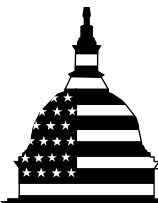


April 2013

# HIGHER EDUCATION

## Experts Cited a Range of Requirements as Burdensome



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Highlights of [GAO-13-371](#), a report to congressional requesters

## Why GAO Did This Study

Postsecondary schools must comply with a variety of federal requirements to participate in student financial aid programs authorized under Title IV. While these requirements offer potential benefits to schools, students, and taxpayers, questions have been raised as to whether they may also distract schools from their primary mission of educating students. GAO examined (1) which requirements, if any, experts say create burden, (2) the types of burdens and benefits schools say requirements create, and (3) how Education solicits feedback from stakeholders on regulatory burden.

GAO reviewed relevant federal regulatory and statutory requirements, and past and ongoing efforts examining postsecondary regulatory burden; interviewed Education officials and 18 experts, including officials from associations that represent postsecondary schools; and conducted eight discussion groups at two national conferences with a nongeneralizable sample of 51 school officials from public, nonprofit, and for-profit sectors. GAO also reviewed documentation associated with Education's requests for public comment on burden for proposed postsecondary information collections and its retrospective analysis of regulations.

## What GAO Recommends

GAO makes no recommendations in this report. In its comments, Education sought clarification regarding types of federal requirements and additional information on its efforts to balance burden and benefits. We provided clarifications and additional information, as appropriate.

View [GAO-13-371](#). For more information, contact Melissa Emrey-Arras at (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov).

April 2013

## HIGHER EDUCATION

### Experts Cited a Range of Requirements as Burdensome

## What GAO Found

Experts GAO interviewed offered varied opinions on which student financial aid requirements under Title IV of the Higher Education Act of 1965, as amended, are the most burdensome. While no single requirement was cited as burdensome by a majority of the 18 experts, 11 cited various consumer disclosure requirements—such as those pertaining to campus safety—primarily due to the time and difficulty needed to gather the information. Beyond consumer disclosures, 4 experts cited “Return of Title IV Funds”—which requires schools to calculate and return unearned financial aid to the federal government when a recipient withdraws from school—as burdensome because schools find it difficult to calculate the precise amount of funds that should be returned. More broadly, 6 experts said that the cumulative burden of multiple requirements is a substantial challenge. Experts also noted some benefits. For example, an expert said required loan disclosures help students understand their repayment responsibilities.

School officials who participated in each of the eight discussion groups GAO conducted expressed similar views about the types of burdens and benefits associated with Title IV requirements. Participants in all groups said requirements for consumer disclosures and Return of Title IV Funds are costly and complicated. Regarding consumer disclosures, participants questioned the value of disclosing data that cannot be readily compared across schools, like data on graduates' employment, which may be calculated using different methodologies. Participants in four groups found Return of Title IV Funds requirements difficult to complete within the required time frame. Participants also cited some benefits, such as how consumer disclosures can help applicants choose the right school and unearned Title IV funds can be redirected to other students.

Education seeks feedback from schools on regulatory burden mainly through formal channels, such as announcements posted in the *Federal Register*, on its website, and on a department listserv. However, Education officials said they have received a limited number of comments about burden in response to these announcements. GAO reviewed Education's notices soliciting public comments on burden estimates for its postsecondary information collections—which require the public, including schools, to submit or publish specified data—and found that 65 of 353 notices (18 percent) received comments, of which 25 received comments related to burden. For example, 2 notices received input on the difficulties of providing data requested by the department.

**Number of Postsecondary Education Information Collection Notices that Received Comment, August 2006–October 2012**



Source: GAO analysis of [reginfo.gov](#) data.

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Figure

Figure 1: Number of Postsecondary Education Information Collection Notices That Received Comment (August 2006-October 2012)

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**Abbreviations**

Education	U.S. Department of Education
HEA	Higher Education Act of 1965, as amended
ICR	Information Collection Request
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act

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Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

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April 10, 2013

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
House of Representatives

The Honorable Virginia Foxx  
Chairwoman  
Subcommittee on Higher Education and Workforce Training  
House of Representatives

The Honorable Richard Hanna  
House of Representatives

In fiscal year 2012, the Department of Education (Education) provided about \$142 billion to help students and their families pay for postsecondary education through federal student aid programs authorized under Title IV of the Higher Education Act of 1965 (HEA), as amended.<sup>1</sup> Schools participating in Title IV programs must comply with a variety of requirements established by statute and Education's regulations. For example, some of these requirements are designed to maintain the integrity of the federal programs, while others require the disclosure of information that can help consumers make more informed decisions about postsecondary attendance. While these requirements offer potential benefits to schools, students, and taxpayers, questions have been raised as to whether efforts to comply with federal requirements can involve substantial staff time, increase costs, and distract schools from their primary mission of educating students. Over the past two decades, Congress has conducted hearings and Education has undertaken regulatory reviews to identify and alleviate burdens faced by schools.

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<sup>1</sup>Pub. L. No. 89-329, 79 Stat. 1219. Title IV of the HEA, relating to student assistance, is codified as amended at 20 U.S.C. §§ 1070-1099d. For clarity, we may refer specifically to "Title IV" in this report, as appropriate. To be eligible to participate in Title IV programs, a school must be an "institution of higher education" as defined by the HEA, 20 U.S.C. §§ 1001-1002. However, for purposes of this report we use the broader term "schools." Not all schools may be eligible to participate in Title IV programs, and different schools may be subject to different Title IV requirements.

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This report examines (1) which requirements, if any, experts say create burden, (2) the types of burdens and benefits schools say requirements create, and (3) how Education solicits feedback from stakeholders on regulatory burden.<sup>2</sup>

We defined a “burdensome federal requirement” as any requirement established by Congress or a federal agency that is viewed as being too costly, vague, complicated, paperwork-heavy, unnecessary, or duplicative by experts or school officials we spoke with.<sup>3</sup> To understand which, if any, federal requirements experts say are burdensome, we conducted interviews with representatives of nine higher education associations as well as nine individuals with postsecondary expertise, including researchers and financial aid professionals from individual schools. We chose these experts based on several factors such as the relevance of their published work to our topic. To determine the types of burdens and benefits that schools say requirements create, we conducted eight discussion groups at two national conferences comprised of a nongeneralizable sample of 51 representatives from public, private nonprofit, and private for-profit schools. To determine how Education solicits feedback from stakeholders on regulatory burden, we interviewed Education officials and reviewed documents related to the department’s retrospective analysis of regulations, as well as its negotiated rulemaking process. We also examined public comments on burden provided in response to Education’s notices about its plans to collect information by reviewing a database from reginfo.gov. We tested the reliability of the database and found it to be reliable for our purposes. Finally, we asked discussion group participants about how, if at all, they communicate feedback on burden to Education. A more detailed description of our scope and methodology can be found in Appendix I.

We conducted this performance audit from April 2012 to April 2013 in accordance with generally accepted government auditing standards.

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<sup>2</sup>In this report, we focused on requirements related to the receipt of Title IV funds, which may include requirements under Title IV of the HEA, as well as requirements found elsewhere that apply to schools that receive funding under Title IV programs.

<sup>3</sup>This definition is based on our prior work on burdensome requirements. See GAO, K-12 *Education: Selected States and School Districts Cited Numerous Federal Requirements As Burdensome, While Recognizing Some Benefits*, [GAO-12-672](#) (Washington, D.C.: June 27, 2012); and *Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies*, [GAO/IGD-97-2](#) (Washington, D.C.: November 1996).

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Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Eligibility Criteria for School Participation in the Title IV Program

In order for students attending a school to receive Title IV funds, a school must be:

1. licensed or otherwise legally authorized to provide higher education in the state in which it is located,
2. accredited by an agency recognized for that purpose by the Secretary of Education, and
3. deemed eligible and certified to participate in federal student aid programs by Education.

Under the Higher Education Act, Education does not determine the quality of higher education institutions or their programs; rather, it relies on recognized accrediting agencies to do so. As part of its role in the administration of federal student aid programs, Education determines which institutions of higher education are eligible to participate in Title IV programs. Education is responsible for overseeing school compliance with Title IV laws and regulations and ensuring that only eligible students receive federal student aid. As part of its compliance monitoring, Education relies on department employees and independent auditors of schools to conduct program reviews and audits of schools. Institutions that participate in Title IV programs must comply with a range of requirements, including consumer disclosure requirements, which include information schools must make available to third parties, as well as reporting requirements, which include information schools must provide to Education.

### Sources of Federal Requirements

Congress and the President enact the statutes that create federal programs; these statutes may also authorize or direct a federal agency to develop and issue regulations to implement them. Both the authorizing statute and the implementing regulations may contain requirements that recipients must comply with in order to receive federal funds. The statute

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itself may impose specific requirements; alternatively, it may set general parameters and the implementing agency may then issue regulations further clarifying the requirements. Federal agencies may evaluate and modify their regulatory requirements, but they lack the authority to modify requirements imposed by statute.

In addition, when issuing rules related to programs authorized under Title IV, Education is generally required by the HEA to use negotiated rulemaking, a process that directly involves stakeholders in drafting proposed regulations.<sup>4</sup> Once the department determines that a rulemaking is necessary, it publishes a notice in the *Federal Register*, announcing its intent to form a negotiated rulemaking committee, and holds public hearings to seek input on the issues to be negotiated. Stakeholders, who are nominated by the public and selected by Education to serve as negotiators, may include schools and their professional associations, as well as student representatives and other interested parties. A representative from Education and stakeholders work together on a committee that attempts to reach consensus, which Education defines as unanimous agreement on the entire proposed regulatory language. If consensus is reached, Education will generally publish the agreed-upon language as its proposed rule.<sup>5</sup> If consensus is not reached, Education is not bound by the results of the negotiating committee when drafting the proposed rule. According to proponents, the negotiated rulemaking process increases the flow of information between the department and those who must implement requirements. Once a proposed rule is published, Education continues the rulemaking process by providing the public an opportunity to comment before issuing the final rule.

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<sup>4</sup>20 U.S.C § 1098a. The Secretary of Education may opt not to use negotiated rulemaking for a Title IV regulation if he or she determines that doing so would be impracticable, unnecessary, or contrary to the public interest. For other rules, Education and other agencies generally may choose to use negotiated rulemaking using similar procedures described in the Negotiated Rulemaking Act of 1990, as amended. 5 U.S.C. §§ 561-570a.

<sup>5</sup>The language of any proposed Title IV regulation published by Education must conform to agreements resulting from negotiated rulemaking, unless Education re-opens the process or explains to the participants in writing the reasons for the departure from the agreements.



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## Information Collections and the Paperwork Reduction Act

The Paperwork Reduction Act (PRA) requires federal agencies to assess and seek public comment on certain kinds of burden, in accordance with its purpose of minimizing the paperwork burden and maximizing the utility of information collected by the federal government. Under the PRA, agencies are generally required to seek public comment and obtain Office of Management and Budget (OMB) approval before collecting information from the public, including schools.<sup>6</sup> Agencies seek OMB approval by submitting information collection requests (ICR), which include among other things, a description of the planned collection efforts, as well as estimates of burden in terms of time, effort, or financial resources that respondents will expend to gather and submit the information.<sup>7</sup> Agencies are also required to solicit public comment on proposed information collections by publishing notices in the *Federal Register*.<sup>8</sup> If a proposed information collection is part of a proposed rulemaking, the agency may include the PRA notice for the information collection in the Notice of Proposed Rulemaking for that rule. The PRA authorizes OMB to approve information collections for up to 3 years. Agencies seeking an extension of OMB approval must re-submit an ICR using similar procedures, including soliciting public comment on the continued need for and burden imposed by the information collection.

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<sup>6</sup>The PRA provides that agencies may not conduct or sponsor the collection of information from 10 or more non-federal persons without first taking certain required steps, including allowing an opportunity for public comment and obtaining OMB approval. 44 U.S.C. §§ 3502, 3506-07. OMB regulations define “information” for purposes of the PRA. 5 C.F.R. § 1320.3(h). According to OMB guidance, this definition includes requests for information to be sent to agencies, recordkeeping requirements, and third-party or public disclosures.

<sup>7</sup>Agencies are also required to certify that each proposed information collection, among other things, reduces burden on respondents, to the extent practicable and appropriate, including the use of techniques to reduce burden on small entities.

<sup>8</sup>In general, agencies are required to seek public comment twice for each new information collection, substantive revisions, and extensions. First, the agency publishes a notice soliciting comments on the proposed information collection for 60 days. After the agency considers any comments received, the agency submits the proposed information collection to OMB for review and publishes a second notice soliciting additional comments. OMB is generally required to allow 30 days for public comment prior to making a decision. GAO reported on Education’s burden estimates for one information collection effort in GAO, *Higher Education: Institutions’ Reported Data Collection Burden Is Higher Than Estimated but Can Be Reduced through Increased Coordination*, [GAO-10-871](#) (Washington, D.C.: August 13, 2010).

## Past and Ongoing Initiatives to Examine Schools' Federal Regulatory Burden

Over the last two decades, there have been several efforts to examine the federal regulatory burden faced by schools (see table 1). While intending to make regulations more efficient and less burdensome, several of these efforts also acknowledge that regulation provides benefits to government and the public at large. The specific results of initiatives varied, as described below. For example, Executive Order 13563, which was issued in 2011, requires agencies to, among other things, develop plans to periodically review their existing significant regulations and determine whether these regulations should be modified, streamlined, expanded, or repealed to make the agencies' regulatory programs more effective or less burdensome. Consistent with the order's emphasis on public participation in the rulemaking process, OMB guidance encourages agencies to obtain public input on their plans. The specific results of initiatives varied, as described below.

**Table 1: Past and Ongoing Initiatives to Examine Federal Regulatory Burden Faced by Postsecondary Schools**

Initiative and Completion Date	Description
Regulatory Reform Initiative, 1995	In response to a memorandum from President Clinton, Education conducted a page-by-page review of all its existing regulations to identify those it deemed out of date or in need of reform. As a result, Education reported that it could eliminate 842 pages from the Code of Federal Regulations and identified a further 1,142 pages containing material that could be streamlined or revised, across all its programs, including higher education.
Student Financial Assistance Regulatory Review, 2000	In response to a requirement in the 1998 amendments to the HEA, Education conducted a review to determine whether any regulations under Title IV were duplicative or no longer necessary. According to the Advisory Committee on Student Financial Assistance—an independent, bipartisan advisory group—Education promulgated regulations that modified about 40 sections of Title IV regulations.
Upping the Effectiveness of Our Federal Student Aid Programs, 2002	Following proposed but un-enacted legislation developed by the House Committee on Education and the Workforce that sought to reduce regulatory burden, Education initiated a negotiated rulemaking to address regulations identified as burdensome through the committee's work. Education promulgated regulations that modified over 50 sections of Title IV regulations, according to the Advisory Committee on Student Financial Assistance.
Higher Education Regulations Study, 2011	In accordance with the Higher Education Opportunity Act, enacted in 2008, the Advisory Committee on Student Financial Assistance issued a report that discussed 15 regulations identified by members of the higher education community as burdensome, and provided suggestions for ameliorating burden.
Retrospective analysis of existing regulations (retrospective analysis plan), ongoing	In response to Executive Order 13563, in 2011, Education developed and published for public comment a plan to review its existing significant regulations. As required by Executive Order 13610, in 2012 and 2013, Education provided updates on the status of its effort to OMB and the public.

Source: GAO analysis of Education, *Federal Register*, and Advisory Committee on Student Financial Assistance documents.

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## Experts Cited a Range of Requirements as Burdensome

Although the 18 experts we interviewed offered varied opinions on which Title IV requirements are the most burdensome, 16 said that federal requirements impose burden on postsecondary schools. While no single requirement was cited as most burdensome by a majority of experts, 11 cited various consumer disclosures schools must provide or make available to the public, students, and staff (see table 2).<sup>9</sup> Among other things, these disclosure requirements include providing certain information about schools, such as student enrollment, graduation rates, and cost of attendance.<sup>10</sup> The most frequently mentioned consumer disclosure requirement—cited by 5 experts as burdensome—was the “Clery Act” campus security and crime statistics disclosure requirement.<sup>11</sup> Two experts noted the burden associated with reporting security data, some of which may overlap with federal, state, and local law enforcement agencies. Beyond consumer disclosures, 4 experts stated that schools are burdened by requirements related to the return of unearned Title IV funds to the federal government when a student receiving financial aid withdraws from school.<sup>12</sup> According to 2 experts, schools find it particularly difficult both to calculate the precise amount of funds that should be returned and to determine the date on which a student withdrew. Finally, 6 experts we interviewed stated that, in their view, it is the accumulation of burden imposed by multiple requirements—rather than burden derived from a single requirement—that accounts for the burden felt by postsecondary schools. Three stated that requirements are incrementally added, resulting in increased burden over time.

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<sup>9</sup>These consumer disclosures encompass multiple requirements in statute and regulations, see, e.g., 20 U.S.C. § 1092, 34 C.F.R. § 668.41. We use the term “consumer disclosures” to mean information schools make available to third parties, and “reporting requirements” to mean information schools must provide to Education. These requirements may overlap.

<sup>10</sup>For a discussion of required disclosures and other reporting requirements under Title IV, see David. P. Smole, Congressional Research Service, *Reporting and Disclosure Requirements for Institutions of Higher Education to Participate in Federal Student Aid Programs Under Title IV of the Higher Education Act*, R40789 (August 31, 2009).

<sup>11</sup>This requirement is part of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f)(18). See also 34 C.F.R. §§ 668.41(e), 668.46.

<sup>12</sup>See generally 20 U.S.C. § 1091b, 34 C.F.R. § 668.22. Although the requirements for both consumer disclosures and returning Title IV funds are each a set of requirements, we refer to them as “consumer disclosures” and “Return of Title IV Funds” for ease of reporting.

**Table 2: Title IV Requirements Mentioned by Two or More Experts as “Most Burdensome”**

Requirement(s)	Number of Interviews in which Requirement was Mentioned
<b>Consumer Disclosures.</b> Schools that participate in Title IV programs are subject to a range of requirements to disclose information, including providing loan entrance counseling and disclosing preferred lender lists; student outcomes, such as graduation rates; and campus crime statistics. The audience for these disclosures, and the method of delivery, varies depending on the specific disclosure requirement. See, e.g., 20 U.S.C. § 1092, 34 C.F.R. § 668.41.	11
<b>Safety / Clery Act / Campus Crime.</b> A subset of consumer disclosures, schools are required to disclose information on specific crimes, as well as the schools’ security policies and procedures. 20 U.S.C. § 1092(f), 34 C.F.R. §§ 668.41(e), 668.46.	5
<b>Return of Title IV Funds.</b> If a student who has received aid under Title IV withdraws from school before completing 60 percent of the payment period or period of enrollment, the school must calculate the amount of funds the student has earned, using a specific formula based on the portion of the period completed. The school, and the student, as applicable, are required to return any unearned funds to Education. 20 U.S.C. § 1091b, 34 C.F.R. § 668.22.	4
<b>Gainful Employment.</b> To be eligible to participate in Title IV programs, certain schools, including private for-profit and vocational schools, must provide “an eligible program of training to prepare students for gainful employment in a recognized occupation.” 20 U.S.C. § 1002(b)-(c). <sup>a</sup>	3
<b>State Authorization.</b> To be eligible to participate in Title IV programs, a school must be legally authorized by the state to provide a program of postsecondary education. 20 U.S.C. §§ 1001(a)(2), 1002. <sup>b</sup>	3
<b>Non-Title IV Revenue (90-10).</b> No more than 90 percent of private for-profit schools’ revenues can come from Title IV student aid; at least 10 percent must come from other sources, such as cash payments from students, private student loans, funds from certain other federal programs, and state educational grants. 20 U.S.C. § 1094(a)(24), (d), 34 C.F.R. § 668.28 and 34 C.F.R. pt. 668, subpart B, app. C.	2
<b>Verification of Student Aid Applications.</b> Schools must verify certain information submitted by some applicants for student aid. 34 C.F.R. §§ 668.51-668.61.	2

Source: GAO analysis of expert interviews and review of relevant federal laws and regulations.

Note: Experts cited the following additional issues as burdensome for postsecondary schools one time each: credit hour; accreditation; definition of accreditation across federal agencies; funding formula for tribal colleges; Carl D. Perkins Career and Technical Education Improvement Act of 2006, section 117; the Community College Initiative; IRS Form 990; satisfactory academic progress; incentive compensation; conflict of interest; animal research; elimination of ability-to-benefit requirements; financial responsibility standards; federal agencies’ varying requirements for disbursing funds to students. The concerns in this note are presented as they were described to us by the experts we interviewed and include requirements not related to Title IV. We did not independently verify the accuracy of this information.

<sup>a</sup>Education issued gainful employment regulations in 2010 and 2011, which were vacated, in part, by a federal district court in June 2012. *Ass’n of Private Colleges and Universities v. Duncan*, 870 F.Supp.2d 133 (D.D.C. 2012). Education has provided guidance to schools that only a portion of the regulations remain in effect, and announced that the department is considering its legal and policy options.

<sup>b</sup>Education issued state authorization regulations in 2010, which were vacated, in part, by a federal appeals court in June 2012. *Ass’n of Private Sector Colleges and Universities v. Duncan*, 681 F.3d 427 (D.C. Cir. 2012). Education has announced that it will not enforce that portion of the regulations, although the remaining portion remains in effect.

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Experts also described some of the benefits associated with Title IV requirements. For example, one expert stated that requiring schools to disclose information to students to help them understand that they have a responsibility to repay their loans could be beneficial. Another expert noted that consumer disclosures allow students to identify programs relevant to their interests and that they can afford.

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## Schools Shared Similar Views on Types of Burdens and Named a Few Benefits

School officials who participated in our discussion groups told us that Title IV requirements impose burden in a number of ways, as shown in table 3.<sup>13</sup> Participants in all eight groups discussed various requirements that they believe create burden for schools because they are, among other things, too costly and complicated.<sup>14</sup> For example, participants in four groups said the requirement that schools receiving Title IV funds post a net price calculator on their websites—an application that provides consumers with estimates of the costs of attending a school—has proven costly or complicated, noting challenges such as those associated with the web application, obtaining the necessary data, or providing information that may not fit the schools’ circumstances. School officials from six discussion groups also noted that complying with requirements related to the Return of Title IV Funds can be costly because of the time required to calculate how much money should be returned to the federal government (see Appendix III for information on selected comments on specific federal requirements school officials described as burdensome).

Participants in six of eight discussion groups said that consumer disclosures were complicated,<sup>15</sup> and participants in seven groups said that Return of Title IV Funds requirements were complicated. For example, participants in one discussion group stated that consumer disclosures are complicated because reporting periods can vary for

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<sup>13</sup>We reserved time in each discussion group to focus on the two most-often mentioned requirements mentioned by experts—consumer disclosures and Return of Title IV Funds. Other requirements were discussed as well.

<sup>14</sup>Results from the discussion groups are reported by group, rather than by participant. Discussion groups are designed to generate ideas among participants and to report findings from the discussion as a whole, rather than to elicit and report ideas from specific individuals.

<sup>15</sup>We used the term “consumer disclosures” in our discussions, but school officials did not always make a clear distinction between consumer disclosures and reporting requirements, some of which overlap.

different types of information. Another explained that the complexity of consumer disclosures is a burden to staff because the information can be difficult to explain to current or prospective students. Also, participants in two groups stated that the complexity of consumer disclosures makes it difficult for schools to ensure compliance with the requirements. Likewise, participants noted that calculating the amount of Title IV funds that should be returned can be complicated because of the difficulty of determining the number of days a student attended class as well as the correct number of days in the payment period or period of enrollment for courses that do not span the entire period. Participants in three discussion groups found the complexity of Return of Title IV requirements made it difficult to complete returns within the required time frame. In addition, participants from four groups noted the complexity increases the risk of audit findings, which puts pressure on staff.

Discussion group participants identified other types of concerns that apply primarily to consumer disclosures. For example, participants in two groups said that it is burdensome for schools to make public some disclosures, such as graduates' job placement data, because they cannot easily be compared across schools, thereby defeating the purpose of the information.<sup>16</sup>

**Table 3. Discussion Group Participants' Description of Burdens for Two Requirements**

Requirement	Complicated	Unnecessary	Paperwork intensive	Resource intensive	Duplicative	Vague
Consumer disclosures	■	■		■	■	■
Return of Title IV Funds	■	■	■	■	■	■

Source: GAO analysis of discussion groups with postsecondary school officials.

Like six of the experts we interviewed, participants in six discussion groups noted that burden results from the accumulation of many requirements rather than a few difficult requirements. Two participants said that when new requirements are added, generally, none are taken away. Similarly, two other participants commented that the amount of information schools are required to report grows over time. Another commented that it is difficult to get multiple departments within a school to

<sup>16</sup>Some schools are required to disclose information on the placement in employment of, and types of employment obtained by, their graduates, but generally are permitted to use different methods of calculating or illustrating those data.

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coordinate in order to comply with the range of requirements to which schools are subject under Title IV. Other federal requirements, in addition to those related to Title IV, may also apply to postsecondary schools (see Appendix IV for selected examples).

School officials also described some benefits of Title IV requirements. Participants in three discussion groups pointed out that some consumer information can be used to help applicants choose the right school. Other participants commented that consumer disclosures encourage transparency. For example, participants in two groups said the information schools are required to disclose regarding textbooks helps students compare prices and consider the total cost of books.<sup>17</sup> Regarding Return of Title IV Funds, participants in three discussion groups stated that the process helps restore funds to the federal government that can be redirected to other students.

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## Education Seeks Feedback Mainly through Formal Channels but Schools Do Not Always Respond to These Opportunities

Education seeks feedback on burden through formal channels such as publishing notices seeking comments on its burden estimates for proposed information collections, its retrospective analysis plan, and negotiated rulemaking. As shown in table 4, the department publishes notices in the *Federal Register*, on its website, and through a listserv to make the public aware of opportunities to provide feedback on burden.<sup>18</sup> Department officials also said they receive some feedback from school officials through informal channels such as training sessions and open forums at conferences.

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<sup>17</sup>Postsecondary schools that receive federal financial assistance are required, to the maximum extent practicable, to provide certain information on textbooks on their internet course schedules and to affiliated college bookstores. Specifically, schools must provide the retail price and International Standard Book Number or other identifying information, including author, title, publisher, and copyright date for all required and recommended course materials. If disclosing the required information is not practicable, schools are to list “to be determined.”

<sup>18</sup>In addition, Education officials reported they often require data collection and analysis contractors to assemble review panels and technical working groups, which may solicit input from the public, providing another opportunity to consider institutional burden.

**Table 4: Mediums through Which Education Publishes Notices Seeking Feedback on Burden**

<b>Opportunity for Public Comment</b>	<b>Federal Register</b>	<b>Education’s website</b>	<b>Education’s Information for Financial Aid Professionals (IFAP) e-mail listserv</b>
Information collections	Yes <sup>a</sup>	Yes <sup>a</sup>	Yes <sup>b</sup>
Retrospective analysis plan	Yes	Yes	No
Negotiated rulemaking	Yes	Yes	Yes <sup>b</sup>

Source: GAO analysis of Education documents.

<sup>a</sup>If the information collection is part of a proposed rule, a notice seeking comment on the information collection may be included in the Notice of Proposed Rulemaking for that rule, which is published in the *Federal Register* and on the agency’s website.

<sup>b</sup>According to Education officials, *Federal Register* notices of interest to the student aid community are usually posted on the IFAP listserv.

Although Education has published notices seeking feedback on burden, officials said the department has received few comments in response to its solicitations. For example, Education said it received no comments in response to its request for public comment on burden estimates included in its 2010 “Program Integrity” Notices of Proposed Rulemaking,<sup>19</sup> which proposed multiple regulatory changes with increased burden estimates. In addition, Education officials said some of the comments they receive about burden estimates are too general to make modifications in response to them.

Our review of Education’s postsecondary-related information collection requests (ICRs) submitted to OMB from August 2006 to October 2012<sup>20</sup>

<sup>19</sup>The online database that contains public comments received in response to proposed regulations, regulations.gov, does not contain a search field that would allow us to distinguish comments regarding burden estimates from comments submitted regarding other topics. Given that in recent years, Education has received thousands of comments in response to proposed rules, we did not evaluate the department’s assertion that few comments were received regarding burden.

<sup>20</sup>We focused on ICRs submitted by two Education offices that manage postsecondary issues: the Office of Federal Student Aid and the Office of Postsecondary Education. We selected the time period because it coincides with the 2006 launch of the OMB and General Services Administration web portal used by agencies to electronically post comments and other documents related to information collections to reginfo.gov; includes the enactment of the Higher Education Opportunity Act in 2008, which resulted in regulatory changes; and includes ICRs recently submitted. See Appendix I for additional information on the types of ICRs included in our review.



shows that fewer than one-fourth (65 of 353) received public comments, of which 25 included comments that addressed burden faced by schools (see fig 1).<sup>21</sup> For example, 2 ICRs received input on the difficulties of providing data requested by the department. We identified 40 ICRs that did not receive comments on burden faced by schools; several ICRs, for example, received input on simplifying the language of student loan-related forms. Further, in a review of the 30 comments received by the department in response to its proposed retrospective analysis plan, we identified 11 comments related to higher education, of which 9 mentioned regulatory burden. For example, one commenter described difficulties that smaller schools may have meeting reporting requirements.

**Figure 1: Number of Postsecondary Education Information Collection Notices that Received Comment (August 2006-October 2012)**



Source: GAO analysis of *reginfo.gov* data.

Negotiated rulemaking presents another opportunity for schools and others to provide feedback on burden. Six experts and participants in six discussion groups thought aspects of negotiated rulemaking are beneficial overall. However, some experts and discussion group participants said certain aspects of the process may limit the impact of feedback on burden. Specifically, four experts and participants in six of our discussion groups expressed concern that when the negotiated rulemaking process does not achieve consensus, the department may draft regulations unencumbered by negotiators' input, which may have addressed burden. According to those we spoke with, consensus may not be achieved, for example, if Education includes controversial topics over which there is likely to be disagreement or declines to agree with other

<sup>21</sup>We did not categorize the specific type of input provided in each comment (e.g., whether the comment discussed burden generally or provided targeted feedback on the department's burden estimates).

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negotiators. Education officials responded that their goal during negotiated rulemakings is to draft the best language for the regulation. Further, department officials said that negotiators can collectively agree to make changes to the agenda, unanimous consensus provides negotiators with an incentive to work together, and that the department cannot avoid negotiated rulemaking on controversial topics. Education officials said that when consensus is not achieved, the department rarely deviates from any language agreed upon by negotiators.

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## Concluding Observations

Notwithstanding the benefits of Title IV requirements, school officials believe that the burden created by federal requirements diverts time and resources from their primary mission of educating students. Our findings—as well as those of previous studies—indicate that the burden reported by school officials and experts not only stems from a single or a few requirements, but also from the accumulation of many requirements. While Education has solicited feedback on the burdens associated with federal requirements, our findings show that stakeholders do not always provide this feedback. As a result, stakeholders may be missing an opportunity to help reduce the burden of federal requirements on schools.

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## Agency Comments and Our Evaluation

We provided a draft of this report to Education for comment. Education's written comments are reproduced in Appendix II. Education sought a clearer distinction in the report between statutory and regulatory requirements as well as Education's authority to address statutory requirements. We have added information accordingly. Education also recommended the report distinguish between reporting and disclosure requirements, and we have provided definitions in the background in response. Education expressed concern that the report did not sufficiently consider the benefits of federal requirements. We agree that federal requirements generally have a purpose and associated benefits—such as benefits associated with program oversight and consumer awareness—which we acknowledge in our report. Analyzing the costs and benefits associated with individual requirements was beyond the scope of this report, as our primary objective was to obtain stakeholder views on burdens. Education also suggested we report more on its efforts to balance burden and benefits when designing information collections. We acknowledged these efforts in our report and incorporated additional information that Education subsequently provided. Education also provided technical comments that were incorporated, as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Education. In addition, the report is available at no charge on GAO's web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in Appendix V.

*Melissa Emrey-Arras*

Melissa Emrey-Arras  
Director  
Education, Workforce,  
and Income Security Issues

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# Appendix I: Objectives, Scope, and Methodology

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To identify which, if any, federal requirements experts say create burden for postsecondary schools, we interviewed a range of experts. We chose these experts based on factors such as: familiarity or experience with Title IV requirements, recognition in the professional community, relevance of their published work to our topic, and recommendations from others. We conducted interviews with representatives of nine higher education associations that represent public, private nonprofit, private for-profit schools, including associations representing research universities, community colleges, and minority-serving institutions. We also conducted interviews with nine other postsecondary experts, including researchers and officials from individual schools with knowledge of Title IV requirements. Because our review focused on the burden and benefits experts say requirements create, we did not evaluate consumers' perspectives on information schools provide.

To determine the types of burdens and benefits that schools say federal requirements create, we conducted eight discussion groups at two national conferences with a nongeneralizable sample of officials from 51 schools.<sup>1</sup> Discussions were guided by a moderator who used a standardized list of questions to encourage participants to share their thoughts and experiences. To optimize time during each session, we focused part of the discussion on the perceived benefits and burdens associated with one of the two sets of requirements most often cited as burdensome during the interviews we conducted with experts: consumer disclosures and Return of Title IV Funds. Specifically, four groups primarily focused on the burdens and benefits associated with consumer disclosures and four groups focused primarily on Return of Title IV Funds. In addition, each group was provided the opportunity to discuss other requirements that officials found to be burdensome, as well as how, if at all, officials communicate feedback on burden to Education. Discussion groups are not an appropriate means to gather generalizable information about school officials' awareness of feedback opportunities because participants were self-selected and may be more aware of federal requirements and feedback opportunities than others in the population.

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<sup>1</sup>We conducted discussion groups at the 2012 annual conferences for the National Association of Student Financial Aid Administrators (four groups comprised of 25 officials from public and private nonprofit schools) and the Association of Private Sector Colleges and Universities (four groups comprised of 26 officials from private for-profit schools). Participants were recruited through announcements made by the associations sponsoring each conference or direct emails to conference attendees, and volunteers were sorted into groups.

Methodologically, group discussions are not designed to (1) demonstrate the extent of a problem or to generalize results to a larger population, (2) develop a consensus to arrive at an agreed-upon plan or make decisions about what actions to take, or (3) provide statistically representative samples or reliable quantitative estimates. Instead, they are intended to generate in-depth information about the reasons for the discussion group participants' attitudes on specific topics and to offer insights into their concerns about and support for an issue. In addition, the discussion groups may be limited because participants represented only those schools that had representatives at the specific conferences we attended and because participants are comprised of self-selected volunteers.

To determine how Education solicits feedback from stakeholders on burden, we conducted interviews with Education officials and reviewed documentation, such as agency web pages and listserv postings used by Education to inform schools and other interested parties about negotiated rulemaking and information collections. We also solicited the views of experts during interviews, and asked school officials in discussion groups about how, if at all, they communicate feedback on burden to Education. Because participants were self-selected, they are more likely to be aware of federal requirements and feedback opportunities than the general population.

We reviewed Education's ICRs related to postsecondary education submitted to OMB from August 1, 2006, to October 31, 2012, to determine how many received public comments. We also reviewed the ICRs that received comments to determine how many received comments related to burden. To do so, we used OMB's [reginfo.gov](http://reginfo.gov) website, and took steps to verify the reliability of the database. We interviewed agency officials, tested the reliability of a data field, and reviewed documentation. We found the database to be reliable for our purposes. In our review of ICRs, we included new information collections along with revisions, reinstatements, and extensions of existing information collections without changes. We excluded ICRs that agencies are not required to obtain public comment on, such as those seeking approval of nonsubstantive changes. We also excluded ICRs for which the associated documents did not allow us to interpret the comments.

To determine how many ICRs received comments that discussed burden faced by schools, one analyst reviewed comments for each ICR and

classified them as being related or not related to the burden faced by schools. Another analyst verified these categorizations and counts.<sup>2</sup>

We also reviewed the number and nature of comments on Education's preliminary plan for retrospective analysis by downloading comments from regulations.gov. We verified with Education the total number of comments received. To determine whether comments discussed burdens faced by schools, one analyst reviewed each comment and classified it as being related or not related to higher education regulations and whether it referenced burden faced by schools. Another analyst verified these categorizations and counts.

We did not review comments submitted to Education in response to proposed rules. Education has received thousands of comments in response to proposed regulations in recent years, and the site does not contain a search feature that would have allowed us to distinguish comments regarding burden estimates from other topics.

For all objectives, we reviewed relevant federal laws and regulations.

We conducted this performance audit from April 2012 to April 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>2</sup>We defined a "burdensome federal requirement" as any mandatory requirement established by Congress or a federal agency that is viewed as being too costly, vague, complicated, paperwork-heavy, unnecessary, or duplicative. This definition is based on our prior work on burdensome requirements. See, [GAO-12-672](#) and [GAO/GGD-97-2](#).

# Appendix II: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

March 29, 2013

Ms. Melissa Emrey-Arras  
Government Accountability Office  
411 G Street, NW  
Washington, DC 20548

Dear Ms. Emrey-Arras:

Thank you for the opportunity to respond to the Government Accountability Office (GAO) draft report, *Higher Education – Experts Cited a Range of Requirements as Creating Burden* (13-371). The Department of Education (ED or the Department) appreciates the work done by GAO in conducting the study on burden for institutions of higher education that participate in student financial aid programs authorized under Title IV of the Higher Education Act.

The Department wishes to note the importance of distinguishing between the different types of requirements detailed in the report. In particular, because most of the requirements mentioned in the report are statutory (e.g., consumer information disclosures required by the Higher Education Opportunity Act (HEOA)), as opposed to regulatory, the Department recommends that the background section of the report distinguish more clearly between statutory and regulatory requirements. In addition, the Department suggests that the report better clarify ED's authority to address burden associated with statutory requirements.

Similarly, the Department recommends that the report more clearly distinguish between reporting and disclosure requirements. The National Postsecondary Education Cooperative report on HEOA disclosure requirements<sup>1</sup> offers additional useful information on this distinction. This is an issue of particular importance because the assistance the Department provides to help institutions meet reporting requirements differs from the amount of technical guidance and assistance the Department provides to help them meet disclosure requirements—which could have an impact on burden.

In the draft report, GAO defines a “burdensome federal requirement” as one that is viewed as “being too costly, vague, complicated, paperwork-work heavy, unnecessary, or duplicative by experts or school officials to whom we spoke.” GAO's methodology, however, appears to have relied solely on the opinions of school officials and their representatives not only for determining whether a requirement is burdensome but also for the context of whether the benefits outweigh the burden. This is problematic, in part, because Congress may have believed the benefits of some statutory requirements that require reporting or disclosure outweighed the costs.

The Department further recommends that the report explain in greater detail how statutory and regulatory requirements for institutions of higher education, and the information that is generated as a result of such requirements, have significant benefits, including promoting proper oversight

<sup>1</sup> See: <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2010831rev>.

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and stewardship of very significant taxpayer support for education. GAO has, on a number of occasions, recommended that ED make more extensive use of such information and found examples of the intended benefits of regulations with respect to protecting consumer interests. ED has found several previous GAO studies to be useful in this respect, particularly the recent report on the Integrated Postsecondary Education Data System data, *Higher Education: Use of New Data Could Help Improve Oversight of Distance Education*,<sup>2</sup> and the report focused on preventing abuse in the student aid system, *Higher Education: Stronger Federal Oversight Needed to Enforce Ban On Incentive Payments to School Recruiters*.<sup>3</sup> GAO's review of our efforts to ensure loan program compliance, titled *Federal Family Education Loan Program: Increased Department of Education Oversight of Lender and School Activities Needed to Help Ensure Program Compliance*,<sup>4</sup> has also been beneficial to our work.

Finally, the Department emphasizes that it consistently seeks to effectively balance the benefits of information collections, whether imposed by statute or regulations, with the burdens and believes that it has accomplished this goal well. The Department works diligently to design information collections to ensure accountability while at the same time minimizing burden on affected parties. In that regard, ED uses many formal and informal channels to receive public input on our information collection and regulatory burden reduction efforts. The Department is hopeful that the final version of the report will more fully discuss these efforts to strike this balance. The final report's results and other public input will be taken into account as we make future decisions on information collections and regulations.

Thank you for the opportunity to comment on this draft report.

Sincerely,



Martha Kanter

<sup>2</sup> See: [www.gao.gov/products/GAO-12-39](http://www.gao.gov/products/GAO-12-39).

<sup>3</sup> See: <http://www.gao.gov/assets/320/311169.pdf>.

<sup>4</sup> See: <http://www.gao.gov/assets/270/265014.pdf>.



# Appendix III: Selected Federal Requirements Described as Burdensome in Discussion Group Comments

The table below lists some of the specific concerns expressed by school officials we spoke to in discussion groups in response to questions about burdensome federal requirements. GAO identified statutory or regulatory provisions that relate to the burdens described by school officials and compiled these summaries to better illustrate the underlying requirements about which we received comments. These are only examples, not a list of every requirement specifically reported to us as burdensome. The summaries provided below are not intended to be complete descriptions of each requirement, and additional statutory or regulatory provisions related to these comments may also apply. In some cases a provision may have multiple sources, such as where statutory requirements are further interpreted in a regulation or guidance document.

Discussion Group Participant Concern	Summary of Related Federal Provisions	Source
<b>Consumer Disclosures:</b> This category encompasses a number of different federal requirements to collect information on various topics and make that information available to specified groups or entities. Students, prospective students, and others can use this information to be better informed. The information can help people make decisions such as whether or not to attend or seek employment at a school.		
Safety and security report. Reporting crime information is less necessary for smaller "trade schools" than larger schools with big campuses.	The statute and regulations require eligible institutions to collect certain information on campus crime statistics and security policies and prepare, publish, and distribute an annual security report to all current students and employees (and to any prospective student or employee upon request). The report must contain, among other information, statistics on certain crimes reported to campus security authorities or local police agencies. 20 U.S.C. § 1092(f)(1)(F), 34 C.F.R. §§ 668.41(e), 668.46.	Statute and Regulation
Seeking crime information from the police department can be difficult.	The regulations require that an institution "make a reasonable, good faith effort to obtain the required statistics" and may rely on information supplied by a local or state police agency. "If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics." 34 C.F.R. § 668.46(c)(9).	Regulation

**Appendix III: Selected Federal Requirements  
Described as Burdensome in Discussion  
Group Comments**

Discussion Group Participant Concern	Summary of Related Federal Provisions	Source
Placement rates. Placement rate calculations are different for different schools or within schools and confusing to students, requiring school staff to give additional explanation to some data.	<p>The statute requires that institutions produce and make readily available upon request—through appropriate publications, mailings, and electronic media—to an enrolled student and to any prospective student the placement in employment of, and types of employment obtained by, graduates of the institution’s degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources. 20 U.S.C. § 1092(a)(1)(R).</p>	Statute
	<p>According to the regulations, information concerning the placement of, and types of employment obtained by, graduates of the institution’s degree or certificate programs may be gathered from:</p> <p>(1) the institution’s placement rate for any program, if it calculates such a rate;</p> <p>(2) state data systems;</p> <p>(3) alumni or student satisfaction surveys; or</p> <p>(4) other relevant sources.</p> <p>The institution must identify the source of the information provided, as well as any time frames and methodology associated with it. In addition, the institution must disclose any placement rates it calculates. 34 C.F.R. § 668.41(d)(5).</p>	Regulation
<b>Return of Title IV Funds:</b> In general, if a recipient of Title IV grant or loan assistance withdraws from an institution, the statute and regulations establish a procedure for calculating and returning unearned funds. Returning these funds can protect the interests of the federal government and the borrower.		
Determining withdrawal date. Fourteen days is a short time frame to determine whether a student has withdrawn.	<p>The statute provides that, for institutions required to take attendance, the day of withdrawal is determined by the institution from such attendance records. 20 U.S.C. § 1091b(c)(1)(B).</p>	Statute
	<p>The regulations prescribe in further detail which institutions are required to take attendance and how to determine the withdrawal date:</p> <p>For a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, or a student who takes a leave of absence that does not meet the regulatory requirements, the student’s withdrawal date is the last date of academic attendance as determined by the institution from its attendance records. 34 C.F.R. § 668.22(b).</p>	Regulation
	<p>“Institutions that are required to take attendance are expected to have a procedure in place for routinely monitoring attendance records to determine in a timely manner when a student withdraws. Except in unusual instances, the date of the institution’s determination that the student withdrew should be no later than 14 days (less if the school has a policy requiring determination in fewer than 14 days) after the student’s last date of attendance as determined by the institution from its attendance records.” Federal Student Aid Handbook, June 2012, and Education “Dear Colleague Letters” GEN-04-03 Revised, Nov. 2004, and DCL GEN-11-14, July 20, 2011.</p>	Education guidance <sup>a</sup>

**Appendix III: Selected Federal Requirements  
Described as Burdensome in Discussion  
Group Comments**

Discussion Group Participant Concern	Summary of Related Federal Provisions	Source
Completing the calculation. It is difficult to complete the Return of Title IV calculation within 45 days.	An institution is required to return any unearned Title IV funds it is responsible for returning within 45 days of the date the school determined the student withdrew. 20 U.S.C. § 1091b(b)(1), 34 C.F.R. §§ 668.22(j)(1), 668.173(b).	Statute and Regulation
“Unofficial” withdrawals. If a student receives grades of all “F’s,” under some circumstances financial aid professionals must verify that the student is or is not an “unofficial withdrawal.” The school has 30 days from the last day of the semester to make a determination, which can be problematic because it takes time to post grades and confirm information with professors.	For a student who withdraws from a school that is not required to take attendance without providing notification, the school must determine the withdrawal date no later than 30 days after the end of the earlier of (1) the payment period or the period of enrollment (as applicable), (2) the academic year, or (3) the student’s educational program. 34 C.F.R. § 668.22(j)(2).	Regulation
	“If a student who began attendance and has not officially withdrawn fails to earn a passing grade in at least one course over an entire period, the institution must assume, for Title IV purposes, that the student has unofficially withdrawn, unless the institution can document that the student completed the period.	Education Guidance <sup>a</sup>
	“In some cases, a school may use its policy for awarding or reporting final grades to determine whether a student who failed to earn a passing grade in any of his or her classes completed the period. For example, a school might have an official grading policy that provides instructors with the ability to differentiate between those students who complete the course but failed to achieve the course objectives and those students who did not complete the course. If so, the institution may use its academic policy for awarding final grades to determine that a student who did not receive at least one passing grade nevertheless completed the period. Another school might require instructors to report, for all students awarded a non-passing grade, the student’s last day of attendance (LDA). The school may use this information to determine whether a student who received all “F” grades withdrew. If one instructor reports that the student attended through the end of the period, then the student is not a withdrawal. In the absence of evidence of a last day of attendance at an academically related activity, a school must consider a student who failed to earn a passing grade in all classes to be an unofficial withdrawal.” Federal Student Aid Handbook, June 2012, and Education “Dear Colleague Letter” GEN-04-03 Revised, Nov. 2004.	

Source: GAO analysis of discussion group responses and review of relevant federal laws, regulations, and agency guidance documents.

<sup>a</sup>Although guidance documents do not establish legally enforceable requirements, we have included them here if they are relevant to the comments described.

Notes:

All references to “statute” or “regulations” are references to the Higher Education Act of 1965 (HEA), as amended, and Education’s implementing regulations.

All references to “eligible institutions” refer to eligible institutions participating in Title IV programs, as defined by the HEA, as amended.

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# Appendix IV: Selected Examples of Other Federal Requirements That May Apply to Postsecondary Schools

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Postsecondary schools may be subject to numerous federal requirements in addition to those related to Title IV of the Higher Education Act of 1965, as amended, which may be established by various other statutes or regulations promulgated by different agencies. The specific requirements to which an individual school is subject may depend on a variety of factors, such as whether it conducts certain kinds of research or is tax-exempt (see the following examples). This is not intended to be a comprehensive list; rather the examples were selected to represent the variety of types of requirements to which schools may be subject.

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## Examples of Requirements Related to Research Activities

- **Nuclear Research:** Schools licensed to conduct medical research using nuclear byproduct material must follow Nuclear Regulatory Commission requirements on safety and security, or compatible requirements issued by a state that has entered into an agreement with the Nuclear Regulatory Commission.<sup>1</sup> Schools that house nuclear reactors for research purposes are also subject to additional regulations, including those on emergency management.<sup>2</sup>
- **Research Misconduct:** To receive federal funding under the Public Health Service Act for biomedical or behavioral research, institutions (including colleges and universities) must have written policies and procedures for addressing research misconduct and must submit an annual compliance report to the federal government. The Public Health Service has issued regulations detailing institutions' responsibilities in complying with these requirements.<sup>3</sup>
- **Research on animals:** Applicants for funding for biomedical or behavioral research under the Public Health Service Act must provide an assurance to the National Institutes of Health that the research entity complies with the Animal Welfare Act and the Public Health Service Policy on Humane Care and Use of Laboratory Animals, and that it has appointed an appropriate oversight committee (an Institutional Animal Care and Use Committee). The oversight committee must review the care and treatment of animals in all animal

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<sup>1</sup>See, e.g., 10 C.F.R. pt. 35. See generally the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq. The Nuclear Regulatory Commission is authorized to enter into agreements with states giving states regulatory authority over certain nuclear materials. 42 U.S.C. § 2021.

<sup>2</sup>See, e.g., 10 C.F.R. § 50.47.

<sup>3</sup>42 U.S.C. § 289b, 42 C.F.R. pt. 93.

study areas and facilities of the research entity at least semi-annually to ensure compliance with the Policy.<sup>4</sup>

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### Examples of Requirements Related to Discrimination

- **Employment Discrimination:** Title VII of the Civil Rights Act of 1964, as amended, prohibits employment practices that discriminate based on race, color, religion, sex and national origin. These requirements apply to schools that qualify as employers as defined by Title VII, generally including private and state or local employers that employ 15 or more employees.<sup>5</sup>
- **Disabilities.** The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in several areas, including employment, state and local government activities, and public accommodations.<sup>6</sup> In addition, section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability under any program or activity that receives federal financial assistance.<sup>7</sup> Colleges, universities, other postsecondary institutions, and public institutions of higher education are subject to these requirements.
- **Sex Discrimination.** Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity. Title IX applies, with a few specific exceptions, to all aspects of education programs or activities that receive federal financial assistance, including athletics.<sup>8</sup>

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### Examples of Other Requirements

- **Byrd Amendment:** Educational institutions that receive federal funds must hold an annual educational program on the U.S. Constitution.<sup>9</sup>

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<sup>4</sup>42 U.S.C. § 289d. See also Public Health Service Policy on Humane Care and Use of Laboratory Animals (2002).

<sup>5</sup>42 U.S.C. §§ 2000e -2000e-4. See also Equal Employment Opportunity Commission regulations, e.g., 29 C.F.R. pts. 1604, 1605, 1606.

<sup>6</sup>42 U.S.C. §§ 12101–12213. Different agencies administer different aspects of the Americans with Disabilities Act, including the Equal Employment Opportunity Commission and the Department of Justice.

<sup>7</sup>29 U.S.C. § 794. Education’s regulations implementing the Rehabilitation Act are located at 34 C.F.R. pt. 104.

<sup>8</sup>20 U.S.C. § 1681 et seq. See also Education’s regulations, 34 C.F.R. pt. 106.

<sup>9</sup>36 U.S.C. § 106 note. See also Notice of Implementation of Constitution Day and Citizenship Day, 70 Fed. Reg. 29,727 (May 24, 2005).

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**Appendix IV: Selected Examples of Other  
Federal Requirements That May Apply to  
Postsecondary Schools**

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- Internal Revenue Service Form 990: Schools that have tax-exempt status generally must annually file IRS Form 990. The form requires a range of information on the organization's exempt and other activities, finances, governance, compliance with certain federal tax requirements, and compensation paid to certain persons.<sup>10</sup>

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<sup>10</sup>26 U.S.C. § 6033, 26 C.F.R. §§ 1.6033-1 to 1.6033-6.

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Melissa Emrey-Arras, (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Bryon Gordon (Assistant Director), Debra Prescott (Assistant Director), Anna Bonelli, Joy Myers, and Daren Sweeney made key contributions to this report. Additionally, Deborah Bland, Kate Blumenreich, Tim Bober, Sarah Cornetto, Holly Dye, Kathleen van Gelder, and Elizabeth Wood aided in this assignment.

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