

Summary of Part 600—Institutional Eligibility

Overview

The goal of these negotiations is to modify or clarify certain regulations that pertain to institutional eligibility, including updating definitions and making conforming changes to those proposed for accreditation and educational innovation.

We also intend to use this opportunity to make technical corrections to provide greater regulatory clarity and better conform with statutory requirements.

SUBPART A—GENERAL

§600.2 Definitions.

- Add a definition for *Additional Location*.
- Modify the definition of *Branch Campus* to distinguish it from other additional locations.
- Modify the definition of *Clock Hour* to include distance education in States where it is permitted for clock hour programs.
- Modify the definition of *Correspondence Course* to distinguish it from distance learning. In correspondence courses, the interaction between the instructor and students is limited to interactions initiated by the student and instructors do not follow a student's progress or performance throughout the duration of the program or course.
- Modify the definition of *Credit Hour* to allow institutions and accreditors to determine how they will evaluate academic progress. However, the Department is interested in feedback about how to create standards or guidelines that ensure quality, protect taxpayers, and do not limit innovation.
- Modify the definition of *Distance Education* to more clearly define the requirements of "regular and substantive interaction," which distinguishes distance education from correspondence education. Expands the definition of instructor to include instructional teams and provides greater flexibility for determining when and how often a student and instructor must interact.
- Define *Regular* to mean the frequency or periodicity of contact initiated by an instructor or members of an instructional team with a student, as approved by the institution's accrediting agency. Removes requirements that regular interactions must occur at a particular time interval and provides greater flexibility to accommodate the needs of non-traditional students who engage in self-paced learning.
- Define *Substantive* to expand the types of interactions that can be included as substantive interactions and expands the definition of an instructor to include instructional teams in which different members perform different functions.
- Modify the definition of *Eligible Institution* to clarify that an institution that does not participate in HEA programs is not required to meet the requirements of 600.4, 600.5 or 600.6.
- Modify the definition of *Incarcerated Student* to include those serving a criminal sentence in a youth correctional facility.
- Modify the definition of *Nonprofit institution* with regard to foreign institutions, to eliminate the reference to a determination made by the U.S. Internal Revenue Service.

- Modifies the definition of *Preaccreditation* (sometimes referred to as candidacy status) to explain that this is a temporary, full-accreditation status, rather than a quasi-accreditation status. Since students enrolled in a preaccredited institution or program are eligible to participate in title IV programs, it is incumbent upon the Department to ensure that credits or degrees earned during this time have the full value of any other title IV participating program or institution. Otherwise, many students who complete their program will never be allowed to practice in their field since some accreditors require an institution or program to graduate one or more cohorts of students prior to making a final accreditation decision. Since preaccreditation can last for 5 years, and students could be using up their Pell eligibility and taking loans during that time, we must make sure that students obtain the full value of their investment.
- Modify the definition of *Religious mission* to protect religious freedom and ensure that accreditors do not discriminate against an institution on the basis of their religious tenets, beliefs or teachings.
- Define *State authorization reciprocity agreement* to reduce regulatory and compliance burden and provide students greater access to a range of educational options. The Department is also interested in recommendations for maintaining or improving reciprocity agreements and any other necessary definitional clarifications.
- Clarify that a *Teach-out* may include the period of time in which an institution engages in an orderly closure or the period of time after a precipitous closure when another institution steps in to enable students to complete their program.
- Define *Teach-out agreement* as a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution. Oftentimes, there is confusion about the role of teach-out plans, which are generic frameworks for a school closure, and teach-out agreements.
- Modify the definition of *Teach-out plan* to include institutions that are engaged in an orderly closure as well as institutions that are taking over a closed campus or accepting students enrolled at a closed campus to enable them to complete their programs.

§600.4 Institution of higher education.

- Adds to our regulations the statutory requirement that institutions must engage in arbitration prior to taking legal action against their accreditor in the event of a negative action. When agencies withdraw accreditation, they may be sued by the institution. Accreditors are encumbered by lengthy and costly legal battles when they take an adverse action, which serves as a significant deterrent from taking necessary action. Arbitration will allow agencies to take action as necessary and disputes to be resolved without costly litigation.

§600.5 Proprietary institution of higher education.

- Make conforming changes related to the initial arbitration requirement.
- Streamline the language regarding programs leading to a baccalaureate degree in liberal arts by removing redundant information regarding accrediting agencies.

§600.6 Postsecondary vocational institution.

- Make conforming changes related to the initial arbitration requirement.

§600.7 Conditions of institutional ineligibility.

- Define a correspondence student as one whose enrollment during an award year was entirely in correspondence courses.

§600.9 State authorization.

- Define a religious institution as one that publicly identifies itself as having, in part or in whole, a religious mission, or that maintains an institutional religious affiliation.

§600.10 Date, extent, duration, and consequence of eligibility

- Limit the requirement for Department approval of direct assessment postsecondary programs to the institution's first program of that type.

§600.11 Special rules regarding institutional accreditation or preaccreditation.

- Establish the conditions under which the Secretary may determine an institution's cause for changing its accrediting agency, or the institution's cause for holding accreditation from more than one agency, to be reasonable.

SUBPART B—PROCEDURES FOR ESTABLISHING ELIGIBILITY

§600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

- Assert that the Secretary shall ensure prompt action is taken by the Department on any application required under this section.

§600.21 Updating application information.

- Add new sections to address the addition of a direct assessment program
- Require an institution entering into a written agreement with an ineligible provider that will provide more than 25 percent of a program to receive prior approval from the institution's accreditor and notify the Department.

SUBPART C—MAINTAINING ELIGIBILITY

§600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

- Modify the definitions of *Closely-held corporation*, *Parent*, *Person*, and *the Standards for identifying changes of ownership and control*, to more accurately reflect these how these entities are considered under Securities and Exchange Commission (SEC) rules.

§600.32 Eligibility of additional locations.

- Remove the two-year requirement for §§600.5(a)(7) or 600.6(a)(6) in circumstances where the applicant institution and the original closed institution are not related parties, have no commonality of ownership or management, and the applicant institution agrees to accept liability for the closed institution's prior actions and its unpaid refunds during the current term and for one prior academic year, and to abide by the closed institution's refund policies.
- Permit an institution to apply to have a location that does not meet the two year requirement added to its Program Participation Agreement if the institution is conducting a teach-out pursuant to a teach-out plan approved by both accrediting agencies.

§600.41 Termination and emergency action proceedings

- Removed outdated language regarding termination of an institution or location
- Added language regarding use of a teach-out plan following termination when the Secretary determines it is in the best interest of the students

§600.52 Definitions

- This section eliminates a restriction on U.S. students enrolled at a *foreign institution* from taking any classes at a U.S. institution or another foreign institution, or to forfeit title IV participation for their entire program. This is an unreasonable restriction that adds to the cost of attendance for those students and that prevents those students from taking advantage of opportunities to take courses the foreign institution doesn't offer or to continue earning credits toward completion during school breaks. We propose to amend these regulations to allow students enrolled at foreign institutions to complete up to 25% of their program at a U.S. institution or another foreign institution. We believe this will provide increased flexibility for students, which may improve the educational experience, accelerate completion or reduce the total cost of earning a degree.

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Subpart A—General

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§600.1 Scope.

§600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition that a nationally recognized accrediting agency grants to an institution or educational program that meets the agency's established requirements.

Additional location: A campus that is geographically apart and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Branch Campus: ~~A~~An additional location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Clock hour: A period of time consisting of—

(1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period; or

(2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; ~~or~~

(3) Sixty minutes of preparation in a correspondence course; or

(4) Fifty to sixty minutes in a 60-minute period of consecutive or non-consecutive academic engagement through distance education. For purposes of this definition, academic engagement is defined by the institution and includes, but is not limited to: attending a synchronous class, lecture, or recitation online; interacting with a faculty member or participating in an online discussion about academic matters; participating in interactive tutorials or computer-assisted instruction; or taking exams. Academic engagement does not include logging into an online class or tutorial without active participation or participating in academic counseling or advisement. (i) A clock hour in a distance education program must meet all accrediting agency and State requirements, including restrictions on the number of clock hours in a program that may be offered through distance education;

(ii) An institution must be capable of monitoring a student's academic engagement in fifty out of sixty minutes for each clock hour under this definition.

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between ~~the~~ instructor/instructors and students s is limited, and is not regular and substantive, ~~and is primarily initiated as defined~~ by the student. ~~Correspondence courses are typically self-paced institution's accrediting agency.~~

(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

(3) A correspondence course is not distance education.

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is ~~an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—~~ defined by an institution and approved by the institution's accreditor and is based upon an amount of work, a unit of time spent engaged in learning activities, and/or a set of clearly defined learning objectives or competencies.

~~(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or~~

~~(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.~~

NOTE TO NEGOTIATORS: The Department is interested in feedback about how to create standards or guidelines that ensure quality, protect taxpayers, and do not limit innovation.

Direct assessment program: A program as described in 34 CFR 668.10.

~~Distance education means education:~~ Education that uses one or more of the technologies listed in paragraphs (1)(i) through (41)(iv) of this definition to deliver instruction to students who are separated from the instructor or members of an instructional team, and to support regular and substantive interaction between the students and the instructor or members of an instructional team, either synchronously or asynchronously. ~~The technologies may include—~~ The institution's accrediting agency determines who qualifies as an instructor or a member of an instructional team and what qualifies as regular and substantive interaction in accordance with parts (2) and (3) of this definition.

(1) The technologies that may be used to offer distance education include—

(i) The internet;

(2ii) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3iii) Audio conferencing; or

(4iv) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

(2) Regular means the frequency or periodicity of contact that is –

(i) Initiated by a person or group of people, as described in paragraph (3)(i) of this definition, other than the student.

(ii) Covers the student's period of engagement with the course with a frequency and periodicity determined by the accrediting agency and must cover the period of time prior to the student's completion of all required assignments or demonstration of competency.

(iii) The required frequency and periodicity may differ based on the needs of individual programs.

(iv) At least once per week for a non-term program and at least equal to the number of weeks in the term for a term-based program.

(3) Substantive means –

(i) Interactions within a course or program between a student and instructors or members of instructional teams (as defined in part ii of this definition) and a distance learning curricula that monitors progress and provides feedback, including through self-paced distance learning where the student's progress is evaluated or competency is assessed.

(ii) The various members of instructional teams may have different and complementary roles and qualifications as required by the accrediting agency, such as to share information, answer questions, provide direct instruction, provide assessment or feedback, monitor a student's academic progress, or provide student support directly related to the student's success in a particular course.

(iii) General academic advisors or counselors are not considered to be members of instructional teams for the purpose of identifying substantive interactions.

(iv) A student must be provided with feedback designed to support his or her learning and success.

Educational program: (1) A legally authorized postsecondary program of organized instruction or study that:

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

(ii) May, in lieu of credit hours or clock hours as a measure of student learning, utilize direct assessment of student learning, or recognize the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment and with the provisions of §668.10.

(2) The Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: Instruction provided by other institutions or schools; examinations or direct assessments provided by agencies or organizations; or other accomplishments such as “life experience.”

Eligible institution: An institution that—

(1) Qualifies as—

(i) An institution of higher education, as defined in §600.4;

(ii) A proprietary institution of higher education, as defined in §600.5; or

(iii) A postsecondary vocational institution, as defined in §600.6; and

(2) Meets all the other applicable provisions of this part- provided that an accredited institution that does not participate in Title IV, HEA programs is not required to meet the requirements of 600.4, 600.5 or 600.6 and cannot be denied accreditation as a result of failure to meet accreditation standards and criteria responsive to sections 600.4, 600.5 or 600.6.

Federal Family Education Loan (FFEL) Programs: The loan programs (formerly called the Guaranteed Student Loan (GSL) programs) authorized by title IV-B of the HEA, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS), and Federal Consolidation Loan programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the students' attendance at eligible institutions. The Federal Stafford Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in 34 CFR part 668.

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, youth correctional facility, or other similar correctional

institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency: An agency or association that the Secretary recognizes as a reliable authority to determine the quality of education or training offered by an institution or a program offered by an institution. The Secretary recognizes these agencies and associations under the provisions of 34 CFR part 602 and publishes a list of the recognized agencies in the FEDERAL REGISTER.

Nonprofit institution: An institution that—

(1)(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(iii) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)); or

(2) For a foreign institution—

(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)(A) If a recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

~~(3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).~~

One-academic-year training program: An educational program that is at least one academic year as defined under 34 CFR 668.2.

~~*Preaccredited:* A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.~~

Preaccreditation (sometimes referred to as candidacy status) means the status of accreditation and public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards a full term of accreditation and is likely to attain a full term of accreditation before the expiration of that limited period of time.

(1) All credits and degrees earned and issued by an institution or program holding recognized preaccreditation are considered by the Secretary to be from an accredited institution or program;

(2) If an agency denies accreditation to an institution or program it has preaccredited, the agency must maintain the institution's or program's preaccreditation for at least the remainder of the current term and up to an additional term for term-based institutions and programs, and at least for the remainder of the academic year for non-term-based institutions and programs; and

(3) An accredited institution or program cannot be returned from accredited to preaccredited status unless, following the loss of accreditation, the institution or program applies for initial accreditation and is awarded preaccreditation status under the new application.

Recognized equivalent of a high school diploma: The following are the equivalent of a high school diploma—

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

Recognized occupation: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at www.onetonline.org or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Religious mission: An institutional mission that includes or is founded upon religious tenets, beliefs, or teachings, and any policies or decisions related to such tenets, beliefs, or teachings (including, but not limited to, any policies or decisions concerning housing, student life and activities, employment, curriculum, facilities, self-governance, student admission, continuing enrollment, or graduation).

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

State authorization reciprocity agreement¹: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

NOTE TO NEGOTIATORS: The Department is interested in recommendations for maintaining or improving reciprocity agreements and any other necessary definitional clarifications.

Teach-out: A period of time during which a program, institution, or institutional location that provides one hundred percent of at least one program offered engages in an orderly closure or when, following the closure of an institution or campus, another institution provides an opportunity for the students of the closed school to complete their program.

Teach-out agreement: A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study. An accreditor is permitted to waive requirements regarding the percentage of credits which must be earned by a student at the institution awarding a degree or certification when a student is completing his or her program through a written teach-out agreement.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate or plans to cease operations before all enrolled students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

Title IV, HEA program: Any of the student financial assistance programs listed in 34 CFR 668.1(c).

¹ This definition was added to section 600.2 by 81 FR 92232 on 12/16/2016. The effective date of those regulations has been delayed until July 1, 2020. We propose to delete this definition.

(Authority: 20 U.S.C. 1001, 1002, 1071, *et seq.*, 1078-2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998; 64 FR 58615, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006; 74 FR 55425, Oct. 27, 2009; 74 FR 55932, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010, 75 FR 67192, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014]

§600.3 [Reserved]

§600.4 Institution of higher education.

(a) An institution of higher education is a public or private nonprofit educational institution that—

(1) Is in a State, or for purposes of the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal TRIO programs may also be located in the Federated States of Micronesia or the Marshall Islands;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with §600.9;

(4)(i) Provides an educational program—

(A) For which it awards an associate, baccalaureate, graduate, or professional degree;

(B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(C) That is at least a one academic year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

(5) Is—

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal student assistance programs.

(b) An institution is physically located in a State if it has a campus or other instructional site in that State.

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to initial arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1091, 1094, 1099b, 1141(a))

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58615, Oct. 29, 1999; 74 FR 55932, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010]

§600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution that—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with §600.9;

(5)(i)(A) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; or

(B)(1) Has provided a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e) of this section, continuously since January 1, 2009; and

(2) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

(6) Is accredited; and

(7) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if—

(i) The institution has been legally authorized to provide, and has provided, a continuous educational program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The educational program that the institution provides on the date of its eligibility application is substantially the same in length and subject matter as the program that the institution provided during the 24 months preceding the date of its eligibility application.

(2)(i) The Secretary considers an institution to have provided a continuous educational program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that directly affected the institution or the institution's students.

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

(ii) Except as provided in paragraph (b)(3)(i) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c) An institution is physically located in a State if it has a campus or other instructional site in that State.

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to initial arbitration before initiating any other legal action.

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that ~~the institution's recognized regional accreditation agency or organization determines,~~ is a general instructional program ~~in the liberal arts subjects, the humanities disciplines, or the general curriculum,~~ falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

(Approved by the Office of Management and Budget under control number 1845-0012)

(Authority: 20 U.S.C. 1088, 1091)

[59 FR 22336, Apr. 29, 1994; 59 FR 32082, June 22, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 59 FR 61177, Nov. 29, 1994; 61 FR 29901, June 12, 1996; 61 FR 60569, Nov. 29, 1996; 64 FR 58615, Oct. 29, 1999; 74 FR 55932, Oct. 29, 2009; 76 FR 66946, Oct. 29, 2010]

§600.6 Postsecondary vocational institution.

...

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to initial arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1088, 1091, 1094(c)(3))

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58616, Oct. 29, 1999; 74 FR 55933, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010]

§600.7 Conditions of institutional ineligibility.

(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—

(1) For its latest complete award year—

(i) More than 50 percent of the institution's courses were correspondence courses as calculated under paragraph (b) of this section;

(ii) Fifty percent or more of the institution's regular enrolled students were enrolled in correspondence courses;

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

(iv) More than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

(2) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution—

(A) Files for relief in bankruptcy; ~~or~~ or

(B) Has entered against it an order for relief in bankruptcy; or

(3) The institution, its owner, or its chief executive officer—

(i) Has pled guilty to, has pled *nolo contendere* to, or is found guilty of, a crime involving the acquisition, use, or expenditure of title IV, HEA program funds; or

(ii) Has been judicially determined to have committed fraud involving title IV, HEA program funds.

(b) *Special provisions regarding correspondence courses and students—*(1) *Calculating the number of correspondence courses.* For purposes of paragraphs (a)(1) (i) and (ii) of this section—

(i) A correspondence course may be a complete educational program offered by correspondence, or one course provided by correspondence in an on-campus (residential) educational program;

(ii) A course must be considered as being offered once during an award year regardless of the number of times it is offered during that year; and

(iii) A course that is offered both on campus and by correspondence must be considered two courses for the purpose of determining the total number of courses the institution provided during an award year.

(2) Calculating the number of correspondence students. For purposes of paragraph (a)(1)(ii) of this section, a correspondence student is a student whose enrollment during an award year was entirely in correspondence courses.

(3) *Exceptions.* (i) The provisions contained in paragraphs (a)(1) (i) and (ii) of this section do not apply to an institution that qualifies as a “technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market” under section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995.

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor's-degree program if the students

enrolled in the institution's correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

...

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1088)

[59 FR 22336, Apr. 29, 1994; 59 FR 32082, June 22, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 34430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006]

§600.8 Treatment of a branch campus.

§600.9 State authorization.

[Link to an amendment published at 81 FR 92262, Dec. 19, 2016.](#)

[This amendment was delayed until July 1, 2020 at 83 FR 31303, July 3, 2018.](#)

(a)(1) An institution described under §§600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section.

(i)(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

(i) The Federal Government; or

(ii) As defined in 25 U.S.C. 1802(2), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that—
publicly identifies itself as having, in part or in whole, a religious mission, or that maintains an institutional religious affiliation.

~~(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and~~

~~(ii) Awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.~~

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

(Authority: 20 U.S.C. 1001 and 1002)

[75 FR 66946, Oct. 29, 2010]

600.9 State authorization.²

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State's approval to the Secretary; or

² Section 600.9 was revised through the publication of 81 FR 92232 on 12/19/2016. The effective date of section 600.9(c) has been delayed until July 1, 2020. We propose to delete this language.

(ii) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(2) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located, for the institution to be considered legally authorized in that State, the institution must document that there is a State process for review and appropriate action on complaints from any of those enrolled students concerning the institution—

(i) In each State in which the institution's enrolled students reside; or

(ii) Through a State authorization reciprocity agreement which designates for this purpose either the State in which the institution's enrolled students reside or the State in which the institution's main campus is located.

(d)³ An additional location or branch campus of an institution that meets the requirements under paragraph (a)(1) of this section and that is located in a foreign country, i.e., not in a State, must comply with §§ 600.8, 600.10, 600.20, and 600.32, and the following requirements:

(1) For any additional location at which 50 percent or more of an educational program (as defined in § 600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the foreign governmental authority is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with §§ 602.24(a) and 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

³ Section 600.9(d) was effective July 1, 2018. We propose to retain this language.

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

(2) An additional location at which less than 50 percent of an educational program (as defined in § 600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses the information regarding the student complaint process described in 34 CFR 668.433(b), of the State in which the main campus of the institution is located.

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

§600.10 Date, extent, duration, and consequence of eligibility⁴.

(a) *Date of eligibility.* (1) If the Secretary determines that an applicant institution satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution to be an eligible institution as of the date—

(i) The Secretary signs the institution's program participation agreement described in 34 CFR part 668, subpart B, for purposes of participating in any title IV, HEA program; and

(ii) The Secretary receives all the information necessary to make that determination for purposes other than participating in any title IV, HEA program.

(2) [Reserved]

(b) *Extent of eligibility.* (1) If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this part, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this part, the Secretary extends eligibility only to those educational programs and locations that meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent to the institution under §600.21.

⁴ The Department proposed to amend 34 CFR 600.10(c)(1) and (2) in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

(3) Eligibility does not extend to any location that an institution establishes after it receives its eligibility designation if the institution provides at least 50 percent of an educational program at that location, unless—

(i) The Secretary approves that location under §600.20(e)(4); or

(ii) The location is licensed and accredited, the institution does not have to apply to the Secretary for approval of that location under §600.20(c), and the institution has reported to the Secretary that location under §600.21.

(c) *Educational programs.* (1) An eligible institution that seeks to establish the eligibility of an educational program must—

(i) For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under §600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.414;

(ii) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval; and

(iii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval of the structure, methods for measuring student progress, and other title IV-related requirements.

(2) Except as provided under §600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1)(i), (ii), or (iii) of this section.

(3) An institution must repay to the Secretary all HEA program funds received by the institution for an educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program if the institution—

(i) Fails to comply with the requirements in paragraph (c)(1) of this section; or

(ii) Incorrectly determines that an educational program that is not subject to approval under paragraph (c)(1) of this section is an eligible program for title IV, HEA program purposes.

(d) *Duration of eligibility.* (1) If an institution participates in the title IV, HEA programs, the Secretary's designation of the institution as an eligible institution under the title IV, HEA programs expires when the institution's program participation agreement, as described in 34 CFR part 668, subpart B, expires.

(2) If an institution participates in an HEA program other than a title IV, HEA program, the Secretary's designation of the institution as an eligible institution, for purposes of that non-title IV, HEA program, does not expire as long as the institution continues to satisfy the statutory and regulatory requirements governing its eligibility.

(e) *Consequence of eligibility.* (1) If, as a part of its institutional eligibility application, an institution indicates that it wishes to participate in a title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the Secretary will determine whether the institution satisfies the standards of administrative capability and financial responsibility contained in 34 CFR part 668, subpart B.

(2) If, as part of its institutional eligibility application, an institution indicates that it does not wish to participate in any title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the institution is eligible to apply to participate in any HEA program listed by the Secretary in the eligibility notice it receives under §600.21. However, the institution is not eligible to participate in those programs, or receive funds under those programs, merely by virtue of its designation as an eligible institution under this part.

(Approved by the Office of Management and Budget under control number 1845-0098)

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 65 FR 65671, Nov. 1, 2000; 71 FR 45692, Aug. 9, 2006; 75 FR 66676, Oct. 29, 2010; 79 FR 65006, Oct. 31, 2014]

§600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) *Change of accrediting agencies.* For purposes of §§600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides to the Secretary—

(1) All materials related to its prior accreditation or preaccreditation; and

(2) Materials demonstrating reasonable cause for changing its accrediting agency. The Secretary determines such cause to be reasonable unless the institution -

(i) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(ii) Has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency.;

(iii) Notwithstanding paragraphs (i) and (ii), the Secretary may determine the institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights, the agency applied its standards and criteria differently to one institution over another, or was the result of an agency's act of discrimination against an institution or program as a result of the institution's religious mission.

(b) *Multiple accreditation.* The Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is accredited or preaccredited as an institution by more than one accrediting agency, unless the institution—

(1) Provides to each such accrediting agency and the Secretary the reasons for that multiple accreditation or preaccreditation;

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation; ~~and.~~

The Secretary determines the institution's cause for multiple accreditation to be reasonable unless the institution —

(i) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(ii) Has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency;

(iii) Notwithstanding paragraphs (i) and (ii), the Secretary may determine the institution's cause for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on that accreditor's geographic scope and national accreditation based on that accreditor's program-area focus or mission ; and

(3) Designates to the Secretary which agency's accreditation or preaccreditation the institution uses to establish its eligibility under this part.

(c) *Loss of accreditation or preaccreditation.* (1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

(d) *Religious exception.* (1) If an otherwise eligible institution loses its accreditation or preaccreditation, the Secretary considers the institution to be accredited or preaccredited for purposes of complying with the provisions of §§600.4, 600.5, and 600.6 if the Secretary determines that its loss of accreditation or preaccreditation—

(i) Is related to the religious mission or affiliation of the institution; and

(ii) Is not related to its failure to satisfy the accrediting agency's standards. (2) If the Secretary considers an unaccredited institution to be accredited or preaccredited under the provisions of paragraph (d)(1) of this section, the Secretary will consider that unaccredited institution to be accredited

or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.

(Authority: 20 U.S.C. 1099b)

Subpart B—Procedures for Establishing Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

(a) *Initial eligibility application.* (1) An institution that wishes to establish its eligibility to participate in any HEA program must submit an application to the Secretary for a determination that it qualifies as an eligible institution under this part. The Secretary shall ensure prompt action is taken by the Department on any application required under this section.

(2) If the institution also wishes to be certified to participate in the title IV, HEA programs, it must indicate that intent on the application, and submit all the documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its application to participate—

(i)(A) A list of all medical school educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks; and

(B) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (a)(3)(i)(A) of this section; and

(ii) Whether the school offers—

(A) Only post-baccalaureate/equivalent medical programs, as defined in §600.52;

(B) Other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine; or

(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under §600.55(e)(1).

(b) *Reapplication.* (1) A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply. If the institution wishes to be certified to participate in the title IV, HEA programs, it must submit an application to the Secretary and must submit all the supporting documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in subparts B and L of 34 CFR part 668.

(2) A currently designated eligible institution that participates in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part and in 34 CFR part 668 ~~if the institution wishes to—~~.

~~¶(i) Such an application must be submitted if the institution wishes to—~~

(A) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution's current eligibility and certification designation;

(B) Reestablish eligibility and certification as a private nonprofit, private for-profit, or public institution following a change in ownership that results in a change in control as described in §600.31; or

(C) Reestablish eligibility and certification after the institution changes its status as a proprietary, nonprofit, or public institution.

(ii) The Secretary shall ensure prompt action is taken by the Department on any application required under 600.20 (a)(2).

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its reapplication to participate—

(i)(A) A list of all of the foreign graduate medical school's educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks; and

(B) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (b)(3)(i)(A) of this section; and

(ii) Whether the school offers—

(A) Only post-baccalaureate/equivalent medical programs, as defined in §600.52;

(B) Other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine; or

(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under §600.55(e)(1).

(c) *Application to expand eligibility.* A currently designated eligible institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary and wait for approval to—

(1) Add an educational program or a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under §600.21:

(i) The institution participates in the title IV, HEA programs under a provisional certification, as provided in 34 CFR 668.13.

(ii) The institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment method, as provided in 34 CFR part 668, subpart K.

(iii) The institution acquires the assets of another institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year.

(iv) The institution would be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location.

(v) The Secretary notifies, or has notified, the institution that it must apply for approval of an additional educational program or a location under §600.10(c).

(2) Increase its level of program offering (*e.g.*, adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under §600.10(c);

(4) Add a branch campus at a location that is not currently included in the institution's eligibility and certification designation;

(5) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, add a location that offers all or a portion of the foreign graduate

medical school's core clinical training or required clinical rotations, except for those locations that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

(6) Convert an eligible location to a branch campus.

(d) *Notice and application.* (1) *Notice and application procedures.* (i) To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must notify the Secretary of its intent to offer an additional educational program, or provide an application to expand its eligibility, in a format prescribed by the Secretary and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(ii)(A) An institution that notifies the Secretary of its intent to offer an educational program under paragraph (c)(3) of this section must ensure that the Secretary receives the notice described in paragraph (d)(2) of this section at least 90 days before the first day of class of the educational program.

~~(B) An institution that submits a notice in accordance with paragraph (d)(1)(ii)(A) of this section is not required to obtain approval to offer the additional educational program unless the Secretary alerts the institution at least 30 days before the first day of class that the program must be approved for title IV, HEA program purposes. If the Secretary alerts the institution that the additional educational program must be approved, the Secretary will treat the notice provided about the additional educational program as an application for that program.~~

~~(C)~~ (B) If an institution does not provide timely notice in accordance with paragraph (d)(1)(ii)(A) of this section, the institution must obtain approval of the additional educational program from the Secretary for title IV, HEA program purposes.

~~(D)~~ (C) If an additional educational program is required to be approved by the Secretary for title IV, HEA program purposes under paragraph (d)(1)(ii) ~~(B)~~ or ~~(C)~~ of this section, the Secretary may grant approval, or request further information prior to making a determination of whether to approve or deny the additional educational program.

~~(E)~~ (D) When reviewing an application under paragraph (d)(1)(ii)(B) of this section, the Secretary will take into consideration the following:

(1) The institution's demonstrated financial responsibility and administrative capability in operating its existing programs.

(2) Whether the additional educational program is one of several new programs that will replace similar programs currently provided by the institution, as opposed to supplementing or expanding the current programs provided by the institution.

(3) Whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations.

(4) Whether the process and determination by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation is sufficient.

~~(F)~~ (E) (1) If the Secretary denies an application from an institution to offer an additional educational program, the denial will be based on the factors described in paragraphs (d)(1)(ii)(E)(2), (3), and (4) of this section, and the Secretary will explain in the denial how the institution failed to demonstrate that the program is likely to lead to gainful employment in a recognized occupation.

(2) If the Secretary denies the institution's application to add an additional educational program, the Secretary will permit the institution to respond to the reasons for the denial and request reconsideration of the denial.

(2) *Notice format.* An institution that notifies the Secretary of its intent to offer an additional educational program under paragraph (c)(3) of this section must at a minimum—

(i) Describe in the notice how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. This description must contain any wage analysis the institution may have performed, including any consideration of Bureau of Labor Statistics data related to the program;

(ii) Describe in the notice how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program;

(iii) Submit documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; and

(iv) Provide the date of the first day of class of the new program.

(e) *Secretary's response to applications.* (1) If the Secretary receives an application under paragraph (a) or (b)(1) of this section, the Secretary notifies the institution—

(i) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in §§600.4 through 600.7; and

(ii) Of the locations and educational programs that qualify as the eligible institution if only a portion of the applicant qualifies as an eligible institution;

(2) If the Secretary receives an application under paragraphs (a) or (b) of this section and that institution applies to participate in the title IV, HEA programs, the Secretary notifies the institution—

(i) Whether the institution is certified to participate in those programs;

(ii) Of the title IV, HEA programs in which it is eligible to participate;

(iii) Of the title IV, HEA programs in which it is eligible to apply for funds;

(iv) Of the effective date of its eligibility to participate in those programs; and

(v) Of the conditions under which it may participate in those programs;

(3) If the Secretary receives an application under paragraph (b)(2) of this section, the Secretary notifies the institution whether it continues to be certified, or whether it reestablished its eligibility and certification to participate in the title IV, HEA programs and the scope of such approval.

(4) If the Secretary receives an application under paragraph (c)(1) of this section for an additional location, the Secretary notifies the institution whether the location is eligible or ineligible to participate in the title IV, HEA programs, and the date of eligibility if the location is determined eligible;

(5) If the Secretary receives an application under paragraph (c)(2) of this section for an increase in the level of program offering, or for an additional educational program under paragraph (c)(3) of this section, the Secretary notifies the institution whether the program qualifies as an eligible program, and if the program qualifies, the date of eligibility; and

(6) If the Secretary receives an application under paragraphs (c)(4) or (c)(5) of this section to have a branch campus certified to participate in the title IV, HEA programs as a branch campus, the Secretary notifies the institution whether that branch campus is certified to participate and the date that the branch campus is eligible to begin participation.

...

(Approved by the Office of Management and Budget under control number 1845-0012)

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1099c)

[65 FR 65671, Nov. 1, 2000, as amended at 75 FR 66677, Oct. 29, 2010; 75 FR 67192, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014]

§600.21 Updating application information⁵.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

- (1) Its name, the name of a branch, or the name of a previously reported location.
- (2) Its address, the address of a branch, or the address of a previously reported location.
- (3) Its establishment of an accredited and licensed additional location at which it offers or will offer 50 percent or more of an educational program if the institution wants to disburse title IV, HEA program funds to students enrolled at that location, under the provisions in paragraph (d) of this section.
- (4) Except as provided in 34 CFR 668.10, the way it measures program length (*e.g.*, from clock hours to credit hours, or from semester hours to quarter hours).
- (5) A decrease in the level of program offering (*e.g.* the institution drops its graduate programs).
- (6) A person's ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—
 - (i) Holds alone or together with another member or members of his or her family, at least a 25 percent “ownership interest” in the institution as defined in §600.31(b);
 - (ii) Represents or holds, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent “ownership interest” in the institution, as defined in §600.31(b); or
 - (iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.
- (7) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.
- (8) The closure of a branch campus or additional location that the institution was required to report to the Secretary.
- (9) The governance of a public institution.
- (10) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, the school adds a location that offers all or a portion of the school's clinical rotations that are not required, except for those that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA), or that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.
- (11) For any gainful employment program under 34 CFR part 668, subpart Q—
 - (i) Establishing the eligibility or reestablishing the eligibility of the program;
 - (ii) Discontinuing the program's eligibility under 34 CFR 668.410;
 - (iii) Ceasing to provide the program for at least 12 consecutive months;
 - (iv) Losing program eligibility under §600.40;
 - (v) Changing the program's name, CIP code, as defined in 34 CFR 668.402, or credential level; or
 - (vi) Updating the certification pursuant to §668.414(b).

(12) Its addition of a direct assessment program.

⁵ The Department proposed to revise the paragraph (a)(11) introductory text in section 600.21 to read “For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—” in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

(13) Its establishment of a written arrangement for an ineligible institution or organization to provide more than 25 percent of a program pursuant to §668.5(c) or a partnership with an ineligible institution or organization for that organization to provide coursework leading to a recognized postsecondary credential.

(Approved by the Office of Management and Budget under control number 1845-0012)

(Authority: 20 U.S.C. 1094, 1099b)

[65 FR 65673, Nov. 1, 2000, as amended at 67 FR 67070, Nov. 1, 2002; 71 FR 45692, Aug. 9, 2006; 75 FR 67193, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014]

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Subpart C—Maintaining Eligibility

§600.30 [Reserved]

§600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent ~~corporation~~ of that entity, acquires or loses the ability to control the institution.

(2) If a private nonprofit, private for-profit, or public institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of §600.20(g) and (h), continue the institution's participation in the title IV, HEA programs on a provisional basis, provided that the institution submits, under the provisions of §600.20(g), a materially complete application—

(i) No later than 10 business days after the change occurs; or

(ii) For an institution owned by a publicly-traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

(3) In order to reestablish eligibility and to resume participation in the title IV, HEA programs, the institution must demonstrate to the Secretary that after the change in ownership and control—

(i) The institution satisfies all the applicable requirements contained in §§600.4, 600.5, and 600.6, except that if the institution is a proprietary institution of higher education or postsecondary vocational institution, it need not have been in existence for two years before seeking eligibility; and

(ii) The institution qualifies to be certified to participate under 34 CFR part 668, subpart B.

(b) *Definitions.* The following definitions apply to terms used in this section:

Closely-held corporation. Closely-held corporation (including the term close corporation) means—

(1) A corporation that qualifies under the law of the State of its incorporation or organization as a closely-held corporation; or

(2) If the State of incorporation or organization has no definition of closely-held corporation, a corporation the stock of which—

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

Control. Control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a-6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or corporate parent are included in the plan; or

(iv) An Employee Stock Ownership Plan (ESOP).

Parent. The parent or parent ~~corporation of a specified corporation~~ entity is the ~~corporation or partnership~~ entity that controls the specified ~~corporation~~ entity directly or indirectly through one or more intermediaries.

Person. Person includes a legal ~~entity or a natural person~~ (corporation or partnership) or an individual.

Wholly-owned subsidiary. A wholly-owned subsidiary is one substantially all of whose outstanding voting securities are owned by its parent together with the parent's other wholly-owned subsidiaries.

(c) *Standards for identifying changes of ownership and control—*(1) *Closely-held corporation.* A change in ownership and control occurs when—

(i) A person acquires more than 50 percent of the total outstanding voting stock of the corporation;

(ii) A person who holds an ownership interest in the corporation acquires control of more than 50 percent of the outstanding voting stock of the corporation; or

(iii) A person who holds or controls 50 percent or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

(2) *Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC).* A change in ownership and control occurs when—

(i) A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

(ii) (A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in 17 CFR 240.15a-6(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the “same day” balance sheet.

(C) If a publicly-traded institution is provisionally certified due to a change in ownership under paragraph (c)(2)(ii) of this section, and that institution experiences another change of ownership under paragraph (c)(2)(ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling

shareholder was listed on the change of ownership application for which the original provisional approval was granted.

(3) ~~Other corporations-entities.~~ The term “other entities” includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities. A change in ownership and control of a corporation an entity that is neither closely-held nor required to be registered with the SEC occurs when—

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation; or

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation; ~~or.~~

~~(iii) For a membership corporation, a person who is or becomes a member acquires or loses control of 25 percent of the voting interests of the corporation and control of the corporation.~~

(4) ~~Partnership~~ General partnership or sole proprietorship. A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

(5) ~~Parent corporation.~~ Wholly-owned subsidiary. An institution entity that is a wholly-owned subsidiary changes ownership and control when ~~theits~~ parent corporation entity changes ownership and control as described in this section.

(6) *Nonprofit institution.* A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

(7) *Public institution.* The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided—

(i) The new governing authority is in the same State as included in the institution's program participation agreement; and

(ii) The new governing authority has acknowledged the public institution's continued responsibilities under its program participation agreement.

(d) *Covered transactions.* For the purposes of this section, a change in ownership of an institution that results in a change of control may include, but is not limited to—

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the liabilities of an institution to its parent corporation;

(6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or

(7) A change in status as a for-profit, nonprofit, or public institution.

(e) *Excluded transactions.* A change in ownership and control reported under §600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement—

(1) From an owner to a “family member” of that owner as defined in §600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the

transfer and who has established and retained the ownership interest for at least two years prior to the transfer.

(Approved by the Office of Management and Budget under control number 1845-0012)

(Authority: 20 U.S.C. 1099c)

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 33430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 65 FR 65673, Nov. 1, 2000; 67 FR 67070, Nov. 1, 2002]

§600.32 Eligibility of additional locations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, to qualify as an eligible location, an additional location of an eligible institution must satisfy the applicable requirements of this section and §§600.4, 600.5, 600.6, 600.8, and 600.10.

(b) To qualify as an eligible location, an additional location is not required to satisfy the two-year requirement of §§600.5(a)(7) or 600.6(a)(6), unless—

(1) The location was a facility of another institution that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

(2) The applicant institution acquired, either directly from the institution that closed or ceased to provide educational programs, or through an intermediary, the assets at the location; and

(3) The institution from which the applicant institution acquired the assets of the location—

(i) Owes a liability for a violation of an HEA program requirement; and

(ii) Is not making payments in accordance with an agreement to repay that liability.

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of §600.5(a)(7) or §600.6(a)(6) if the applicant institution and the original institution are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b) and the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received during the current academic year and up to one academic year prior by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students who received title IV, HEA program funds during the current academic year and up to one academic year prior; and

(3) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(d)(1) An institution that conducts a teach-out at a site of a closed institution or an institution engaged in a formal teach-out plan approved by the institution's accreditor may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations ~~and the Secretary has taken an action to limit, suspend, or terminate the institution's participation under §600.41 or subpart G of this part, or has taken an emergency action under 34 CFR 668.83~~ or the closing institution is engaged in an orderly teach-out plan and the Secretary has evaluated and approved that plan; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed or closing institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the two-year in existence requirement of §600.5(a)(7) or §600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed ~~or closing~~ institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

(C) Will not have the default rate of the closed institution included in the calculation of its default rate, as would otherwise be required under 34 CFR 668.184 and 34 CFR 668.203, if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b).

(ii) As a condition for approving an additional location under paragraph (d)(1) of this section, the Secretary may require that payments from the institution conducting the teach-out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

(e) For purposes of this section, an “additional location” is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under §600.21.

(Authority: 20 U.S.C. 1088, 1099c, 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 74 FR 55933, Oct. 29, 2009]

Subpart D—Loss of Eligibility

§600.40 Loss of eligibility.

§600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that a previously designated eligible institution as a whole, or at one or more of its locations, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may—

(1) Terminate the institution's eligibility designation in whole or as to a particular location—

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (a)(4), and (c) through (f), and 668.91; or

(ii) Under a show-cause hearing, if the institution's loss of eligibility results from—

(A) Its previously qualifying as an eligible vocational school;

(B) Its ~~previously qualifying as an eligible institution, notwithstanding its unaccredited status, under the transfer of credit alternative to accreditation (as that alternative existed in 20 U.S.C. 1085, 1088, and 1141(a)(5)(B) and §600.8 until July 23, 1992);~~

~~(C) Its~~ loss of accreditation or preaccreditation;

~~(D)~~ Its loss of legal authority to provide postsecondary education in the State in which it is physically located;

~~(E)~~ Its violations of the provisions contained in §600.5(a)(8) or §600.7(a);

~~(F)~~ Its permanently closing; or

(~~GF~~) Its ceasing to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, a particular location, or the students of the institution or location;

(2) Limit, under the provisions of 34 CFR 668.86, the authority of the institution to disburse, deliver, or cause the disbursement or delivery of funds under one or more title IV, HEA programs as otherwise provided under 34 CFR 668.26 for the benefit of students enrolled at the ineligible institution or location prior to the loss of eligibility of that institution or location; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may in accordance with the procedural provisions described in paragraph (a) of this section—

(1) Undertake to terminate that educational program's eligibility under one or more of the title IV, HEA programs under the procedural provisions applicable to terminations described in paragraph (a) of this section;

(2) Limit the institution's authority to deliver, disburse, or cause the delivery or disbursement of funds provided under that title IV, HEA program to students enrolled in that educational program, as otherwise provided in 34 CFR 668.26; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs with respect to students enrolled in that educational program. (c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

(2) Once a termination under this section becomes final, the termination is effective with respect to any commitment, delivery, or disbursement of funds provided under an applicable title IV, HEA program by the institution—

(i) Made to students enrolled in the ineligible institution, location, or educational program; and

(ii) Made on or after the date of the act or omission that caused the loss of eligibility as to the institution, location, or educational program.

(3) Once a limitation under this section becomes final, the limitation is effective with regard to any commitment, delivery, or disbursement of funds under the applicable title IV, HEA program by the institution—

(i) Made after the date on which the limitation became final; and

(ii) Made to students enrolled in the ineligible institution, location, or educational program.

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution may not certify applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

(1) In accordance with the requirements of 34 CFR 668.26(c) with respect to students enrolled in the ineligible institution, location, or educational program; and

(2) After satisfaction of any additional requirements, imposed pursuant to a limitation under paragraph (a)(2) of this section, which may include the following:

(i) Completion of the actions required by 34 CFR 668.26(a) and (b)(~~7~~);.

(ii) Demonstration that the institution has made satisfactory arrangements for the completion of actions required by 34 CFR 668.26(a) and ~~(b)(2)~~.

(iii) Securing the confirmation of a third party selected by the Secretary that the proposed disbursements or delivery of title IV, HEA program funds meet the requirements of the applicable program.

~~(iv)~~(iv) Implementation of up to the first 120 days of the institution's teach-out plan, as approved by the institution's accreditor, which may include adherence to other requirements in this section; and/or .

(v) Using institutional funds to make disbursements permitted under this paragraph and seeking reimbursement from the Secretary for those disbursements.

(e) If the Secretary undertakes to terminate the eligibility of an institution, location, or program under paragraphs (a) and (b) of this section:

(1) If the basis for the loss of eligibility is the loss of accreditation or preaccreditation, the sole issue is whether the institution, location, or program has the requisite accreditation or preaccreditation. The presiding official has no authority to consider challenges to the action of the accrediting agency.

(2) If the basis for the loss of eligibility is the loss of legal authorization, the sole issue is whether the institution, location, or program has the requisite legal authorization. The presiding official has no authority to consider challenges to the action of a State agency in removing the legal authorization.

(3) If the basis for the loss of eligibility of a foreign graduate medical school is one or more annual pass rates on the U.S. Medical Licensing Examination below the threshold required in §600.55(f)(1)(ii), the sole issue is whether one or more of the foreign medical school's pass rate or rates for the preceding calendar year fell below that threshold. For a foreign graduate medical school that opted to have the Educational Commission for Foreign Medical Graduates (ECFMG) calculate and provide the pass rates directly to the Secretary for the preceding calendar year as permitted under §600.55(d)(2) in lieu of the foreign graduate medical school providing pass rate data to the Secretary under §600.55(d)(1)(iii), the ECFMG's calculations of the school's rates are conclusive; and the presiding official has no authority to consider challenges to the computation of the rate or rates by the ECFMG.

(Authority: 20 U.S.C. 1088, 1091, 1094, 1099a-3, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40623, July 29, 1998; 75 FR 67193, Nov. 1, 2010]

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

SOURCE: 59 FR 22063, Apr. 28, 1994, unless otherwise noted.

§600.51 Purpose and scope.

§600.52 Definitions.

The following definitions apply to this subpart E:

Associate degree school of nursing: A school that provides primarily or exclusively a two-year program of postsecondary education in professional nursing leading to a degree equivalent to an associate degree in the United States.

Clinical training: The portion of a graduate medical education program that counts as a clinical clerkship for purposes of medical licensure comprising core, required clinical rotation, and not required clinical rotation.

Collegiate school of nursing: A school that provides primarily or exclusively a minimum of a two-year program of postsecondary education in professional nursing leading to a degree equivalent to a bachelor of arts, bachelor of science, or bachelor of nursing in the United States, or to a degree equivalent to a graduate degree in nursing in the United States, and including advanced training related to the program of education provided by the school.

Diploma school of nursing: A school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a two-year program of postsecondary education in professional nursing leading to the equivalent of a diploma in the United States or to equivalent indicia that the program has been satisfactorily completed.

Foreign graduate medical school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to a degree of medical doctor, doctor of osteopathic medicine, or the equivalent. A reference in these regulations to a foreign graduate medical school as “freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

Foreign institution:

(1) For the purposes of students who receive title IV aid, an institution that—

(i) Is not located in a State;

(ii) Except as provided with respect to clinical training offered under §600.55(h)(1), §600.56(b), or §600.57(a)(2)—

(A) Has no U.S. location;

(B) Has no written arrangements, within the meaning of §668.5, with institutions or organizations located in the United States for students enrolling at the foreign institution to take courses from more than 25 percent of the courses required by the program from institutions located in the United States, offered by Title IV participating institutions located in the United States;

(C) Does not permit students to enroll complete more than 25 percent of the program by enrolling in any course courses offered by the foreign institution in the United States, including by another Title IV eligible institution in the United States, or by another foreign institution authorized by the country in which the institution is located to provide higher education, including coursework, research, work, internship, externship, or special studies ~~within the United States, except that independent research done by an individual student in the United States for not more than one academic year is permitted, if it is conducted during the dissertation phase of a doctoral program under the guidance of faculty, and the research can only be performed in a facility in the United States;~~;

(iii) Is legally authorized by the education ministry, council, or equivalent agency of the country in which the institution is located to provide an educational program beyond the secondary education level; and

(iv) Awards degrees, certificates, or other recognized educational credentials in accordance with §600.54(e) that are officially recognized by the country in which the institution is located; or

(2) If the educational enterprise enrolls students both within a State and outside a State, and the number of students who would be eligible to receive title IV, HEA program funds attending locations outside a State is at least twice the number of students enrolled within a State, the locations outside a State must apply to participate as one or more foreign institutions and must meet all requirements of paragraph (1) of this definition, and the other requirements of this part. For the purposes of this paragraph, an educational enterprise consists of two or more locations offering all or part of an educational program that are directly or indirectly under common ownership.

Foreign nursing school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) that is an associate degree school of nursing, a collegiate school of nursing, or a diploma school of nursing. A reference in these regulations to a foreign nursing school as

“freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

Foreign veterinary school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to the degree of doctor of veterinary medicine, or the equivalent. A reference in these regulations to a foreign veterinary school as “freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

National Committee on Foreign Medical Education and Accreditation (NCFMEA): The operational committee of medical experts established by the Secretary to determine whether the medical school accrediting standards used in other countries are comparable to those applied to medical schools in the United States, for purposes of evaluating the eligibility of accredited foreign graduate medical schools to participate in the title IV, HEA programs.

Passing score: The minimum passing score as defined by the Educational Commission for Foreign Medical Graduates (ECFMG), or on the National Council Licensure Examination for Registered Nurses (NCLEX-RN), as applicable.

Post-baccalaureate/equivalent medical program: A program offered by a foreign graduate medical school that requires, as a condition of admission, that its students have already completed their non-medical undergraduate studies and that consists solely of courses and training leading to employment as a doctor of medicine or doctor of osteopathic medicine.

Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located.

(Authority: 20 U.S.C. 1082, 1088)

[59 FR 22063, Apr. 28, 1994, as amended at 75 FR 67193, Nov. 1, 2010]

§600.53 Requesting an eligibility determination.

§600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the Direct Loan Program.

§600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Direct Loan Program.

§600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the Direct Loan Program.

§600.57 Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the Direct Loan Program.

§600.58 Duration of eligibility determination.

Summary of Part 602—Accreditation

Overview

This negotiated rulemaking effort is designed to modify the regulations that pertain to accreditor recognition in order to provide accreditors, and the institutions they accredit, with greater latitude to innovate; to create healthy competition among institutions and accreditors; to provide agencies with increased independence in their recognition and oversight responsibilities; and to reduce unnecessary regulatory burden and oversight redundancies.

There are also a number of technical corrections that will be included in this rulemaking effort to better conform with statute and provide greater regulatory clarity.

§ 602.3 What definitions apply to this part?

- Clarify the definition of “compliance report” and add a new definition of “monitoring report” to differentiate between accreditor reports that must be reviewed and approved by NACIQI versus those that may be reviewed and approved by staff analysts.
- Require in the definition of “recognition” that an agency be “consistent” in addition to “effective” in its application of its criteria.
- Clarify in the definition of “scope of recognition” that the Secretary’s recognition of one agency’s geographic scope does not preclude another agency from also including a given state or territory in its geographic scope.
- Update the definition of “Senior Department Official.”
- Add a definition for “substantial compliance.”

§ 602.10 Link to Federal programs.

- Clarify that an agency has a link to federal programs and therefore can be recognized by the Department if it accredits institutions with multiple accreditation under § 600.11.
- Clarify that an agency’s geographic scope of accrediting activities must be properly defined and create a clear distinction between regional agencies, with activities covering up to ten States, and national agencies, with activities covering most or all of the States.
 - The Department wishes to return to the original purpose of regional accreditation, which is to support activities that were unique or exclusive to a region of the country.
 - Over time, regional agencies have started to approve campuses in other regions, and to serve students via distance education across the country. The Department wishes to enable such activities for national accrediting agencies while also preserving a role for agencies with more limited geographic scope and drawing a clear distinction between the two.
 - The Department further believes some regional agencies have abused the current distinction to push a false narrative that the Department considers regional accreditation to be superior to national accreditation. Many institutions have denied well-qualified students attending nationally accredited institutions the opportunity to transfer credits, attend graduate programs, and enjoy other benefits that should rightfully belong to all students attending institutions with recognized accreditation.

- The Department seeks to level the playing field among accreditors who benefit from the Department's recognition and the billions in Federal student aid that is made available to accredited institution's students.

§ 602.12 Accrediting experience.

- Eliminates the "chicken-and-egg" problem of the earlier regulations that required an agency to demonstrate that it has accredited or preaccredited institutions under elements of an expanded scope for which the agency is not currently approved to accredit or preaccredit institutions.
- Instead, accreditors must have policies in place that meet criteria and may face limitations on growth or expansion if they cannot demonstrate appropriate experience.

§ 602.13 Engagement of employers and practitioners in Agency Decisions

- This requirement is viewed by the Department as an anti-competitive provision.
- Instead of requiring acceptance of an agency's standards, policies, procedures, and decisions by a large number of groups, instead require input from or acceptance by practitioners and employers.

§ 602.14 Purpose and organization.

- Delete the table, which many have found to be confusing, and reorder in traditional outline form in order to simplify.
- Strengthen the "separate and independent" requirement to avoid conflicts of interest and remove the waiver approval process, which is allowed but not required in statute. The Department believes that some relationships between accreditors and affiliated entities has reduced the number of pathways available to individuals who wish to practice in a given occupation or field, and may result in credential inflation that disadvantages newcomers to the field and reduces the likelihood that low-income students can pursue the occupation.

§ 602.15 Administrative and fiscal responsibilities.

- Allow employers as well as practitioners, to serve on accreditor decision-making bodies to ensure that academic programs align with contemporary workforce needs.
- Reduce record-keeping burdens.
- Make other technical changes to improve the clarity of these regulations.

§ 602.16 Accreditation and preaccreditation standards.

- Clarify that agencies are not required to apply standards related to Title IV compliance to institutions or programs that do not participate in Title IV HEA programs.
- Require recognized agencies whose scope includes distance education and/or correspondence courses to establish clear definitions that distinguish between distance and correspondence education and that define "regular and substantive interaction," in a manner consistent with the definitions in § 600.2.
- Clarify that no single form of institutional governance is required by statute or regulations, and allow institutions that offer career, occupational or vocational programs to establish alternative governance models that rely on the recommendations of employers and gain approval outside of the traditional shared-governance model. The alternate governance model will reduce the time required to make necessary program changes and enable programs to keep pace with changing workforce needs
- Make other technical corrections to improve the clarity of the regulations.

- The Department seeks recommendations from negotiators about when and how agencies should be allowed to grant waivers to institutions, such as to support innovation or in situations where an institution cannot reasonably be expected to comply with a given standard. The Department wishes to integrate a consideration of student outcomes into any waiver process.
- The Department also seeks recommendations from negotiators on how it could discourage or prevent accreditors from aligning with state licensing bodies or other vocational credentialing boards to exclude the licensure of individuals who prepare for work through apprenticeship, the military, or other work-based learning pathways, and to prevent accreditors from responding to efforts to expand or elevate credentials that serve as minimum requirements for licensure or certification. The Department also seeks the advice of negotiators on how to ensure that transfer of credits remain the decision of institutions, but disallow institutions from categorically denying credits from national accreditors if the courses completed by the student are in alignment with those offered by the accepting institution.

§ 602.17 Application of standards in reaching an accrediting decision.

- Provide greater flexibility for institutions to innovate by allowing accreditors to establish alternative standards rather than relying on commonly or widely accepted requirements that favor the status quo.
- Clarify that an institution's accreditation self-study must focus on the institution's efforts and ability to meet its learning objectives and those of its students.
- Require agencies to rely on evidence rather than anecdotes when making an accrediting decision.
- The Department seeks advice from negotiators on how to ensure continuous improvement and rigorous outcomes, while at the same time avoiding one-size-fits-all solutions that fail to appropriately account for differences in institutional mission, occupational pathways, or the accountability that students have for their own success. The Department seeks to ensure that it, and NACIQI, does not violate the statutory prohibitions on dictating student achievement standards, while at the same time requiring institutions to achieve strong outcomes.
- Update the methods by which institutions offering programs via distance education, correspondence education, or other delivery methods may verify student identity to ensure institutions have sufficient flexibility to manage such programs with appropriate safeguards.

§ 602.18 Ensuring consistency in decision-making.

- Add direct assessment as an additional focus of the requirements of this regulation.
- Eliminate several requirements that are duplicative or unduly burdensome.
- Provide an opportunity for an institution or program to obtain agency review of claims of inequitable treatment, and a written response from the agency;
- Add a provision requiring a written response from agencies if an institution feels its religious mission has not been appropriately respected.
- Require agencies to clearly define their policies for retroactive application of accreditation decisions. These policies are critical to ensuring that the first class of students are not precluded from practicing in a given occupation since some accreditors will not make a final accreditation decision until the first cohort of students graduates.

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

- Require agencies to monitor institutional enrollment s and report to the Secretary any institution that increases its enrollment by more than 50 percent in a given academic year. Require agencies that received an approved expansion of scope to be reviewed by NACIQI if any institution accredited by the agency under the expanded scope increased their enrollment in distance education or correspondence courses by more than 50 percent.

§ 602.20 Enforcement of standards.

- Revise enforcement provisions to remove overly-prescriptive timelines that don't recognize the amount of time it can take for changes in curricula or admissions process to impact student outcomes.
- Require that an agency has policies in place to identify areas of non-compliance, notify an institution or program of such findings, evaluate a corrective action plan submitted by the institution or program, monitor progress towards becoming compliant, provide good-cause extensions if warranted, ensure that compliance has been achieved or take adverse action when necessary.
- In the event of the loss of accreditation, permit agencies to provide a sufficient amount of time for the institution to implement a teach-out plan or find teach-out partners before closing.
- Give agencies, including institutional accreditors, the ability to limit negative actions, including the revocation of accreditation, to specific programs or additional locations that are noncompliant without necessarily revoking the accreditation of an entire institution or all of its programs.
 - The Department believes institutions often escape sanction because the penalties and tools available to agencies are too harsh and inflexible. Instead, agencies may be more likely to take swift action and apply sanctions when needed if they can more effectively target their action to the specific areas of non-compliance.
- Clarify that, in accordance with statute, an institution must first engage in arbitration before pursuing a legal remedy against an accreditor, including in the event of an adverse action.
- Clarify that agencies do not have the responsibility for enforcing certain title IV requirements that are the responsibility of the Department. This includes monitoring compliance with program participation agreements, performing federal financial responsibility audits or reviews (other than for the purpose of ensuring that the institution has sufficient resources to administer their educational programs), and ensuring compliance with the Clery Act, among other things.
 - Agencies will still be required to report to the Department any title IV violations discovered through accreditation review, but they will not be responsible for auditing requirements that are the sole responsibility of the Department or States.
- Clarify that agencies are not required to apply the standards required by the Department's recognition criteria in making accreditation decisions for institutions or programs that do not participate in any title IV, HEA or other Federal program.

§ 602.21 Review of standards.

- Require that agencies periodically review and update their standards, but allow agencies to develop their own policies and procedures for how often they must conduct these reviews.

- Remove the requirement that an agency must initiate action to update their standards within 12 months and allow agencies to develop timelines appropriate to their scope and the size of their membership.
- Make other technical corrections to improve regulatory clarity.

§ 602.22 Substantive changes and other reporting requirements.

- Revise the definition of substantive changes to limit the actions that require agency pre-approval to high risk activities. Substantive change approvals are costly and time-consuming, and can interfere with an institution's ability to be responsive to workforce needs. Institutions in good standing should be given more latitude to make changes without needing prior agency approval.
- Include a list of other changes that institutions in good standing can implement without prior approval.
- Affirm that certain accreditor decisions can be dated retroactively to ensure that students enrolled in a program that received accreditation benefit fully from that decision..
- Make other technical corrections for clarity.

§ 602.23 Operating procedures all agencies must have.

- Clarify the agency's decision-making timeline, and explain the order in which accreditor, State and Department approval should occur.
- Clarify the information that an agency must make available to the public about its accreditation decisions and its member institutions as well as the members of its decision making bodies.

§ 602.24 Additional procedures certain institutional accreditors must have.

- Remove language regarding the sequencing of agency approval of branch campuses and additional locations.
- Require that an institution provide an updated teach-out plan when it notifies the agency of its intent to move a location.
- Revise the requirements for approving teach-out agreements to ensure that students enrolled in ground-based programs are given ground-based transfer or completion options. Online options may also be provided, but ground-based options must be included.
- Add the requirement that agencies conform their use of the terms "branch campus" and "additional location" with § 600.2. This will alleviate confusion that currently exists as a result of inconsistent utilization of those terms by accreditors and the Department.
- Remove the regulations related to credit hour policies.
- Make other technical corrections to improve clarity.

§ 602.25 Due process.

- In the event that decisions of the appeals body is remanded to the original decision-making body, requires the appeals body to explain the basis for a decision that differs from that of the original decision-making body..
- Make other technical corrections to improve clarity.

§ 602.26 Notification of accrediting decisions.

- Shorten the amount of time that an agency has to notify the Department of a negative action to within three business days of notifying the institution or program.

§ 602.27 Other information an agency must provide the Department.

- Remove the requirement to submit an annual report to the Department.
- Revise the request for confidentiality made by the Secretary regarding information provided by the agency regarding an institution's compliance with its title IV, HEA program responsibilities.
- Make other reorganization and technical, conforming, or word-choice edits for clarity.

§ 602.28 Regard for decisions of States and other accrediting agencies.

- Provide limited exceptions to the prohibition on granting initial or renewed accreditation or preaccreditation to an institution or program that is on probation or the equivalent with another recognized agency. For example, if the agency has violated its due process procedures or has put an institution or program on probation due to an institution's religious mission, it may be reasonable for the institution or program to seek accreditation from another recognized agency.

§ 602.30 Activities covered by recognition procedures.

Delete and reserve this section, which listed the activities covered by the recognition procedures in other sections.

§ 602.31 Agency submissions to the Department.

- Require agencies to include in their petition for recognition or continuation of recognition all documents required by the Secretary as published in the Federal Register.
- Require agencies to redact business information from the documents provided to the Department, including in its petition for recognition, to protect sensitive information in the event that the documents are subject to a FOIA request.
- Require agencies to provide staff with information redacted by the agency in its submissions to the Department.
- Permit the Secretary to limit the length of agency submissions.

§ 602.32 Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment.

- Require agencies seeking renewal of recognition to submit, two years prior to the expiration of their current term of recognition, a petition, copies of their standards and policy manuals, and a list of their upcoming accrediting reviews or decisions, including the timeline if known.
- Provide that Department staff may consider legal complaints or other actions, but those actions will not be deemed to be determinative unless there is a final determination on the merits.
- Expand the available options for staff when reviewing an agency's compliance with recognition requirements to include compliant, substantially compliant or non-compliant and expand the final staff recommendation to include approval, approval with compliance reporting requirements, approval with monitoring report requirements, denial, limitation, suspension or termination of recognition.
- Revise the timeframes for the recognition review process to provide more time for agencies to respond to the Department and for NACIQI to review documents prior to their meetings.
- Provide for review and decisions by the Department on requests for expansion of scope submitted outside of the regular renewal of recognition process.
- Make other technical corrections to improve regulatory clarity.

§ 602.33 Procedures for review of agencies during the period of recognition.

- Clarify that compliance reviews are limited to the Secretary's Criteria for Recognition.
- Revise compliance review procedures to differentiate between reviews that can be completed by staff and those that must be reviewed by NACIQI.
- Make other technical corrections for clarity.

§ 602.34 Advisory Committee meetings.

- Clarify that the agency's response to the draft staff analysis is provided to NACIQI.
- Revise the recommendations available to the NACIQI to include those listed in 602.32.

§ 602.35 Responding to the Advisory Committee's recommendation.

- Revise the timeframe for an agency and Department staff to submit written comments to the senior Department official to 10 business days.
- Revise the timeframe for an agency and Department staff to submit written comments to the senior Department official in response to written comments received by the other party to be 10 business days.
- Add the limitation that no additional comments or new evidence may be submitted by either party after the responses to the first comments are submitted.

§ 602.36 Senior Department official's decision.

- Revise the options available to the senior Department official to include those listed in 602.23
- Clarify that the 12 months period in which an agency must come into compliance begins on the date that the agency is notified of the Senior Department Official's decision.
- Make other technical corrections for clarity.

§ 602.37 Appealing the senior Department official's decision to the Secretary.

- Revise the timeframe for an agency to notify the Secretary and the senior Department official in writing of its intent to appeal to be 10 business days.
- Add the limitation that no additional comments or new evidence may be submitted by either party once the agency's appeal and the senior Department official's response are submitted.
- Make other technical corrections to improve regulatory clarity.

Summary of Part 603— Secretary's Recognition Procedures for State Agencies

§ 603.24 Criteria for State agencies.

- Remove the regulations related to credit hour policies.

PART 602—ACCREDITATION

Subpart A—General

§602.1 Why does the Secretary recognize accrediting agencies?

§602.2 How do I know which agencies the Secretary recognizes?

§602.3 What definitions apply to this part?

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Branch campus

Correspondence course

Credit hour

Distance education

Institution of higher education or institution means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.

Nationally recognized accrediting agency

Preaccreditation

Religious mission

Secretary

State

Teach-out

Teach-out agreement

Teach-out plan

(b) The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or *adverse action* means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

~~*Branch campus* means a location of an institution that meets the definition of branch campus in 34 CFR 600.2.~~

Compliance report means a written report that the Department requires an agency to file to when that agency is found to be out of compliance to demonstrate that the agency has addressed deficiencies specified in a decision letter from the senior Department official or the Secretary. Compliance reports must be approved in order for the agency's recognition to be granted or continued. Compliance reports must be reviewed by the Department and the Advisory Committee and approved by the senior department official to continue or grant, in the case of an award of initial award, the agency's recognition.

~~*Correspondence education* means:~~

~~(1) Education provided through one or more courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor.~~

~~(2) Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student.~~

~~(3) Correspondence courses are typically self-paced.~~

~~(4) Correspondence education is not distance education.~~

Designated Federal Official means the Federal officer designated under section 10(f) of the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1.

Direct assessment program means an instructional program that, in lieu of credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if such assessment is consistent with the institution's or program's accreditation, and meets the conditions of 34 CFR 668.10. For title IV, HEA purposes, the institution must obtain approval from the Secretary for the direct assessment program ~~from the Secretary under 34 CFR 668.10(g) or (h) as applicable. As part of that approval, the accrediting agency must—~~first time it is considered to be an eligible program.

As part of the accrediting agency's review, it must—

(1) Evaluate the program(s) based on the agency's accreditation standards and criteria; and include them in the institution's grant of accreditation or preaccreditation; and

(2) Review and approve the institution's claim of each direct assessment program's equivalence in terms of credit or clock hours.

~~*Distance education* means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include —~~

~~(1) The internet;~~

~~(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;~~

~~(3) Audio conferencing; or~~

~~(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.~~

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is ~~not~~ appealable within the agency, the decision made by the agency, including at the conclusion of any appeals made available to the institution by the agency's due process policies and procedures.

~~*Institution of higher education or institution* means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.~~

Institutional accrediting agency means an agency that accredits institutions of higher education.

~~*Nationally recognized accrediting agency, nationally recognized agency, or recognized agency* means an accrediting agency that the Secretary recognizes under this part.~~

~~*Preaccreditation* means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.~~

Monitoring report means a report that an agency is required to submit to the Department containing documentation that the agency is —

(1) Implementing its current or corrected policies;

(2) Compliant in practice but needs to provide additional documentation; or

(3) Compliant in practice but needs to update its policies to conform with its practice.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation.

Recognition means an unappealed determination by the senior Department official under §602.36, or a determination by the Secretary on appeal under §602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective and consistent in its application of those criteria. A grant of recognition to an agency as a reliable authority regarding the quality of education or training offered by institutions or programs it accredits remains in effect for the term granted except upon a determination made in accordance with subpart C of this part that the agency no longer complies with the subpart B criteria or that it has become ineffective in its application of those criteria.

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

~~(1) Geographic area of accrediting activities; such that the inclusion of a particular geographic area in one accreditor's scope does not preclude the inclusion of that same or a similar geographic area in another accreditor's scope.~~

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

(4) Types of preaccreditation status covered, if any; and

(5) Coverage of accrediting activities related to distance education or correspondence education courses.

~~*Secretary* means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.~~

Senior Department official means the senior official in the U.S. Department of Education ~~who reports directly~~ designated by the Secretary to ~~the Secretary regarding~~ make decisions on accrediting agency recognition.

~~*State* means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.~~

~~Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate before all enrolled students have completed their program of study.~~

~~Teach-out plan means a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides one hundred percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.~~

Substantial compliance: means having the necessary policies, practices and standards in place, and in all but a few of those cases, adheres with fidelity to those policies, practices and standards; or having policies, practices, and standards in place that need minor modifications in order to become fully compliant.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009]

Subpart B—The Criteria for Recognition

Basic Eligibility Requirements

§602.10 Link to Federal programs.

The agency must demonstrate that ~~—~~ —

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs; ~~or. The agency satisfies this requirement if, pursuant to 34 CFR 600.11(b), it accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, even if the institution currently designates another institutional accreditor as its Federal link; or~~

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

(Authority: 20 U.S.C. 1099b)

§602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities ~~cover~~ are limited to -

(a) A State, if the agency is part of a State government;

(b) A region ~~of the United States that includes~~ covering at least three ~~States that~~ but fewer than 10 contiguous States or territories within the United States, in which all of the institutions, additional locations and branch campuses it accredits ~~are reasonably close to one another; or located;~~

(c) The United States and other countries.

(Authority: 20 U.S.C. 1099b)

§602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has ~~(1) Granted~~ to operate as an accrediting agency or association by demonstrating that it has granted accreditation or preaccreditation ~~—~~ -

~~(i1)~~ To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

~~(ii2)~~ That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

~~(iii3)~~ In the geographic area for which it seeks recognition. ~~and~~

~~(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.~~

(b) ~~(1)~~ A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has ~~granted~~ accreditation or preaccreditation policies in place that meet all recognition criteria, and covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(2) A recognized agency seeking expansion of scope to include graduate programs will be scrutinized considerably, and an accreditor whose scope includes graduate programs must have policies in place to engage employers in the review and consideration of new graduate programs.

(3) Agencies that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope may -

(i) Be limited in the number of institutions to which it may grant accreditation under the expanded scope;

(ii) Have program growth under that expanded scope limited for a certain period of time;

(iii) Be required to submit monitoring reports regarding accrediting decisions made under the expanded scope.

(Authority: 20 U.S.C. 1099b)

§602.13 Agency acceptance by employers and practitioners ~~Acceptance of the agency by others.~~

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation ~~are widely accepted in the United States by~~ are accepted by practitioners or employers.

~~(a) Educators and educational institutions; and~~

~~(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.~~

(Authority: 20 U.S.C. 1099b)

§602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of accrediting agencies:

The Secretary recognizes —	that —
(1) An accrediting agency	(i) Has a voluntary membership of institutions of higher education;
—	(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and
—	(iii) Satisfies the “separate and independent” requirements in paragraph (b) of this section.
(2) An accrediting agency	(i) Has a voluntary membership; and
—	(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.
(3) An accrediting agency	for purposes of determining eligibility for Title IV, HEA programs—
—	(i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and

—	(ii) Either satisfies the “separate and independent” requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.
(4) A State agency	(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and
—	(ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.

(1) A State agency that-

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991 and has been recognized continuously since that date.

(2) An accrediting agency that-

(i) Has a voluntary membership of institutions of higher education;

(ii) Offers accreditation that is used to provide a link to Federal HEA programs in accordance with § 602.10; and

(iii) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section;

(3) An accrediting agency that-

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or both higher education programs and institutions of higher education, and the accreditation it offers is used to provide a link to non-HEA Federal programs in accordance with § 602.10;

(4) An accrediting agency that, for purposes of determining eligibility for title IV, HEA programs--

(A)(i) Has a voluntary membership of individuals participating in a profession; or

(ii) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(B) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section;

(b) For purposes of this section, ~~the term~~ "separate and independent" means that—

(1) The members of the agency's decision-making body —who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both —are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of the ~~ate~~ body consists of representatives of the public;

(3) The agency has established and implemented ~~guide lines~~guidelines for each member of the decision-making body ~~to avoid~~including guidelines on avoiding conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization ~~does not violate~~s the "separate and independent" requirements in paragraph (b) of this section. ~~if—~~

~~(1) The agency pays the fair market value for its proportionate share of the joint use; and~~

~~(2) The joint use does not compromise the independence and confidentiality of the accreditation process.~~

(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the "separate and independent" requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the "separate and independent" requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

§602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that ~~—~~

(a) The agency has ~~—~~ —

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education ~~and~~ or experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence ~~education;~~ courses;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators and practitioners or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

(5) Representatives of the public on all decision-making bodies; and

(6) Clear and effective controls ~~against~~ including guidelines to prevent or resolve conflicts of interest, or the appearance of conflicts of interest, by the agency's ~~—~~ —

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of ~~—~~ —

(1) Its last full accreditation or preaccreditation review of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

(2) All decisions made ~~throughout an institution's or program's affiliation with~~ by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes, ~~including all correspondence that is significantly related to those decisions.~~

(Approved by the Office of Management and Budget under control number 1845-0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009]

Required Standards and Their Application

§602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if—:

(1) The agency's accreditation standards effectively address~~clearly define its expectations for~~ the ~~quality of the institution~~institutions or ~~program~~programs it accredits, in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, ~~are~~—

(i) Are appropriately related to the agency's accreditation standards ~~and do~~,

(ii) Do not permit the institution or program to hold preaccreditation status for more than five years before a final accreditation decision is made.

~~(b)~~(b) Agencies are not required to apply the standards described in paragraph (a)(1)(x) of this section to institutions or programs that do not participate in title IV HEA programs. The agency's grant of accreditation or preaccreditation issued under this section must specify that the grant, by request of the institution, does not include participation by the institution or program in Title IV HEA programs.

(c) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(ed)(1) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education ~~or~~, correspondence courses, or direct assessment education, the agency's standards must effectively address the quality of an institution's distance education ~~or~~, correspondence courses or direct assessment education in the areas identified in paragraph (a)(1) of this section.

(2) The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education ~~or correspondence education~~ or correspondence courses except that an agency that has or seeks to include either type of program within the scope of recognition must define "distance education", "correspondence courses", and "regular and substantive interaction" in accordance with the definitions of those terms in 34 CFR 600.2 in a manner that clearly distinguishes between the two types of delivery.

~~(d)~~ (e) If none of the institutions an agency accredits participates in any ~~F~~ title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(ef) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(fg) Nothing in paragraph (a) of this section restricts—

(1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency; ~~or~~

(2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review may be considered as part of any accreditation review; or

(3) Agencies from having different governance requirements for approving curricular changes to programs preparing students for employment in a specific field or occupation. These alternate governance requirements may be used in order to enable programs to more effectively meet the recommendations or requirements of:

(i) Industry advisory boards that include employers who hire program graduates;

(ii) Widely recognized industry standards and organizations;

(iii) Credentialing or other occupational registration or licensure; or

(iv) Other requirements that employers in a given field or occupation use in making hiring decisions.

(h) Waivers. **NOTE TO NEGOTIATORS:** The Department seeks recommendations from negotiators about when and how agencies should be allowed to grant waivers to institutions, such as to support

innovation or in situations where an institution cannot reasonably be expected to comply with a given standard. The Department wishes to integrate a consideration of student outcomes into any waiver process.

(i) Fair access. NOTE TO NEGOTIATORS The Department also seeks recommendations from negotiators on how it could discourage or prevent accreditors from aligning with state licensing bodies or other vocational credentialing boards to exclude the licensure of individuals who prepare for work through apprenticeship, the military, or other work-based learning pathways, and to prevent accreditors from responding to efforts to expand or elevate credentials that serve as minimum requirements for licensure or certification. The Department also seeks the advice of negotiators on how to ensure that transfer of credits remain the decision of institutions, but disallow institutions from categorically denying credits from national accreditors if the courses completed by the student are in alignment with those offered by the accepting institution.

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(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded; and

(2) Is successful in achieving its stated objectives; ~~and~~

~~(3) Maintains degree and certificate requirements that at least conform to commonly accepted standards;~~

(b) Requires the institution ~~or program to prepare, following guidance provided by the agency, an in-depth to engage in a~~ self-study process that ~~includes~~ assesses the ~~assessment of institution's educational quality and success in meeting its~~ educational quality ~~and the institution's or program's continuing efforts to improve objectives, highlights opportunities for improvement and develops a plan for making those improvements to meet the institution's or program's~~ educational quality objectives;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other ~~appropriate~~ information substantiated by the accreditor from other sources to determine whether the institution or program complies with the agency's standards;

(f) Provides the institution or program with a detailed written report that ~~assesses—~~

~~(1) The~~assesses the institution's or program's compliance with the agency's standards, including areas needing improvement; and

(2) The institution's or program's performance with respect to student achievement.

NOTE TO NEGOTIATORS: The Department seeks advice from negotiators on how to ensure continuous improvement and rigorous outcomes, while at the same time avoiding one-size-fits-all solutions that fail to appropriately account for differences in institutional mission, occupational pathways, or the accountability that students have for their own success. The Department seeks to ensure that it, and NACIQI, does not violate the statutory prohibitions on dictating student achievement standards, while at the same time requiring institutions to achieve strong outcomes.

(g) Requires institutions ~~that offer distance education or correspondence education~~ to have processes in place through which the institution establishes that the student who registers in any course, including a distance education or correspondence ~~education course~~courses or program, is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it—

(1) Requires institutions to verify the identity of a student who participates in ~~class~~classes, takes exams, or coursework submits assignments by using, at the option of the institution, methods such as ~~—~~ —

(i) A secure login and pass code; or electronic badging systems;

(ii) Photo identification issued by a State or Federal agency, a foreign government, or the institution;

~~(iii)~~ Proctored examinations; and/or

~~(iiiiv)~~ New or other technologies and practices that are effective in verifying student identity; and

(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education ~~or~~, correspondence courses, or

direct assessment education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period ~~granted by the agency.~~ The agency meets this requirement if the agency—

~~(a) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited;~~

~~(b) Has effective controls against the inconsistent application of the agency's standards;~~

~~(c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;~~

~~(d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate; and~~

~~(e~~

(a) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards;

(b) At the request of an institution, performs a review of the accreditor's respect for an institution's religious mission and provides a written response of the results of that review; and

(c) Does not deny preaccreditation or accreditation, or take action against an institution or program, due to a compliance gap that is the result of an institution's adherence to its religious mission in any of its policies and practices.

(d) Agencies must publish any policies for retroactive application of an accreditation decision.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, ~~a set of~~ monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of §602.16(f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect headcount enrollment data from those institutions or programs.

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a)(~~54~~) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence ~~education courses~~. The Secretary shall require a review, at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency if the enrollment of an institution that offers distance education or correspondence courses that is accredited by such agency increases by 50 percent or more within any one institutional fiscal year. If any such institution has experienced an increase in headcount enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—~~—~~ —

(1) ~~Immediately initiate adverse action against~~ Have a policy in place for notifying the institution or program; ~~or~~ (2) Require of the finding, providing sufficient opportunity for the institution or program to ~~take appropriate action~~ respond to bring itself into compliance with the agency's standards within a time period that must not exceed— ~~(i) Twelve months, if finding by submitting additional information to demonstrate the program, or the longest program offered by the institution, is less than one year in length~~ institution's compliance or submit a monitoring report;

~~(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or~~

~~(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.~~

(2) Have a written policy in place explaining the circumstances under which the agency will initiate an immediate adverse action.

(3) Have a written policy in place to evaluate and approve the monitoring report and monitor its implementation and efficacy in resolving the finding of noncompliance;

(4) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of the finding, the time it would reasonably take to come into compliance, and the stated mission and educational objectives of the program or institution. The timeline may include intermediate checkpoints on the way to full compliance;

(5) Implement a written policy describing the process and criteria for requesting and being granted a good-cause extension of the timeline.

(b) If the institution or program does not bring itself into compliance within the ~~period~~ specified ~~period~~by the agency, including under paragraph (a)(2) and (a)(3) of this section, the agency must take immediate adverse action ~~unless the agency, for good cause, extends the period for achieving compliance against the institution or program, but may continue accreditation or preaccreditation for a sufficient amount of time to enable the institution or program to develop and implement a teach-out that enables students near completion of their program to do so and others to transfer to a new institution or program, if the student so desires.~~

(c) An agency that accredits institutions may limit the adverse or other action to particular programs that are offered by the institution or to particular additional locations of an institution, without necessarily taking action against the entire institution and all of its programs, provided the noncompliance was limited to that particular program or location.

(d) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

(e) An agency is not responsible for enforcing requirements in 34 CFR 668.14, 668.15, 668.16, 668.41, or 668.46, but if in the course of an agency's work it identifies instances or potential instances of non-compliance with any of these requirements, it must notify the Department.

(f) The Secretary may not require an agency to take action against an institution or program that does not participate in any title IV, HEA or other Federal programs as a result of a requirement specified in this chapter.

(Authority: 20 U.S.C. 1099b)

§602.21 Review of standards.

(a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.

~~(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—~~

~~(1) Is comprehensive;~~

~~(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;~~

~~(3) Examines each of the agency's standards and the standards as a whole; and~~

~~(4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.~~

~~(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time.~~ (b) Before finalizing any changes to its standards, the agency must ~~—~~ —

(1) Provide notice to all of the agency's relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; ~~and~~

(3) Take into account and be responsive to any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties; ~~and~~

~~(4) Ensure that nothing in these standards violates the requirements of § 602.18(f).~~

(Authority: 20 U.S.C. 1099b)

Required Operating Policies and Procedures

§602.22 Substantive changes and other reporting requirements.

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the ~~educational institution's~~ mission, ~~program,~~ or programs ~~of an institution~~ after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if ~~—~~ —

(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(2) The agency's definition of substantive change ~~includes~~ is limited to high-impact, high-risk changes that include at least the following ~~types of change~~ —

(i) Any substantial change in the established mission or objectives of the institution programs,

~~(ii) Any change in the~~ legal status, form of control, or ownership of the institution.

(iii) The addition of ~~courses or~~ programs that represent a significant departure from the existing offerings ~~of~~ educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

~~(iviii)~~ The addition of graduate programs ~~of study at a degree or credential level different from by an institution~~ that ~~which is included previously offered only under~~graduate programs or certificates.

~~(iv)~~ A change in the ~~institution's current accreditation or preaccreditation~~ way an institution measures student progress, such as whether the institution measures progress in clock hours or credit-hours, semesters, trimesters, or quarters; uses term or non-term programs; or uses time-based or non-time based methods;

(v) The addition of subscription programs.

~~(v) A change from clock hours to credit hours.~~ (vi) The addition of locations, for which the agency must verify that:

(A) Academic control is clearly identified by the institution;

(B) The agency conducts regular evaluation of the locations;

(C) The institution has adequate faculty, facilities, resources, and academic and student support systems in place;

(D) The institution is financially stable; and

(E) The institution has engaged in long-range planning for expansion.

~~(vi) A~~ (v) A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded, for successful completion of ~~a~~the program.

~~(vii) If the agency's accreditation~~ (vi) The acquisition of any other institution enables the or any program or location of another institution to seek eligibility to participate in title IV, HEA programs,

(vii) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

(viii) The addition of the institution's first additional location or branch campus, or the entering addition of any additional location or branch campus in the event that the institution has been placed on warning, probation, show cause, or other limitation by the agency, or is subject to limitation by the Department.

(ix) Entering into a contract ~~written arrangement under 34 CFR 668.5~~ under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

~~(viii)(A) If the agency's accreditation~~ (b) Among institutions in that have not been placed on a show-cause directive or been subject to an adverse action over the prior three academic years, the agency requires its institutions to report within 30 days of making the change, but does not require agency pre-approval of the following non-substantive changes:

(1) A change in an existing program's method of delivery;

(2) The establishment of additional locations beyond the first such location, which requires the institution enables it to seek eligibility to also provide to the agency a budget for the main campus and the new additional location to demonstrate that sufficient resources are in place to operate the additional location consistent with the institution's mission;

(3) Curricular changes within existing programs that constitute with this change, or in aggregate with other changes made since the last accreditor review, a change of 25 percent or more of the program;

(4) The development of customized pathways or abbreviated or modified courses or programs to –

(i) Accommodate and recognize a students' existing knowledge, such as knowledge attained through employment or military service; and

(ii) Close competency gaps between demonstrated prior knowledge or competency and the full requirements of a particular course or program; and

(5) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs, the establishment of an additional location at which the institution offers at least more than 25 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has— of one or more of the accredited institution's educational programs.

~~(1) Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;~~

~~(2) At least three additional locations that the agency has approved; and~~

~~(3) Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes—~~

~~(i) Clearly identified academic control;~~

~~(ii) Regular evaluation of the locations;~~

~~(iii) Adequate faculty, facilities, resources, and academic and student support systems;~~

~~(iv) Financial stability; and~~

~~(v) Long-range planning for expansion.~~

~~(B) The agency's procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.~~

~~(C) Each agency determination or redetermination to preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.~~

~~(D) The agency may not preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.~~

~~(E)(c)~~ The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under ~~paragraph~~paragraphs (a)(2)(vii) and (a)(2)(viii)(A) of this section.

~~(ix) The acquisition of any other institution or any program or location of another institution.~~

~~(x) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.~~

~~(3) The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.~~

~~(b)d~~ The agency may determine the procedures it uses to grant prior approval of the substantive change. ~~However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but need not, require a visit by the agency.~~

~~(c) Except as provided in paragraph (a)(2)(viii)(A) of this section, if (e) If~~ the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location where at least 50 percent of an educational program is offered must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include ~~—~~ —

(1) A visit, within six months, to each additional location the institution establishes, if the institution ~~—~~ —

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that ~~it has a proven record of effective educational oversight of the~~ additional ~~locations~~location is meeting all of the requisite agency standards that apply to that additional location; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) ~~An effective~~A mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) ~~An effective~~A mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(~~df~~) The purpose of the visits described in paragraph (~~ee~~) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009]

§602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public written materials describing—

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation~~or~~, preaccreditation; or substantive changes and the sequencing of those steps relative to any applications or decisions required by or from States or the Department relative to the agency's preaccreditation, accreditation or substantive change decisions;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) ~~The~~A list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of—

(i) The members of the agency's policy and decision-making bodies; and

(ii) The agency's principal administrative staff.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, ~~address,~~ and ~~telephone number of~~ contact information for the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about —

(1) The accreditation or preaccreditation status of the institution or program;

(2) The contents of reports of on-site reviews; and

(3) The agency's accrediting or preaccrediting actions with respect to the institution or program.

(f) The agency may establish any additional operating procedures it deems appropriate. At the agency's discretion, these may include unannounced inspections.

(Approved by the Office of Management and Budget under control number 1845-0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009]

§602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) Branch campus ~~and additional location.~~ (1) The agency must require the institution to notify the agency if it plans to establish a branch campus or additional location and to submit a business plan for the branch campus that describes—

(i) The educational program to be offered at the branch campus or additional location;

(ii) The projected revenues and expenditures and cash flow at the branch campus; ~~and~~ or additional location.

~~(iii) The operation, management, and physical resources at the branch campus.~~

~~(2) The agency may extend accreditation to the branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards.~~

~~(b)~~

(b) The agency must undertake a site visit to ~~thea new~~ branch campus or additional location or following a change of ownership as soon as practicable, but no later than six months after the establishment of that campus ~~or the change of ownership.~~

~~(b) Change in ownership. The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.~~

(c) Teach-out plans and agreements.

(1) The agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required.

(ii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program, including if the location is being moved to a new location.

(iv) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that—the teach-out institution -

(i) ~~The teach-out institution has~~Has the necessary experience, resources, and support services to—

~~(A) Provide provide~~ an educational program that is of acceptable quality and reasonably similar in content, ~~structure, delivery modality~~ and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations, ~~however, while an online option may be made available to students enrolled in a closing ground-based program, such an option is not sufficient unless ground-based options are also provided;~~

~~(ii) Is able to remain stable, carry out its mission, and meet all obligations to existing students;~~

~~(B) Remain stable, carry out its mission, and meet all obligations to existing students; and~~

~~(ii) The teach-out institution demonstrates (iii) Has not been subject to a negative action over the prior two years; and~~

~~(iv) Demonstrates~~ that it can provide students access to the program and services without requiring them to move or travel substantial distances ~~(by mileage or travel time)~~ and that it will provide students with information about additional charges, if any.

(d) Closed institution. If an institution the agency accredits or preaccredits closes without a teach-out plan or agreement, the agency must work with the Department and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

(e) Transfer of credit policies. The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that ~~— are publicly disclosed in accordance with 34 CFR 668.43(a)(11).~~

(1) Are publicly disclosed in accordance with §668.43(a)(11); and

(2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

~~(f) Credit hour policies. The accrediting agency, as part of its review of an institution for initial accreditation or preaccreditation or renewal of accreditation, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.~~

~~(1) The accrediting agency meets this requirement if—~~

~~(i) It reviews the institution's—~~

~~(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and~~

~~(B) The application of the institution's policies and procedures to its programs and coursework; and~~

~~(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.~~

~~(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, an accrediting agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (f)(1)(i)(B) of this section.~~

~~(3) The accrediting agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (f)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.~~

~~(4) If, following the institutional review process under this paragraph (f), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.~~

(f) In its accrediting practice, the agency must -

(1) Adopt and apply the definitions of "branch campus" and "additional location" in 34 CFR 600.2; and

(2) Conform its designations of an institution's branches and additional locations with the Secretary's if it learns its designations diverge on the Secretary's request; and

(3) Ensure that it does not accredit or preaccredit an institution comprising fewer than all of the programs, branches and locations of an institution as certified for Title IV participation by the Secretary, except with notice to and permission from the Secretary.

_(Approved by the Office of Management and Budget under control number 1845-0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009; 75 FR 66947, Oct. 29, 2010]

§602.25 Due process.

The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.

(b) Uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.

(c) Provides written specification of any deficiencies identified at the institution or program examined.

(d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

(e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(f) Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final.

(1) The appeal must take place at a hearing before an appeals panel that—

(i) May not include current members of the agency's decision-making body that took the initial adverse action;

(ii) Is subject to a conflict of interest policy;

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, remand, or reverse adverse actions of the original decision-making body; and

(iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. ~~In; however, in the event that~~ a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must ~~identify specific issues that explain the basis for a decision that differs from that of~~ the original decision-making body ~~must address. In a decision that is implemented by or remanded to and~~ the original decision-making body, ~~that body in a remand~~ must act in a manner consistent with the appeals panel's decisions or instructions.

(2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation that the agency permits the institution or program to make on its own during the appeal.

(g) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.

~~(h)~~ (1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

(i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.

(ii) The financial information is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are determined by the agency.

(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.

(2) An institution or program may seek the review of new financial information described in paragraph (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

(Authority: 20 U.S.C. 1099b)

[74 FR 55429, Oct. 27, 2009]

§602.26 Notification of accrediting decisions.

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures—

...

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section within ~~24 hours~~one business day of its notice to the institution or program;

(d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment.

(e) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program -

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within ~~30~~business days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within ~~3 business~~0 days of the date on which accreditation or preaccreditation lapses.

(Approved by the Office of Management and Budget under control number 1845-0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55429, Oct. 27, 2009]

§602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) A copy ~~of any annual report it prepares;~~

~~(2) A copy,~~ updated annually, of its directory list of accredited and preaccredited institutions and programs;

~~(3)~~ (2) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(43) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

- (i) Scope of recognition, except as provided in paragraph (a)(54) of this section; or
- (ii) Compliance with the criteria for recognition;

(54) Notification that the agency has expanded its scope of recognition to include distance education or correspondence ~~education~~ courses as provided in section 496(a)(4)(B)(i)(I) of the HEA. Such an expansion of scope is effective on the date the Department receives the notification;

(65) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(76) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(65) or (a)(76) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. Upon a specific request by the Department citing a compelling need for confidentiality, including that the matter relates to a criminal investigation, the agency must consider that contact confidential.

(Authority: 20 U.S.C. 1099b)

[74 FR 55430, Oct. 27, 2009]

§602.28 Regard for decisions of States and other accrediting agencies.

...

(Approved by the Office of Management and Budget under control number 1845-0003)

(Authority: 20 U.S.C. 1099b)

Subpart C—The Recognition Process

SOURCE: 74 FR 55430, Oct. 27, 2009, unless otherwise noted.

Application and Review by Department Staff

§602.30 ~~Activities covered by recognition procedures.~~ [Reserved]

~~Recognition proceedings are administrative actions taken on any of the following matters:~~

~~(a) Applications for initial or continued recognition submitted under §602.31(a).~~

~~(b) Applications for an expansion of scope submitted under §602.31(b).~~

~~(c) Compliance reports submitted under §602.31(c).~~

~~(d) Reviews of agencies that have expanded their scope of recognition by notice, following receipt by the Department of information of an increase in headcount enrollment described in §602.19(e).~~

~~(e) Staff analyses identifying areas of non-compliance based on a review conducted under §602.33.~~

~~(Authority: 20 U.S.C. 1099b)~~

§602.31 Agency submissions to the Department.

(a) *Applications for recognition or renewal of recognition.* An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision. The application must consist of—

(1) A statement of the agency's requested scope of recognition; and

(2) ~~Evidence, including documentation,~~ Documentation as specified in writing in the FEDERAL REGISTER, that the agency complies with the criteria for recognition listed in subpart B of this part ~~and effectively applies those criteria; and.~~

(3) Evidence, including documentation, of how an agency that includes or seeks to include distance education or correspondence education in its scope of recognition applies its standards in evaluating programs and institutions it accredits that offer distance education or correspondence education.

(b) *Applications for expansions of scope.* An agency seeking an expansion of scope by application must submit a written application to the Secretary. The application must—

(1) Specify the scope requested; and

~~(2) Include documentation of experience in accordance with §602.12(b); and~~

~~(3)(2)~~ Provide copies of any relevant standards, policies, or procedures developed and applied by the agency and documentation of the application of these standards, policies, or procedures.

(c) *Compliance or monitoring reports.* If an agency is required to submit a compliance or monitoring report, it must do so within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.

(d) *Review following an increase in headcount enrollment.* If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence ~~education~~ courses in accordance with §602.27(a)(5) reports an increase in headcount enrollment in accordance with §602.19(e) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency's accredited institutions, the agency must, within 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—

(1) How the agency evaluates the capacity of the institutions or programs it accredits to accommodate significant growth in enrollment and to maintain educational quality;

(2) The specific circumstances regarding the growth at the institution(s) or programs(s) that triggered the review and the results of any evaluation conducted by the agency; and

(3) Any other information that the agency deems appropriate to demonstrate the effective application of the criteria for recognition ~~or that the Department may require.~~

(e) *Consent to sharing of information.* By submitting an application for recognition, the agency authorizes Department staff throughout the application process and during any period of recognition—

(1) To observe its site visits to one or more of the institutions or programs it accredits or preaccredits, on an announced or unannounced basis;

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;

(3) To obtain copies of all documents the staff deems necessary to complete its review of the agency; and

(4) To gain access to agency records, personnel, and facilities.

(f) *Public availability of agency records obtained by the Department.* (1) The Secretary's processing and decision making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C. 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies ~~may~~must, before submission to the Department —

(i) Redact the names and any other personally identifiable information that would identify about individual students and any other individuals or institutions that is who are not essential to the Department's review ~~agents of the agency or of an institution the agency is reviewing;~~

~~(ii) Make a good faith effort to designate~~ (ii) Redact the personal addresses, personal telephone numbers, personal email addresses, Social Security numbers, and any other personally identifiable information regarding individuals who are acting as agents of the agency or of an institution under review;

(iii) Designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded; and

~~(iii) Identify~~ (iv) Ensure documents submitted are only those required for Department review or as requested by Department officials.

(2) The agency may, but is not required to, redact the identities of institutions that it believes are not essential to the Department's review of the agency and may identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from public disclosure; ~~and.~~

~~(iv) Ensure documents submitted are only those required for Department review or as requested by Department officials.~~

~~(2)(3)~~ The Secretary processes FOIA requests in accordance with 34 CFR part 5 and makes all documents provided to the Advisory Committee available to the public.

(4) Upon request by Department staff, the agency must disclose to Department staff any specific material the agency has redacted that Department staff believes is needed to conduct the staff review. Department staff will make any arrangements needed to ensure that the materials are not made public if prohibited by law.

(g) Length of submissions. The Secretary may publish in the FEDERAL REGISTER reasonable, uniform limits on the length of submissions described in this section.

(Authority: 20 U.S.C. 1099b)

§602.32 Procedures for Department review of applications for recognition or for change in scope, ~~compliance reports,~~ and increases in enrollment.

(a) ~~After receipt~~An agency preparing for continuing recognition will –

(1) Submit, 24 months prior to the date on which the current recognition expires -

(i) A list of all institutions or programs that the agency plans to consider for an agency's application for award of initial recognition or continued recognition, or change in scope, over the next year, as well as any institutions or an agency's programs currently subject to compliance report, review or reporting requirements. An agency that does not anticipate a review of any institution for an initial award of recognition or continued recognition in the 24 months prior to the date of recognition expiration may submit a list of institutions or programs it has reviewed for an agency's report submitted under §602.31(d), initial award of accreditation or renewal of accreditation at any time since the prior award of recognition or leading up to the application for an initial award of recognition; and

(ii) The agency's application for initial or continuing recognition, as defined in 602.31(a), to include a copy of the agency's policies and procedures manual, and accreditation standards and criteria.

(2) Department staff publishes a notice of the agency's submission of an application or report in the FEDERAL REGISTER inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(b) The Department staff analyzes the agency's application for initial or renewal of recognition, ~~compliance report, or report submitted under §602.31(d)~~including the documentation identified in writing in the FEDERAL REGISTER, to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and in the agency's effectiveness consistency in applying the criteria. ~~The analysis of an application for recognition and, as appropriate, of a compliance report, or of a report required under §602.31(d), includes—~~

(1) Observations from site visit(s), on an announced or unannounced basis, to the agency or to a location where agency conducts activities such as training, review and evaluation panel meetings, ~~and~~or decision meetings ~~take place and~~;

(2) Observations from site visit(s), on an announced or unannounced basis, to one or more of the institutions or programs ~~at the agency~~ accredits or preaccredits;

~~(2)~~(3) A file review at the agency of documents identified in writing in the FEDERAL REGISTER, at which time the Secretary may retain copies of documents needed for record retention purposes;

(4) Review of the public comments and other third-party information the Department staff receives by the established deadline, ~~and~~ the agency's responses to the third-party comments, as appropriate, ~~as well as~~and any other information Department staff ~~assembles~~obtains for purposes of evaluating the agency under this part; ~~and~~

~~(3)~~(5) Review of complaints or legal actions involving the agency-

~~(c) The Department staff analyzes; however, although the materials submitted in support of an application for expansion of scope to ensure that complaints or legal actions brought by a third party against an accredited institution or program may be considered, they are not determinative of compliance unless the agency has complaint or legal action results in a final judgment on the merits by a court or administrative agency the requisite experience, policies that comply with subpart B of this part, capacity, and performance record to support the request.;~~

(c) Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, to the extent possible, and policies that comply with subpart B of this part, capacity and performance record to support the request;~~and~~

(d) Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards, but must make any and all such materials available to the agency for review and comment.

(e) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§602.10 through 602.13~~15~~, the staff—

(1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and

(2) ~~Recommends~~Requires that the agency withdraw its application and instructs the agency that it may reapply when the agency ~~can~~is able to demonstrate compliance.

(f) Except with respect to an application that has been returned ~~or~~and is withdrawn under paragraph (~~ede~~) of this section, when Department staff completes its evaluation of the agency, the staff—

(1) Prepares a written draft analysis of the ~~agency~~agency's application;

(2) Sends the draft analysis including any identified areas of potential non-compliance and ~~a proposed recognition recommendation, and all supporting documentation, including~~ all third-party

comments and complaints, if applicable, and any other materials the Department received by the established deadline or is including in its review, to the agency;

(3) Invites the agency to provide a written response to the draft analysis and ~~proposed recognition recommendation and~~ third-party comments or other material included in the review, specifying a deadline that provides at least ~~30~~180 days for the agency's response;

(4) Reviews the response to the draft analysis the agency submits, if any, and prepares the written final analysis. ~~The final analysis includes a recognition recommendation to the senior Department official, as the Department staff deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, require the submission of a compliance report and continue recognition pending a final decision on compliance, approve or deny a request for expansion of scope, or revise or affirm the scope of the agency; and —~~

(i) Indicating that the agency is in full compliance, substantial compliance, or non-compliance with each recognition standard; and

(ii) Recommending that the senior Department official approve, approve with compliance reporting requirements, approve with monitoring or other reporting requirements, deny, limit, suspend, or terminate recognition; and

(5) Provides to the agency, no later than ~~seven~~30 days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under §602.34(c).

~~(g6)~~ The agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs ~~(fe)~~(3) and ~~(fe)~~(5) of this section. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph ~~(fe)~~(3) or ~~(fe)~~(5) of this section is due to the failure of the agency to submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, by the deadline established by the Secretary, the agency forfeits its right to request a deferral of its application.

(f) An agency seeking initial recognition must follow the policies and procedures outlined in section (a), but in addition must also submit—

(1) Letters of support for the agency from at least three accredited programs or institutions, three educators, and if appropriate, three employers or practitioners, explaining the role for such an agency and the reasons for their support; and

(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency, or intends to seek dual accreditation which will allow it in the future to designate the agency as its Federal link.

(g)(1) An agency seeking an expansion of scope request, either as part of the regular renewal of recognition process or during a period of recognition, must submit an application to the Secretary, separately or as part of the policies and procedures outlined in section (a), that -

(i) States the reason for the expansion of scope request;

(ii) Includes letters from at least three institutions or programs that would seek accreditation under one or more of the elements of the expansion of scope;

(iii) Includes any new policies, procedures, or standards necessary to carry out the expansion of scope if approved;

(iv) Explains how the agency must expand capacity in order to support the expansion of scope, if applicable, and if necessary, how it will do so, and how its budget will support that expansion of capacity; and

(v)(1) If the initial recognition or expansion of scope includes graduate programs, the application must provide letters of support from a sample of employers who hire employees in that field or occupation supporting the need for the higher level credential and committing to increasing salaries and wages commensurate with the added cost of education at the higher credential level. The agency must also submit a study that provides clear and convincing evidence that any shortcomings of current education and training programs at the current credential level cannot be resolved through changes in the curriculum at the current credential level.

(2) In accrediting graduate programs among member institutions, the accreditor must have policies in place to provide evidence that employers are demanding graduate credentials of employees in that field, that graduate degrees are necessary, and that salaries paid to graduates are commensurate with the added cost of obtaining a higher level credential.

(3) Satisfying the interests of trade associations that represent individuals in those fields, or state or occupational licensing boards, will not meet the requirements of providing documentation to justify the increased credential level-

(4) Upon receiving an application for expansion of scope, outside of the regular renewal of recognition process, Department staff will -

(i) Analyze the application and provide a written analysis to the agency, to include any areas of non-compliance with the Department's standards, and provide 90 days for the agency to provide supplemental information addressing those areas;

(ii) Provide a written recommendation, based on the review of the application and any responses provided by the agency to the written analysis, to the senior Department official (SDO) regarding the approval or denial of the application;

(iii) Within 90 days of receiving a recommendation from Department staff, the SDO will issue a decision regarding the expansion of scope application, including approval, approval with conditions, deferral of decision, or denial;

(iv) The agency will have 30 days to appeal that decision to the Secretary;

(5) The agency must notify the Department within 30 days if any institution it accredits that offers distance education or correspondence courses increases its enrollment by 50 percent or more during any one institutional fiscal year. In such a case, the Secretary will require a review of the agency

at the next available meeting of NACIQI, based on the documentation provided as required in 602.19(e) and follow the process outline in 602.32.

(Authority: 20 U.S.C. 1099b)

§602.33 Procedures for review of agencies during the period of recognition.

(a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—

(1) ~~At~~Based on the request submission of a monitoring report as directed by a decision by the Advisory Committee; senior Department official or Secretary; or (2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to the recognition criteria.

(b) The review may include, but need not be limited to, any of the activities described in §602.32(b) and ~~(dc)~~.

(c) If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, it—

(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern. ~~The draft analysis reflects the results of the review, and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;~~

(2) Sends the draft analysis including any identified areas of non-compliance, ~~and a proposed recognition recommendation,~~ and all supporting documentation to the agency; and

(3) Invites the agency to provide a written response to the draft analysis ~~and proposed recognition recommendation, specifying a deadline that provides at least 30 days for the agency's response within 90 days, and provides the agency an opportunity to put a monitoring report in place to remedy any deficiencies.~~

~~(d) If, after review of~~(4) Thoroughly reviews the agency's response ~~to the draft analysis, Department staff provided by the agency, including any monitoring report submitted, and either concludes that the agency has demonstrated the review, continues monitoring of the agency's areas of deficiencies, or makes a formal recommendation to the agency and the Secretary to require a formal compliance report, continue with the criteria for a monitoring report, limit, suspend, or terminate recognition, the staff notifies the agency in writing of.~~

~~(5) Notifies the results of agency, in the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.~~

~~(e) If, after review of the agency's report that the agency's response to the draft analysis, Department staff concludes that the agency has and monitoring report does not demonstrated compliance, satisfy the staff—~~

~~(1) Notifies the agency Secretary, that~~ that the draft analysis will be finalized for presentation to the Advisory Committee;

~~(26)~~ Publishes a notice in the FEDERAL REGISTER ~~including, if practicable, with~~ an invitation ~~to for~~ the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

~~(37)~~ Provides the agency with a copy of all public comments received and, ~~if practicable,~~ invites a written response from the agency;

~~(48)~~ Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; ~~and~~

~~(59)~~ Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under §602.34(c-); ~~and~~

~~(10)~~ The Advisory Committee reviews the matter in accordance with §602.34.

(Authority: 20 U.S.C. 1099b)

Review by the National Advisory Committee on Institutional Quality and Integrity

§602.34 Advisory Committee meetings.

(a) Department staff submits a proposed schedule to the Chairperson of the Advisory Committee based on anticipated completion of staff analyses.

(b) The Chairperson of the Advisory Committee establishes an agenda for the next meeting and, in accordance with the Federal Advisory Committee Act, presents it to the Designated Federal Official for approval.

(c) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with—

(1) The agency's application for recognition ~~or~~ for expansion of scope when Advisory Committee review is required, the agency's compliance report, ~~or the agency's report submitted under §602.31(d),~~ and supporting documentation;

(2) The final Department staff analysis of the agency developed in accordance with §602.32 or §602.33, and any supporting documentation;

~~(3) At the request of the agency, the~~ (3) The agency's response to the draft analysis;

(4) Any written third-party comments the Department received about the agency on or before the established deadline;

(5) Any agency response to third-party comments; and

(6) Any other information Department staff relied upon in developing its analysis.

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the FEDERAL REGISTER inviting interested parties, ~~including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition,~~ to make oral presentations before the Advisory Committee.

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section in a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations during the meeting. A transcript is made of all Advisory Committee meetings.

(f) The written motion adopted by the Advisory Committee regarding each agency's recognition will be made available during the Advisory Committee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to, a recommendation to –

(1) Approve, approve with a required compliance report, approve with a monitoring report, deny, limit, suspend, or terminate recognition;

(2) Grant or deny a request for expansion of scope;

(3) Revise or affirm the scope of the agency;

(4) Continue the agency's recognition and require the agency to submit a compliance report based on the time it would reasonably take to come into compliance, to be reviewed by staff and the Advisory Committee;

(5) In the case of non-compliance, or substantial compliance in any area, approve the agency's request for recognition and recommend a report with a set deadline to be reviewed by staff to ensure that corrective action is taken and full compliance is achieved (or for action by staff under 602.33 if it is not); or

(6) Further recommend that the agency be given up to 12 months from the date of the senior Department official's decision to come into compliance with the criteria for recognition by submitting a compliance report to the Department. (h) After each meeting of the Advisory Committee at which a

review of agencies occurs, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, to grant or deny a request for expansion of scope, to revise or affirm the scope of the agency, or to require the agency to submit a compliance report and to continue recognition pending a final decision on compliance. ~~(Authority: 20 U.S.C. 1099b)~~

(Authority: 20 U.S.C. 1099b)

§602.35 Responding to the Advisory Committee's recommendation.

(a) Within ten business days following the Advisory Committee meeting, the agency and Department staff may submit written comments to the senior Department official on the Advisory Committee's recommendation. The agency must simultaneously submit a copy of its written comments, if any, to Department staff. Department staff must simultaneously submit a copy of its written comments, if any, to the agency.

(b) Comments must be limited to—

(1) Any Advisory Committee recommendation that the agency or Department staff believes is not supported by the record;

(2) Any incomplete Advisory Committee recommendation based on the agency's application; and

(3) The inclusion of any recommendation or draft proposed decision for the senior Department official's consideration.

(c)(1) Neither the Department staff nor the agency may submit additional ~~documentary evidence~~ with documentation with its comments unless the Advisory Committee's recognition recommendation proposes finding the agency noncompliant with, or ineffective in its application of, a criterion or criteria for recognition not identified in the final Department staff analysis provided to the Advisory Committee.

(2) Within ten business days of receipt by the Department staff of an agency's comments or new evidence, if applicable, or of receipt by the agency of the Department staff's comments, Department staff, the agency, or both, as applicable, may submit a response to the senior Department official. Simultaneously with submission, the agency must provide a copy of any response to the Department staff. Simultaneously with submission, Department staff must provide a copy of any response to the agency. No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

(Authority: 20 U.S.C. 1099b)

Review and Decision by the Senior Department Official

§602.36 Senior Department official's decision.

(a) The senior Department official makes a decision regarding recognition of an agency based on the record compiled under §§602.32, 602.33, 602.34, and 602.35 including, as applicable, the following:

(1) The materials provided to the Advisory Committee under §602.34(c).

(2) The transcript of the Advisory Committee meeting.

(3) The recommendation of the Advisory Committee.

(4) Written comments and responses submitted under §602.35.

(5) New ~~evidence~~ documentation submitted in accordance with §602.35(c)(1).

(6) A communication from the Secretary referring an issue to the senior Department official's consideration under §602.37(e).

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed Advisory Committee members than needed to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency's compliance with subpart B of this part that require prompt attention, the senior Department official may make a decision in a recognition proceeding based on the record compiled under §602.32 or §602.33 after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official absent a recommendation from the Advisory Committee may be appealed to the Secretary as provided in §602.37.

(c) Following consideration of an agency's recognition under this section, the senior Department official issues a recognition decision.

(d) Except with respect to decisions made under paragraph (f) or (g) of this section and matters referred to the senior Department official under §602.37(e) or (f), the senior Department official notifies the agency in writing of the senior Department official's decision regarding the agency's recognition within 90 days of the Advisory Committee meeting or conclusion of the review under paragraph (b) of this section.

(e) The senior Department official's decision may include, but is not limited to, approving, approving with a required compliance report, approving with a monitoring report, denying, limiting, suspending, or terminating recognition, granting or denying an application for an expansion of scope, revising or affirming the scope of the agency, or continuing recognition pending submission and review of a compliance report under §§602.32 and 602.34 and review of the report by the senior Department official under this section.

(1)(i) The senior Department official approves recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency effectively applies those criteria.

(ii) If the senior Department official approves recognition, the recognition decision defines the scope of recognition and the recognition period. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

(iii) If the scope ~~or period~~ of recognition is less than that requested by the agency, the senior Department official explains the reasons for continuing or approving a lesser scope ~~or recognition period~~.

(2)(i) Except as provided in paragraph (e)(3) of this section, if the agency either fails to comply with the criteria for recognition listed in subpart B of this part, or to apply those criteria effectively, the senior Department official denies, limits, suspends, or terminates recognition.

(ii) If the senior Department official denies, limits, suspends, or terminates recognition, the senior Department official specifies the reasons for this decision, including all criteria the agency fails to meet and all criteria the agency has failed to apply effectively.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, if a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria, but the senior Department official concludes that the agency ~~will demonstrate or achieve~~ is otherwise substantially compliant, and can reasonably come into compliance with the criteria for recognition in an appropriate

timeframe and effective application of those criteria within 12 months from the date of the senior Department official's decision or less, the senior ~~Department~~ official may continue the agency's recognition, ~~pending submission by or approve a renewal of recognition and require that~~ the agency ~~of submit~~ a compliance report, that is subject to staff and Advisory Committee review of the report under §§602.32 and 602.34, and review of the report by the senior Department official under this section. In such a case, the senior Department official specifies the criteria the compliance report must address, and a time period, not longer than 12 months from the date of the senior Department official's decision, during which the agency must achieve compliance and effectively apply the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official's decision.

(ii) If the record includes a compliance report, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official's decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

(f) If the senior Department official determines that the agency is substantially compliant, or is fully compliant but has concerns about the agency maintaining compliance, the senior Department official may approve the agency's recognition or continued recognition and require periodic monitoring reports that are to be reviewed and approved by Department staff;

(g) If the senior Department official determines, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with one or more standards of recognition, or if the agency does not hold institutions accountable for complying with one or more of the agency's standards or criteria for accreditation that were a criterion or criteria of recognition not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides—

(1) The agency with an opportunity to submit a written response and ~~documentary~~ evidencedocumentation addressing the finding; and

(2) The staff with an opportunity to present its analysis in writing.

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior Department official's attention while a decision regarding the agency's recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under §602.32 or §602.33, as appropriate, and consideration by the Advisory Committee under §602.34; or

(2)(i) Provides the information to the agency and Department staff;

(ii) Permits the agency to respond to the senior Department official and the Department staff in writing, and to include additional evidenced documentation relevant to the issue, and specifies a deadline;

(iii) Provides Department staff with an opportunity to respond in writing to the agency's submission under paragraph (g)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on the record described in paragraph (a) of this section, as supplemented by the information provided under this paragraph.

(h) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with §602.32(a) or §602.33(e)(2).

(i) If the senior Department official does not reach a final decision to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the senior Department official automatically extends the recognition period until a final decision is reached.

(j) Unless appealed in accordance with §602.37, the senior Department official's decision is the final decision of the Secretary.

(Authority: 20 U.S.C. 1099b)

APPEAL RIGHTS AND PROCEDURES

§602.37 Appealing the senior Department official's decision to the Secretary.

(a) The agency may appeal the senior Department official's decision to the Secretary. Such appeal stays the decision of the senior Department official until final disposition of the appeal. If an agency wishes to appeal, the agency must—

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than ~~ten~~10 business days after receipt of the decision;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision; and

(3) Provide the senior Department official with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The senior Department official may file a written response to the appeal. To do so, the senior Department official must—

(1) Submit a response to the Secretary no later than 30 days after receipt of a copy of the appeal; and

(2) Provide the agency with a copy of the senior Department official's response at the same time it is submitted to the Secretary.

~~(c)~~ Once the agency's appeal and the senior Department official's response, if any, have been provided, no additional written comments may be submitted by either party.

~~(d)~~ Neither the agency nor the senior Department official may include in its submission any new ~~evidencedocumentation~~ it did not submit previously in the proceeding.

~~(de)~~ On appeal, the Secretary makes a recognition decision, as described in §602.36(e). If the decision requires a compliance report, the report is due within 30 days after the end of the period specified in the Secretary's decision. The Secretary renders a final decision after taking into account the senior Department official's decision, the agency's written submissions on appeal, the senior Department official's response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's recognition.

~~(ef)~~ The Secretary may determine, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the issue under §602.36(f). After the senior Department official makes a decision, the agency may, if desired, appeal that decision to the Secretary.

~~(fg)~~ If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under §602.32 or §602.33, as appropriate, and review by the Advisory Committee under §602.34; and consideration by the senior Department official under §602.36; or

(2)(i) Provides the information to the agency and the senior Department official;

(ii) Permits the agency to respond to the Secretary and the senior Department official in writing, and to include additional ~~evidencedocumentation~~ relevant to the issue, and specifies a deadline;

(iii) Provides the senior Department official with an opportunity to respond in writing to the agency's submission under paragraph ~~(fg)~~(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on all the materials described in paragraphs ~~(de)~~ and ~~(fg)~~ of this section.

~~(gh)~~ No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph ~~(fg)~~ of this section. Before invoking paragraph ~~(fg)~~ of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with §602.32(a) or §602.33(e)(2).

~~(hi)~~ If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

(Authority: 20 U.S.C. 1099b)

§602.38 Contesting the Secretary's final decision to deny, limit, suspend, or terminate an agency's recognition.

...

(Authority: 20 U.S.C. 1099b)

Subpart D—Department Responsibilities

SOURCE: 64 FR 56617, Oct. 20, 1999. Redesignated at 74 FR 55435, Oct. 27, 2009, unless otherwise noted.

§602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

...

(Authority: 20 U.S.C. 1099b)

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

§603.24 Criteria for State agencies.

The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

...

~~(c) Credit-hour policies. The State agency, as part of its review of an institution for initial approval or renewal of approval, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.~~

~~(1) The State agency meets this requirement if—~~

~~(i) It reviews the institution's—~~

~~(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and~~

~~(B) The application of the institution's policies and procedures to its programs and coursework; and~~

~~(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.~~

~~(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, a State agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (c)(1)(i)(B) of this section.~~

~~(3) The State agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (c)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.~~

~~(4) If, following the institutional review process under this paragraph (c), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.~~

~~(d)~~ *Capacity to foster ethical practices.* The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program.

(Authority: 20 U.S.C. 1094(c)(4))

[39 FR 30042, Aug. 20, 1974, as amended at 75 FR 66947, Oct. 29, 2010]

Summary of Part 654 - Robert C. Byrd Honors Scholarship Program

Overview

The Robert C. Byrd Honors Scholarship Program is a federally funded and regulated program administered by the States. It is designed to recognize exceptionally able high school seniors who show promise of continued excellence in postsecondary education. Through this program, the Department awards funds to state education agencies, which in turn make scholarship awards to eligible applicants. Students receive scholarships for college expenses.

Beginning with the 2011 Continuing Appropriations Act, which provided funding for the 2012 fiscal year, Congress has not provided funding for this program and there is no indication that funding will be restored in the future. The Department proposes to rescind and reserve the regulations for this program in 34 CFR Part 654.

Summary of Proposed Changes

Part 654-ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

- Delete all regulations (Part §564.1-654.60) pertaining to the Robert C. Byrd Honors Scholarship Program and reserve Part 654.

PART 654 ~~[Reserved]~~—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

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Subpart A—General

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~~§654.1 What is the Robert C. Byrd Honors Scholarship Program?~~

~~Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.~~

~~(Authority: 20 U.S.C. 1070d-31, 1070d-33)~~

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~~§654.2 Who is eligible for an award?~~

~~(a) States are eligible for grants under this program.~~

~~(b) Students who meet the eligibility criteria in §§654.40 and 654.51 are eligible for scholarships under this program.~~

~~(Authority: 20 U.S.C. 1070d-33, 1070d-36)~~

-

~~§654.3 What kind of activity may be assisted?~~

~~A State may use its funds under this program, including funds collected from scholars under §654.60(a)(3), only to make scholarship payments to scholars.~~

~~(Authority: 20 U.S.C. 1070d-35, 1070d-38)~~

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~~§654.4 What regulations apply?~~

~~The following regulations apply to this program:~~

~~(a) The Education Department General Administrative Regulations (EDGAR) as follows:~~

~~(1) 34 CFR 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).~~

~~(2) 34 CFR part 76 (State Administered Programs).~~

~~(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).~~

~~(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).~~

~~(5) [Reserved]~~

~~(6) 34 CFR part 82 (New Restrictions on Lobbying).~~

~~(7) [Reserved]~~

~~(8) 34 CFR part 86 (Drug-Free Schools and Campuses).~~

~~(b) The regulations in this part 654.~~

~~(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and~~

~~(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.~~

~~(Authority: 20 U.S.C. 1070d-31 et seq.)~~

~~[58 FR 42669, Aug. 11, 1993, as amended at 79 FR 76103, Dec. 19, 2014]~~

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~~§654.5 What definitions apply?~~

~~(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:~~

EDGAR

Fiscal year

Private

Public

Secretary

State

State educational agency

~~(b) Other definitions.~~ The following definitions also apply to this part:

~~Award year~~ means the period of time from July 1 of one year through June 30 of the following year.

~~Cost of attendance~~ has the meaning given that term in section 472 of the HEA.

~~Full-time student~~ means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

~~HEA~~ means the Higher Education Act of 1965, as amended.

~~High school graduate~~ means an individual who has —

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

~~Institution of higher education~~ means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

~~Participating State~~ means a State that has submitted a participation agreement that has been approved by the Secretary.

~~Scholar~~ means an individual who is selected as a Byrd Scholar.

~~Scholarship~~ means an award made to a scholar under this part.

~~Secondary school year~~ means the period of time during which a secondary school is in session, as determined by State law.

~~Year of study~~ means the period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

~~(Authority: 20 U.S.C. 1070d-31 et seq., 20 U.S.C. 1088)~~

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~~Subpart B—How Does a State Apply for a Grant?~~

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~~§654.10—What must a State do to apply for a grant?~~

~~(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the FEDERAL REGISTER.~~

~~(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program in subsequent years, except that any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.~~

~~(Approved by the Office of Management and Budget under control number 1840-0612)~~

~~(Authority: 20 U.S.C. 1070d-35)~~

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~~§654.11—What is the content of a participation agreement?~~

A State's participation agreement must include the following:

~~(a) A description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to—~~

~~(1) Publicize the availability of Byrd scholarships to students in the State, with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;~~

~~(2) Select eligible students;~~

~~(3) Notify scholars of their selections and scholarship awards;~~

~~(4) Monitor the continuing eligibility of scholars;~~

~~(5) Disburse scholarship funds in accordance with the requirements of §654.50; and~~

~~(6) Collect scholarship funds improperly disbursed.~~

~~(b) Assurances that the SEA will—~~

~~(1) Comply with the criteria and procedures in its approved participation agreement;~~

~~(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and~~

~~(3) Expend the payments it receives under this program only as provided in §654.3.~~

~~(Approved by the Office of Management and Budget under control number 1840-0612)~~

~~(Authority: 20 U.S.C. 1070d-35 to 1070d-38)~~

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~~Subpart C—How Does the Secretary Make a Grant to a State?~~

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~~§654.20—How does the Secretary approve a participation agreement?~~

~~The Secretary approves a participation agreement if it contains all of the information and assurances required in §654.11 and is in compliance with the requirements of this part.~~

~~(Authority: 20 U.S.C. 1070d-31 et seq.)~~

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~~§654.21—How does the Secretary determine the amount of the grant to each participating State?~~

~~(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to \$1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.~~

~~(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that—~~

~~(1) Not fewer than 10 scholarships are allotted to any participating State; and~~

~~(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.~~

~~(Authority: 20 U.S.C. 1070d-34, 1070d-37)~~

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~~Subpart D—How Does a Student Apply to an SEA for a Scholarship?~~

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~~§654.30—How does a student apply to an SEA for a scholarship?~~

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

~~{Authority: 20 U.S.C. 1070d-37}~~

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~~Subpart E—How Does an SEA Select an Eligible Student To Be a Scholar?~~

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~~§654.40—Who is an eligible student?~~

~~A student is eligible to be selected as a scholar if he or she—~~

~~(a) Is a legal resident of the State to which he or she is applying for a scholarship;~~

~~(b)(1) Is a U.S. citizen or national;~~

~~(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—~~

~~(i) Is a permanent resident of the United States; or~~

~~(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or~~

~~(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);~~

~~(c) Becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application;~~

~~(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;~~

~~(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and~~

~~(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.~~

~~(Authority: 20 U.S.C. 1070d-36, 50 U.S.C. App. 462, 20 U.S.C. 1091)~~

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~~§654.41—What are the selection criteria and procedures?~~

~~(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school administrators, school boards, teachers, counselors, and parents.~~

~~(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars—~~

~~(1) Who are eligible students under the criteria provided in §654.40;~~

~~(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;~~

~~(3) In a manner that ensures an equitable geographic distribution of awards within the State; and~~

~~(4) Without regard to—~~

~~(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;~~

~~(ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's State of legal residence;~~

~~(iii) Race, color, national origin, sex, religion, disability, or economic background; and~~

~~(iv) The scholar's educational expenses or financial need.~~

~~(Approved by the Office of Management and Budget under control number 1840-0612)~~

~~(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-37)~~

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~~Subpart F—How Does a Scholar Receive Scholarship Payments?~~

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~~§654.50—How does an SEA disburse scholarship funds?~~

~~(a) Except as provided in paragraph (b) of this section, the SEA shall disburse \$1,500 for each year of study for a maximum of four years of study to each scholar who—~~

~~(1) Is selected in accordance with the criteria established under §654.41; and~~

~~(2) Meets the requirements for continuing eligibility under §654.51.~~

~~(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.~~

~~(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.~~

~~(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.~~

~~(Authority: 20 U.S.C. 1070d-38)~~

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~~§654.51—What are the continuing eligibility criteria?~~

~~(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to—~~

~~(1) Meet the eligibility requirements in §654.40(b), (c), and (f);~~

~~(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and~~

~~(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.~~

~~(b) In order to be eligible for scholarship funds, a scholar must be enrolled full time for the first year of study. If after the first year of study, the SEA determines that unusual circumstances justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.~~

~~(Authority: 20 U.S.C. 1070d-33, 1070d-36)~~

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~~§654.52—What are the consequences of a scholar's failure to meet the eligibility criteria?~~

~~(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.~~

~~(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.~~

~~(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.~~

~~(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of §654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.~~

~~(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.~~

~~(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.~~

~~(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in §654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.~~

~~(Authority: 20 U.S.C. 1070d-35, 1070d-36 to 1070d-38)~~

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~~Subpart G—What Post-Award Conditions Must an SEA Meet?~~

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~~§654.60—What requirements must an SEA meet in the administration of this program?~~

~~(a) To receive and continue to receive payments under this part, an SEA shall—~~

~~(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;~~

~~(2) Disburse the scholarship funds in accordance with §654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;~~

~~(3) Collect any scholarship funds improperly disbursed under §654.50;~~

~~(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and~~

~~(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.~~

~~(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an SEA may retain any funds that are subsequently returned or collected for scholarship awards in the following award period.~~

~~(Approved by the Office of Management and Budget under control number 1840-0612)~~

~~(Authority: 20 U.S.C. 1070d-33, 1070d-35)~~

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Summary of Part 668—Student Assistance General Provisions

Subpart A—General

§ 668.2 General Definitions

- Modifies the definition of a “Full-time student” to prevent a subscription-based program from providing title IV aid for retaken coursework, and provides that a minimum full time workload for a subscription-based program must be commensurate with the credit hour requirements for standard and non-standard term programs or correspondence coursework.
- Defines a “Subscription-based program” to create a framework for disbursing title IV aid – a student receives an initial disbursement but is then required to complete a cumulative number of credits before receiving aid in a subsequent period. This new definition recognizes the growing use of subscription-based programs as an innovative mechanism allowing purchase of educational instruction over a “subscription period” during which time students may demonstrate mastery of competencies at an individual pace. The programs to be covered by this definition are offered within a term-based framework, requiring schools to determine students’ enrollment status on a term-by-term basis. The definition provides a formula for doing this.
- Updates the list of administrative functions of title IV programs performed by a third-party servicer to include “originating loans” under the Direct Loan program rather than “certifying loans,” a process associated with the now defunct FFEL program.
- Removes references to the Federal Perkins Loan, FFEL, Academic Competitiveness Grant, and National SMART Grant programs, all of which are no longer in existence.

§ 668.3 Academic year

- Modifies the definition of a week of instructional time to be more flexible with respect to direct assessment and asynchronous coursework and avoids forcing students to be involved in synchronous instruction on a predetermined schedule. Specifically, a week of instructional time for a direct assessment program or a program offered using asynchronous coursework through distance education or correspondence, is any week in which the institution makes available the instructional materials, other resources, and faculty support necessary for academic engagement and completion of course objectives and expects enrolled students to perform educational activities in fulfillment of program requirements.
- Asynchronous learning occurs when faculty and students interact at different times and different places. The current definition of a week of instructional time (which requires at least one day of regularly scheduled instruction or examination over a consecutive seven-day period) does not account for this type of program structure. By clarifying that for a program offered using asynchronous coursework, a week of instructional time is linked to the availability of instructional materials and faculty interaction, the definition is sufficiently expanded to all types of instruction - both synchronous and asynchronous.

§ 668.5 Written arrangements to provide educational programs.

- Modifies the portion of a program that may be offered by an ineligible organization through a written arrangement in order to encourage partnering with entities that may have innovative solutions or technologies otherwise unavailable to colleges and universities, or that develop

programs and curricula that are more workforce responsive. This could include written agreements with employers, trade associations, unions or other instructional providers as part of an apprenticeship program or other “earn and learn” model to ensure that students receive credit for all of the learning that takes place throughout their program. Such arrangements can permit institutions to respond quickly to workforce factors that affect the employability of graduates, and reduce the cost to institutions of trying to stay current with the latest equipment and technology in use by employers. Subject to some existing restrictions,

- An institution may enter into an agreement with an ineligible organization to provide up to 25 percent of a program as long as the eligible institution notifies its accrediting agency.
- An institution may enter into an agreement with an ineligible organization to provide more than 25 percent of a program, but must obtain prior, written approval from the institution’s accrediting agency.
- Establishes a formula for calculating the percentage of the program offered by an ineligible organization. An ineligible organization maintains authority or control over course design, instruction or assessment, but may agree to work with the eligible institution to make necessary modifications to align with the institution’s educational requirements. This would allow for ineligible organizations which may be more aware of employer and industry needs than the institution itself, to structure programs in accordance with those needs.
- Clarifies that written arrangements are not required in order to accept transfer credits, award credit through prior learning assessments, integrate third party instruction that leads to an industry-recognized certification within a degree or certificate program, or allow for the use of learning resources provided by entities other than the institution for students engaged in a direct assessment program or course.

§668.8 Eligible program.

- Relocates to the Program Participation Agreement the reasonable program length requirement.
- Simplifies the clock to credit hour conversion formula by providing that a semester or trimester hour must include at least 30 clock hours of instruction, or that a quarter hour must include at least 20 clock hours of instruction. The Department also seeks input on how, outside of the 50% safe harbor, it can ensure adequate worker mobility without encouraging states to add or elevate licensure requirements or students and taxpayers to spend more than necessary to qualify for employment.

§668.10 Direct assessment programs.

- Reduces the complexity of exiting provisions by: (1) providing that an institution must follow existing rules related to credit or clock hour programs for direct assessment programs using credit or clock hour equivalencies; and (2) requiring an institution to apply to the Department for approval to offer direct assessment programs only for their first direct assessment program and any additional programs that are substantially different from its existing programs as recognized by the institution’s accreditor or State. This greatly reduces the burden on an institution wishing to offer additional direct assessment programs following approval by the Secretary of the institution’s initial direct assessment program without sacrificing needed oversight.

Subpart B—Standards for Participation in Title IV, HEA Programs

§668.13 Certification procedures.

- Provides that the Secretary certifies a location of an institution that meets the requirements as a branch as a branch if it satisfies the definition of “branch” in 600.2. This change, along with those made in other sections, clarifies confusion that has arisen as a result of the Department and accreditor defining “branch campus” and “additional location” differently.
- Provides that if the Secretary does not make a determination to grant or deny certification within 12 months of the expiration of the current certification period, the institution will automatically be granted renewal of certification, which may be provisional. This is intended to promote timely processing of renewal applications by the Department.
- Updates the manner in which an institution files a request for the Secretary to reconsider a revocation by replacing faxes with electronic notifications and provides that the filing date of a request for reconsideration is the date on which the request is hand-delivered, mailed, or sent by electronic confirmation.

§668.14 Program participation agreement.

- Clarifies the requirement for an institution to demonstrate a reasonable relationship between the length of a clock-hour program and entry level requirements for the recognized occupation for which the program prepares the student. The current regulation states that programs that do not exceed by more than 50 percent the minimum number of clock hours required by a State for licensure, certification, or the equivalent are acceptable. The revised regulation permits the institution to include the maximum number of clock hours required for licensure, certification, or the equivalent by any State or federal agency. This addresses concerns about the lack of occupational mobility that results from State licensure requirements that differ from state to state and ensures that a student who completes a program in any state could qualify for licensure or certification in any other State in which they choose to reside.
- The Department also wishes to discuss how, outside of the 50% safe harbor, it can ensure adequate worker mobility without encouraging states to add or elevate licensure requirements or students and taxpayers to spend more than necessary to qualify for employment.
- Requires an institution to update its teach-out plan when triggered by one of the events listed in (b)(31) of this section. Although institutions are required to have teach-out plans on file throughout their participation in title IV programs, when the decision is made to close an institution or location, the teach-out plan must be updated to include any teach-out agreements negotiated with other institutions, and to provide a list of students currently enrolled, including their program and anticipated completion date. This is because a generic teach-out plan provides a framework for a future teach-out, but cannot include a level of specificity needed to help students enrolled at the time of a closure identify transfer and other opportunities.

§668.15 Factors of financial responsibility for changes in ownership.

- Clarifies that this section is used to determine the financial responsibility of an institution that undergoes a change in ownership (updates the section title).

§668.22 Treatment of title IV funds when a student withdraws.

- Considers a student to have withdrawn from a payment period or period of enrollment if: for a student in a nonterm program, the student is unable to resume attendance within a payment period or period of enrollment for more than 60 calendar days after ceasing attendance. This

change conforms with the elimination of module requirements for nonterm and subscription-based programs and acknowledges that when students seek to return to a non-term program within a reasonable period of time, institutions should not be burdened with calculating an R2T4 and possibly having to undo that calculation within this reasonable timeframe.

- Provides, for standard term programs, that a student who completes all the requirements for graduation from his or her program before completing the days or hours in the period that he or she was scheduled to complete is not considered to have withdrawn, and a student who completes the coursework in a module or modules that include a number of days equal to or greater than fifty percent of the number of days in the payment period is considered to have completed the period and is not considered to have withdrawn. It is illogical to consider a student who has completed the graduation requirements of a program to be withdrawn, simply because that student learns at a more rapid pace or can find more time to engage early in course material than others. It is equally illogical to consider students who have completed coursework in a module to be withdrawn if they fail begin subsequent modules. Proposed rules would allow a student completing a module comprising 50 percent or more of the days in the payment period to have completed the period.
- Provides that for a nonterm program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date is no later than 60 calendar days after the student ceased attendance. This provides a more reasonable timeframe for a student to resume his or her attendance, which may result in fewer withdrawals.
- Makes technical corrections to the list of title IV grant or loan assistance programs by removing from that list the Federal Perkins Loan, FFEL, and Academic Competitiveness Grant, National SMART Grant Programs and adding the Iraq and Afghanistan Service Grant Program, and corresponding changes to the list of programs pertaining to the order in which title IV funds are returned.
- Makes a conforming change for post-withdrawal disbursements by referencing the cash management provisions in § 668.164(c), reflecting the most recent cash management rules related to the allowable charges for which an institution may credit students' accounts.
- Provides that in the event of an approved leave of absence, upon the student's return from that leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence, except for a clock hour, nonterm credit hour, or a subscription-based program. As with clock-hour and non-term credit hour programs, subscription-based programs measure progress by the work a student has completed or the competencies demonstrated, not in accordance with the passage of weeks which comprise a term. Because of this, it is not necessary to require that a student returning from a leave of absence to a subscription-based program be subject to the same constraints associated with term-based programs.
- Provides that a program is "offered in modules" if the program uses a standard term or nonstandard term academic calendar, is not a subscription-based program, and a course or courses in the program do not span the entire length of the payment period or period of enrollment. Despite the current definition of modules, much confusion remains as to whether or not a program is offered in modules. This modification makes it clear that courses that do not span the entire length of a payment period are only considered modules where a program uses standard or nonstandard terms.
- Provides that a student in a program offered in modules is scheduled to complete the days in a module if the student's coursework in that module was used to determine the amount of the student's eligibility for title IV, HEA funds for the payment period or period of enrollment. This

change would simplify how an institution calculates the number of days in the denominator of the R2T4 calculation when a student is scheduled to attend more than one module or withdraws from multiple modules.

§668.28 Non-title IV revenue (90/10).

- Removes the provisions pertaining the use and calculation of the Net Present Value of institutional loans because these provisions are no longer applicable.

Subpart C—Student Eligibility

§668.34 Satisfactory academic progress.

- Provides that an institution may establish a program's maximum time frame in credit hours or in calendar time. Currently, for a credit-hour program, maximum timeframe must be measured in credit hours. Such programs would now have the option of expressing maximum timeframe in calendar time. This increased flexibility retains a reasonable limit on the amount of time students may take to complete an educational credential while acknowledging the varied ways in which credit-hour programs are now structured.
- Provides that for a credit hour program using standard or nonstandard terms, the policy specifies the pace, measured at each evaluation, at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, but clarifies that this pace evaluation is not required for nonterm credit or clock hour programs given the requirements elsewhere in the regulations that students complete half of the hours and weeks of instruction in an academic year before a subsequent disbursement of aid can be made.
- Clarifies that for a term-based program that is not a subscription-based program, an institution may calculate a student's pace by either dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted or by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe.
- Clarifies that in a subscription-based program, an institution may only calculate a student's pace by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe. Current regulations related to the pace at which a student is expected to progress through his or her program do not provide for a measurement that reasonably accommodates subscription-based programs. This revision would address that gap.

Subpart D—Institutional and Financial Assistance Information for Students

§668.41 Reporting and disclosure of information.

- Provides that an institution must disclose any placement rates it is required by an accreditor or oversight entity to calculate and report, but clarifies that placement rates calculated for internal program evaluation purposes are not required to be disclosed to the public. This allows programs to do a better job of monitoring program outcomes without subjecting themselves to the risk of using a placement rate that has not been established by an accreditor or State or

using surveys or other tools that do not meet the standard required for public disclosure of job placements.

§668.43 Institutional information.

- In addition to existing requirements, provides that an institution must make readily available the written criteria used to evaluate and award credit for prior learning experience including, but not limited to, knowledge and skills learned during service in the armed forces, paid or unpaid employment, or other informal learning opportunities. This will provide greater transparency and better inform prospective students, including those who have developed mastery of skills through military service.
- Updates the current rules to reflect recent statutory changes requiring institutions to provide information about: (1) the percentage of enrolled full-time students at the institution who are male, female, receive a Pell Grant, and are a self-identified member of a racial or ethnic group; (2) the placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs; (3) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; (4) fire safety reports prepared by the institution pursuant to §668.49; (5) retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and (6) Institutional policies regarding vaccinations.

§668.50 Institutional disclosures for distance or correspondence programs

- Section 668.50 was added through the proposed State Authorization for Distance Education rules published on 12/19/2016 through the publication of 81 FR 92232. Its effective date has been delayed until July 1, 2020. We propose to delete this section.

Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations

§668.113 Request for review.

- Clarifies that in cases where an institution or third-party servicer seeks the Secretary's review of a final audit or program review determination that includes a finding about the institution's application of the definitions of a credit hour, direct assessment, distance education, or correspondence course under 34 CFR 600.2, the Secretary relies on the definitions established by the institution's accrediting agency to evaluate the institution's or servicer's compliance.

§668.164 Disbursing funds.

- Makes technical changes for a subscription-based program by revising the early disbursement rules to provide that the earliest an institution may disburse funds to a student in a subscription-based program is the later of ten days before the first day of classes of a payment period, or the date the student completed the cumulative number of credit hours associated with the student's enrollment status in all prior terms that the student attended under the definition of a subscription-based program in 34 CFR 668.2

Subpart L—Financial Responsibility

§668.171 General.

- For an institution that is not financially responsible or does not submit its audits timely, clarifies that the Secretary may, in addition to the current actions, deny the institution's application for certification or recertification to participate in the title IV programs.
- Other technical changes.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A—General

§668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

(b) As used in this part, an “institution” “unless otherwise specified,” includes—

- (1) An institution of higher education as defined in 34 CFR 600.4;
- (2) A proprietary institution of higher education as defined in 34 CFR 600.5; and
- (3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

- (1) The Federal Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR part 690);
- (2) The Academic Competitiveness Grant (ACG) Program (20 U.S.C. 1070a-1; 34 CFR part 691);
- (3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR parts 673 and 676);
- (4) The Leveraging Educational Assistance Partnership (LEAP) Program (20 U.S.C. 1070c *et seq.*; 34 CFR part 692);
- (5) The Federal Stafford Loan Program (20 U.S.C. 1071 *et seq.*; 34 CFR part 682);
- (6) The Federal PLUS Program (20 U.S.C. 1078-2; 34 CFR part 682);
- (7) The Federal Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR part 682);
- (8) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR parts 673 and 675);
- (9) The William D. Ford Federal Direct Loan (Direct Loan) Program (20 U.S.C. 1087a *et seq.*; 34 CFR part 685);

(10) The Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.*; 34 CFR parts 673 and 674);

(11) The National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program (20 U.S.C. 1070a-1; 34 CFR part 691); and

(12) The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

(Authority: 20 U.S.C. 1070 *et seq.*)

[52 FR 45724, Dec. 1, 1987, as amended at 56 FR 36696, July 31, 1991; 59 FR 22418, Apr. 29, 1994; 61 FR 60396, Nov. 27, 1996; 63 FR 40623, July 29, 1998; 65 FR 38729, June 22, 2000; 71 FR 38002, July 3, 2006; 73 FR 35492, June 23, 2008]

§668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Award year

Branch campus

Clock ~~hour~~ hour

Correspondence course

~~Credit hour~~

Direct assessment program

Distance education

Educational program

Eligible institution

Federal Family Education Loan (FFEL) programs

Foreign institution

Incarcerated student

Institution of higher education Legally authorized

~~Legally authorized~~

Nationally recognized accrediting agency

Nonprofit institution

One-academic-year training program

Postsecondary vocational institution

Preaccredited

Proprietary institution of higher education

Recognized equivalent of a high school diploma

Recognized occupation

Regular student

Regular (with regard to distance education)

Religious mission

Secretary

State

~~Telecommunications course~~

Substantive (with regard to distance education)

Teach-out

Teach-out agreement

Teach-out plan

Title IV, HEA program

(b) The following definitions apply to all Title IV, HEA programs:

~~*Academic Competitiveness Grant (ACG) Program:* A grant program authorized by Title IV-A-1 of the HEA under which grants are awarded during the first and second academic years of study to eligible financially needy undergraduate students who successfully complete rigorous secondary school programs of study.~~

~~{Authority: 20 U.S.C. 1070a-1}~~

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR parts 673 and 674);

(2) The Federal Work-Study (FWS) Program (34 CFR parts 673 and 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR parts 673 and 676).

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

Dependent student: Any student who does not qualify as an independent student (see *Independent student*).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct Loan Program loan: A loan made under the William D. Ford Federal Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Direct PLUS Loan: A loan made under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1078-2 and 1087a *et seq.*)

Direct Subsidized Loan: A loan made under the Federal Direct Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

Direct Unsubsidized Loan: A loan made under the Federal Direct Unsubsidized Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

(Authority: 20 U.S.C. 1088)

Expected family contribution (EFC): The amount, as determined under title IV, part F of the HEA, an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

Federal Consolidation Loan program: The loan program authorized by Title IV-B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal Consolidation Loan, Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the

Public Health Service Act, for Federal PLUS borrowers whose loans were made after October 17, 1986, and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078-3)

Federal Direct PLUS Program: A loan program authorized by title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 10782 and 1087a *et seq.*)

Federal Direct Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

Federal Direct Unsubsidized Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Unsubsidized Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Pell Grant Program: A grant program authorized by Title IV-A-1 of the HEA under which grants are awarded to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

Federal Perkins loan: A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Federal Perkins Loan program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986. Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

(Authority: 20 U.S.C. 1087aa-1087ii)

Federal PLUS loan: A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078-2)

Federal PLUS program: The loan program authorized by Title IV-B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students. Beginning July 1, 2006, the PLUS Program provides for making loans to graduate and professional students.

(Authority: 20 U.S.C. 1078-2)

Federal SLS loan: A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078-1)

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Stafford Loan program: The loan program authorized by Title IV-B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Supplemental Educational Opportunity Grant (FSEOG) program: The grant program authorized by Title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Federal Supplemental Loans for Students (Federal SLS) Program: The loan program authorized by Title IV-B, section 428A of the HEA, as in effect for periods of enrollment that began before July 1, 1994. The Federal SLS Program encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078-1)

Federal Work Study (FWS) program: The part-time employment program for students authorized by Title IV-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

FFELP loan: A loan made under the FFEL programs.

(Authority: 20 U.S.C. 1071 *et seq.*)

Free application for Federal student aid (FAFSA): The student aid application provided for under section 483 of the HEA, which is used to determine an applicant's eligibility for the title IV, HEA programs.

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program that is not subscription-based, the student's workload may include repeating any coursework previously taken in the program ~~but~~; however, the workload may not include more than one repetition of a previously passed course. ~~However, for~~ For an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements, based on the type of program:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters, or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time course load must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(8) For a subscription-based program, completion of a full-time course load commensurate with the full-time definitions listed in paragraphs (1), (3), and (5) through (7) of this definition.

(Authority: 20 U.S.C. 1082 and 1088)

Graduate or professional student: A student who—

(1) Is not receiving title IV aid as an undergraduate student for the same period of enrollment;

(2) Is enrolled in a program or course above the baccalaureate level or is enrolled in a program leading to a professional degree; and

(3) Has completed the equivalent of at least three years of full-time study either prior to entrance into the program or as part of the program itself.

(Authority: 20 U.S.C. 1082 and 1088)

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic workload, as determined by the institution, that amounts to at least half of the workload of the applicable minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a workload of at least 12 hours of work per week, or is earning at least six credit hours per semester, trimester, or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

(Authority: 20 U.S.C. 1082 and 1088)

Independent student: A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

Initiating official: The designated department official authorized to begin an emergency action under 34 CFR 668.83.

Institutional student information record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) FAFSA information; and

(2) EFC.

Leveraging Educational Assistance Partnership (LEAP) Program: The grant program authorized by Title IV-A-4 of the HEA.

National Defense Student Loan program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

National Direct Student Loan (NDSL) program: The student loan program authorized by Title IV-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

National Early Intervention Scholarship and Partnership (NEISP) program: The scholarship program authorized by Chapter 2 of subpart 1 of Title IV-A of the HEA.

(Authority: 20 U.S.C. 1070a-21 *et seq.*)

National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program: A grant program authorized by Title IV-A-1 of the HEA under which grants are awarded during the third and fourth academic years of study to eligible financially needy undergraduate students pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering, or foreign languages determined to be critical to the national security of the United States.

(Authority: 20 U.S.C. 1070a-1)

One-third of an academic year: A period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under §668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution's academic year.

(Authority: 20 U.S.C. 1088)

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student's biological or adoptive mother or father or the student's stepparent, if the biological parent or adoptive mother or father has remarried at the time of application.

Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

Professional degree: A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor's degree. Professional licensure is also generally required. Examples of a professional degree include but are not limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.).

(Authority: 20 U.S.C. 1082 and 1088)

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under 34 CFR 668.83.

(Authority: 20 U.S.C. 1070c *et seq.*)

Subscription-based program: A standard term or nonstandard term direct assessment program in which the institution charges a student for each term on a subscription basis with the expectation that the student completes a specified number of credit hours during that term. Coursework in a subscription-based program is not required to begin or end within a specific timeframe in each term. Students in subscription-based programs must complete a cumulative number of credit hours (or the equivalent) during or following the end of each term before receiving subsequent disbursements of Title IV, HEA program funds. The number of credit hours (or the equivalent) a student must complete before receiving subsequent disbursements is calculated by,

(1) Determining for each term the number of credit hours (or the equivalent) associated with the institution's minimum standard for the student's enrollment status (for example, full-time, three-quarter time, or half-time) for that period commensurate with paragraph (8) in the definition of full-time student, adjusted for less than full-time students in light of the definitions of half-time student and three-quarter time students, and adjusted to at least one credit for a student who is enrolled less than half time; and

(2) Adding together the number of credit hours (or the equivalent) determined under paragraph (1) for each term in which the student was enrolled in and attended that program, including the current term.

Student aid report (SAR): A report provided to an applicant by the Secretary showing his or her FAFSA information and the amount of his or her EFC.

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program: A grant program authorized by title IV of the HEA under which grants are awarded by an institution to students who are completing, or intend to complete, coursework to begin a career in teaching and who agree to serve for not less than four years as a full-time, highly-qualified teacher in a high-need field in a low-income school. If the recipient of a TEACH Grant does not complete four years of qualified teaching service within eight years of completing the course of study for which the TEACH Grant was received or

otherwise fails to meet the requirements of 34 CFR 686.12, the amount of the TEACH Grant converts into a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g)

TEACH Grant: A grant authorized under title IV-A-9 of the HEA and awarded to students in exchange for prospective teaching service.

(Authority: 20 U.S.C. 1070g)

Third-party servicer: (1) An individual or a State, or a private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(i) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA, such as, but not restricted to—

(A) Processing student financial aid applications;

(B) Performing need analysis;

(C) Determining student eligibility and related activities;

(D) ~~Certifying loan applications~~Originating loans;

(E) Processing output documents for payment to students;

(F) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(G) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(H) Preparing and certifying requests for advance or reimbursement funding;

(I) Loan servicing and collection;

(J) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(K) Preparing a Fiscal Operations Report and Application to Participate (FISAP);

(ii) Exclude the following functions—

- (A) Publishing ability-to-benefit tests;
- (B) Performing functions as a Multiple Data Entry Processor (MDE);
- (C) Financial and compliance auditing;
- (D) Mailing of documents prepared by the institution;
- (E) Warehousing of records; and
- (F) Providing computer services or software; and

(iii) Notwithstanding the exclusions referred to in paragraph (1)(ii) of this definition, include any activity comprised of any function described in paragraph (1)(i) of this definition.

(2) For purposes of this definition, an employee of an institution is not a third-party servicer. The Secretary considers an individual to be an employee if the individual—

- (i) Works on a full-time, part-time, or temporary basis;
- (ii) Performs all duties on site at the institution under the supervision of the institution;
- (iii) Is paid directly by the institution;
- (iv) Is not employed by or associated with a third-party servicer; and
- (v) Is not a third-party servicer for any other institution.

(Authority: 20 U.S.C. 1088)

Three-quarter time student: An enrolled student who is carrying a three-quarter-time academic workload, as determined by the institution, that amounts to at least three quarters of the work of the applicable minimum requirement outlined in the definition of a full-time student.

(Authority: 20 U.S.C. 1082 and 1088)

Two-thirds of an academic year: A period that is at least two-thirds of an academic year as determined by an institution. At a minimum, two-thirds of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 20 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 16 semester or trimester hours or 24 quarter hours in an educational program whose length is measured in credit hours or 600 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under §668.3, two-thirds of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least two-thirds of the institution's academic year.

(Authority: 20 U.S.C. 1088)

Undergraduate student: (1) A student who is enrolled in an undergraduate course of study that usually does not exceed four years, or is enrolled in a longer program designed to lead to a degree at the baccalaureate level. For purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(2) In addition to meeting the definition in paragraph (1) of this definition, a student is only considered an undergraduate for purposes of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, National Science and Mathematics Access to Retain Talent (SMART) Grant Program, and TEACH Grant program if the student has not yet earned a baccalaureate or professional degree. However, for purposes of 34 CFR 690.6(c)(5) and 686.3(a) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(3) For purposes of dual degree programs that allow individuals to complete a bachelor's degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

(4) A student enrolled in a four to five year program designed to lead to an undergraduate degree. A student enrolled in a program of any other, longer length is considered an undergraduate student for only the first four years of that program.

(Authority: 20 U.S.C. 1070g)

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

Valid institutional student information record (valid ISIR): An ISIR on which all the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

Valid student aid report (valid SAR): A student aid report on which all of the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

William D. Ford Federal Direct Loan (Direct Loan) Program: The loan program authorized by Title IV, Part D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 22418, Apr. 29, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §668.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§668.3 Academic year.

...

(b) *Definitions.* For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which ~~at~~—

(i) At least one day of regularly scheduled instruction or examinations occurs, or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; ~~and~~ or

(ii) In a direct assessment program or a program offered using asynchronous coursework through distance education or correspondence, the institution makes available the instructional materials, other resources, and faculty support necessary for academic engagement and completion of course objectives and expects enrolled students to perform educational activities in fulfillment of program requirements.

(3) Instructional time does not include any vacation periods, homework, (for a program offered on campus), or periods of orientation or counseling.

...

§668.4 Payment period.

§668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides part of the educational program to students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree ~~or~~ certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8.

(2) If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Secretary considers the educational program to be an eligible program if ~~—~~ the educational program offered by the institution that grants the degree, certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8.

~~(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of §668.8; and~~

~~(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.~~

(b) *Written arrangements for study-abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement under which an institution in another country, or an organization acting on behalf of an institution in another country, provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization ~~has not—~~

(i) must be able to demonstrate experience in the delivery and assessment of the program or portion of program they will be contracted to deliver and must provide evidence that the program has been effective in meeting the stated learning objectives; and

(ii) has not:

(A) Had its eligibility to participate in the title IV, HEA programs terminated by the Secretary;

(B) Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(C) Had its certification to participate in the title IV, HEA programs revoked by the Secretary;

(iv) Had its application for re-certification to participate in the title IV, HEA programs denied by the Secretary; or

(v) Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

(2) The educational program offered by the institution that grants the degree ~~or~~, certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8; ~~and~~

~~(3)(i) The ineligible institution or organization provides 25 percent or less of the educational program; or~~

~~(ii)(A) The ineligible institution or organization provides more than 25 percent but less than 50 percent of the educational program;~~

~~(B)(3)~~ The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

~~(C)(4) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, is notified of the change; and the ineligible institution or organization provides 25 percent or less of an educational program leading to a degree, certificate or other recognized educational credential.~~

~~(5) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the ~~FEDERAL REGISTER~~ FEDERAL REGISTER in accordance with 34 CFR part 603, ~~has specifically determined that~~ affirmatively approves the institution's arrangement meets change; and the agency's standards for the contracting out ineligible institution or organization provides more than 25 percent of an educational services program leading to a degree, certificate or other recognized educational credential.~~

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section or provides coursework as provided in paragraphs (h)(2) or (h)(3), except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a third-party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the hours in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

(e) *Information made available to students.* If an institution enters into a written arrangement described in paragraph (a), (b), or (c) of this section, the institution must provide the information described in §668.43(a)(12) to enrolled and prospective students.

(f) *Workforce responsiveness.* Nothing in this or any other section shall prohibit an institution utilizing written arrangements from aligning or modifying their curriculum or academic requirements in order to meet the recommendations or requirements of industry advisory boards that include

employers who hire program graduates, widely recognized industry standards and organizations, or industry-recognized credentialing bodies, including making governance or decision-making changes as an alternative to allowing or requiring faculty control or approval or integrating industry-recognized credentials into existing degree programs.

(g) *Calculation of percentage of a program.* When determining the percentage of the program that is provided by an ineligible institution or organization under paragraph (c) of this section, the institution shall divide the number of semester, trimester, or quarter credit hours, clock hours, or the equivalent that are provided by the ineligible organization or organizations by the total number of semester, trimester, or quarter credit hours, clock hours, or the equivalent required for completion of the program. A course is provided by an ineligible institution or organization if the contracted organization has authority over the design, administration, or instruction in the course, including, but not limited to—

(1) Establishing the requirements for successful completion of the course;

(2) Delivering instruction in the course; or

(3) Assessing student learning.

(h) *Non-applicability to other interactions with outside entities.* Written arrangements are not necessary for, and the limitations in this section do not apply to an institution's acceptance of transfer credits or use of prior learning assessment or other non-traditional methods of providing academic credit.

(Authority: 20 U.S.C. 1094)

[65 FR 65674, Nov. 1, 2000, as amended at 75 FR 66948, Oct. 29, 2010; 75 FR 67198, Nov. 1, 2010]

§668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.¹

§668.7 [Reserved]

§668.8 Eligible program.²

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

¹ The Department proposed to remove section 668.6 in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

² The Department proposed to amend section 668.8 by revising paragraphs (d)(2)(iii) and (d)(3)(iii) in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part; and

(iv)(A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree;

(3) For purposes of the FFEL and Direct Loan programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section; or

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The institution can demonstrate, in accordance with 34 CFR 668.14(b)(26) that the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under §668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

...

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the ~~§~~Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward completion of an eligible program offered by the institution that ~~institution's provides an~~ associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, ~~provided that—~~

~~(i) The institution's degree~~ the eligible program requires at least two academic years of study; and

~~(ii) The the~~ institution ~~demonstrates~~can demonstrate that ~~students enroll in, and graduate at least one student graduated~~ from, the ~~degree~~-program during the current or most recently completed award year.

(l) *Formula.* ~~(1) Except as provided in paragraph (l)(2) of this section, for~~ For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and ~~determining~~ the number of credit hours in that educational program ~~with regard to~~for purposes of the ~~§~~Title IV, HEA programs—

~~(i)~~ A semester ~~hour must include at least 37.5 clock hours of instruction;~~

~~(ii) A~~ trimester hour must include at least ~~37.5 clock hours of instruction; and~~

~~(iii) A quarter hour must include at least 25 clock hours of instruction.~~

~~(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions for participation in the title IV, HEA programs, has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c), so long as—~~

~~(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and~~

~~(ii)(A) A semester hour must include at least 30 clock hours of instruction; and~~

~~(B) A trimester hour must include at least 30 clock hours of instruction; and~~

~~(C)(2) A quarter hour must include at least 20 clock hours of instruction.~~

~~(m)~~ An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for title IV, HEA program purposes if the program is offered by an institution, other than a foreign institution, that has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association that—

(1) Is recognized by the Secretary under subpart 2 of part H of the HEA; and

(2) Has accreditation of distance education within the scope of its recognition.

~~(m)~~ For Title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under §668.10 and a comprehensive transition and postsecondary program approved by the Secretary under §668.232.

(Authority: 20 U.S.C. 1070a, 1070a-1, 1070b, 1070c-1, 1070c-2, 1070g, 1085, 1087aa-1087hh, 1088, 1091; 42 U.S.C. 2753)

[59 FR 22421, Apr. 29, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §668.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

§668.10 Direct assessment programs.

(a)(1) A direct assessment program is ~~an instructional~~a program that, in lieu of credit hours or clock hours as ~~the~~ measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others. The assessment must be consistent with the accreditation of the institution or program utilizing the results of the assessment.

(2) Direct assessment of student learning means a measure ~~by the institution of what of a student knows and can do in terms of the body of student's knowledge making up the educational program. These measures, skills, and abilities designed to provide evidence that a student has command of a specific of the student's proficiency in the relevant subject, content area, or skill or that the student demonstrates a specific quality such as creativity, analysis or synthesis associated.~~

(3) An institution must establish a methodology to reasonably equate each module in the direct assessment program to either credit hours or clock hours. This methodology must be consistent with the subject matter of the program. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios requirements of the institution's accrediting agency or State approval agency.

(~~3~~4) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs. ~~Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours that use credit or clock hour equivalencies, respectively.~~

(i) ~~An academic year in a direct assessment program is a period of instructional time that consists of a minimum of 30 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete the equivalent of at least 24 semester or trimester credit hours, 36 quarter credit hours or 900 clock hours.~~

(ii) ~~A payment period in a direct assessment program for which equivalence in credit hours has been established must be determined under the requirements in §668.4(a), (b), or (c), as applicable, using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program). A payment period in a direct assessment program for which equivalence in clock hours has been established must be determined under the requirements in §668.4(c), using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program).~~

(iii) ~~A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty~~

mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.

(iv) A full-time student in a direct assessment program is an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in the program. However, for an undergraduate student, the institution's minimum standard must equal or exceed the minimum full-time requirements specified in the definition of *full-time student* in §668.2 based on the credit or clock hour equivalency established by the institution for the direct assessment program.

(b) An institution that offers a direct assessment program must apply to the Secretary to have that program determined to be an eligible program for title IV, HEA program purposes. The institution's (5) A direct assessment program that is not consistent with the requirements of the institution's accrediting agency or State approval agency is not an eligible program as provided under §668.8.

(b) An institution that wishes to offer a direct assessment program must apply to the Secretary to have its direct assessment program or programs determined to be eligible programs for title IV, HEA program purposes. Following the Secretary's initial approval, additional direct assessment programs may be determined to be eligible subject to the requirements in §600.10(c)(1)(iii), §600.20(c)(1), or §600.21(a), as applicable, if such programs are consistent with the institution's accreditation or its State approval. The institution's direct assessment application must provide information satisfactory to the Secretary that includes—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

(2) A description of how the assessment of student learning is done;

(3) A description of how the direct assessment program is structured, including information about how and when the institution determines on an individual basis what each student enrolled in the program needs to learn and how the institution excludes from consideration of a student's eligibility for title IV, HEA program funds any credits or competencies earned on the basis of prior learning;

(43) A description of how learning is assessed and how the institution assists students in gaining the knowledge needed to pass the assessments;

(54) The number of semester, trimester, or quarter credit hours, or clock hours, that are equivalent to the amount of student learning being directly assessed for the certificate or degree, as required by paragraph (b)(3) of this section;

(65) The methodology the institution uses to determine the number of credit or clock hours to which the program is or programs are equivalent;

~~(7) The methodology the institution uses to determine the number of credit or clock hours to which the portion of a program an individual student will need to complete is equivalent;~~

(86) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of direct assessment program(s) and has included the program(s) in the institution's grant of accreditation; or approval Documentation from the accrediting agency or State approval agency indicating agreement with the institution's methodology for determining the direct assessment program's equivalence in terms of credit or clock hours.

~~(9) Documentation from the accrediting agency or relevant state licensing body indicating agreement with the institution's claim of the direct assessment program's equivalence in terms of credit or clock hours; and~~

~~(10) Any other information the Secretary may require to determine whether to approve the institution's application.~~

~~(c) To be an eligible program, a direct assessment program must meet the requirements in §668.8 including, if applicable, minimum program length and qualitative factors.~~

~~(d) Notwithstanding paragraphs (a) through (c) and (b) of this section, no program offered by a foreign institution that involves direct assessment will be considered to be an eligible program under §668.8.~~

~~(e) A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the institution providing the direct assessment program without regard to the limitations on contracting for part of an educational program in §668.5(c)(3).~~

~~(f) (d) Title IV, HEA program funds may be used only for learning that results from to support instruction provided, or overseen, by the institution, not for the portion of the program that the student has demonstrated completes based on prior mastery of prior or tests of learning that are not associated with educational activities overseen by the institution.~~

~~(e) Unless an institution has received initial approval from the Secretary, to (g) Title IV, HEA program eligibility with respect to offer direct assessment programs is limited to, and the institution's offering of direct assessment programs approved by the Secretary. Title coursework is consistent with the institution's accreditation and State authorization, if applicable, title IV, HEA program funds may not be used for—~~

(1) ~~t~~The course of study described in §668.32(a)(1)(ii) and (iii) and (a)(2)(i)(B). if offered by using direct assessment; ~~z~~ or

(2) ~~r~~Remedial coursework described in §668.20, if offered by using direct assessment. ~~However, remedial instruction that is offered~~

~~(f) Student progress in credit or clock hours in conjunction with a direct assessment program is eligible for title IV, HEA program funds. may be measured using a combination of--~~

~~(h) The Secretary's approval of a direct assessment program expires on the date that the institution changes one or more aspects of the program described in the institution's application submitted under paragraph (b) of this section. To maintain program eligibility, the institution must obtain prior approval from the Secretary through reapplication under paragraph (b) of this section that sets forth the revisions proposed.~~

(1) Credit hours and credit hour equivalencies; or

(2) Clock hours and clock hour equivalencies.

[71 FR 45693, Aug. 9, 2006, as amended at 71 FR 64397, Nov. 1, 2006; 72 FR 62026, Nov. 1, 2007]

Subpart B—Standards for Participation in Title IV, HEA Programs

SOURCE: 52 FR 45727, Dec. 1, 1987, unless otherwise noted.

§668.11 Scope.

§668.12 [Reserved]

§668.13 Certification procedures.

(a) *Requirements for certification.* (1) (i) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

(ii) On application from the institution, the Secretary certifies a location of an institution that meets the requirements of 34 CFR 668.13(a)(1)(i) as a branch if it satisfies the definition of “branch” in 600.2.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under §668.14:

(i) The individual the institution designates under §668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates.

(3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) *Period of participation.* (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a title IV, HEA program. An institution's period of participation expires no more than six years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that—

(i) The period of participation for a private, for profit foreign institution expires three years after the date of the Secretary's certification; and

(ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(3) In the event that the Secretary does not make a determination to grant or deny certification within 12 months of the expiration of its current period of participation, the institution shall automatically be granted renewal of certification, which may be provisional.

...

(d) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (d)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in §668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that

the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or ~~facsimile~~electronic transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by ~~facsimile~~electronic transmission.

(iii) Documents filed by ~~facsimile~~electronic transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. ~~An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.~~

~~(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.~~

(4)(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

~~(5)~~(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service or another service that provides delivery confirmation for that document.

~~(ii) The date on which a request for reconsideration of a revocation is submitted is—~~

~~(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and~~

~~(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.~~

(Approved by the Office of Management and Budget under control number 1845-0537)

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1989 Comp., p. 189) and E.O. 12689 (3 CFR, 1989 Comp., p. 235))

[59 FR 22424, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 60 FR 34431, June 30, 1995; 62 FR 62876, Nov. 25, 1997; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 65 FR 65675, Nov. 1, 2000; 74 FR 55934, Oct. 29, 2009; 75 FR 67198, Nov. 1, 2010]

§668.14 Program participation agreement.

...

(b) By entering into a program participation agreement, an institution agrees that—

...

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency;

NOTE FOR NEGOTIATORS: The Department wishes to discuss how, outside of the 50% safe harbor, it can ensure adequate worker mobility without encouraging states to add or elevate licensure requirements or students and taxpayers to spend more than necessary to qualify for employment.

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in §668.414.

...

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency. The institution will update its teach-out plan upon the occurrence of any of the following events:

...

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141)

[59 FR 22425, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 64 FR 59038, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000; 67 FR 67072, Nov. 1, 2002; 73 FR 35492, June 23, 2008; 74 FR 55648, Oct. 28, 2009; 74 FR 55934, Oct. 29, 2009; 76 FR 66950, Oct. 29, 2010; 76 FR 20536, Apr. 13, 2011; 79 FR 65007, Oct. 31, 2014]

§668.15 Factors of financial responsibility for changes in ownership.

(a) *General.* To begin and to continue to participate in any Title IV, HEA program after a change in ownership, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.

...

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[59 FR 22428, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 59 FR 61179, Nov. 29, 1994; 60 FR 34431, June 30, 1995; 60 FR 42408, Aug. 15, 1995; 61 FR 29901, June 12, 1996; 61 FR 60569, Nov. 29, 1996; 62 FR 27128, May 16, 1997; 71 FR 45694, Aug. 9, 2006; 75 FR 67198, Nov. 1, 2010]

§668.16 Standards of administrative capability.

§668.17 [Reserved]

§668.18 Readmission requirements for servicemembers.

§668.19 Financial aid history.

§668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

§668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

§668.22 Treatment of title IV funds when a student withdraws.

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2)(i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, a student is considered to have withdrawn from a payment period or period of enrollment if—

(A) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete;

(B) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours and weeks of instructional time in the payment period or period of enrollment that the student was scheduled to complete; ~~or~~

(C) For a student in a non-term or nonstandard-term program, the student is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending, unless the student is on an approved leave of absence, as defined in paragraph (d) of this section; ~~or~~

(D) For a student in a non-term program, the student is unable to resume attendance within a payment period or period of enrollment for more than 60 calendar days after ceasing attendance.(ii)(A) Notwithstanding paragraph (a)(2)(i)(A) and (a)(2)(i)(B) of this section, ~~for~~ —

(1) A student who completes all the requirements for graduation from his or her program before completing the days or hours in the period that he or she was scheduled to complete is not considered to have withdrawn;

(2) A student who completes the coursework in a module or modules that include a number of days equal to or greater than fifty percent of the number of days in the payment period is considered to have completed the period and is not considered to have withdrawn;

(3) For a payment period or period of enrollment in which courses in the program are offered in modules—

(1) A student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will attend a module that begins later in the same payment period or period of enrollment; and

(2) For non-term and nonstandard-term programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending; and

(4) For a non-term program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date is no later than 60 calendar days after the student ceased attendance.

(B) If an institution has obtained the written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) of this section—

(1) A student may change the date of return to a module that begins later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed; and

(2) For non-term and nonstandard-term programs, the later module that he or she will attend begins no later than 45 calendar days after the end of module the student ceased attending.

(C) If an institution obtains written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) and, if applicable, (a)(2)(ii)(B) of this section, but the student does not return as scheduled—

(1) The student is considered to have withdrawn from the payment period or period of enrollment; and

(2) The student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of a future date of attendance in accordance with paragraph (a)(2)(ii)(A) of this section.

(iii)(A) If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period, subject to conditions established by the Secretary, the student is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section, provided the student's enrollment status continues to support the full amount of those funds.

(B) In accordance with §668.4(f), if a student withdraws from a clock-hour or non-term credit hour program during a payment period or period of enrollment and then reenters the same program within 180 calendar days, the student remains in that same period when he or she returns and, subject to

conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section.

(3) For purposes of this section, "title IV grant or loan assistance" includes only assistance from the ~~Federal Perkins Loan~~, Direct Loan, ~~FFEL~~, Federal Pell Grant, ~~Academic Competitiveness Grant~~, ~~National SMART~~ ~~Iraq and Afghanistan Service~~ Grant, TEACH Grant, and FSEOG programs, not including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(4) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(5) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(6) of this section and §668.164(gi).

(6)(i) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(ii)(A) If outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of outstanding charges in accordance with §668.164(c) with all or a portion of any—

(1) Grant funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1)~~ ~~; and (d)(2); and~~

(2) Loan funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1), (d)(2), and (d)(3)~~ only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(6)(iii) of this section.

...

(d) *Approved leave of absence.* (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have

to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

- (i) The institution has a formal policy regarding leaves of absence;
- (ii) The student followed the institution's policy in requesting the leave of absence;
- (iii) The institution determines that there is a reasonable expectation that the student will return to the school;
- (iv) The institution approved the student's request in accordance with the institution's policy;
- (v) The leave of absence does not involve additional charges by the institution;
- (vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;
- (vii) Except for a clock hour ~~or~~ non-term credit hour program, or a subscription-based program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

...

(i) *Order of return of title IV funds—(1) Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

- (i) Unsubsidized Federal Direct Stafford loans.
- (ii) Subsidized Federal ~~Stafford loans.~~
- ~~(iii) Unsubsidized Federal~~ Direct Stafford loans.
- ~~(iv) Subsidized Federal Direct Stafford loans.~~
- ~~(v) Federal Perkins loans.~~
- ~~(vi) Federal PLUS loans received on behalf of the student.~~
- ~~(vii)~~ (iiiiv) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) ~~Academic Competitiveness~~ Iraq and Afghanistan Service Grants.

(iii) ~~National SMART Grants.~~

~~(iv)~~ FSEOG Program aid.

~~(v)~~ TEACH Grants.

...

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that “could have been disbursed” are determined in accordance with the late disbursement provisions in §668.164(~~g~~).

(2) A “period of enrollment” is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The “date of the institution's determination that the student withdrew” for an institution that is not required to take attendance is—

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his or her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.

(4) A “recipient of title IV grant or loan assistance” is a student for whom the requirements of §668.164(~~g~~)(2) have been met.

(5) Terms are “substantially equal in length” if no term in the program is more than two weeks of instructional time longer than any other term in that program.

(6) A program is “offered in modules” if the program uses a standard term or nonstandard term academic calendar, is not a subscription-based program, and a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) “Academic attendance” and “attendance at an academically-related activity” —

(A) Include, but are not limited to—

(1) Physically attending a class where there is an opportunity for direct interaction between the instructor and students;

(2) Submitting an academic assignment;

(3) Taking an exam, an interactive tutorial, or computer-assisted instruction;

(4) Attending a study group that is assigned by the institution;

(5) Participating in an online discussion about academic matters; and

(6) Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and

(B) Do not include activities where a student may be present, but not academically engaged, such as—

(1) Living in institutional housing;

(2) Participating in the institution's meal plan;

(3) Logging into an online class without active participation; or

(4) Participating in academic counseling or advisement.

(ii) A determination of “academic attendance” or “attendance at an academically-related activity” must be made by the institution; a student's certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (a)(2) to calculate Federal Pell Grant payments under 34 CFR 690.63(b) or (c). (8) A student in a program offered in modules is scheduled to complete the days in a module if the student's coursework in that module was used to determine the amount of the student's eligibility for Title IV, HEA funds for the payment period or period of enrollment.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1070g, 1091b)

[64 FR 59038, Nov. 1, 1999, as amended at 67 FR 67073, Nov. 1, 2002; 71 FR 45694, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 72 FR 62027, Nov. 1, 2007; 73 FR 35493, June 23, 2008; 75 FR 66951, Oct. 29, 2010]

§668.23 Compliance audits and audited financial statements.

§668.24 Record retention and examinations.

§668.25 Contracts between an institution and a third-party servicer.

§668.26 End of an institution's participation in the Title IV, HEA programs.

§668.27 Waiver of annual audit submission requirement.

§668.28 Non-title IV revenue (90/10).

...

~~(b) Net present value (NPV). (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—~~

~~(i) Using the formula, $NPV = \text{sum of the discounted cash flows } R^t / (1 + i)^t$, where—~~

~~(A) The variable “ i ” is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;~~

~~(B) The variable “ t ” is time or period of the cash flow, in years, from the time the loan entered repayment; and~~

~~(C) The variable “ R^t ” is the net cash flow at time or period t ; and~~

~~(ii) Applying the NPV formula to the loans made during the fiscal year by—~~

~~(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable “ t ”; or~~

~~(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable “ t ”; and~~

~~(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution's loan collection rate (e.g., the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable “ R ” in each period “ t ”, for each group of loans that a NPV is calculated.~~

~~(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the~~

~~institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.~~

(b) [Reserved]

...

(Approved by Office of Management and Budget under control number 1845-NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, 1141)

[74 FR 55937, Oct. 29, 2009]

Appendix A to Subpart B of Part 668—Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Appendix B to Subpart B of Part 668—Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Appendix C to Subpart B of Part 668—90/10 Revenue Calculation

Subpart C—Student Eligibility

SOURCE: 60 FR 61810, Dec. 1, 1995, unless otherwise noted.

§668.31 Scope.

§668.32 Student eligibility—general.

§668.33 Citizenship and residency requirements.

§668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides 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;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

(5)(i) The policy specifies —

(i) for all programs, the maximum timeframe as defined in paragraph (b) of this section; and

(ii) for a credit hour program using standard or nonstandard terms, the pace, measured at each evaluation, at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and calculated by--:

(ii) An institution calculates the pace at which the student is progressing by (A) In a program that is not a subscription-based program, either dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted, or by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe. In making this calculation, the institution is not required to include remedial courses; and

{(B) In a subscription-based program, by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe.}

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

...

Maximum timeframe. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours or expressed in calendar time;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

...

(Authority: 20 U.S.C. 1091(d))

[75 FR 66953, Oct. 29, 2010]

§668.35 Student debts under the HEA and to the U.S.

§668.36 Social security number.

§668.37 Selective Service registration.

§668.38 Enrollment in telecommunications and correspondence courses.

§668.39 Study abroad programs.

§668.40 Conviction for possession or sale of illegal drugs.

Subpart D—Institutional and Financial Assistance Information for Students

SOURCE: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

§668.41 Reporting and disclosure of information.³

...

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to §668.42).

(2) The institution (pursuant to §668.43).

³ The Department proposed to amend section 600.41 by revising paragraphs (a) and (c) and adding a new paragraph (h) in the Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program NPRM (Borrower Defense NPRM). See 83 FR 37242 (July 31, 2018).

(3) The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(4) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to §668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(5) The placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) The institution's placement rate for any program, if it calculates such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(iii) The institution must disclose any placement rates it ~~calculates~~.

~~is required to calculate by an accreditor or other oversight entity.~~(5) The types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

...

(Approved by the Office of Management and Budget under control number 1845-0004)

(Authority: 20 U.S.C. 1092)

[64 FR 59066, Nov. 1, 1999, as amended at 74 FR 55942, Oct. 29, 2009]

§668.42 Financial assistance information.

§668.43 Institutional information.

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

...

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and

(ii) A list of institutions with which the institution has established an articulation agreement; and

(iii) Written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other informal learning. (12)

A description of written arrangements the institution has entered into in accordance with §668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

~~(iv))~~ Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(13) The percentage of those enrolled, full-time students at the institution who—

(i) Aare male;

(ii) Aare female;

(iii) Rreceive a Federal Pell Grant; and

(iv) Aare a self-identified member of a racial or ethnic group;

(14) The placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled;

(16) The fire safety report prepared by the institution pursuant to §668.49;

(17) The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and (18) Institutional policies regarding vaccinations.

...

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1092)

[64 FR 59068, Nov. 1, 1999, as amended at 74 FR 55943, Oct. 29, 2009; 75 FR 66954, Oct. 29, 2010]

§668.44 Availability of employees for information dissemination purposes.

§668.45 Information on completion or graduation rates.

§668.46 Institutional security policies and crime statistics.

§668.47 Report on athletic program participation rates and financial support data.

§668.48 Report on completion or graduation rates for student-athletes.

§668.49 Institutional fire safety policies and fire statistics.

§668.50 Institutional disclosures for distance or correspondence programs⁴.

(a) General. In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9 (a)(1) or (b) that offers an Start Printed Page 92263 educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) Public disclosures. An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following

⁴ Section 668.50 was added through the publication of 81 FR 92232 on 12/19/2016. Its effective date has been delayed until July 1, 2020. We propose to delete this section.

information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(i) Whether the institution is authorized by each State in which enrolled students reside to provide the program;

(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2, to provide the program; and

(iii) An explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;

(2)(i) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b); and

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9 (c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

(3) A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(5) Any adverse actions an accrediting agency has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(6) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees; and

(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

(A) Each State in which the program's enrolled students reside; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect.

(c) Individualized disclosures. (1) An institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—

(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence; and

(ii) To each enrolled and prospective student—

(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

Subpart E—Verification and Updating of Student Aid Application Information

Subpart F—Misrepresentation

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations

SOURCE: 52 FR 30115, Aug. 12, 1987, unless otherwise noted. Correctly designated at 52 FR 46354, Dec. 7, 1987.

§668.111 Scope and purpose.

(a) This subpart establishes rules governing the issuance by the Department of, and appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

...

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 59 FR 22452, Apr. 29, 1994]

§668.112 Definitions.

§668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer must file its request for review no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

~~(d)(1)~~ (d) (1) If the final audit determination or final program review determination in paragraph (a) of this section results from the institution's application of the definition of "credit hour," "direct assessment," "distance education," (including the definitions of "regular" or "substantive) or "correspondence course" under 34 CFR §600.2, the Secretary relies upon the definitions established by the institution's accrediting agency.

(2) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

~~(23)~~ If the institution is charged with a liability as a result of an error described in paragraph (d)(~~12~~) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c-1)

[59 FR 22452, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 64 FR 58619, Oct. 29, 1999; 78 FR 48051, Aug. 7, 2013]

§668.114 Notification of hearing.

§668.115 Prehearing conference.

§668.116 Hearing.

§668.117 Authority and responsibilities of the hearing official.

§668.118 Decision of the hearing official.

§668.119 Appeal to the Secretary.

§668.120 Decision of the Secretary.

§668.121 Final decision of the Department.

§668.122 Determination of filing, receipt, and submission dates.

§668.123 Collection.

§668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

Subpart I—Immigration-Status Confirmation

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Subpart K—Cash Management

§668.161 Scope and institutional responsibility.

§668.162 Requesting funds.

§668.163 Maintaining and accounting for funds.

§668.164 Disbursing funds.

...

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length that is not a subscription-based program, 10 days before the first day of classes of a payment period; ~~or~~

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, that is not a non-term subscription-based program, a non-term credit-hour program, or a clock-hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds; ~~or~~

~~(iii) If the student is enrolled in a subscription-based program, the later of—~~

~~(A) Ten days before the first day of classes of a payment period; or~~

~~(B) The date the student completed the cumulative number of credit hours associated with the student's enrollment status in all prior terms that the student attended under the definition of a subscription-based program in 34 CFR 668.2.~~ (2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(5). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

...

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

§668.165 Notices and authorizations.

§668.166 Excess cash.

§668.167 Severability.

Subpart L—Financial Responsibility

§668.171 General.

...

(e) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in §668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under §668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; ~~or~~

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in §668.13(d~~);~~ or

(3) Deny the institution's application for certification or recertification to participate in the Title IV, HEA programs.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 64 FR 59042, Nov. 1, 1999; 65 FR 65637, Nov. 1, 2000; 67 FR 67074, Nov. 1, 2002; 75 FR 67199, Nov. 1, 2010]

§668.172 Financial ratios.⁵

...

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 65 FR 65637, Nov. 1, 2000]

⁵ The Department proposed to add a new paragraph (d) to section 668.172 in the Borrower Defense NPRM. See 83 FR 37242 (July 31, 2018).

§668.174 Past performance.

(a) *Past performance of an institution.* An institution is not financially responsible if the institution—

(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, as defined in 34 CFR part 682, within the preceding five years;

(2) In either of its two most recent compliance audits had an audit finding, or in a report issued by the Secretary had a program review finding for its current fiscal year or either of its preceding two fiscal years, that resulted in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

(3) Has been cited during the preceding five years for failure to submit in a timely fashion acceptable compliance and financial statement audits required under this part, or acceptable audit reports required under the individual title IV, HEA program regulations; or

(4) Has failed to resolve satisfactorily any compliance problems identified in audit or program review reports based upon a final decision of the Secretary issued pursuant to subpart G or H of this part.

(b) *Past performance of persons or entities affiliated with an institution.* (1)(i) Except as provided under paragraph (b)(2) of this section, an institution is not financially responsible if a person or entity who exercises substantial control over the institution, as described under 34 CFR 600.30, or any member or members of that person's family, alone or together—

(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a title IV, HEA program requirement; or

(B) Owes a liability for a violation of a title IV, HEA program requirement; and

(ii) That person, entity, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary.

(2) The Secretary may determine that an institution is financially responsible, even if the institution is not otherwise financially responsible under paragraph (b)(1) of this section, if—

(i) The institution notifies the Secretary, within the time permitted and in the manner provided under 34 CFR 600.30, that the person or entity referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

(ii) The person or entity referenced in paragraph (b)(1) of this section repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(A) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that entity, person or any member or members of that person's family, either alone or in combination with one another;

(B) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the entity, person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why—

(A) The person or entity who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person or entity who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) *Ownership interest.* (1) An ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, an institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation. The term “ownership interest” includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term “ownership interest” does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person or entity to exercise substantial control over an institution or third-party servicer if the person or entity —

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, a general partner, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

(4) “Family member” is defined in §600.21(f) of this chapter.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, 40349, July 28, 1998; 67 FR 67075, Nov. 1, 2002]

§668.175 Alternative standards and requirements.⁶

...

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

⁶ The Department proposed to amend section 668.175 by revising paragraphs (a) through (d) and (f) and adding a new paragraph (h) in the Borrower Defense NPRM. See 83 FR 37242 (July 31, 2018).

(2) Under this zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in §668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;

(C) Any violation by the institution of any loan agreement;

(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;

(E) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or

(F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under §668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described under paragraph (d)(2)(ii) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic ~~or facsimile~~ transmission no later than 10 days after that event occurs. An institution that provides this information electronically ~~or by facsimile transmission~~ is responsible for confirming that the Secretary received a complete and legible copy of that transmission; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraphs (d) (2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) [Reserved]...

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, 40349, July 28, 1998; 81 FR 76075, Nov. 1, 2016]

§668.176 Severability.

Appendix A to Subpart L of Part 668—Ratio Methodology for Proprietary Institutions

Appendix B to Subpart L of Part 668—Ratio Methodology for Private Non-Profit Institutions

Appendix C to Subpart L of Part 668—XXX

Subpart M—Two Year Cohort Default Rates

Subpart N—Cohort Default Rates

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Subpart P [Reserved]

Subpart Q—Gainful Employment (GE) Programs

Subpart R—Program Cohort Default Rate

Summary of Part 686 – TEACH Grants

Subpart A – Scope, Purpose, and General Definitions

§ 686.1 Scope and purpose.

- Revise the description of the TEACH Grant Program to clarify that grant recipients can satisfy the service obligation by teaching for an educational service agency serving low-income students. In addition, as a result of the change to the definition of school in 686.2, this regulation would also provide that grant recipients can satisfy their teaching obligation by teaching at a private school serving low-income students.
- Clarify that the eight-year period for completing the service obligation begins when the grant recipient ceases enrollment at the institution where he or she received a TEACH Grant. This is for consistency with existing regulatory language elsewhere in Part 686 and with current operational practice. Make conforming changes where needed in other sections of the regulations.
- Change the reference to Direct Unsubsidized Loans to match the terminology used in the Direct Loan Program regulations. Make conforming changes in other sections of the TEACH Grant regulations.

§ 686.2 Definitions.

- Add a definition of the term “educational service agency” to reflect a statutory change that allows grant recipients to satisfy the TEACH Grant service obligation by teaching for an educational service agency serving low-income students.
- Remove an unnecessary cross-reference to the FFEL Program targeted teacher deferment regulations in the definition of the term “high-need field.”
- Revise the definition of the term “highly-qualified”—
 - For clarity, replace the existing cross-reference to the Elementary and Secondary Education Act of 1965 (ESEA) with the full text of the definition from the ESEA; and
 - For consistency with the “highly-qualified” definition used for purposes of the Direct Loan Teacher Loan Forgiveness Program, added language to cover private school teachers.
- Revise the definition of the term “school serving low-income students (low-income school)” by—
 - Clarifying that this term includes educational service agencies serving low-income students;
 - Updating the name of the Department’s directory of low-income schools;
 - Simplifying the definition of “low-income school” by removing unnecessary text that explains the criteria for inclusion of a school or educational service agency in the Department’s Teacher Cancellation Low-Income (TCLI) Directory, retaining only the requirement that the school or educational service agency must be listed in the TCLI Directory; and
 - Adding language (currently in a different section of the TEACH Grant regulations) explaining the conditions under which teaching at a school or educational service agency that no longer qualifies as a low-income school may satisfy the TEACH Grant service obligation.

Subpart B—Application Procedures

§686.10 Application.

- Replace the current references to submitting an "application" for a TEACH Grant with references to the Free Application for Federal Student Aid (FAFSA), because there is no separate TEACH Grant application. Make conforming changes elsewhere in the regulations.

§686.12 Agreement to serve.

- Change the title of the section to "Agreement to serve and repay," to emphasize that a grant recipient must either perform the service obligation or repay the grant as a loan. Make conforming changes elsewhere.
- Add a requirement for the grant recipient to promptly notify the Secretary of any changes of name, address, telephone number, or e-mail address, if the recipient has provided the Secretary with an e-mail address for receiving communications. This incorporates into the regulations language that is currently in the Agreement to Serve (ATS).
- Add language to address the treatment of grant recipients who withdraw from the institution where they received a TEACH Grant before completing the TEACH Grant-eligible program, then at a later date re-enroll in the same program, or in a different TEACH Grant-eligible program at the same academic level (undergraduate or graduate) as the prior program, at either the same school or a different school, and receive additional TEACH Grants. Specifically—
 - Provide that in the situation described above, the grant recipient must complete one service obligation for all grants received at the same academic level. This incorporates into the regulations current operational procedures for handling such situations.
 - Provide that except in cases when a grant recipient completed one or more years of qualifying teaching during the period between withdrawal and reenrollment, the Secretary adjusts the starting date of the period for completing the service obligation to begin when the grant recipient ceases to be enrolled at the institution where he or she has re-enrolled.
 - Provide that for a grant recipient who completed one or more complete academic years of creditable teaching service during the period between the grant recipient's withdrawal and re-enrollment, the Secretary does not adjust the starting date of the period for completing the service obligation and applies the completed teaching service toward satisfaction of the grant recipient's service obligation. If the grant recipient continues to perform creditable teaching service after re-enrolling in a TEACH Grant-eligible program, the grant recipient may receive credit toward satisfaction of the service obligation for any complete academic years of creditable teaching performed while the recipient is concurrently enrolled in the TEACH Grant-eligible program only if the recipient does not request and receive a temporary suspension of the period for completing the service obligation.
- Clarify that the requirements for "majoring and serving in a high-need field," are specific to teaching in a high-need field listed in the Nationwide List.
- To reflect a statutory change, provide that to meet the teaching service obligation by teaching in a high-need field listed in the Nationwide List, the field must be listed in the Nationwide List for the State in which the grant recipient teaches at the time the recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or for teaching service performed on or after July 1, 2010, at the time the grant recipient begins teaching in that field or when the grant recipient signed the agreement to serve or received the

TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching. Conforming changes were also made.

- Provide that in the case of a grant recipient who has more than one service obligation and who intends to satisfy the service obligation by teaching in a high-need field that was listed in the Nationwide List at the time the grant recipient signed the agreement to serve or received a TEACH Grant, the grant recipient cannot satisfy all of the service obligations by teaching in the same high-need field unless that high-need field was listed in the Nationwide List for the State in which the grant recipient teaches at the time the grant recipient signed an agreement to serve or received a TEACH Grant associated with each of the grant recipient's service obligations.

Subpart C—Determination of Awards

§686.21 Calculation of a grant.

- Replaced the word “aggregate” with the word “total” and the word “master’s” with the words “graduate study” to be consistent with statutory language.

Subpart D—Administration of Grant Payments

§686.32 Counseling requirements.

- Add to initial and exit counseling a requirement that the grant recipient must be informed that, in order for teaching in a high-need field listed in the Nationwide List to count towards the recipient's service obligation, the high-need field must be listed in the Nationwide List for the State in which the grant recipient teaches at the time the recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or, for teaching service performed on or after July 1, 2010, the field must have been listed in the Nationwide List at the time the grant recipient signed the agreement to serve or received the TEACH Grant associated with the service obligation for which the teaching service is going to be performed, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field.
- However, a grant recipient who has more than one service obligation cannot satisfy all of the service obligations by teaching in the same high-need field unless that high-need field was listed in the Nationwide List for the State in which the grant recipient teaches at the time the grant recipient signed an agreement to serve or received a TEACH Grant associated with each of the grant recipient's service obligations.
- Add to initial, subsequent, and exit counseling a requirement to explain to the grant recipient that once a TEACH Grant is converted to a Direct Unsubsidized Loan it cannot be reconverted to a grant unless the grant was converted to a loan in error.
- Add language to the exit counseling requirements to reflect that the Secretary will regularly remind the recipient of the requirements that must be met to satisfy the service obligation, and of the timeframe within which the recipient must complete the service obligation.

Subpart E—Service and Repayment Obligations

§686.40 Documenting the service obligation.

- Remove the requirement for grant recipients to notify the Secretary within 120 days of completing or otherwise ceasing enrollment in a program of study for which a TEACH Grant was received that they are performing qualifying teaching service, or that they are not yet teaching,

but intend to satisfy the service obligation. This requirement is no longer needed due to changes in proposed §686.43.

- Remove language that relates to the determination of whether a school or educational service agency qualifies as a low-income school and move it to the definition of “school or educational service agency serving low-income students (low-income school)”.
- Clarify existing language explaining that a grant recipient cannot satisfy the requirement to teach in a high-need field by teaching in a geographic region of a State that has been designated in the Nationwide List as having a shortage of elementary or secondary school teachers, or by teaching in a specific grade level not associated with a specific high-need field that has been designated in the Nationwide List as having a shortage of teachers.
- Remove redundant language related to the high-need field requirement and replace with a cross-reference to where the high-need field requirement is explained.
- Add “residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))” as a new circumstance that would allow less than a full year of teaching to be counted as one of a grant recipient’s required four complete elementary or secondary years of teaching.

§686.41 Periods of suspension.

- Add “residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))” as an additional basis for a grant recipient to request a temporary suspension of the period for completing the service obligation. Provide for a separate 3-year limit for this suspension, and allow for a representative to submit a request for a disaster suspension on the grant recipient's behalf.

§686.42 Discharge of agreement to serve.

- Amend the regulations related to total and permanent disability to reflect the current procedures for discharging a TEACH Grant service obligation based on the grant recipient's total and permanent disability. The existing regulatory language is obsolete.
- For consistency with existing military suspension language, add “a reserve component of the Armed Forces named in 10 U.S.C. 10101, or the National Guard” to the meaning of Armed Forces.

§686.43 Obligation to repay the grant.

- Simplify the regulations that specify the conditions under which TEACH Grants are converted to loans to provide that, for all recipients, loan conversion will occur only if the grant recipient asks the Secretary to convert his or her TEACH Grants to loans, or the recipient fails to begin or maintain qualifying teaching service within a timeframe that would allow the recipient to satisfy the service obligation within the 8-year period.
- Add language stating that the Secretary will provide recipients with information about the service obligation requirements at least annually, and for recipients whose grants have been converted to loans, will explain the process by which they may request reconsideration of the conversion if they believe that the grants were converted in error.
- Provide that a recipient remains obligated to meet all service obligation requirements even if the recipient does not receive the notices from the Secretary previously described in this section.

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

Subpart A – Scope, Purpose, and General Definitions

§686.1 Scope and purpose.

The TEACH Grant program awards grants to students who intend to teach, to help meet the cost of their postsecondary education. In exchange for the grant, the student must agree to serve as a full-time teacher in a high-need field, in a school or for an educational service agency serving low-income students for at least four academic years within eight years of ~~completing~~ceasing enrollment at the ~~program of study for which~~institution where the student received the grant or the transfer institution where the student completed the program. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Federal Direct Unsubsidized Stafford/Ford Loan (~~Federal~~ Direct Unsubsidized Loan) and must be repaid with interest.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.2 Definitions.

(a) Definitions for the following terms used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, (HEA) 34 CFR part 600:

Award year

Clock hour

Correspondence course

Credit hour

Eligible institution

Institution of higher education (institution)

Regular student

Secretary

State

Title IV, HEA program

(b) Definitions for the following terms used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year

Enrolled

Expected family contribution (EFC)

Full-time student

Graduate or professional student

Half-time student

HEA

Payment period

Three-quarter-time student

Undergraduate student

William D. Ford Federal Direct Loan (Direct Loan) Program

(c) Definitions for the following terms used in this part are in 34 CFR part 77:

Local educational agency (LEA)

State educational agency (SEA)

(d) Other terms used in this part are defined as follows:

Academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year):

(1) One complete school year, or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period.

(2) If a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

Agreement to serve (ATS): An agreement under which the individual receiving a TEACH Grant commits to meet the service obligation described in §686.12 and to comply with notification and other provisions of the agreement.

Annual award: The maximum TEACH Grant amount a student would receive for enrolling as a full-time, three-quarter-time, half-time, or less-than-half-time student and remaining in that enrollment status for a year.

Bilingual education: An educational program in which two languages are used to provide content matter instruction.

Educational service agency: A regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to LEAs.

Elementary school: A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

English language acquisition: The process of acquiring English as a second language.

Full-time teacher: A teacher who meets the standard used by a State in defining full-time employment as a teacher. For an individual teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

High-need field: Includes the following:

(1) Bilingual education and English language acquisition.

(2) Foreign language.

(3) Mathematics.

(4) Reading specialist.

(5) Science.

(6) Special education.

(7) Another field documented as high-need by the Federal Government, a State government or an LEA, and approved by the Secretary and listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) ~~in accordance with 34 CFR 682.210(q).~~

Highly -qualified: ~~Has~~

(1) When used with respect to any public elementary school or secondary school teacher teaching in a State, means that-

(i) The teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the meaning State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in section 9101(23) the State's public charter school law; and

(ii) The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

(2) When used with respect to-

(i) An elementary school teacher who is new to the profession, means that the teacher-

(A) Holds at least a bachelor's degree; and

(B) Has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the Elementary and Secondary Education Act basic elementary school curriculum (which may consist of 1965, as amended (ESEA) or in section 602(10) passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the Individuals With Disabilities Education Act basic elementary school curriculum); or

(ii) A middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by-

(A) Passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(B) Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

(3) When used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and-

(i) Has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

(ii) Demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that-

(A) Is set by the State for both grade- appropriate academic subject matter knowledge and teaching skills;

(B) Is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

(C) Provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

(D) Is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State; and

(E) Takes into consideration, but is not be based primarily on, the time the teacher has been teaching in the academic subject;

(F) Is made available to the public upon request; and

(G) May involve multiple, objective measures of teacher competency.

(4)(i) When used with respect to any private school teacher who is exempt from State certification requirements means that the teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas.

(ii) For purposes of paragraph (4)(i) of this definition, the competency tests taken by a private school teacher must be recognized by five or more States for the purpose of fulfilling the highly qualified teacher requirements as described in paragraphs (1), (2), and (3) of this definition, and the score achieved by the teacher on each test must equal or exceed the average passing score of those five States.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

- (1) Personal identification information;
- (2) Application data used to calculate the applicant's EFC; and
- (3) EFC.

Numeric equivalent: (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing TEACH Grant eligibility. The institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.25 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only “satisfactory/unsatisfactory”, “pass/fail”, or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the “pass” or “satisfactory” standard has the numeric equivalent of at least a 3.25 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.25 GPA on a 4.0 scale; and

(ii) For an eligible institution, the institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Post-baccalaureate program: A program of instruction for individuals who have completed a baccalaureate degree, that—

- (1) Does not lead to a graduate degree;
- (2) Consists of courses required by a State in order for a student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that it does not include any program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education; and
- (3) Is treated as an undergraduate program of study for the purposes of title IV of the HEA.

Retiree: An individual who has decided to change his or her occupation for any reason and who has expertise, as determined by the institution, in a high-need field.

Scheduled Award: The maximum amount of a TEACH Grant that a full-time student could receive for a year.

School or educational service agency serving low-income students (low-income school): (1) An elementary ~~or school~~, secondary school, or educational service agency that—

- ~~(1) Is in the school district of an LEA that is eligible for assistance pursuant to title I of the ESEA;~~
- ~~(2) Has been determined by the Secretary to be a school in which more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I of the ESEA; and~~
- ~~(3) Is listed in the Department's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. Low-Income (TCL) Directory.~~ The Secretary considers all elementary and secondary schools and educational service agencies operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian tribal groups under contract or grant with the BIE to qualify as schools or educational service agencies serving low-income students.

Secondary school: A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

TEACH Grant-eligible institution: An eligible institution as defined in 34 CFR part 600 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 and—

(1) Provides a high-quality teacher preparation program at the baccalaureate or master's degree level that—

(i)(A) Is accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs; or

(B) Is approved by a State and includes a minimum of 10 weeks of full-time pre-service clinical experience, or its equivalent, and provides either pedagogical coursework or assistance in the provision of such coursework; and

(ii) Provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(2) Provides a two-year program that—

(i) Is acceptable for full credit in a baccalaureate teacher preparation program of study offered by an institution described in paragraph (1) of this definition, as demonstrated by the institutions; or

(ii) Is acceptable for full credit in a baccalaureate degree program in a high-need field at an institution described in paragraph (3) of this definition, as demonstrated by the institutions;

(3) Offers a baccalaureate degree that, in combination with other training or experience, will prepare an individual to teach in a high-need field as defined in this part and has entered into an agreement with an institution described in paragraphs (1) or (4) of this definition to provide courses necessary for its students to begin a career in teaching; or

(4) Provides a post-baccalaureate program of study.

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 668.8, is a program of study that is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

Teacher: A person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including special education teachers and reading specialists.

Teacher preparation program: A State-approved course of study, the completion of which signifies that an enrollee has met all the State's educational or training requirements for initial certification or licensure to teach in the State's elementary or secondary schools. A teacher preparation

program may be a regular program or an alternative route to certification, as defined by the State. For purposes of a TEACH Grant, the program must be provided by an institution of higher education.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 75 FR 66968, Oct. 29, 2010]

§686.3 Duration of student eligibility.

§686.4 Institutional participation.

§686.5 Enrollment status for students taking regular and correspondence courses.

§686.6 Payment from more than one institution.

Subpart B—Application Procedures

§686.10 Application.

~~(a)~~ To receive a grant under this part, a student must—

~~(1a)~~ Complete a Free Application for Federal Student Aid (FAFSA) and submit ~~an approved signed application, as designated by it in accordance with the Secretary. A copy of this application is not acceptable~~instructions in the FAFSA;

~~(2b)~~ Complete and sign an agreement to serve ~~and promise to~~ repay in § 686.12; and

~~(3c)~~ Provide any additional information and assurances requested by the Secretary.

~~(b) The student must submit an application to the Secretary by—~~

~~(1) Sending the completed application to the Secretary; or~~

~~(2) Providing the application, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically.~~

~~(c) The student must provide the address of his or her residence.~~

~~(d) For each award year, the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting to the Department the application and additional information and for making corrections to the information provided.~~

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.11 Eligibility to receive a grant.

(a) *Undergraduate, post-baccalaureate, and graduate students.* (1) Except as provided in paragraph (b) of this section, a student who meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(i) Has submitted a completed ~~application~~ FAFSA;

(ii) Has signed an agreement to serve as required under §686.12;

(iii) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program;

(iv) Is completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating; and

(v) Has—

(A) If the student is in the first year of a program of undergraduate education as determined by the institution—

(1) A final cumulative secondary school grade point average (GPA) upon graduation of at least 3.25 on a 4.0 scale, or the numeric equivalent; or

(2) A cumulative GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, based on courses taken at the institution through the most-recently completed payment period;

(B) If the student is beyond the first year of a program of undergraduate education as determined by the institution, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most recently completed payment period;

(C) If the student is a graduate student during the first payment period, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent;

(D) If the student is a graduate student beyond the first payment period, a cumulative graduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period; or

(E) A score above the 75th percentile of scores achieved by all students taking the test during the period the student took the test on at least one of the batteries from a nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test, except that such test may not include a placement test.

(2)(i) An institution must document the student's secondary school GPA under §686.11(a)(1)(v)(A) using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency; or

(C) A public or private secondary school.

(iii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation of a home-schooled student's secondary school GPA.

(iv) If an institution has reason to believe the documentation provided by a student under paragraph (a)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's grades by using documentation provided directly to the institution by the cognizant authority.

(b) *Current or former teachers or retirees.* A student who has submitted a completed application ~~FAFSA~~ and meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(1) Has signed an agreement to serve ~~and/or repay~~ as required under §686.12;

(2) Is a current teacher or retiree who is applying for a grant to obtain a master's degree or is or was a teacher who is pursuing certification through a high-quality alternative certification route; and

(3) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program during the period required for the completion of a master's degree.

(c) *Transfer students.* If a student transfers from one institution to the current institution and does not qualify under §686.11(a)(1)(v)(E), the current institution must determine that student's eligibility for a TEACH Grant for the first payment period using either the method described in paragraph (c)(1) of this section or the method described in paragraph (c)(2) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(1) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted upon transfer—

(i) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts; and

(ii) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(2) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, the current institution must use the grades assigned to the coursework accepted by the current institution as the student's cumulative GPA to determine eligibility for the first

payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.12 Agreement to serve or repay.

(a) *General.* A student who meets the eligibility requirements in §686.11 may receive a TEACH Grant only after he or she signs an agreement to serve or repay the grant as a loan provided by the Secretary and receives counseling in accordance with §686.32.

(b) *Contents of the agreement to serve or repay.* The agreement provides that, for each TEACH Grant-eligible program for which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by performing creditable teaching service by—

(1) Serving as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after ~~completing the program or otherwise ceasing~~ date the recipient ceased to be enrolled ~~in~~ at the ~~program for which~~ institution where the recipient received the TEACH Grant—

(i) In a low-income school;

(ii) As a highly-qualified teacher; and

(iii) In a high-need field in the majority of classes taught during each elementary and secondary academic year.

(2) Submitting, upon completion of each year of service by the annual certification due date, documentation of the service in the form of a certification by a chief administrative officer of the school; and

(3) Complying with the terms, conditions, and other requirements consistent with §§686.40-686.43 that the Secretary determines to be necessary.

(c) *Completion of more than one service obligation.* (1) ~~A~~ Except as provided in paragraph (c)(2) of this section, a grant recipient must complete a service obligation for each program of study for which he or she received TEACH Grants. ~~Each~~ The starting date of the eight-year period for completing each service obligation begins ~~following the completion or other cessation of enrollment by~~ when the student ~~increases to be enrolled at~~ the TEACH Grant-eligible program for which institution where the student received TEACH ~~Grant funds~~ Grants. However, creditable teaching service, a suspension approved under §686.41(a)(2), or a military discharge granted under §686.42(c)(2) may apply to more than one service obligation.

(2)(i)(A) In the case of a TEACH Grant recipient who withdraws from an institution before completing a baccalaureate or post-baccalaureate program of study for which he or she received TEACH Grants, but later re-enrolls at the same institution or at a different institution in either the same

baccalaureate or post-baccalaureate program or in a different TEACH Grant-eligible baccalaureate or post-baccalaureate program and receives additional TEACH Grants, the grant recipient must complete one service obligation for all TEACH Grant-eligible baccalaureate or post-baccalaureate programs for which TEACH Grants were received; and

(2)(B) In the case of a TEACH Grant recipient who withdraws from an institution before completing a master's degree program for which he or she received TEACH Grants, but later re-enrolls at the same institution or at a different institution in either the same master's degree program or in a different TEACH Grant-eligible master's degree program and receives additional TEACH Grants, the grant recipient must complete one service obligation for all TEACH Grant-eligible master's degree programs for which TEACH Grants were received;

(ii) Except as provided in paragraph (c)(2)(iii) of this section, for a TEACH Grant recipient covered under paragraph (c)(2)(i)(A) or (B) of this section the Secretary adjusts the starting date of the period for completing the service obligation to begin when the grant recipient ceases to be enrolled at the institution where he or she has re-enrolled.

(iii) In the case of a TEACH Grant recipient covered under paragraph (c)(2)(i)(A) or (B) of this section who completed one or more complete academic years of creditable teaching service as described in §686.12(b) during the period between the grant recipient's withdrawal and re-enrollment—

(A) The Secretary does not adjust the starting date of the period for completing the service obligation;

(B) The completed teaching service counts toward satisfaction of the grant recipient's service obligation under paragraph (c)(2)(i) of this section; and

(C) If the grant recipient continues to perform creditable teaching service after re-enrolling in a TEACH Grant-eligible program, the grant recipient may receive credit toward satisfaction of the service obligation under paragraph (c)(2)(i) of this section for any complete academic years of creditable teaching performed while the recipient is concurrently enrolled in the TEACH Grant-eligible program only if the recipient does not request and receive a temporary suspension of the period for completing the service obligation under §686.41(a)(1)(i).

(3) A grant recipient may request a suspension, in accordance with §686.41, of the eight-year time period in paragraph (b)(1) of this section.

(d) ~~Majoring and serving Teaching in a high-need field. A grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List cannot satisfy his or her. In order for a grant recipient's teaching service in a high-need field listed in the Nationwide List to count toward satisfying the recipient's service obligation to teach in that high-need field unless,~~ the high-need field in

which he or she ~~has~~ prepared to teach ~~is~~must be listed in the Nationwide List for the State in which the grant recipient ~~teaches—~~

(1) At the time the grant recipient begins teaching ~~at~~in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, —

(i) At the time the ~~grant~~ recipient begins teaching in that field, ~~even if that field subsequently loses its high-need designation for that State; or~~

(ii) At the time the grant recipient signed the agreement to serve or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field. However, a grant recipient who has more than one service obligation cannot satisfy all of the service obligations by teaching in the same high-need field unless that high-need field was listed in the Nationwide List for the State in which the grant recipient teaches at the time the grant recipient signed an agreement to serve or received a TEACH Grant associated with each of the grant recipient's service obligations.

(e) *Repayment for failure to complete service obligation.* If a grant recipient fails or refuses to carry out the required service obligation described in paragraph (b) of this section, the TEACH Grants received by the recipient must be repaid and will be treated as a ~~Federal~~ Direct Unsubsidized Loan, with interest accruing from the date of each TEACH Grant disbursement, in accordance with applicable sections of subpart B of 34 CFR part 685.

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 55950, Oct. 29, 2009]

Subpart C—Determination of Awards

§686.20 Submission process and deadline for a SAR or ISIR.

§686.21 Calculation of a grant.

(a)(1)(i) The Scheduled Award for a TEACH Grant for an eligible student is \$4,000.

(ii) Each Scheduled Award remains available to an eligible student until the \$4,000 is disbursed.

(2)(i) The ~~aggregate~~total amount that a student may receive in TEACH Grants for undergraduate and post-baccalaureate study may not exceed \$16,000.

(ii) The ~~aggregate~~total amount that a student may receive in TEACH Grants for ~~a master's degree~~graduate study may not exceed \$8,000.

(b) The annual award for—

(1) A full-time student is \$4,000;

(2) A three-quarter-time student is \$3,000;

(3) A half-time student is \$2,000; and

(4) A less-than-half-time student is \$1,000.

(c) Except as provided in paragraph (d) of this section, the amount of a student's grant under this part, in combination with the other student financial assistance available to the student, including the amount of a Federal Pell Grant for which the student is eligible, may not exceed the student's cost of attendance at the TEACH Grant-eligible institution. Other student financial assistance is estimated financial assistance, as defined in 34 CFR 673.5(c).

(d) A TEACH Grant may replace a student's EFC, but the amount of the grant that exceeds the student's EFC is considered estimated financial assistance, as defined in 34 CFR 673.5(c).

(e) In determining a student's payment for a payment period, an institution must include—

(1) In accordance with 34 CFR 668.20, any noncredit or reduced credit courses that an institution determines are necessary—

(i) To help a student be prepared for the pursuit of a first undergraduate baccalaureate or post-baccalaureate degree or certificate; or

(ii) In the case of English language instruction, to enable the student to utilize already existing knowledge, training, or skills; and

(2) In accordance with 34 CFR 668.5, a student's participation in a program of study abroad if it is approved for credit by the home institution at which the student is enrolled.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.22 Calculation of a grant for a payment period.

§686.23 Calculation of a grant for a payment period that occurs in two award years.

§686.24 Transfer student: attendance at more than one institution during an award year.

§686.25 Correspondence study.

Subpart D—Administration of Grant Payments

§686.30 Scope.

§686.31 Determination of eligibility for payment and cancellation of a TEACH Grant.

...

(e)(1) In accordance with 34 CFR 668.165, before disbursing a TEACH Grant for any award year, an institution must—

(i) Notify the student of the amount of TEACH Grant funds that the student is eligible to receive, how and when those funds will be disbursed, and the student's right to cancel all or a portion of the TEACH Grant; and

(ii) Return the TEACH Grant proceeds, cancel the TEACH Grant, or both, if the institution receives a TEACH Grant cancellation request from the student by the later of the first day of a payment period or 14 days after the date it notifies the student of his or her right to cancel all or a portion of a TEACH Grant.

(2)(i) If a student requests cancellation of a TEACH Grant after the period of time in paragraph (e)(1)(ii) of this section, but within 120 days of the TEACH Grant disbursement date, the institution may return the TEACH Grant proceeds, cancel the TEACH Grant, or do both.

(ii) If the institution does not return the TEACH Grant proceeds, or cancel the TEACH Grant, the institution must notify the student that he or she may contact the Secretary to request that the TEACH Grant be converted to a ~~Federal~~ Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.32 Counseling requirements.

(a) *Initial counseling.* (1) An institution must ensure that initial counseling is conducted with each TEACH Grant recipient prior to making the first disbursement of the grant.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV,

HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) The initial counseling must—

(i) Explain the terms and conditions of the TEACH Grant agreement to serve as described in §686.12;

(ii) Provide the studentgrant recipient with information about how to identify low-income schools and documented high-need fields;

(iii) Inform the grant recipient that, in order for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in §686.2; or

(B) A high-need field that is listed in the Nationwide List ~~at the time and~~ for the State in which the grant recipient teaches—

(1) At the time the grant recipient begins teaching in that field-, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient signed the agreement to serve or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field. However, a grant recipient who has more than one service obligation cannot satisfy all of the service obligations by teaching in the same high-need field unless that high-need field was listed in the Nationwide List for the State in which the grant recipient teaches at the time the grant recipient signed an agreement to serve or received a TEACH Grant associated with each of the grant recipient's service obligations.

(iv) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the agreement to serve and the conditions under which a suspension may be granted in accordance with §686.41;

(v) Explain to the studentgrant recipient that conditions, such as conviction of a felony, could preclude the student from completing the service obligation;

(vi) Emphasize to the studentgrant recipient that if the studentgrant recipient fails or refuses to complete the service obligation contained in the agreement to serve or any other condition of the agreement to serve—

(A) The TEACH Grant must be repaid as a ~~Federal~~ Direct Unsubsidized Loan; and

(B) The ~~TEACH Grant~~grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain the circumstances, as described in §686.43, under which a TEACH Grant will be converted to a ~~Federal~~Direct Unsubsidized Loan;

(viii) Emphasize that, once a TEACH Grant is converted to a ~~Federal~~Direct Unsubsidized Loan, it ~~cannot~~may be reconverted to a grant if the grant was converted to a loan in error;

(ix) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office;

(x) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation; and

(xi) Inform the ~~student~~grant recipient of sample monthly repayment amounts based on a range of student loan indebtedness.

(b) *Subsequent counseling.* (1) If a student receives more than one TEACH Grant, the institution must ensure that the student receives additional counseling prior to the first disbursement of each subsequent TEACH Grant award.

(2) Subsequent counseling may be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) Subsequent counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve as described in §686.12;

(ii) Emphasize to the ~~student~~grant recipient that if the ~~student~~grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or any other condition of the agreement to serve—

(A) The TEACH Grant must be repaid as a ~~Federal~~Direct Unsubsidized Loan; and

(B) The ~~TEACH Grant~~grant recipient will be obligated to repay the full amount of the grant and the accrued interest from the disbursement date;

(iii) Explain the circumstances, as described in §686.34, under which a TEACH Grant will be converted to a ~~Federal~~Direct Unsubsidized Loan;

(iv) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant;~~and~~

unless the grant was converted to a loan in error; and

(v) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office.

(c) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each grant recipient before he or she ceases to attend the institution at a time determined by the institution.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the grant recipient's questions. As an alternative, in the case of a grant recipient enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the grant recipient may be provided with written counseling materials within 30 days after he or she completes the TEACH Grant-eligible program.

(3) Within 30 days of learning that a grant recipient has withdrawn from the institution without the institution's knowledge, or from a TEACH Grant-eligible program, or failed to complete exit counseling as required, exit counseling must be provided either in-person, through interactive electronic means, or by mailing written counseling materials to the grant recipient's last known address.

(4) The exit counseling must—

(i) Inform the grant recipient of the four-year service obligation that must be completed within the first eight calendar years after completing a TEACH Grant-eligible program in accordance with §686.12;

(ii) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service obligation and the conditions under which a suspension may be granted in accordance with §686.41;

(iii) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(iv) Inform the grant recipient that, in order for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in §686.2; or

(B) A high-need field that is listed in the Nationwide List ~~at the time and~~ for the State in which the grant recipient teaches—

(1) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

~~(v) Explain that the grant recipient will be required to submit to the Secretary each year written documentation of his or her status as a highly-qualified teacher in a high-need field at a low-income school or of his or her intent to complete the four-year service obligation until the date that the service obligation has been met or the date that the grant becomes a Federal Direct Unsubsidized Loan, whichever occurs first;~~

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient signed the agreement to serve or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field. However, a grant recipient who has more than one service obligation cannot satisfy all of the service obligations by teaching in the same high-need field unless that high-need field was listed in the Nationwide List for the State in which the grant recipient teaches at the time the grant recipient signed an agreement to serve or received a TEACH Grant associated with each of the grant recipient's service obligations.

(v) Explain to the grant recipient that the Secretary will ~~regularly~~annually remind the recipient of the requirements that must be met to satisfy the service obligation, and of the timeframe within which the recipient must complete the service obligation if the grant recipient provides updated contact information to the Secretary as needed.;

(vi) Explain the circumstances, as described in §686.43, under which a TEACH Grant will be converted to a ~~Federal~~ Direct Unsubsidized Loan;

(vii) Emphasize that once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan it cannot be reconverted to a grant; unless the grant was converted to a loan in error;

(viii) Inform the grant recipient of the average anticipated monthly repayment amount based on a range of student loan indebtedness if the TEACH Grants convert to a ~~Federal~~ Direct Unsubsidized Loan;

(ix) Review for the grant recipient available repayment options if the TEACH Grant converts to a ~~Federal~~ Direct Unsubsidized Loan, including the standard repayment, extended repayment, graduated repayment, income-contingent and income-based repayment plans, and loan consolidation;

(x) Suggest debt-management strategies to the grant recipient that would facilitate repayment if the TEACH Grant converts to a ~~Federal~~ Direct Unsubsidized Loan;

(xi) Explain to the grant recipient how to contact the Secretary;

(xii) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(xiii) Review for the grant recipient the conditions under which he or she may defer or forbear repayment, obtain a full or partial discharge, or receive teacher loan forgiveness if the TEACH Grant converts to a ~~Federal~~ Direct Unsubsidized Loan;

(xiv) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office; and

(xv) Inform the grant recipient of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(5) If exit counseling is conducted through interactive electronic means, an institution must take reasonable steps to ensure that each grant recipient receives the counseling materials and participates in and completes the exit counseling.

(d) *Compliance.* The institution must maintain documentation substantiating the institution's compliance with this section for each TEACH Grant recipient.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.33 Frequency of payment.

§686.34 Liability for and recovery of TEACH Grant overpayments.

§686.35 Recalculation of TEACH Grant award amounts.

§686.36 Fiscal control and fund accounting procedures.

§686.37 Institutional reporting requirements.

§686.38 Maintenance and retention of records.

Subpart E—Service and Repayment Obligations

§686.40 Documenting the service obligation.

~~(a) Except as provided in §§686.41 and 686.42, within 120 days of completing or otherwise ceasing enrollment in a program of study for which a TEACH Grant was received, the grant recipient must confirm to the Secretary in writing that—~~

~~(1) He or she is employed as a full-time teacher in accordance with the terms and conditions of the agreement to serve described in §686.12; or~~

~~(2) He or she is not yet employed as a full-time teacher but intends to meet the terms and conditions of the agreement to serve described in §686.12.~~

~~(b)(a)~~ If a grant recipient is performing full-time teaching service in accordance with the agreement to serve, or agreements to serve if more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient is teaching. The documentation must show that the grant recipient ~~is teaching in a low income school. If the school at which the grant recipient is employed meets the requirements of a low income school in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that recipient.~~ —

~~(c)(1) In addition to the documentation requirements in paragraph (b) of this section, the documentation must show that the grant recipient—~~

~~((1) Taught full-time in a low-income school as a highly-qualified teacher; and~~

~~(2)(i)~~ Taught a majority of classes during the period being certified in any of the high-need fields of mathematics, science, a foreign language, bilingual education, English language acquisition, special education, or as a reading specialist; or

(ii) Taught a majority of classes during the period being certified in ~~a State in~~ another high-need field ~~designated by that State and~~ listed in the Nationwide List, in accordance with §686.12(d), except that ~~teaching service does not a grant recipient cannot~~ satisfy the requirements of the agreement to serve ~~if that by teaching service is in—~~

(A) In a geographic region of a State or in that has been designated in the Nationwide List as having a shortage of elementary or secondary school teachers; or (B) In a specific grade level not associated with a high-need field of a State that has been designated in the Nationwide List as having a shortage of elementary or secondary school teachers.

(3) If the school or educational service agency at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school or educational service agency fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of satisfying the service obligation described in §686.12(b).

~~(2) If a grant recipient begins qualified full-time teaching service in a State in a high-need field designated by that State and listed in the Nationwide List and in subsequent years that high-need field is no longer designated by the State in the Nationwide List, the grant recipient will be considered to continue to perform qualified full-time teaching service in a high-need field of that State and to continue to fulfill the service obligation.~~

~~(d) Documentation must also provide evidence that the grant recipient is a highly-qualified teacher.~~

~~(e)(b)~~ For purposes of completing the service obligation, the elementary or secondary academic year may be counted as one of the grant recipient's four complete elementary or secondary academic years if the grant recipient completes at least one-half of the elementary or secondary academic year and the grant recipient's school employer considers the grant recipient to have fulfilled his or her contract requirements for the elementary or secondary academic year for the purposes of salary increases, tenure, and retirement if the grant recipient is unable to complete an elementary or secondary academic year due to—

(1) A condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2612(a)(1) and (3)); or

(2) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency; or

(f3) Residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(d) A grant recipient who taught in more than one qualifying school or qualifying educational service agency during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§686.41 Periods of suspension.

(a)(1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on—

(i) Enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State's elementary or secondary schools;

(ii) A condition that is a qualifying reason for leave under the FMLA; ~~or~~

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency; or

(iv) Residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(2) A grant recipient may receive a suspension described in paragraphs (a)(1)(i), (ii), (iii), and ~~(iiiiv)~~ of this section in one-year increments that—

(i) Does not exceed a combined total of three years under both paragraphs (a)(1)(i) and (ii) of this section; ~~or~~

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) of this section; or

(iii) Does not exceed a total of three years under paragraph (a)(1)(iv) of this section.

(b) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) or (iv) of this section, must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under §686.43(a)(1) ~~through (a)(5)~~ that would cause the TEACH Grant to convert to a ~~Federal~~ Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) or (iv) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Approved by the Office of Management and Budget under control number 1845-0083)

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 55950, Oct. 29, 2009]

§686.42 Discharge of agreement to serve.

(a) *Death.* (1) If a grant recipient dies, the Secretary discharges the obligation to complete the agreement to serve based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the grant recipient's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges the obligation to complete the agreement to serve based on other reliable documentation of the grant recipient's death that is acceptable to the Secretary.

(b) *Total and permanent disability.* (1) A grant recipient's agreement to serve is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR ~~682.200~~685.102(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

~~(2) The eight year time period in which the grant recipient must complete the service obligation remains in effect during the conditional discharge period described in 34 CFR 685.213(c)(2) unless the grant recipient is eligible for a suspension based on a condition that is a qualifying reason for leave under the FMLA in accordance with §686.41(a)(1)(ii)(D).~~

~~(3) Interest continues to accrue on each TEACH Grant disbursement unless and until the TEACH Grant recipient's agreement to serve is discharged.~~

~~(4) If the grant recipient satisfies the criteria for a total and permanent disability discharge during and at the end of the three year conditional discharge period, the Secretary discharges the grant recipient's service obligation.~~

~~(5) If, If at any time during or at the end of the three year conditional discharge period, the Secretary determines that the grant recipient does not meet the eligibility criteria for a total and permanent disability requirements of the three year period following the discharge, as described in 34 CFR 685.213(b)(7), the Secretary ends the conditional discharge period and will notify the grant recipient is once again subject that the grant recipient's obligation to satisfy the terms of the agreement to serve is reinstated.~~

~~(3) The Secretary's notification under paragraph (b)(2) of this section will—~~

~~(i) Include the reason or reasons for reinstatement;~~

~~(ii) Provide information on how the grant recipient may contact the Secretary if the grant recipient has questions about the reinstatement or believes that the agreement to serve was reinstated based on incorrect information; and~~

~~(iii) Inform the TEACH Grant recipient that he or she must satisfy the service obligation within the portion of the eight-year period that remained after the date of the discharge.~~

~~(4) If the TEACH Grant made to a recipient whose TEACH Grant agreement to serve is reinstated is later converted to a Direct Unsubsidized Loan, the recipient will not be required to pay interest that accrued on the TEACH Grant disbursements from the date the agreement to serve was discharged until the date the agreement to serve was reinstated.~~

(c) *Military discharge.* (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under §686.41(a)(2)(ii), may qualify for a proportional discharge of

his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

(2) A grant recipient described in paragraph (c)(1) of this section may receive a—

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

(3) A grant recipient or his or her representative must provide the Secretary with—

(i) A written statement from the grant recipient's commanding or personnel officer certifying—

(A) That the grant recipient is on active duty in the Armed Forces of the United States;

(B) The date on which the grant recipient's service began; and

(C) The date on which the grant recipient's service is expected to end; or

(ii)(A) A copy of the grant recipient's official military orders; and

(B) A copy of the grant recipient's military identification.

(4) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, ~~and the Coast~~the Coast Guard, a reserve component of the Armed Forces named in 10 U.S.C. 10101, or the National Guard.

(5) Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with §686.12.

(Approved by the Office of Management and Budget under control number 1845-0083)

(Authority: 20 U.S.C. 1070g, *et seq.*)

[73 35495, June 23, 2008, as amended at 74 FR 55950, Oct. 29, 2009; 81 FR 76089, Nov. 1, 2016]

§686.43 Obligation to repay the grant.

(a)(1) The TEACH Grant amounts disbursed to the recipient will be converted into a ~~Federal~~ Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made and be collected by the Secretary in accordance with the relevant provisions of subpart A of 34 CFR part 685 if—

(1) The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a ~~Federal~~ Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or ~~field~~educational service agency, or not to teach in a high-need field, or for any other reason; or

~~(2) Within 120 days of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has failed to notify the Secretary in accordance with §686.40(a);~~

~~(3) Within one year of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has not—~~

~~(i) Been determined eligible for a suspension of the eight year period for completion of the service obligation as provided in §686.41;~~

~~(ii) Re-enrolled in a TEACH Grant-eligible program; or~~

~~(iii) Begun creditable teaching service as described in §686.12(b);~~

~~(4) The grant recipient completes the course of study for which a TEACH Grant was received and does not actively confirm to the Secretary, at least annually, his or her intention to satisfy the agreement to serve; or~~

~~(5) The grant recipient has completed the TEACH Grant-eligible program but has failed to~~ begin or maintain qualified employment within the timeframe that would allow that individual to complete the service obligation within the number of years required under §686.12.

(2) At least annually during the service obligation period under §686.12, the Secretary notifies the grant recipient of—

(i) The terms and conditions that the grant recipient must meet to satisfy the service obligation;

(ii) The requirement for the grant recipient to provide to the Secretary, upon completion of each of the four required elementary or secondary academic years of teaching service, documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient taught;

(iii) The timeframe within which the grant recipient must complete the service obligation;

(iv) The conditions under which the grant recipient may request a temporary suspension of the period for completing the service obligation; and

(v) The conditions under which the TEACH Grant amounts disbursed to the recipient will be converted into a Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made.

(3) If the TEACH Grant amounts disbursed to a recipient are converted to a Direct Unsubsidized Loan, the Secretary notifies the recipient of the conversion and explains —

(i) That the recipient will receive a six-month grace period before he or she enters repayment on the Direct Unsubsidized Loan;

(ii) That the recipient has the option of paying the interest that has accrued since the date of each TEACH Grant disbursement, and that any unpaid interest will be capitalized at the end of the six-month grace period;(iii) That once a TEACH Grant has been converted to a Direct Unsubsidized Loan, it cannot be converted to a grant, unless the grant was converted to a loan in error; and

(iv) The process by which the recipient may contact the Secretary to request reconsideration of the conversion if the recipient believes that the TEACH Grant was converted to a loan in error, the deadline by which the grant recipient must submit the request for reconsideration, and a list of the specific documentation required by the Secretary to reconsider the conversion.

(4) If a grant recipient who requests reconsideration demonstrates to the satisfaction of the Secretary that a TEACH Grant was converted to a loan in error, the Secretary—

(i) Converts the loan to a TEACH Grant; and

(ii) Notifies the recipient of the reconversion to a grant and explains that the recipient is once again responsible for meeting all requirements of the service obligation under §686.12.

(5) If a grant recipient who requests reconsideration does not demonstrate to the satisfaction of the Secretary that a TEACH Grant was converted to a loan in error, the Secretary—

(i) Notifies the recipient that the loan cannot be converted to a TEACH Grant;

(ii) Explains the reason or reasons why the loan cannot be converted to a TEACH Grant; and

(iii) Explains how the recipient may contact the Federal Student Aid Ombudsman if he or she continues to believe that the TEACH Grant was converted to a loan in error.

(6) A TEACH Grant recipient remains obligated to meet all requirements of the service obligation under §686.12, even if the recipient does not receive the notices from the Secretary as described in paragraph (a)(2) of this section.

(b) A TEACH Grant that converts to a loan, and is treated as a ~~Federal~~ Direct Unsubsidized Loan, is not counted against the grant recipient's annual or any aggregate Stafford Loan limits.

(c) A grant recipient whose TEACH Grant has been converted to a ~~Federal~~ Direct Unsubsidized Loan—

(1) Enters a six-month grace period prior to entering repayment, and

(2) Is eligible for all of the benefits of the Direct Loan Program, including an in-school deferment.

(d)(1) A TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be ~~re~~converted to a grant, unless the grant was converted to a loan in error.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Summary of Religious Inclusion in Title IV Grant Making

Overview

The intention of these negotiations is to remove regulatory language that is inconsistent with the 2017 U.S. Supreme Court ruling in *Trinity Lutheran Church v. Comer*, which held that religious institutions could not be excluded from participating in publically-funded programs if those programs have a secular intent.

We also intend to use this opportunity to make technical corrections and clarifying edits to better conform with statute and provide greater regulatory clarity.

Summary of Proposed Changes

PART 674—FEDERAL PERKINS LOAN PROGRAM

- The Federal Perkins Loan Program provided low interest loans to help students finance the costs of postsecondary education. Individuals are eligible to receive a deferment from repaying their Perkins Loan by fulfilling various requirements.

§675.9 Student Eligibility

- Although the program is no longer disbursing new loans, we propose to delete restrictions in the Perkins Loan regulations that restrict a borrower who volunteers for an organization with a religious mission from deferring payments on a Perkins Loan.

§674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993

- In §674.35(c)(5), delete section (iv) that pertains specifically to a borrower who, as part of his or her duties, gives religious instruction, conducts worship service, engages in religious proselytizing, or engages in fundraising to support religious activities.

§674.36 Deferment of repayment—NDSLs made on or after October 1, 1980, but before July 1, 1993

- In §674.36, delete section (c)(4)(iv) that pertains specifically to a borrower who, as part of his or her duties, gives religious instruction, conducts worship service, engages in religious proselytizing, or engages in fundraising to support religious activities.

PART 675—FEDERAL WORK-STUDY PROGRAMS

- Federal Work-Study (FWS) provides part-time jobs for undergraduate and graduate students with financial need, allowing them to earn money to help pay education expenses. We propose

to delete the statements in the FWS regulations that restrict an otherwise qualified member of a religious order from receiving Federal Work Study funds.

§675.9 Student eligibility

- We propose to change the statement in the FWS regulations that restricts a recipient from being involved in work at facilities used for religious worship. We propose that an FWS recipient may be involved with the construction of any facility, but may not be involved in constructing the portion of a facility that will be used for religious worship.

§675.20 Eligible employers and general conditions and limitation on employment

- We propose to delete the statements in the FWS regulations that restrict a recipient from working for an organization that primarily benefits the members of a religious order.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

- The FSEOG program is need based grant aid that is awarded to students to pursue postsecondary education. We are proposing to delete the statements in the FSEOG regulations that restrict an otherwise qualified member of a religious order from receiving FSEOG funds.

§676.9 Student eligibility

- We propose to delete eligibility requirements that pertain specifically to student who are members of a religious order (an order, community, society, agency, or organization) and who are pursuing a course of study at an institution of higher education.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

- Under the Federal Family Education Loan (FFEL) Program, private lenders made federal student loans to students, and guaranty agencies insured these funds, which were, in turn, reinsured by the federal government. We are proposing to delete the statements in the FFEL regulations that restrict a volunteer engaging in religious activities from deferring payments on loans made under the FFEL program

§682.210 Deferment

- In §682.210(m)(1), delete section (iv), which excludes borrowers who, as part of his or her duties, gives religious instruction, conducts worship services, engages in religious proselytizing, or engages in fund-raising to support religious activities.

- The Federal government will at times pay all or a portion of the interest that accrues on Stafford loans or Consolidation loans if the borrower fulfills certain requirements. We are proposing to delete regulations that restrict a member of a religious order from qualifying for this benefit.

§682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans

- There are several types of loans granted under the William D. Ford Federal Direct Loan Program, including subsidized loans, unsubsidized loans, and PLUS loans (for Parents of dependent students and graduate students). We are proposing to delete the regulations that restrict an otherwise qualified member of a religious order from receiving Direct Loans
- We also propose to delete regulations that address limitations on the consolidation of HEAL loans that are no longer relevant.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

§685.200 Borrower eligibility

- The Public Service Loan Forgiveness Program provides loan forgiveness for individuals that fulfill certain loan, repayment and employment criteria. The regulations define “public service organization” and work that would fulfill acceptable employment for loan forgiveness. We propose to eliminate the restriction on otherwise qualified work that involves religious instruction, worship service and proselytizing from receiving loan forgiveness under PSLF.

PART 690—FEDERAL PELL GRANT PROGRAM

§690.75 Determination of eligibility for payment

- A Pell Grant is need based grant aid that is awarded to students to pursue postsecondary education. We propose to delete the regulations that restrict an otherwise qualified member of a religious order from receiving Pell Grant funds.

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

§692.30 How does a State administer its community service-learning job program?

- We propose to delete regulations that exclude from eligibility community service-learning jobs that involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction.

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

§ 694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

- We propose to delete regulations that require educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits only to students attending private schools that are determined to be secular, neutral, and non-ideological. This deletion is technical in nature as it is redundant to the Establishment Clause of the U.S. Constitution and to the requirements of the GEAR UP program, including that the funds be used to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.

§694.6 Who may provide GEAR UP services to students attending private schools?

- We propose to delete regulations that require the employee, individual, association, agency, or organization to be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.
- We also propose to delete regulations that require Federal funds used to provide GEAR UP services to students attending private schools not be commingled with non-Federal funds. This deletion is technical in nature as it is redundant to requirements in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in § 2 CFR 200.

§694.10 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

- We propose to delete the regulatory restriction on organizations that are pervasively sectarian.

RELIGIOUS INCLUSION IN TITLE IV GRANT MAKING

PART 674—FEDERAL PERKINS LOAN PROGRAM

§674.9 Student eligibility.

Prior to October 1, 2017, ~~a~~A student at an institution of higher education ~~is~~was eligible to receive a loan under the Federal Perkins Loan program for an award year if the student—

[...]

(c) Has financial need as determined in accordance with part F of title IV of the HEA. ~~A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—~~

~~(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;~~

~~(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and~~

~~(3) Directs the member to pursue the course of study or provides subsistence support to its members;~~

§674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

[...] (c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

[...] (5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following ~~five~~four criteria:

[...] ~~(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.~~

(iv) [...]

§674.36 Deferment of repayment—NDSLs made on or after October 1, 1980, but before July 1, 1993.

[...] (c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

[...] (4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary

considers that a borrower is providing comparable service if he or she satisfies the following ~~five~~four criteria:

~~[...] (iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.~~

(iv) [...]

PART 675—FEDERAL WORK-STUDY PROGRAMS

§675.9 Student eligibility.

[...]

(c) Has financial need as determined in accordance with part F of title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is not precluded from participation or determined to not have need simply because of the nature of his or her membership or area of study. ~~considered to have no financial need if that religious order—~~

~~(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;~~

~~(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and~~

~~(3) Directs the member to pursue the course of study or provides subsistence support to its members.~~

§675.20 Eligible employers and general conditions and limitation on employment.

[...] (c) *FWS general employment conditions and limitation.*

[...] (2) FWS employment may not—

(iii) [...];

(iv) Involve the construction, operation, or maintenance of theany part of a facility used or to be used for religious worship or sectarian instruction; or

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

§676.9 Student eligibility.

(c) Has financial need as determined in accordance with part F of title IV of the HEA. ~~A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—~~

- ~~(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;~~
- ~~(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and~~
- ~~(3) Directs the member to pursue the course of study or provides subsistence support to its members;~~

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

§682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

[...]

~~(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—~~

- ~~(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;~~
- ~~(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and~~
- ~~(iii) (A) Directs the member to pursue the course of study; or~~
 - ~~(B) Provides subsistence support to its members.~~
- ~~(3) [...]~~

§682.210 Deferment.

[...]

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

[...]

(iii) Does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

~~(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and~~

(iv) Has agreed to serve on a full-time basis for a term of at least one year;

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

§685.200 Borrower eligibility.

(a)

[...]

(2)(i) [...]

~~(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need as that term is used in paragraph (a)(2)(i)(A) of this section if that organization—~~

~~(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;~~

~~(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and~~

~~(C)(1) Directs the member to pursue the course of study; or~~

~~(2) Provides subsistence support to its members.~~

PART 690—FEDERAL PELL GRANT PROGRAM

§690.75 Determination of eligibility for payment.

[...]

~~(d) A member of a religious order, community, society, agency or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution amount at least equal to the maximum authorized award amount for the award year if that religious order~~
~~-~~

~~(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and~~

~~(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.~~

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

§692.30 How does a State administer its community service-learning job program?

[...] (c) Each community service-learning job must—

[...]~~(5) Not involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; and~~

~~(56)~~

[...](Authority: 20 U.S.C. 1070c–2, 1070~~c~~–4)

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

§694.5 What requirements must be met by a Partnership or State that chooses to provide services to private school students under the program's early intervention component?

~~(a) Secular, neutral, and nonideological services or benefits. Educational services or other benefits, including materials and equipment, provided under GEAR UP by a Partnership or State that chooses to provide those services or benefits to students attending private schools, must be secular, neutral, and nonideological.~~

~~(b)~~

§694.6 Who may provide GEAR UP services to students attending private schools?

(a) GEAR UP services to students attending private schools must be provided—

(1) By employees of a public agency; or

(2) Through contract by the public agency with an individual, association, agency, or organization.

~~(b) In providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be independent of the private school that the students attend, and of any religious organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.~~

~~(c) Federal funds used to provide GEAR UP services to students attending private schools may not be commingled with non-Federal funds.~~

§694.10 What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program?

Although any member of a Partnership may organize the project, a Partnership must designate as the fiscal agent for its project under GEAR UP—

(a) A local educational agency; or

(b) An institution of higher education ~~that is not pervasively sectarian.~~