEASES PROPOSED CHANGES TO TITLE IX REGULATIONS, INVITES PUBLIC COMMENT

In a June 23, 2022 press release, the U.S. Department of Education released for public comment proposed changes to the Title IX regulations that help elementary and secondary schools and colleges and universities implement this vital legislation. The proposed amendments will restore crucial protections for students who are victims of sexual harassment, assault, and sex-based discrimination – a critical safety net for survivors that was weakened under previous regulations. The proposed regulations will advance educational equity and opportunity for women and girls across the country to ensure that every student in America, from kindergarten through a doctorate degree, can achieve her dreams.

The proposed regulations would:

- Clearly protect students and employees from all forms of sex discrimination.
- Provide full protection from sex-based harassment.
- Protect the right of parents and guardians to support their elementary and secondary school children.
- Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.
- Protect students and employees who are pregnant or have pregnancy-related conditions.
- Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decisionmakers to evaluate the evidence.
- Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.
- Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.



- Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.
- Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.
- Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.

For the complete press release and additional information on the proposed rule, visit [here](#).

NEW QUARTERLY CYBERSECURITY NEWSLETTER FROM FEDERAL STUDENT AID

Federal Student Aid recently announced a new quarterly cybersecurity newsletter publication. As cyberthreats continue to increase in our world, as well as our industry, Federal Student Aid aims to be a resource to help institutions of higher education navigate the everchanging challenges. Keeping student data safe is not only crucial, but a compliance requirement outlined in the Gramm-Leach-Bliley Act (GLBA) and the HEA.

This new publication has been created for IT and compliance professionals at institutions of higher education (IHEs). FSA's new cybersecurity newsletter will feature news, updates, tips, and resources about cybersecurity best practices—all to help protect student data and keep institutions secure.

To sign up and receive FSA's new cybersecurity newsletter, please email FSASchoolCyberSafety@ed.gov with the subject line: "Send me the FSA Cybersecurity Newsletter for IHEs." Those who sign up will be added to the list to receive this quarterly newsletter.

COMPLIANCE CORNER

Written Arrangements Between Title IV-Eligible Institutions and Ineligible Third-Party Entities Providing a Portion of an Academic Program

In a recently released Dear Colleague Letter, guidance was provided to institutions about certain types of written arrangements between eligible institutions and third-party entities that are not eligible for Title IV funds under the Higher Education Act (HEA) and Department of Education regulations. It also reminded institutions about accreditation requirements that apply to distance education, and disclosure requirements that apply to all written arrangements.

Excerpt from the Dear Colleague Gen-22-07



Title IV-eligible institutions (eligible institutions) may enter into written arrangements with outside entities, including institutions or organizations that are not eligible for Title IV, HEA funds (ineligible entities), for the outside entities to provide a portion of an academic program. Under 34 CFR § 668.5, if an eligible domestic institution enters into a written arrangement with an ineligible entity, the ineligible entity is generally limited to providing 25 percent or less of the eligible institution's academic program. This limitation expands to allow an ineligible entity to provide more than 25 percent, but less than 50 percent, of the program when the eligible institution and the ineligible entity are not owned or controlled by the same individual, partnership, or corporation, provided that the eligible institution's accrediting agency has specifically determined that the institution's arrangement meets the agency's standards for executing a written arrangement with an ineligible entity. Eligible foreign institutions should also consult 34 CFR § 600.54(c)(1) to review additional applicable requirements.

The Department is aware of at least two categories of written arrangements that are not compliant with Title IV of the HEA. One category is a written arrangement where the ineligible entity provides a percentage of the academic program that exceeds the allowable regulatory limit, but the institution incorrectly characterizes the portion of the program offered by the ineligible entity as being offered by the eligible institution. A second category is where an eligible institution enters a written arrangement with an entity that provides what is sometimes referred to as a "gap-year experience," and the eligible institution provides Title IV, HEA assistance to students who are not regular students and are instead enrolled primarily for the gap-year experience, itself.

Written Arrangements Incorrectly Characterized as Offered by the Eligible Institution

The requirements in 34 CFR § 668.5 are designed to offer flexibility to institutions in contracting with other entities to provide a portion of an academic program while ensuring the institution maintains control of that program and any associated instruction, assessment, or curricular design. The requirements also protect students who have reason to believe that, while enrolled at an eligible institution, the academic programs are provided by that institution and meet minimum bars for accreditation as well as regulatory standards defined by the Department.

34 CFR § 668.5(g) describes how the ineligible entity's portion of a program is calculated. The hours, whether credit or clock hours, that comprise the academic program must be attributed to one of the partners in the arrangement, either the eligible institution or the ineligible entity. The ineligible entity provides the course if it has authority over the design, administration, or instruction of the course, which may include (among other things):

- Establishing the requirements for completion of the course;
- Delivering instruction or mandatory tutoring;
- Assessing student learning, including through electronic means; or
- Developing curricula or course materials, where the institution and its instructors cannot make changes to the materials.

It has come to our attention that institutions and their accrediting agencies do not always accurately account for the percentage of a program that is provided by an ineligible entity, including in written arrangements where the



ineligible entity provides services or activities related to credit or clock hours that should be attributed to the ineligible entity, but that are instead attributed to the eligible institution. The apparent goal of this practice is to make it appear that the ineligible entity's portion of an academic program does not exceed the regulatory limitations. If the Department determines that an educational program operated through an arrangement with an ineligible entity has exceeded the regulatory threshold, we may determine that the program is ineligible for Title IV, HEA funds and assess liabilities for all funds disbursed through that program while the arrangement was in place. In addition, if the Department determines that the institution misrepresented the portion of the program offered by the ineligible entity, we may initiate a fine action or an administrative action to terminate the institution's ability to continue in the Title IV, HEA programs.

We are aware of several arrangements between eligible institutions and ineligible entities that have exceeded the regulatory limitations in 34 CFR § 668.5. Examples of these situations include the following:

1. A program is offered in its entirety by an ineligible entity, but the program is inaccurately represented as being offered by the eligible institution for the primary purpose of obtaining Title IV, HEA funds for an otherwise ineligible program.
2. The ineligible entity provided the instructors for the program and directly or indirectly compensated those individuals, but the eligible institution treated those instructors as employees of the eligible institution. In some instances, the eligible institution classified these individuals as "adjunct faculty."
3. The eligible institution designated one of its own employees as the "instructor of record," or a similar designation, while the actual instruction was performed by staff employed by the ineligible entity. Often, these staff members were called "teaching assistants," "tutors," "coaches," or a similar title.
4. The eligible institution agreed to serve as the "institution of record" for the purposes of transcribing hours for an ineligible entity's program in order to access Title IV, HEA funds.
5. The eligible institution purchased curriculum or curricular materials from an ineligible entity for a program of study and agreed that the curriculum could not be modified by the institution or its instructors, effectively surrendering its control over the program's curriculum.

In all of these arrangements, credit or clock hours were incorrectly attributed to the eligible institution and not the ineligible entity. When the ineligible entity is the de facto provider of instruction to students, those hours must be attributed to the ineligible entity. The individual who interacts with the student through instructional activities is the instructor, and institutions must determine if this individual is correctly associated with the eligible institution as a true employee or associated with the ineligible entity for attribution purposes.

If any part of the compensation of an instructor for a course is paid directly or indirectly by the ineligible entity, the hours associated with that course are attributable to the ineligible entity. An instructor may be indirectly compensated by an ineligible entity where the ineligible entity reimburses the institution for compensation to the instructor. In that case, the hours in that course would be attributable to the ineligible entity.

Similarly, referring to a faculty member as an "instructor of record" for a course does not absolve an institution from the responsibility of determining whether other individuals compensated by the ineligible entity designed curricula, assessed student coursework, or otherwise provided instruction to students in that course. An institution is also not permitted to term itself an "institution of record" and merely give credit for a program

offered entirely by an ineligible entity for the purpose of providing Title IV, HEA funds for those credits, as this is prohibited under the definition of an educational program in 34 CFR § 600.2.

Institutions must ensure that the portion of any program that is provided by an ineligible entity does not exceed the regulatory maximum for a written arrangement, or the program of study must be considered ineligible for Title IV, HEA funds. The Department will monitor and enforce the regulatory limitation applicable to this type of written arrangement through its compliance activities.

Written Arrangements in Which Eligible Institutions Partner with Ineligible Entities to Provide Title IV, HEA Funds for an Experience Prior to the Matriculation of Conventional Studies

Some students elect to pursue a period of travel, leisure, and/or experiential activity prior to commencement of conventional studies (frequently called a “gap year”). Those who partake in such an experience may delay applying for postsecondary education or defer admission to a postsecondary institution until after the end of the gap-year experience. The Department’s regulations do not govern the aforementioned activity as it does not generally involve Title IV, HEA funds.

We are, however, concerned with written arrangements between eligible postsecondary institutions and entities that specialize in organizing and conducting gap-year experiences where Title IV, HEA funds are involved. Some gap-year experiences provide an option to earn academic credit, where the eligible institution agrees in the written arrangement to be the institution of record and to admit the student, administer the student’s financial aid, if any, and offer academic credit to the student for academic activity occurring during the gap-year experience. However, under these circumstances the ineligible entity typically provides most or all of the instruction for those credits.

In these types of arrangements, the student’s enrollment in the institution of record is used as an avenue for the student to obtain Title IV, HEA funds to help finance the gap-year experience. In many of these arrangements, the gap-year participant is urged to pursue admission to the institution of record only if the student is interested in applying for Title IV, HEA benefits, making clear that the admission to a postsecondary institution is not a requirement to participate in the gap-year experience or to earn transferable college credit. In some instances, emphasis is placed on the ability of the student to be automatically admitted to a postsecondary institution other than the institution of record at the conclusion of the gap-year experience, suggesting that students do not intend to earn a credential at the institution of record.

A student applying for Title IV, HEA assistance solely to finance a gap-year experience does not meet the criteria to be considered a regular student. To establish eligibility for Title IV, HEA funds, a student must be a regular student in an eligible program of study. 34 CFR § 600.2 defines a “regular student” as follows:

“A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.”

To receive Title IV, HEA funds, a student must meet this definition of a regular student, regardless of whether the student is enrolled in a gap-year experience or a similar offering. The eligible institution, acting in its role as

a fiduciary of federal funds and administrator of the federal student aid programs, must determine whether a student has met this basic eligibility factor.

In addition, we remind institutions that the definition of “educational program” in 34 CFR § 600.2 specifically prohibits the awarding of Title IV, HEA assistance if the institution itself does not provide instruction but merely gives credit for instruction provided by other entities or for other accomplishments, like life experience.

The Department will monitor and enforce the regulatory limitations applicable to this type of written arrangement through its compliance activities.

To read on the accreditation requirements for written arrangements involving Distance Education, disclosure requirements for institutions engaged in written arrangements and for Frequently Asked Questions and Answers on the topic, visit the Dear Colleague in it’s entirety [here](#).

DJA CALENDAR

DJA Monthly Webinar

Campus Crime Report —Wednesday, July 13, 2022 at 11 a.m. CDT

NOTE: There may be a difference between DJA local time and your time zone. To determine your time zone equivalent, click on this link to view a time zone map: <http://www.worldtimezone.com/time-usa12.php>

Webinars are free to clients. There is a \$45 fee for all others who may be interested in joining us for these presentations. Invitations are automatically sent to all clients, however if you do not receive an invitation, email Renee Ford at rford@gotodja.com. After registering, you will receive the log-in information. Questions can be directed to Renee by email or by calling toll free at 1-800-242-0977.

2022 DJA WEBINAR SCHEDULE

JUL 13	Campus Crime Report
AUG 11	Entrance and Exit Counseling
SEPT 9	Cash Management
OCT 6	Enrollment Reporting Using NSLDS
NOV 3	Program Integrity (Audits, Program Review)
DEC 1	1098-T Reporting

Disclaimer: The information presented in this Newsletter is provided as a service and represents our best efforts to assist institutions with federal student aid regulations. We have collected information we believe to be important in finding and obtaining the resources for administering federal student aid; however, we assume no liability for the use of this information. The information in this newsletter does not constitute, and should not be construed as, legal advice.

