

LIFELONG LEARNING (HIGHER EDUCATION FEE LIMITS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Lifelong Learning (Higher Education Fee Limits) Bill as introduced in the House of Commons on 1 February 2023 (Bill 240).

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Lifelong Learning (Higher Education Fee Limits) Bill (“the Bill”) will introduce a new method for determining tuition fee limits for each course year of qualifying higher education courses, based on credits. This is to enable fee limits for short courses and modules of courses, as well as traditional full courses, to be set in a consistent and appropriate way as part of the Lifelong Loan Entitlement policy.

Policy background

- 2 This Bill forms part of the Government’s wider reforms to further and higher education (FE and HE) and provides further legislative underpinnings required to deliver the Lifelong Loan Entitlement (LLE), which was initiated by the Skills and Post-16 Education Act 2022.

Higher Education Reform

- 3 The Government is concerned that the current student finance system does not incentivise or offer a clear route for an adult to study flexibly over their lifetime, with the current system predominantly set up for the traditional 3-year undergraduate degree.
- 4 This Bill furthers wider Government reforms to HE, particularly the aim to bring further and higher education closer together, building on Chapter 3 of the Skills and Post-16 Education Act 2022.

Skills for Jobs White Paper

- 5 This Bill progresses the skills reforms set out in the *Skills for Jobs: Lifelong Opportunity and Growth* White Paper, published on 21 January 2021.¹ The White Paper set out the Government’s plans to reform the post-16 skills system and address its challenges, including skills shortages. The White Paper set out five objectives:
 - i. Putting employers at the heart of post-16 skills
 - ii. Providing the advance technical and higher technical skills the country needs
 - iii. A flexible Lifetime Skills Guarantee
 - iv. Responsive providers supported by effective accountability and funding
 - v. Supporting outstanding teaching

¹ **Error! Hyperlink reference not valid.**

Review of Post-18 Education and Funding

- 6 A review of Post-18 Education and Funding was announced in February 2018 and an Independent Panel, chaired by Sir Philip Augar, prepared a report for the review, which was published in May 2019. The review set out to build on the foundations set by the Higher Education and Research Act 2017 (HERA) for improving quality and outcomes for the HE system, as well as addressing wider post-18 provision and funding issues.
- 7 The introduction of the LLE builds upon one of the recommendations of this review: *Recommendation 2:1: The Government should introduce a single lifelong learning loan allowance for tuition loans at Levels 4, 5 and 6, available for adults aged 18 or over, without a publicly funded degree. This should be set, as it is now, as a financial amount equivalent to four years' full time undergraduate degree funding – to increase flexibility and lifetime learning.*²
- 8 The review also recommended the use of credits as a basis for funding, as it is an established method of quantifying learning for modules and courses across different study modes and intensities.³

Lifelong Loan Entitlement

- 9 The introduction of the LLE from 2025 will provide individuals with a loan entitlement to the equivalent of four years of post-18 education (e.g., £37,000 in today's fees) to use over their lifetime. This will be available for both modules of courses and full courses, in colleges and universities, and combines the existing student finance offers at higher technical and degree levels (levels 4-6) into a single, unified offer.
- 10 As announced in the former Prime Minister's speech on 29 September 2020, the Government wants to create a more streamlined, efficient and flexible learning system that brings further and higher education closer together, through the introduction of the LLE. The Government's policy intent is that this new system will better meet the needs of people, employers and the economy by enabling students to study courses and modules at a time, and in a way, that best suits them.⁴
- 11 The launch of the LLE consultation on 24 February 2022 sought views on the ambition, scope, and coverage of the LLE.⁵ The consultation did not request responses on the fee limits policy, but instead set out the Government's policy intent on this area with the questions focused on wider aspects of LLE policy. The Government closed the consultation on 6 May 2022. The Government will continue working with representatives from the education sector, as well as delivery bodies to scope and design the system changes. The Government will publish its response in due course.

² [Review of Post-18 Education and Funding](#), p. 40

³ [Review of Post-18 Education and Funding](#), p. 39

⁴ [PM's skills speech: 29 September 2020 - GOV.UK \(www.gov.uk\)](#)

⁵ [Lifelong loan entitlement consultation](#)

- 12 In order to meet the Government's aim to deliver the LLE from 2025, additional primary legislation is required and this Bill will amend the HERA to allow the Secretary of State to: set maximum chargeable credits per course year for fee limit purposes; set limits on the cost-per-credit of courses and modules; and determine when the fee limit should be set per-year instead of per-credit.

Current Student Finance and Fee Limit Systems

- 13 The current HE student support system (i.e. student loans and grants) and the fee limits system are mainly designed around traditional 3-year undergraduate degrees.
- 14 There are two key pieces of primary legislation covering these systems: (1) the Teaching and Higher Education Act 1998 (“THEA”), which provides the broad powers for the Secretary of State to issue tuition fee, maintenance loans and targeted grants, and (2) HERA, which establishes the Office for Students and provides it with the necessary regulatory powers, including the power to regulate provider compliance with fee limits.⁶ The fee limits themselves are set out in regulations made by the Secretary of State under Schedule 2 to HERA.
- 15 One of the Government’s main aims of the LLE is to ensure that student support can be made available for flexible modular provision, in addition to full courses at levels 4 to 6 (including those regulated by Ofqual). Among other responsibilities, Ofqual regulates technical and vocational qualifications in England. These qualifications are typically offered by providers without degree-awarding powers, such as further education colleges, and they are not currently subject to tuition fee limits.
- 16 Under the Skills and Post-16 Education Act, several changes were made to provide legislative underpinnings for the LLE.
- 17 As a starting point, two key changes were made to THEA – (1) to modify the powers to make clear that loans could be set on a basis other than the academic year (to allow for the option of credit-based loans), and (2) introducing the concept of modules specifically into the powers to make clear that loans and grants for modules can be made available. Express provision was also made for the powers to be able to set out a maximum loan amount for a person; a “lifetime limit”. These changes were made by section 15 of the Skills and Post-16 Education Act 2022.
- 18 The main features of the existing fee limits legislation (in a combination of primary and secondary legislation) are, firstly, that fee limits apply in respect of an academic year to those “qualifying courses” which the Secretary of State sets out in regulations under HERA. They are the courses which are “designated” for student support purposes and offered by providers in the approved (fee cap) part of the Office for Students register under regulations made under THEA.
- 19 Secondly, that the Secretary of State sets out the fee limit rates (e.g. £9,250 per year). Those fee limits vary according to the type of course, whether the provider has an approved access and participation plan in place, and whether the provider has a high level of quality (e.g. Teaching Excellence Framework – “TEF”) rating. Those fee limits are then mirrored in the amounts of tuition fee loans

⁶ [Teaching and Higher Education Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1998/12); [Higher Education and Research Act 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2017/17)

which are made available to students. Thirdly, the Office for Students has the power to regulate provider compliance with fee limits, as it is one of the conditions of registration.

- 20 Under Section 16, the Skills and Post-16 Education Act 2022 also amended the definition of “higher education course” in HERA to add a module of such a course. This was in part to enable fee limits to be set for modules, but the changes to the method for determining them were not included. Ministers set out throughout this Bill’s passage that further changes to HERA on fee limits would be necessary and brought forward in a future Bill.⁷ This Bill delivers on that to ensure that fee limits can be set in a consistent way for modules and full courses based on credits.
- 21 Credits are widely used in HE and FE as a method of quantifying the amount of learning a student would ordinarily be expected to undertake in order to complete a certain programme. Definitions are very similar across the sectors, with Ofqual’s Conditions of Registration and the Office for Students’ Sector-Recognised Standards both stating that one credit should represent ten hours of notional learning by the student, whether that learning is guided by the provider or undertaken independently.

Legal background

- 22 The following significant legislation is referenced by the Bill. Explanation on how previous legislation is referenced, if required, is given in the commentary on provisions in the Bill.
- i. Higher Education and Research Act 2017 (HERA)
 - ii. Teaching and Higher Education Act 1998 (THEA)
- 23 There are also some key pieces of secondary legislation on fee limits and the fee limit condition.
- i. The Higher Education (Fee Limit Condition) (England) Regulations 2017;
 - ii. The Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018;
 - iii. The Higher Education (Fee Limits for Accelerated Courses) (England) Regulations 2019.

Territorial extent and application

- 24 Education is devolved under all three of the devolution settlements. The Bill extends to England and Wales and applies to England only. The Bill amends existing provisions in HERA which extend to England and Wales but apply to English higher education providers only.
- 25 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. We do not expect to need a legislative consent motion for any of the measures.

⁷ [Contribution by The Parliamentary Under-Secretary of State, Department for Education \(Baroness Barran\) \(Con\)](#); [Contribution by Alex Burghart \(parliament.uk\)](#)

Commentary on provisions of Bill

Clause 1: New method for determining fee limits

- 26 This clause amends section 10 of, and Schedule 2 to, HERA which make provision for the fee limit condition and the fee limit for the purposes of that condition.
- 27 The main amendments are provided for in subsection (4), which substitutes paragraph 1 of Schedule 2 with new provisions and inserts new paragraphs 1A to 1I into the Schedule. A summary of those amendments is as follows.
- 28 New paragraph 1(2) introduces a new method of determining the fee limit: the credit-based method. The rules governing this method, and the associated powers of the Secretary of State, are contained in new paragraphs 1A to 1G. The existing method for determining fee limits, now to be called the fixed method, is preserved (see paragraphs 1(2) and 1H). The Secretary of State will specify in regulations which method is to apply in each case in new paragraph 1(3).
- 29 New paragraph 1(1) also provides that the determination of the fee limit, under either method, applies in respect of a course year of a qualifying course (which can be either a full course or a module). A “course year” is a new defined term, to be inserted as new subsection (7B) of section 10 by subsection (2)(b) of clause 1, as a period of 12 months starting on the first day of the month in which a qualifying course begins. This new term replaces the existing concept of the academic year as that term is less appropriate to modular study. It will also enable the fee limit to be broken down into 12-month segments for courses or modules which last longer than a year. That definition will apply to references to “course year” in Schedule 2.
- 30 New paragraph 1B provides the Secretary of State with the power to set out in regulations when credits are to be treated as attaching to a course year, for example when the number of credits for the year have been notified to a person on the basis of the amount of time expected to be involved. The power has been drafted to enable the regulations to capture, so far as possible, the way in which credits are currently used.
- 31 New paragraph 1C requires the Secretary of State by regulations to set out for each course year both the maximum and default number of credits. The inclusion of default numbers of credits is to ensure that fee limits can still apply in appropriate cases where providers do not attach credits to all or some elements of the course year.
- 32 Sub-paragraph (5) excludes qualifying courses which are modules from the duty to prescribe maxima and defaults. The relevant secondary legislation made under section 22 of THEA will provide, among other matters, that modules will need to be part of a full qualifying course and, when taken separately, have the same number of credits as the part of the full course they are taken from. The number of credits attached to the course year for a module will be used in the fee limit calculation (on which, see new paragraph 1D(6)).
- 33 New paragraph 1D makes provision for how the fee limit will be determined where credits are attached to the course year. The general rule here is that the fee limit is determined by applying the formula: chargeable number of credits for the course year x per-credit limit. The chargeable number of credits is the number attached to the course year, up to a maximum prescribed under paragraph 1C(1)(a) or the actual number of credits attached to the year, if lower than the maximum. The “per-credit limit” is determined under new paragraphs 1I to 3.
- 34 New paragraph 1E makes provision for the fee limit where credits are not attached to the course year. The general formula in this case is that the fee limit is the default number of

credits under new paragraph 1C(1)(b) x per-credit limit.

- 35 Further provision is made in new paragraph 1B(3) for the Secretary of State to prescribe in regulations that where credits are treated as attached to a course year, that they can be further regarded as attached to particular descriptions of activity within that year (defined as “credit-differentiated activity”). This is to enable provision to be made for credits to be attached to, for instance, time spent on placement or studying overseas within a given course year so that different per-credit limits can be applied to such activities. In the event that the Secretary of State makes such regulations, then new paragraphs 1C(2) to (4) require regulations to also prescribe the maximum and default numbers of credits for each credit-differentiated activity. Sub-paragraph (4) provides that the total of any such credits are capped at the overall maximum or default number of credits for the course year.
- 36 Where the course year includes credit-differentiated activity, new paragraphs 1D and 1E set out alternative formulae for the calculation of the fee limit. Where credits are attached to the course year, the fee limit is the cumulative total of all of the chargeable number of credits for the prescribed activities x per-credit limits. If credits are not attached to the course year, then the fee limit is the cumulative total of all of the default numbers of credits for the various activities’ per-credit limits.
- 37 New paragraph 1F provides that in “transfer cases” (where a provider chooses to recognise previous activity undertaken by a student), the Secretary of State may provide in regulations for a reduction in the chargeable or default number of credits.
- 38 New paragraph 1G(1) provides that regulations made by the Secretary of State under paragraphs 1B, 1C or 1F may refer to matters determined or published by the Secretary of State or other persons. This is primarily intended to enable the prescribed maximum credit value for courses on the Ofqual register to be set with reference to a list of credit values published on a Government website.
- 39 New paragraph 1I makes provision for the application of the existing rules in paragraphs 2 and 3 of Schedule 2 for the purposes of determining both the per-credit and fixed fee limits. This will continue to enable fee limit amounts to be set according to whether a provider has an Office for Students approved access and participation plan in force when the relevant course year begins and whether the provider has a high-level quality rating at the same time. Sub-paragraph (4) provides that any amounts prescribed by regulations made under paragraphs 2 or 3 must set out whether that is for the per-credit or fixed limit. Finally, sub-paragraph (5) provides that the power in section 119(5)(a) for different amounts to be set for different cases enables the prescription of different per-credit limits for different credit-differentiated activities. This would allow, for example, different per-credit rates to be set in respect of sandwich placements as opposed to ordinary study.
- 40 Subsections (5) to (8) make consequential amendments to paragraphs 2 and 3 of Schedule 2.

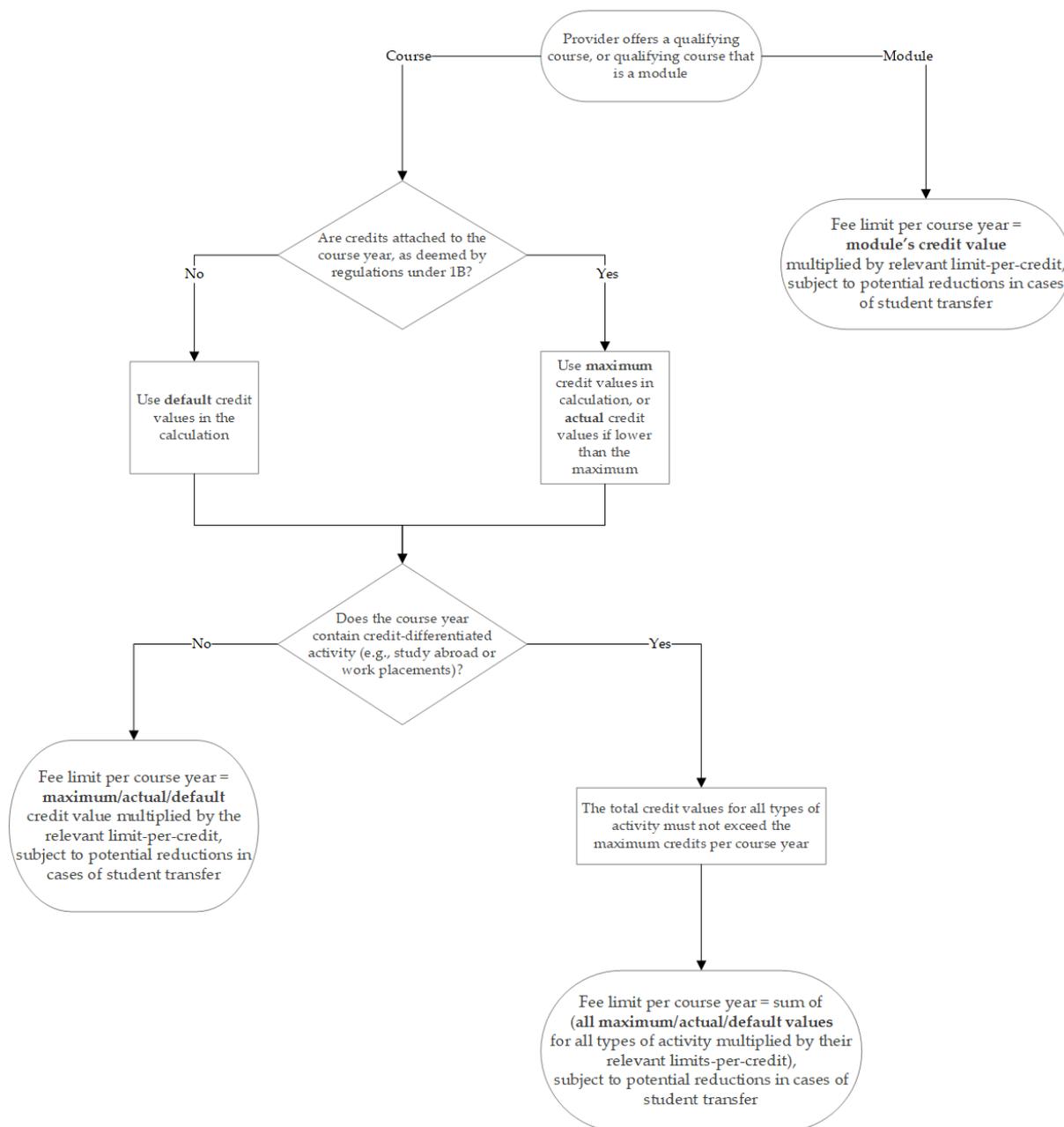


FIGURE 1: THE CREDIT-BASED METHOD

Clause 2: Related amendments

- 41 This clause makes related amendments to sections 10, 11, 31, 85 and 119 of, and Schedule 2 to, HERA.
- 42 Subsection (2)(a) inserts new subsection (3A) into section 10, and makes clear that “regulated course fees” include those which are payable to institutions or other persons which are providing qualifying courses on behalf of the registered provider, for example under a franchise arrangement or other contractual arrangement.
- 43 Subsection (2)(b) inserts new subsection (6A) into section 10, and provides that a module

cannot be a “qualifying course” for the purposes of subsection (6) where credits have not been attached to the course year.

- 44 Subsection (2)(c) inserts new subsection (7A) into section 10, and creates an exception to the rule in subsection (7) which provides that the powers for the Secretary of State in regulations to prescribe HE courses to be qualifying courses for the fee limit condition cannot be used to discriminate between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate. This new provision will allow the Secretary of State to prescribe only those courses for fee limits purposes which have been designated by or under regulations made by the Secretary of State in accordance with section 22 of THEA in relation to student support. This is to ensure that fee limits are not required to be set for all modules, when only some modules may be designated for the purposes for having student loans made available for them.
- 45 Subsection (3) amends the duty in section 11 on the Office for Students to publish an annual list of those providers which have a fee limit condition to reflect some of the changes to Schedule 2 made by clause 1. These amendments will require the list to include the method to be used to determine the fee limits for qualifying course types and what the relevant per-credit or fixed limits will be. The list will not need to include every individual qualifying course under the fee limit condition, and instead will only need to include each type of course being offered, in a manner that covers every course.
- 46 Subsection (4) amends section 31 on the requirements on institutions to include information on fees in their access and participation plans. The plans will now be required to provide for how the per-credit and fixed fee limits, as applicable, are to be determined in respect of each course year of a qualifying course.
- 47 Subsection (5) inserts a new definition of “module” into section 85(1) to ensure that anything which is included as a module for the purposes of regulations under section 22 of THEA will be a module for the purposes of Part 1 of HERA. This is to ensure that modules are treated consistently under both legislative regimes.
- 48 Subsection (6) adds regulations under paragraphs 1(3), 1B, 1C or 1F of Schedule 2 to the list of statutory instruments listed in section 119(2) which are subject to the affirmative resolution procedure, as applies to the existing fee limits regulations made under paragraphs 2 or 3 of Schedule 2.

Clause 3: Extent, commencement and short title

- 49 This clause provides for the territorial extent of the Bill, for its commencement and for its short title. Commencement is to be confirmed by regulations.

Commencement

- 50 The LLE reforms will not start until Academic Year 2025/26. Operationally, changes to the student finance and admissions system benefit from a long lead-in time – providers need to be able to advertise both course entry requirements and financing available in the preceding academic year. The Government currently intends to commence clauses 1 and 2 and make the necessary secondary legislation using the amended powers during 2024.

Financial implications of the Bill

- 51 The Government does not expect that the introduction of the new credit-based fee limits system will increase significantly the administrative costs for, in particular, the Student Loans Company or the Office for Students. The Impact Assessment which accompanies the Bill contains information on this, and the Government also intends to provide a further and more detailed financial assessment to accompany the secondary legislation which will be made as part of the implementation of the overall Lifelong Loan Entitlement, including fee limits.

Parliamentary approval for financial costs or for charges imposed

- 52 This Bill will not require a money resolution as it does not authorise new charges on public revenue and is not expected to give rise to significant additional expenditure.

Compatibility with the European Convention on Human Rights

- 53 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, the Secretary of State for Education has made the following statement under section 19(1)(a) of the Human Rights Act 1998: “in my view the provisions of the Lifelong Learning (Higher Education Fee Limits) Bill are compatible with the Convention rights.”
- 54 The introduction of an additional method of determining fee limits for courses offered by providers who choose to apply for registration in the approved (fee cap) category of the Office for Students’ register does not, in the Government’s view, interfere with any Convention rights.

Related documents

55 The following documents are relevant to the Bill and can be read at the stated locations:

- [Independent Panel Report to the Review of Post-18 Education and Funding](#)
- [Interim Conclusion of the Review of Post-18 Education and Funding](#)
- [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#)
- [Lifelong Loan Entitlement – Government Consultation](#)
- [Skills and Post-16 Education Act 2022](#)
- [Post-legislative scrutiny of the Higher Education and Research Act 2017](#)

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clauses 1-3	Yes	No	No	No	No	No	No

Subject matter and legislative competence of devolved legislatures

- 56 Clauses 1-3 extend to England and Wales but apply to England only. This is because only English HE providers, within the meaning of section 83 of HERA 2017, may be registered with the Office for Students and subject to a fee limit condition.

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