

## Eligibility for Micro Entity Status

**Question FEE1010:** What are the eligibility requirements for micro entity status?

To qualify as a micro entity, an applicant must meet either of two sets of conditions. As a first option, an applicant can establish a limited income and limited experience with the patent application filings. See 37 C.F.R. 1.29(a). As a second option, an applicant can establish employment by, or an assignment or obligation to assign to, an institution of higher education. Under either option, an application also must satisfy the requirements for small entity status. See 37 C.F.R. 1.29(d).

## Micro Entity Status under the Gross Income Basis

**Question FEE1014:** What are the requirements to establish micro entity status under the “gross income” basis set forth in 37 C.F.R. 1.29(a)?

An applicant for micro entity status under the “gross income” basis set forth in 37 C.F.R. 1.29(a) must satisfy four requirements. First, the applicant must certify that he/she/it qualifies as a small entity under 37 CFR 1.27. Second, the applicant must certify that neither the applicant nor the inventor nor a joint inventor has been named as an inventor on more than four previously filed patent applications. Third, the applicant must certify that neither the applicant nor the inventor nor a joint inventor had a gross income exceeding three times the median household income for the preceding calendar year, as most recently reported by the Bureau of the Census. Lastly, the applicant must certify that neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed a license or other ownership interest (and is not obligated to do so) in the subject application to an entity that had a gross income in the preceding calendar year in excess of the gross income limit.

**Question FEE1017:** Where can I find the gross income limit for purposes of determining entitlement to micro entity status under the “gross income” basis?

The USPTO will post the gross income limit on the USPTO website. The gross income limit will be referred to as the “maximum qualifying gross income.” The “maximum qualifying gross income” for calendar year 2012 is \$150,162.

**Question FEE1020:** How can an applicant determine whether he/she/it meets the gross income limit for purposes of determining entitlement to micro entity status under the “gross income” basis?

For purposes of qualifying for micro entity status on the “gross income” basis, an applicant, inventor, or joint inventor cannot have a gross income during the calendar year when a fee is paid exceeding three times the median household income for the preceding calendar year, as reported on the USPTO website. What constitutes “gross income” for this context is defined by section 61(a) of the Internal Revenue Code of 1986. See 26 U.S.C. 61(a).

Notably, the gross income limit may change each calendar year. Therefore, if the prosecution of an application extends across multiple calendar years, an applicant, inventor, and joint inventor must verify that the gross income limit for the requisite calendar year is met to maintain eligibility for the micro entity discount. If the gross income limit is not met, then a notification of loss of entitlement to micro entity status must be filed in the application to remove micro entity status.

**Question FEE1025:** What effect does marital status have on “gross income” insofar as whether the inventor’s tax return is filed jointly, rather than separately, for purposes of meeting the gross income requirement under the “gross income” basis?

Regardless whether an applicant, inventor, or joint inventor filed a joint tax return rather than a separate tax return in the preceding calendar year, the “gross income” limit applies to the amount of income the person would have reported as gross income if that person filed a separate tax return, which includes, for example, properly accounting for that person’s portion of interest, dividends, and capital gains from joint bank or brokerage accounts.

**Question FEE1028:** What types of applications count toward the application filing limit for purposes of establishing micro entity status under the “gross income” basis?

For purposes of establishing micro entity status under the “gross income” basis, the application filing limit includes: (i) U.S. nonprovisional applications (e.g., utility, design, continuation, and divisional applications), (ii) U.S. reissue applications, and (iii) U.S. national stage applications under the Patent Cooperation Treaty (PCT). It does not matter whether the applications are pending, patented, or abandoned; they are still included when counting to determine whether the application filing limit has been reached.

The application filing limit does not include: (i) foreign applications; (ii) international (PCT) applications for which the basic U.S. national stage filing fee was not paid; and (iii) provisional applications. In addition, the application filing limit does not include applications where an applicant, inventor, or joint inventor has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant’s, inventor’s, or joint inventor’s previous employment.

## **Micro Entity Status under the “Institution of Higher Education” Basis**

**Question FEE1030:** What are the requirements to establish micro entity status under the “institution of higher education” basis set forth in 37 C.F.R. 1.29(d)?

An applicant for micro entity status under the “institution of higher education” basis set forth in 37 C.F.R. 1.29(d) must satisfy two requirements. First, the applicant must certify that he/she/it qualifies as a small entity under 37 C.F.R. 1.27. Second, the applicant must certify that either (i) the applicant’s employer, from which he/she obtains the majority of his/her income, is an institution of higher education; or (ii) the applicant has assigned, granted, or conveyed a license or other ownership interest in the subject application (or is obligated to do so) to such an institution of higher education.

**Question FEE1033:** What type of university is eligible as an “institution of higher education” for purposes of establishing micro entity status under 37 C.F.R. 1.29(d)?

Section 101(a) of the Higher Education Act of 1965 defines what is meant by “institution of higher education” in the context of 37 C.F.R. 1.29(d). See 20 U.S.C. 1001. Section 101(a) of the Higher Education Act states that the term “institution of higher education” means:

an educational institution in any State that—

1.
  1. admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a

- certificate, or persons who meet the requirements of section 1091(d)(3) of this title;
2. is legally authorized within such State to provide a program of education beyond secondary education;
  3. provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;
  4. is a public or other nonprofit institution; and
  5. is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.'

Additionally, section 103 of the Higher Education Act of 1965 provides that the term "State" means the 50 States of the United States as well as "the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States" and that the Freely Associated States means the "Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau." See 20 U.S.C. 1003.

Based upon these definitions, public or non-profit institutions located in one of the 50 States or U.S. territories offering certain undergraduate educational programs credited toward a bachelor's degree or educational programs awarding "a degree that is acceptable for admission to a graduate or professional degree program" are eligible as an "institution of higher education" for purposes of establishing micro entity status under 37 CFR 1.29(d).

**Question FEE1035:** Can an institution such as a non-profit research foundation, technology transfer organization, or Federal Government research laboratory that is legally separate from a university located in the U.S. qualify as an "institution of higher education" for purposes of establishing micro entity status under the "institution of higher education" basis?

No. An institution such as a non-profit research foundation, technology transfer organization, or Federal Government research laboratory does not qualify as an "institution of higher education" under the definition of "institution of higher education" set forth in the Higher Education Act of 1965 for purposes of establishing micro entity status.