

34 CFR 600.7

(a) *General rule.* For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if -

(iii) More than twenty-five percent of the institution's regular enrolled students were incarcerated;

(c) *Special provisions regarding incarcerated students -*

(1) *Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma and has continuously provided an eligible prison education program approved by the Department under 34 CFR 668.8(o) for at least two years. The Secretary does not grant the waiver if -

(i) For a program described under paragraph (3)(ii) of this subsection, the program does not maintain a completion rate of 50 percent or greater; or

(ii) For an institution described under paragraphs (c)(2) or (3) of this subsection-

(A) The institution provides one or more eligible prison education programs that are not compliant with the requirements of 34 CFR 668.8(o); or

(B) The institution is not administratively capable under 34 CFR 668.16 or financially responsible under 34 CFR Subpart L.

Commented [BW1]: ED's Response - Section 102 of the Higher Education Act states the following:

The subcommittee can identify the potential rapid growth of prison education programs as an area where additional oversight or safeguards might be warranted to ensure that an institution is meeting the needs of its incarcerated students. Suggestions for providing effective oversight or something like the "scaffolding approach" described above are welcome.

Commented [BW2R1]: (RECOMMENDATION: up to a maximum of 49% of an institution's "traditional" student body for an initial probationary period of 5 years. If an institution shows clear evidence to ED, their accreditation agency, and corrections that they are continuing to serve students' best interests they can apply for an expansion of their waiver to a maximum of 75% of an institution's "traditional" student body. That expansion would also be probationary and would have to show evidence that students' best interests are being served. At this time, it does not appear warranted that an educational institution should go above the 49%-75% (non-traditional) student population.

Commented [BW3R1]: ^^ Personally, I could see value in stopping expansion at the 49% cap, but I see potential value in providing some scaffolding for institutions who may want to expand fairly and equitably in this space.

(2) *Waiver for entire institution.* If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary [may](#) waive the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.)

(3) *Other waivers.* If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary [may](#) waive the prohibition contained in paragraph (a)(1)(iii) of this section.)

Commented [BW4]: See ED's response above.

Commented [BW5R4]: (RECOMMENDATION: "...of this section for the entire institution" up to a maximum of 49% of an institution's "traditional" student body for an initial probationary period of 5 years. If an institution shows clear evidence to ED, their accreditation agency, and corrections that they are continuing to serve students' best interests they can apply for an expansion of their waiver to a maximum of 75% of an institution's "traditional" student body. That expansion would also be probationary and would have to show evidence that students' best interests are being served. At this time, it does not appear warranted that an educational institution should go above the 49%-75% (non-traditional) student population.)

Commented [BW6R4]: ^^ Personally, I could see value in stopping expansion at the 49% cap, but I see potential value in providing some scaffolding for institutions who may want to expand fairly and equitably in this space.

Commented [BW7]: See ED's response above.

Commented [BW8R7]: ((RECOMMENDATION: up to a maximum of 49% of an institution's "traditional" student body for an initial probationary period of 5 years. If an institution shows clear evidence to ED, their accreditation agency, and corrections that they are continuing to serve students' best interests they can apply for an expansion of their waiver to a maximum of 75% of an institution's "traditional" student body. That expansion would also be probationary and would have to show evidence that students' best interests are being served. At this time, it does not appear warranted that an educational institution should go above the 49%-75% (non-traditional) student population.)

Commented [BW9R7]: ^^ Personally, I could see value in stopping expansion at the 49% cap, but I see potential value in providing some scaffolding for institutions who may want to expand fairly and equitably in this space.