

Professional Judgment

Professional Judgment Principles

The Higher Education Act of 1965, as amended (HEA) provides authority for the financial aid administrator to exercise discretion in a number of areas. This authority is known as professional judgment (PJ) and allows for the individual treatment of a student who has special circumstances that are not sufficiently addressed by the standardized federal student aid formulas and delivery methods.

- Special circumstances are defined as conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students
- The conditions that create the need for special treatment, as well as any action taken, must be adequately documented and maintained in the student's file
- Policies and procedures regarding PJ provide a basic framework and guidelines within which an individual student may be treated
- PJ must be administered on a case-by-case basis, in response to an examination of a student's unique situation
- An institution may establish policies and procedures under which it identifies circumstances that trigger a review by a financial aid administrator
- Financial aid administrators are not allowed to make across-the-board changes
- Although several students may have similar circumstances which may be resolved in similar way using PJ, the financial aid administrator must still evaluate the merits of each student's situation on a case-by-case basis
 - Under the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, the Department of Education (ED) waives the requirement that adjustments be made on a case-by-case basis for "affected individuals" who:
 - ◆ Are serving on active duty during a war or other military operation or national emergency;
 - ◆ Are performing qualifying National Guard duty during a war or other military operation or national emergency;
 - ◆ Reside or are employed in an area that is declared a disaster area by any federal, state, or local official in connection with a national emergency; or
 - ◆ Suffer direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by ED
- The financial aid administrator's authority extends to requesting and using any supplemental information he or she deems necessary for making a PJ decision
- The financial aid administrator must make his or her own decision about discretionary adjustments
 - Except for dependency status adjustments, a financial aid administrator at one school can not automatically accept adjustments made for the same student by a financial aid administrator at another school. The financial aid administrator may arrive at essentially the same conclusion based on his or her own examination of



the student's circumstances, but must still document the reasons for his or her own decision.

Professional Judgment Decision-Making Process

- Questions the financial aid administrator may consider when making his or her PJ decision include, but are not limited to the following:
 - Is the student or the student's family actually experiencing unique circumstances that are not dealt with adequately in the need analysis formula, or by other Title IV requirements or procedures?
 - Does the unusual situation warrant special treatment because it affects the student's or family's ability to contribute toward the cost of the student's education, or otherwise affects the student's ability to complete his or her program of study?
 - What should the special treatment be?
 - What documentation is needed to support this determination?
- The financial aid administrator's decision should not be questioned in an audit or program review as long as it:
 - Was based in an area where the law authorizes the use of PJ discretion
 - Is reasonable
 - Was reached on a case-by-case basis and based on an individual's unique circumstances
 - Is thoroughly documented in the student's file, even if it is decided that no further action will be taken
- The decision of the financial aid administrator cannot be appealed to ED

Areas of Professional Judgment

The HEA authorizes the financial aid administrator to exercise discretion in the following areas:

- Dependency status
- Need analysis
 - Calculation of the cost of attendance (COA)
 - Calculation of the expected family contribution (EFC)
- Denial or reduction of Direct Stafford or PLUS loan eligibility
- Unsubsidized Stafford Loan eligibility for a dependent student without parental Free Application for Federal Student Aid (FAFSA) data
- Satisfactory academic progress (SAP)

Dependency Status

HEA Section 480(d)

For Title IV purposes, the term "independent" means any individual who:

- Is 24 years of age or older by December 31 of the award year;
- Is or was an orphan, in foster care, or a ward of the court at any time when 13 years



of age or older;

- Is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court in the individual's state of legal residence;
- Is a graduate or professional student;
- Is married;
- Has legal dependents other than a spouse;
- Is a veteran of the U.S. Armed Forces;
- Is serving on active duty in the U.S. Armed Forces for other than training purposes;
- Has been determined to be, during the school year in which the application is submitted, either an unaccompanied youth who is a homeless child or youth, or an unaccompanied youth, at risk of homelessness, and self-supporting; or
- Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

Need Analysis

HEA Section 479A

(a) IN GENERAL.—Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected in the absence of special circumstances. Special circumstances may include tuition expenses at an elementary or secondary school, medical, dental, or nursing home expenses not covered by insurance, unusually high child care or dependent care costs, recent unemployment of a family member or an independent student, a student or family member who is a dislocated worker (as defined in section 101 of the Workforce Investment Act of 1998), the number of parents enrolled at least half-time in a degree, certificate, or other program leading to a recognized educational credential at an institution with a program participation agreement under section 487, a change in housing status that results in an individual being homeless (as defined in section 103 of the McKinney-Vento Homeless Assistance Act), or other changes in a family's income, a family's assets, or a student's status. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students. Adequate documentation for such adjustments shall substantiate such special circumstances of individual students. In addition, nothing in this title shall be interpreted as limiting the authority of the student financial aid administrator in such cases (1) to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this title, or (2) to offer a dependent student financial assistance under section 428H or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under section 483 if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such



student and refuse to file such form. No student or parent shall be charged a fee for collecting, processing, or delivering such supplementary information.

(b) **ADJUSTMENTS TO ASSETS TAKEN INTO ACCOUNT.**—A student financial aid administrator shall be considered to be making a necessary adjustment in accordance with subsection (a) if—

- (1) the administrator makes adjustments excluding from family income any proceeds of a sale of farm or business assets of a family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy or an involuntary liquidation; or
- (2) the administrator makes adjustments in the award level of a student with a disability so as to take into consideration the additional costs such student incurs as a result of such student's disability.

Expected Family Contribution

The EFC calculation includes an income protection allowance (IPA) which provides the following allowances for basic living expenses normally incurred by a family:

- Food – 30%
- Housing – 22%
- Transportation expenses – 9%
- Clothing and personal care – 16%
- Medical care – 11%
- Other family consumption – 12%

Cost of Attendance

HEA Section 472

For the purpose of this title, the term “cost of attendance” means—

- (1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;
- (2) an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a half-time basis, as determined by the institution;
- (3) an allowance (as determined by the institution) for room and board costs incurred by the student which—
 - (A) shall be an allowance determined by the institution for a student without dependents residing at home with parents;
 - (B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;
 - (C) for students who live in housing located on a military base or for which a basic allowance is provided under section 403(b) of title 37, United States Code,



shall be an allowance based on the expenses reasonably incurred by such students for board but not for room; and

- (D) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board;
- (4) for less than half-time students (as determined by the institution), tuition and fees and an allowance for only—
 - (A) books, supplies, and transportation (as determined by the institution);
 - (B) dependent care expenses (determined in accordance with paragraph (8)); and
 - (C) room and board costs (determined in accordance with paragraph (3)), except that a student may receive an allowance for such costs under this subparagraph for not more than 3 semesters or the equivalent, of which not more than 2 semesters or the equivalent may be consecutive;

- (8) for a student with one or more dependents, an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that—
 - (A) such allowance shall not exceed the reasonable cost in the community in which the student resides for the kind of care provided; and
 - (B) the period for which dependent care is required includes, but is not limited to, class-time, study-time, field work, internships, and commuting time.
- (9) for a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

- (11) for a student engaged in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the institution);
- (12) for a student who receives a loan under this or any other Federal law, or, at the option of the institution, a conventional student loan incurred by the student to cover a student's cost of attendance at the institution, an allowance for the actual cost of any loan fee, origination fee, or insurance premium charged to such student or such parent on such loan, or the average cost of any such fee or premium charged by the Secretary, lender, or guaranty agency making or insuring such loan, as the case may be; and
- (13) at the option of the institution, for a student in a program requiring professional licensure or certification, the one-time cost of obtaining the first professional credentials (as determined by the institution).

Denial or Reduction of Direct Stafford or PLUS Loan Eligibility

HEA Section 479A(c)

REFUSAL OR ADJUSTMENT OF LOAN CERTIFICATION.—On a case-by-case basis, an eligible institution may refuse to certify a statement that permits a student to receive a loan under part B or D, or may certify a loan amount or make a loan that



is less than the student's determination of need (as determined under this part), if the reason for the action is documented and provided in written form to the student. No eligible institution shall discriminate against any borrower or applicant in obtaining a loan on the basis of race, national origin, religion, sex, marital status, age, or disability status.

Direct Loan Program Regulations—34 CFR 685.301(a)(8)

- (8) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, and if—
- (i) The determination is made on a case-by-case basis;
 - (ii) The documentation supporting the determination is retained in the student's file; and
 - (iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.

Unsubsidized Direct Loan Eligibility for a Dependent Student Without Parental FAFSA Data HEA Section 479A(a)

In addition, nothing in this title shall be interpreted as limiting the authority of the student financial aid administrator in such cases (1) to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this title, or (2) to offer a dependent student financial assistance under section 428H or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under section 483 if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such student and refuse to file such form. No student or parent shall be charged a fee for collecting, processing, or delivering such supplementary information.

Satisfactory Academic Progress

HEA Section 484

STUDENT ELIGIBILITY

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

* * *

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

* * *

- (c) SATISFACTORY PROGRESS.—

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



- (A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and
 - (B) the student has a cumulative “C” average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.
- (2) Whenever a student fails to meet the eligibility requirements of subsection (a)(2) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) for a grant, loan, or work assistance under this title.
- (3) Any institution of higher education at which the student is in attendance may waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on—
- (A) the death of a relative of the student,
 - (B) the personal injury or illness of the student, or
 - (C) special circumstances as determined by the institution.

Student Eligibility Regulations—34 CFR 668.32(f)

A student is eligible to receive title IV, HEA program assistance if the student—

* * *

- (f) Maintains satisfactory progress in his or her course of study according to the institution’s published standards of satisfactory progress that satisfy the provisions of Sec. 668.16(e), and, if applicable, the provisions of Sec. 668.34;

Student Eligibility Regulations—34 CFR 668.34

- (a) If a student is enrolled in a program of study of more than two academic years, to be eligible to receive title IV, HEA program assistance after the second year, in addition to satisfying the requirements contained in Sec. 668.32(f), the student must be making satisfactory progress under the provisions of paragraphs (b), (c) and (d) of this section.
- (b) A student is making satisfactory progress if, at the end of the second year, the student has a grade point average of at least a “C” or its equivalent, or has academic standing consistent with the institution’s requirements for graduation.
- (c) An institution may find that a student is making satisfactory progress even though the student does not satisfy the requirements in paragraph (b) of this section, if the institution determines that the student’s failure to meet those requirements is based upon—
 - (1) The death of a relative of the student;
 - (2) An injury or illness of the student; or
 - (3) Other special circumstances.
- (d) If a student is not making satisfactory progress at the end of the second year, but at



the end of a subsequent grading period comes into compliance with the institution's requirements for graduation, the institution may consider the student as making satisfactory progress beginning with the next grading period.

- (e) At a minimum, an institution must review a student's academic progress at the end of each year.

Administrative Capability Regulations—34 CFR 668.16(e)

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

* * *

- (e) For purposes of determining student eligibility for assistance under a Title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards—
 - (1) Are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;
 - (2) Include the following elements:
 - (i) A qualitative component which consists of grades (provided that the standards meet or exceed the requirements of Sec. 668.34), work projects completed, or comparable factors that are measurable against a norm.
 - (ii) A quantitative component that consists of a maximum timeframe in which a student must complete his or her educational program. The timeframe must—
 - (A) For an undergraduate program, be no longer than 150 percent of the published length of the educational program measured in academic years, terms, credit hours attempted, clock hours completed, etc. as appropriate;
 - (B) Be divided into increments, not to exceed the lesser of one academic year or one-half the published length of the educational program;
 - (C) Include a schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment to complete his or her educational program within the maximum timeframe; and
 - (D) Include specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress;
 - (3) Provide for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;
 - (4) Provide for a determination at the end of each increment by the institution as to whether the student has met the qualitative and quantitative components of the



- standards (as provided for in paragraphs (e)(2)(i) and (ii) of this section);
- (5) Provide specific procedures under which a student may appeal a determination that the student is not making satisfactory progress; and
 - (6) Provide specific procedures for a student to re-establish that he or she is maintaining satisfactory progress.

Student Consumer Information Regulations—34 CFR 668.42(c)

- (c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

* * *

- (2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and
- (ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

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Some Areas Where Professional Judgment Does Not Apply

A financial aid administrator cannot use PJ to:

- Change a student's dependency status from independent to dependent;
- Create a new category of costs in the COA;
- Adjust the "bottom-line" EFC directly;
- Change the Federal Methodology (FM) formula itself or the values in the tables used to calculate the EFC;
- Make across-the-board changes;
- Make an otherwise ineligible student eligible for Title IV aid (e.g., using PJ to waive general student eligibility requirements);
- Circumvent the intent of the law or regulations;
- Circumvent Federal Supplemental Educational Opportunity Grant (FSEOG) selection criteria; or
- Include expenses related to post-enrollment activities in the student's COA, except on a one-time basis for the cost, incurred during a period of enrollment, of obtaining a first professional credential for a student in a program requiring professional licensure or certification.

