PIP Procedures Memorandum 97-14

September 11, 1997

THIS INELIGIBLE LOCATION GUIDANCE, AND THAT IN THE ATTACHED MEMO OF JUNE 7, 1996, DOES NOT AFFECT LIABILITY DETERMINATIONS IN CASES IN WHICH FINAL PROGRAM REVIEW DETERMINATIONS OR FINAL AUDIT DETERMINATIONS HAVE BEEN ISSUED. THIS GUIDANCE DOES NOT ALTER THE REGULATORY REQUIREMENTS FOR INSTITUTIONS THAT OPEN ADDITIONAL LOCATIONS, AND IT DOES NOT GUARANTEE AN INSTITUTION THAT THE DEPARTMENT WILL NOT SUBSEQUENTLY DEMAND FULL REPAYMENT OF THE LIABILITIES ARISING FROM THE PROGRAM VIOLATIONS IDENTIFIED IN A PROGRAM REVIEW OR AUDIT. FURTHER, LIABILITY ASSESSMENTS MADE UNDER THESE PROCEDURES DO NOT PRECLUDE THE DEPARTMENT FROM SEEKING FULL REPAYMENT OF ANY UNASSESSED LIABILITIES IN OTHER ADMINISTRATIVE OR JUDICIAL PROCEEDINGS, OR IN ANY WAY LIMIT FORMAL PROCEEDINGS THAT MAY BE INITIATED BY THE DEPARTMENT OF JUSTICE.

This document constitutes internal staff discussion and general procedures regarding exercise of enforcement discretion, and does not create any procedural rights of schools. This memorandum contains general guidance to IPOS Case Management Teams and is for internal IPOS use only. This memorandum is not a regulation, and is not intended to provide guidance binding upon the Department. The requirements that schools must meet are set out in the regulations, and the internal staff procedures in this memorandum neither supplement nor supplant the regulations. Because the document sets forth proposed enforcement strategies, substantial portions of this memorandum are not releasable under FOIA.

TO : Case Management Division Directors
Area Case Directors
Co-Team Leaders

THROUGH : Howard E. Fenton, Director
Performance Improvement and Procedures Division

FROM : Patricia Hopson, Chief
Procedures Branch
Performance Improvement and Procedures Division

SUBJECT : **Ineligible Locations: Part II--Final Determinations**
June 7, 1996 Ineligible Locations Memorandum is attached

This memorandum provides guidance to IPOS case management teams in making final determinations concerning ineligible locations, with special attention requested from program reviewers and audit specialists. Our June 7, 1996 “Part I” ineligible location memo (copy attached) provided assistance in assessing the violation’s severity and writing the finding.

That memo, written before the IPOS reorganization, was developed in the context of the previous IPOS structure, but the concepts outlined in that memo will continue to serve as useful guidance for case management teams in the *initial evaluation* of ineligible location violations. The guidance below focuses on the second half of the process -- recommending fines or determining liability assertions -- and is designed to assist in the preparation of final program review determinations and final audit determinations. In developing these final determination guidelines, the Ineligible Location Task Force relied on valuable input from regional office case team staff, OGC, AAAD, the Initial Participation Branch of AEDD, the Policy Development Division of PTAS, and PIP staff.

Just as our June 7, 1996, Part I memorandum was built on the concept of two different levels of ineligible location findings ("technical" or "substantive"), we suggest a similar process for making decisions on fine recommendations or liability assertions. **Four determination levels** are recommended for consideration by program reviewers or audit specialists. Staff should exercise their professional judgment and, in consultation with the case management team, use the recommended guidelines to assist in the decision-making process. Note: While this memo's guidance relies more on program review language than audit (because this finding occurs more frequently in program reviews), audit specialists also should find these approaches useful.

1. Fine only. If the reviewer and case team members determine, after evaluating the institutional response to the program review report and weighing other relevant information, that a fine only is appropriate, a formal fine recommendation should be made to AAAD, following the procedure outlined in IRB 95-5 (10/10/95), "Elimination of Informal Fines & Implementation of Formal Fine Procedures." Note: IRB 95-5 includes a formal fine matrix and an "Institutional Review Branch" fine referral form to be submitted to "CED." Please note that AAAD recently issued a **new referral form** to case teams (July 1997) and requests that the new form, **"Case Team's Referral to AAAD**," be used for fine recommendations. Teams may continue to use the existing fine matrix in 95-5. AAAD will soon issue an updated fine matrix.

Please note that while IRB 95-5, page 7, lists $10,000 as the minimum fine for an "institutional" violation (as opposed to an "individual student" violation--minimum of $5,000), AAAD has indicated it will accept a **$5,000 minimum recommendation** for any institutional violation fine referral for an ineligible location.

Two important points: **(A)** Repeat violations should trigger recommendations for stiffer fines, as indicated in 95-5. **(B)** School size, as well as seriousness of the finding, is a key factor in deciding on the penalty. However, since the AAAD matrix lists levels of *total institutional funding*, reviewers should estimate the *ineligible location's funds*, note this on the AAAD referral form and request that AAAD consider a fine amount appropriately adjusted. In addition, as noted in the italicized statement after Category 4 on page 4, AAAD (with OGC) may entertain, ***but only on an exceptional basis***, recommendations for fines lower than $5,000, or other recommended fines that may be justified by particular circumstances.

However, as a general rule, the $5,000 minimum stands, serving as a solid base for ED's legal position, as well as ensuring that Department staff and resources are used wisely, providing a reasonable return for the taxpayer.

Larger fines**:** If the institution receives substantial Title IV funding (see IRB 95-5 chart, page 7) **or** if the reviewer considers the finding's circumstances more serious, larger fines may be recommended to AAAD ($25,000 maximum for each location; that is, multiple ineligible sites could warrant a maximum $25,000 fine recommendation for each ineligible site). If a reviewer is concerned that the recommended minimums or maximums do not fit the particulars of the case (multiple ineligible locations, unusual circumstances), informal discussions are suggested with AAAD adjunct case team staff.

Fine-only wording in the FPRD should include a carry-over of the standard "harm statement" that was used in the program review report, indicating that the institution's failure to obtain ED's approval for the location(s) in question could contribute to a reduction in available Title IV funds to needy students and thereby cause harm to students and the U.S. Department of Education. Additional wording should be included to indicate that, although liabilities are not being assessed in this final determination, the case team has determined that a fine for the violation may be appropriate (the reviewer should specify no amount in the FPRD), and is making a formal fine referral to AAAD for its consideration, and that any fine action that AAAD may decide to initiate would be accompanied by a notification of institutional appeal rights.

2. Liability. If the reviewer determines that the finding is "substantive," consistent with guidance in the June 1996 memo, liabilities for the appropriate site and period should be asserted. Generally, the full liability for all years of ineligible Title IV funds at the location(s) should be asserted; however, individual circumstances may justify a partial liability assertion in some cases.

EXAMPLE: The institution can document that, two-thirds of the way through a three-year period of additional location ineligibility, it at least notified its accreditor and state agency about the location and obtained approval (if it was required by those agencies), even though it had never gained ED's approval. The reviewer in this case may determine that an appropriate liability is an assessment for the funds used in the <u>first two</u> of three ineligible award years. (Note: Per OGC, any partial liability assessment should be supported by a clear rationale included in the FPRD.) For the third year of this scenario, a fine might be considered, serving as a lesser penalty but still drawing a clear connection between a regulatory violation and the resulting consequences.

3. Fine <u>and</u> liability. If the reviewer determines that the finding is substantive, and the institution has also demonstrated negligence or lack of cooperation, consideration should be given to asserting liabilities for the full period at issue *plus* a fine recommendation to AAAD. Again, per normal procedure, the final determination's language would not list any fine amount, but would cite only the fine referral to AAAD.

EXAMPLE: In addition to a substantive ineligible location violation and other serious problems noted in the review, the school has not taken the required action listed in the program review report--it failed to notify ED and begin the process of seeking approval of the ineligible campus. Thus, a liability and a fine recommendation may be considered.

FPRD wording should include the harm statement, and also an explanation for the combined liability assertion *and* fine recommendation. EXAMPLES: repeat violation, demonstrated failure to initiate any corrective response per the required action, or efforts to obstruct or improperly delay the resolution process.

Reimbursement: As our June 1996 memorandum indicates, case teams might consider a transfer to reimbursement for closer monitoring of the institution's federal funds. One reimbursement option is the "***Expedited Reimbursement"*** process (page 4 of the June 1996 memo), which utilizes the school CEO's signed certification stating that funds were properly used, instead of requiring the normal, lengthier process of reimbursement documentation. This streamlined approach may be a good option in cases where a less stringent method of monitoring institutional funding is appropriate.

4. Fine, liability, and administrative action. For the most serious cases, reviewers may consider recommending a combination liability, fine referral, and termination recommendation. In very serious cases, reviewers and case team staff may already have asked AAAD to consider emergency action or termination proceedings, or made an OIG referral. In such cases, case teams should consult with AAAD, OGC, or OIG on the best approach to issuance of the program review report, FAD, or FPRD. Such consultations should focus not only on the best wording for the report or FPRD, but also on the more basic question of whether issuance of a report or final determination (or the timing of such issuance) might actually harm the Department's enforcement strategy for the institution.

Final determination wording: If the institution has not yet obtained ED's approval of the location in question (even if it has begun the process) the final determination's wording in such cases should make it clear that the finding is not considered "resolved," even though ED is choosing not to impose penalties. However, to facilitate orderly management of the program review/audit process and accomplish necessary administrative closure, while still preserving the Department's options, suggested wording would refer to the fact that the Department is making a determination for the purpose of *resolving the program review (or audit)* at this time, but that the *finding* will not be considered resolved until the corrective action is taken and any financial penalties or assessments paid.

Special Cases: If case team staff believe that the circumstances of a school's case are not adequately addressed by the above four categories, the staff should consult with OGC (working through the AAAD adjunct), being prepared to clearly explain and justify any recommendation for a different penalty or determination.

Notes on Part I Ineligible Location Memo: **(1)** Please note that the June 7, 1996 Part I memo recommends a name change for this Finding, as follows: **"Ineligible Location(s): No ED Approval."** The former title for Code 2170 was "Ineligible Branch/Location." **(2)** Although the Part I memo, issued before the IPOS reorganization, included wording for the Finding that instructs the school to contact IPD and begin the process of seeking ED's site approval, the new IPOS structure makes the IPD reference no longer applicable. Schools should now contact ED using the procedure in the new **Dear Colleague Letter (GEN 97-6, August 1997),** which will be a useful document for teams to share with schools seeking location approval**.** The DRCC will receive and log the school requests for changes, then forward them to the appropriate case team for review.

A final note, re: PEPS tracking: A reminder: Case team staff should be certain to follow standard procedure and enter the ineligible location deficiency code (2170) into the system . Also per usual procedure, even if the institution ultimately resolves the finding, the code should remain in PEPS to assist IPOS in tracking the frequency of the finding's occurrence. This reminder is provided as one more point of emphasis to reinforce the IPOS commitment to PEPS integrity and to stress the critical role of PEPS in helping us to manage our institutional caseload and to provide comprehensive reporting to OPE officials on IPOS activities.

If you have any questions, comments or suggestions, please direct them to the Performance Improvement and Procedures Division, John Cantalupo, by e-mail message or telephone (202/708-8261).

Attachment: June 7, 1996 memorandum to Regional Directors and Regional Institutional Review Branch Chiefs re: "Ineligible Location Issue"

cc: Marianne Phelps
Mary K. Muncie
Karen Chauvin
Karen Kershenstein
Patricia Trubia
David Morgan
Mary Gust
Lois Moore
Patti Patterson
Richard Nelson
David Bartnicki
Joe Bowen
David Heath
Steve Finley
Sally Wanner
PIP staff

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

June 7, 1996

TO : Regional Directors
Institutional Review Branch Chiefs, Regions I-X

FROM : Howard Fenton

Bonnie LeBold

SUBJECT : Ineligible Location Issue

The Ineligible Location Task Force, a work group including central office and regional office staff, is currently reexamining program review procedures for the ineligible location finding. The Task Force, established at the request of Marianne Phelps, is developing new guidance on a procedure for determining liabilities and/or fines in cases where institutions lack ED approval for a location. Issuance of FPRDs should be deferred until the new guidance is issued.

In the meantime, so as not to slow the issuance of program review reports, the Task Force has prepared this recommended language for the program review report Requirement. While the language below provides a useful approach for developing the review report's required action, it serves primarily as a framework, and may be adjusted according to the program reviewer's professional judgment, in consultation with the regional office supervisor. To assist reviewers in making that judgment, the Task Force provides guideposts in this memorandum.

This memo provides two suggested Requirement models, which differ from the language in our standard paragraph GEN 2170, currently in use. Reviewers should use the existing Finding and Reference sections in GEN 2170, but, depending on the severity of the case, word the Requirement based on Version One or Version Two, below. (For additional information on regulations, see the Attachment, which was developed by Region X staff and approved by OGC.)

We are recommending a change in the finding's title, from "Ineligible Branch/Location" to **Ineligible Location(s): No ED Approval."**

VERSION ONE: Violation Appears Technical, Rather than Substantive

Guideposts: **Key point**--Does the program review support the conclusion that the ineligible program violation appears to be technical, rather than substantive? **Important questions**: Has the school provided documentation to show that it notified its accrediting body or state agency (if required), or had communication with ED about the locations?

Does the overall program review appear to be in the mild/moderate range of seriousness? Does this finding appear to be an isolated occurrence or part of a larger pattern? Is this an apparent first-time deficiency, not seen in any previous reviews or audits? Are the programs offered at the ineligible sites also offered at the institution's approved locations, and do the programs have appropriate state or accrediting agency approval? Were Title IV funds properly awarded and disbursed to students at the questionable location?

If these guideposts are positive, and there are no indications that substantive program review violations have occurred at the ineligible location, reviewers should use the following copy as a basic model, making adjustments as needed:

Requirement

The Title IV eligibility of a school and its programs does not automatically include separate locations and extensions. If educational services are provided at other locations not listed in the Approval Notice sent to the school by the Department, or if the school adds other locations after it receives the Notice, the school must notify the Department and supply any additional information needed to obtain the Department's approval of the locations.

In response to this report:

1) The institution must immediately notify the Department's Institutional Participation Division (IPD) of the additional location(s) and begin the approval process for those location(s):

U.S. Department of Education
Institutional Participation Division
ROB-3, Room 3522
7th and D Streets, SW
Washington, DC 20202

202/401-6485

NOTE: The institution must submit to the regional office documentation regarding its contact with IPD by the 30-day deadline governing its overall response to this program review report. The institution remains independently responsible for obtaining the Department's approval for the location(s) in question.

2) If the institution believes that these locations were properly established and approved by the Department, the institution must compile and submit documentation to the regional office in support of its case.

No liabilities are being assessed at this time.

VERSION TWO: Violation Appears Substantive, Rather than Technical

If the violation appears to be substantive, use a more stringent required action.

Guideposts: If the school has " not satisfied accrediting body or state agency notification requirements (if applicable)**;** can document no effort to inform ED**;** if the deficiency is a repeat, or the overall review suggests serious problems in other areas, then the violation should be treated as substantive. Key questions: Is a disproportionate number of students enrolled at the questionable campus, compared to overall enrollment? Are regulatory violations at the questionable campus the same or substantially different than at the other locations? Are file reconstructions being required ? How many? (Two or more could signal serious problems.) Does ED have serious exposure to the possible loss of federal funds? Major red flag: Combination of ineligible site **plus** student screening violations (such as ATB). Finally, does the school's failure to obtain ED approval for the location appear related to an economic or other enrollment-related incentive?

In these serious cases, the reviewer should use the Requirement model below as a framework, and adapt it as needed:

Requirement

The Title IV eligibility of a school and its programs does not automatically include separate locations and extensions. If educational services are provided at other locations not listed in the Approval Notice sent to the school by the Department, or if the school adds other locations after it receives the Notice, the school must obtain the Department's participation approval of the locations.

XXX School must immediately cease awarding and disbursing Title IV funds to, or certifying any Title IV loans for students at the questionable branch/location. The institution may be required to repay any Title IV funds disbursed to students at the ineligible location(s).

- **In response to this report, the institution must contact the Department's Institutional Participation Division (IPD) immediately to begin the approval process for the questionable location(s), if it wishes to seek approval of that location for future participation in the federal student aid programs.**

U.S. Department of Education
Institutional Participation Division
ROB-3, Room 3522
7th and D Streets, SW
Washington, DC 20202
202/401-6485

- **NOTE: The institution must submit documentation to the regional office regarding its contact with IPD by the 30-day deadline governing its overall response to this program review report. The institution remains independently responsible for obtaining the Department's approval of the location(s) in question.**

- **If the institution believes that these locations were properly established and approved by the Department, the institution must compile and submit to the regional office any documentation in support of its case.**

With its response, the institution must provide the following information regarding each student who received Title IV funds while attending the questionable branch/location. The format for the student listing is as follows:

1. **Award Year**
2. **Name of Student**
3. **Social Security Number**
4. **Amount of Title IV disbursement by Program (for Federal Stafford or SLS, amount of loans certified, subtracting any refunds previously paid).**
5. **Dates of loan delivery**

Also, please provide the cumulative amount disbursed by program and award year. Final determinations on liabilities and/or fines will be made at a later time.

Notes to Program Reviewers

1) Reimbursement

A transfer to reimbursement is recommended **if** it appears there is a heightened need to monitor federal funds and that such funds otherwise may be in jeopardy. If a school is advised that awarding/disbursing **must stop** at the questionable location(s), the reviewer may decide to arrange for reimbursement transfer so that any awarding/disbursing that continues at **other** locations is done under the monitoring of reimbursement. In the **most serious** cases, where the reviewer identifies major risk to federal on an institution-wide basis, the school should be **referred to CED** for **emergency action**, which places an immediate stop on all Title IV funds to the institution.

"Expedited Reimbursement": If the reviewer believes that a situation warrants, instead of standard reimbursement, a milder administrative monitoring option, the new, streamlined approach of "expedited reimbursement '' may be applied. Expedited reimbursement requires that the school's CEO sign and forward to the reimbursement analyst a simple certification stating that no funds in the current reimbursement request were awarded or disbursed to students **at the questionable campus**. No detailed student data, normally required for regular reimbursement requests from institutions, would be needed.

Instead, the top school official would be on record that the Department's instructions on no awarding/disbursing for a specific campus had been observed. Based on this certification, the analyst would arrange with Finance for prompt release of the requested institutional funds. If later audits or reviews determined that this instruction had not been observed, the Department could take appropriate action. While this is not a foolproof monitoring mechanism, it provides a measure of assurance based on the top school official's written confirmation of compliance. Please note that, where a reviewer has serious reservations about an institution, the standard reimbursement method should be applied.

2) Professional Judgment

We again emphasize that reviewers should use their professional judgment in adjusting the Requirement according to the special circumstances of the particular case. If a reviewer considers an institution to fall somewhere between Version One and Version Two, neither write-up may be appropriate as is. For example, where an institution is acting responsibly and the overall review analysis is not serious, a reviewer may use Version One, but might choose to supplement it by also requiring the list of students/awards from Version Two. We urge reviewers to discuss these situations with their supervisors and, if desired, check with headquarters staff (John Cantalupo, Steve Finley).

3) IPD Contacts: Team Leaders

While reviewers may contact IPD staff, as listed, for information on approved locations, IPD requests that the PEPS system be checked first to obtain this information. This step may answer many questions without the need for IPD contact. However, the designated Team Leaders for the various regions may be called or e-mailed if more information or verification is needed. Reviewers may request a written follow-up (an e-mail may be easiest) to confirm IPD's institutional information. The follow-up memo would be useful in a potential appeal hearing.

Following is a list of IPD Team Leaders for schools in the various regions. Reviewers may check with the designated individuals ascertain the IPD status of questionable locations. (Use area code: **202**)

Regions II, VI, VII, and VIII: Laura Harcum (Liz Neverson, co-leader), 205-3720
Region V: Liz Neverson (Laura Harcum), 205-3630
Regions I, III, and IV: Cliff Knight (Jeff Raffensperger), 205-3710
Regions IX and X: Jeff Raffensperger (Cliff Knight), 205-3710

General number to IPD: 401-6485

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This concludes our guidance on **program review report <u>Requirement</u> language**. This information should facilitate report issuance and allow the review process to move forward. Until **FPRD guidance** is finalized, however, we ask that issuance of FPRDs with ineligible location findings be deferred, pending distribution of the new liability/fine guidelines. The Task Force will work hard to ensure timely completion of this assignment.

In the meantime, if you have any questions, you may contact either Steve Finley in OGC (202/401-8302), John Cantalupo in IRB/IMD (202/708-8261), or Richard Nelson in the Seattle Regional Office (206/220-7820).

Attachment

cc: Marianne Phelps
Mary K. Muncie
Steve Finley
Shirley Brown
Angie Torruella
David Morgan
Lois Moore
Richard Nelson
David Bartnicki
Joe Bowen
David Heath
Phillip M. “Radar” Brumback
John Cantalupo

ELIGIBLE LOCATION REGULATORY REQUIREMENTS

1. From May 20, 1988 to June 30, 1994:

ED NOTIFICATION AND ED APPROVAL:

- CFR 600.10(b), 4/5/88, eff. 5/20/88 - Eligibility does not extend to locations not identified on the eligibility notification.
- CFR 600.20(b), 4/5/88, eff. 5/20/88 - Application procedures for establishing eligibility.
- CFR 600.21(b), 4/5/88, eff. 5/20/88 - ED specifies which locations are eligible on the eligibility notification.
- CFR 600.30(a), 4/5/88, eff. 5/20/88 - Must notify ED of new locations not identified in original eligibility notification. Amended 7/31/91 and 12/3/92 with no significant changes.
- CFR 600.32(a), 4/5/88. Amended 7/31/91, eff. 9/14/91 - Must apply under 600.20 for eligibility for additional locations.

ACCREDITATION AND STATE LICENSURE:

- CFR 600.21, 4/5/88, eff. 5/20/88 - ED notifies the institution whether it qualifies for eligibility in whole or in part under 600.4 through 600.7 (these regulations require legal authorization by the State in which the institution is located, and require the institution to be accredited). Therefore, if the State requires such action, the institution must have evidence on file that it has the appropriate license for each additional location. If required by the institution's accrediting body, the institution must have evidence on file that it has met the accrediting body's approval requirements for additional locations.
- CFR 600.32(b), 4/5/88. Amended 7/31/91, eff. 9/14/91 - Restates 600.21 to clarify that additional locations must meet the requirements of 600.4 through 600.7.

2. From July 1, 1994 to the present:

ED NOTIFICATION AND ED APPROVAL

- CFR 600.10(b)(3), 4/5/88. Amended 4/29/94, eff. 7/1/94 - Eligibility does not extend to any location not identified on the eligibility notification that provides at least 50% of an educational program.
- CFR 600.20(c), 4/5/88. Amended 4/29/94, eff. 7/1/94 - Must apply for eligibility if at least 50% of an educational program is offered at a location.
- CFR 600.30(a)(3), 4/5/88. Amended 7/31/91 and 12/3/92. Amended 4/29/94, eff. 7/1/94 - Must notify ED of locations at which at least 50% of an educational program is offered.
- CFR 600.32(a), 4/5/88. Amended 7/31/91. Amended 4/29/94, eff. 7/1/94 - To qualify as an additional location, the requirements of 600.10 and 600.32 must be met.
- CFR 600.32(d), 4/5/88. Amended 7/31/91. Amended 4/29/94, eff. 7/1/94 - Additional location defined as a location that was not designated as an eligible location on the eligibility notification.
- CFR 668.12(c), 12/1/87. Amended 4/29/94, eff. 7/1/94 - Must notify ED of a location that is not currently included in its participation agreement and offers at least 50% of a program. Amended 11/29/94 with no significant changes.
- CFR 668.12(e), 12/1/87. Amended 4/29/94, eff. 7/1/94 - Must apply for eligibility in a format prescribed by ED.

ACCREDITATION AND STATE LICENSURE:

- CFR 600.32(a), 4/5/88. Amended 7/31/91. Amended 4/29/94, eff. 7/1/94 - Additional locations must meet requirements of 600.4, 600.5, and 600.6 (see accreditation and state licensure information above).

Summary

From 5/20/88 to 6/30/94, institutions must have received ED approval for any additional locations where education is provided. Beginning 7/1/94, institutions must receive ED approval only if at least 50% of a program is offered at an additional location.

For all award years, accrediting and state licensing body requirements must also be reviewed to ensure the institution's additional locations received such approval, if applicable.