

# 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:

**Academic engagement:** Active participation by a student in an instructional activity related to the student's course of study that—

(1) Is defined by the institution in accordance with any applicable requirements of its State or accrediting agency;

(2) Includes, but is not limited to—

(i) Attending a synchronous class, lecture, or recitation, physically or online, where there is an opportunity for direct interaction between the instructor and students;

(ii) Submitting an academic assignment;

(iii) Taking an exam;

(iv) Participating in an interactive tutorial, webinar, or other interactive computer-assisted instruction;

(v) Participating in a study group, group project, or online discussion that is assigned by the institution; or

(vi) Interacting with an instructor or a member of an instructional team about academic matters.

(3) Does not include—

(i) Living in institutional housing;

(ii) Participating in the institution's meal plan;

(iii) Logging into an online class or tutorial without active participation; or

**Commented [DM1]:** In response to comments from the subcommittee, we added a separate definition of "academic engagement" in order to ensure consistency in the application of the concept throughout the regulations.

**Commented [DM2]:** One subcommittee member recommended eliminating or narrowing the term "computer-assisted instruction" in the definition of academic engagement. One option is to maintain the definition of "computer-assisted instruction," but added the term "interactive" to address the member's concern.

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**Commented [DM3]:** This includes the concept of a member of an instructional team to conform with proposed changes to the definition of "distance education."

**(iv) Participating in academic counseling or advisement.**

**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:** 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 60 minutes in a 60-minute period of attendance in a synchronous class, lecture, or recitation through distance education where there is opportunity for direct interaction between the instructor and students, as described in subparagraph (2)(i) of the definition of academic engagement.

**(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 instructors and

**Commented [A4]:** Modified to distinguish a branch campus from an additional location. A branch campus is a type of additional location.

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**Commented [A5]:** Updated this definition to account for clock hour programs provided partially or entirely through distance education. The intention is to provide greater consistency between measures of academic engagement in ground-based and online courses.

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**Commented [VB6]:** Suggest "described in" be used here, instead. The phrase isn't defined under the subparagraph.

**Commented [DM7]:** Some members of the subcommittee expressed concern at the breadth of the proposed definition of a clock hour. To address these concerns, one option is to limit the definition to only synchronous instruction through distance education.

**Deleted:** consecutive or non-consecutive academic engagement through distance education. For purposes of this definition, academic engagement

**Deleted:**

**Deleted:** 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

**Commented [A8]:** Modified to conform with proposed changes to the definition of distance education and to eliminate components of the definition of correspondence courses that are not clearly derived from the law.

**Deleted:** the instructor

students is limited, is primarily initiated by the student, and is not regular and substantive, as defined by the 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 —defined by an institution and approved by the institution's, 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.

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

Distance education: Education that uses one or more of the technologies listed in paragraphs (1)(i) through (1)(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.

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

(i) The internet;

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

(iii) Audio conferencing; or

(iv) Other media used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

(2)(i) An instructional team includes at least one individual who is a subject-matter expert, by virtue of academic credentials or work experience, as defined by the accrediting agency, and one or more staff members that perform an instructional function. Members of an instructional team may have different and complementary roles and qualifications, as required by the institution's 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 related the student's success in a particular course or competency.

(ii) An instructional team must ensure that it monitors each student's academic engagement and success and ensures that an instructor is responsible for promptly and proactively providing academic assistance, when needed, on the basis of such monitoring, or upon request by the student.

(iii) General academic advisors or counselors are not considered to be members of an instructional team.

**Commented [DM9]:** Some subcommittee members questioned the removal of the phrase "primarily initiated by the student." This would add it back in acknowledgement of the importance of the institution and its faculty initiating contact.

**Deleted:** and is primarily initiated

**Deleted:** student. Correspondence courses are typically self-paced institution's

**Commented [A10]:** The Department proposes to modify this definition because of complaints by many institutions that the credit hour definition imposes unnecessary "seat-time" requirements, adds administrative burden for institutions and accrediting agencies, and is not sufficiently flexible for adult learners.

**Deleted:** 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

**Commented [DM11]:** Several subcommittee members indicated that many aspects of the original definition of a credit hour were useful, especially after publication of Dear Colleague Letter GEN-11-06. The Department seeks additional information from the subcommittee regarding ...

**Deleted:** (1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class ...

**Commented [A12]:** Modified to more clearly define the requirements of "regular and substantive interaction" wh ...

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**Commented [DM13]:** Given concerns by both subcommittee and full committee members about the ...

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**Deleted:** The technologies may include—

**Deleted:** The institution's accrediting agency determines who qualifies as an instructor or a member of an ...

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**Deleted:** Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are

**Commented [DM14]:** Several subcommittee members recommended that the concept of an instructional team ...

**Commented [DM15]:** Several subcommittee members indicated that an instructional team should include at least ...

**Commented [DM16]:** Several subcommittee members recommended that in a setting where instructional teams ...

(3) Regular means the frequency or periodicity of contact that is established by the institution in accordance with any applicable requirements of its State or accrediting agency, in which –

(i) The interactions are initiated by an instructor or a member of an instructional team; and

(ii) (A) For a course that is worth three or more credit hours, interactions occur at least once for each week of instruction; or

(B) For a course that is worth less than three credit hours, interactions occur at least once every two weeks of instruction.

(4) Substantive means related to the subject matter under discussion for the course.

(5) Waiver Authority. Under procedures established by the Secretary, the Secretary may, through publication in the Federal Register, permit an institution or group of institutions to define the courses in one or more educational programs as “distance education” rather than “correspondence courses” using an instructional model that does not meet one or more of the requirements under paragraphs (1) through (4) of this definition if the institution or institutions demonstrate that—

(i) The instructional model ensures that each course in the program or programs meets the statutory definition of “distance education” under 20 USC 1003; and

(ii) Each institution’s accrediting agency has specifically reviewed and approved the educational program for which the institution seeks the waiver and the agency has determined that the program meets all of its applicable requirements.

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—

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Deleted: Initiated by a person or group of people, as described in paragraph (3)(i) of this definition, other than the student. The interactions are initiated by an instructor or

Deleted: 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....

Commented [DM17]: One subcommittee member expressed concern about requiring an interaction each week given scheduled breaks or other times when a student is not in attendance. Another subcommittee member requested greater clarity about the required frequency of interaction. The Department proposes these changes to address those items.

Commented [DM18]: One subcommittee member indicated that the definition of “substantive” focused mostly on the concept of an “instructor” or an “instructional team.” The Department has broken out the discussion of the instructional team and included it above.

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¶ (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 ...

Commented [DM19]: Given concerns expressed by the subcommittee regarding the idea of having accrediting agencies define “regular and substantive interaction,” the Department proposes this option to define the term itself ...

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Commented [A20]: Clarifies that an institution that does not participate in HEA programs is not required to meet the requirements of 600.4 [Institution of higher education], ...

- (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.

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*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.

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

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) An agency's preaccreditation standards should predict success for an institution or program seeking accreditation.

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

(3) All institutions or programs holding preaccreditation must have a teach-out plan in place. If an agency denies accreditation to an institution or program it has preaccredited, the agency may maintain the institution's or program's preaccreditation until the institution or program has had a reasonable time to complete the activities it has agreed in its teach-out plan to undertake to assist students in transferring or completing their program(s); and

(4) An accredited institution or program cannot be moved 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. Institutions that participated in the Title IV, HEA programs before the loss of accreditation are subject to the requirements of 34 CFR 600.11(c).

Reciprocity agreement for State authorization<sup>1</sup>: 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 located in other States covered by the agreement and does not result in a conflict between a State's statutes and regulations and the requirements of the agreement.

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

<sup>1</sup> 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.

**Deleted:** (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)).¶

**Commented [DE21]:** The subcommittee members were concerned that (3) didn't seem to provide student protections or reinforce the roles of the triad – specifically any agency review and determination of educational quality.

The Department proposes these changes to address most of the concerns from both the subcommittee.

**Commented [VB22]:** It looks like there is an extra or missing word in the last sentence of the comment bubble above.

**Deleted:** *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.¶

**Deleted:** be a predictor of

**Deleted:** recognized

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**Deleted:** must

**Deleted:** 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

**Deleted:** teach-out has ended

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**Commented [DM23]:** The Department proposes to define a "reciprocity agreement for State authorization" rather than a "State authorization reciprocity agreement" in order to avoid confusion between the term in the regulations and the existing agreement known as "NC-SARA."

**Commented [A24]:** Intended 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.

**Commented [DM25]:** Several subcommittee members expressed concern that the Department's 2016 definition of a State authorization reciprocity agreement would require that States be permitted to enforce their own statutes and regulations, since this could render a reciprocity agreement ineffective and result in institutions being required to fulfill requirements in numerous states once again. Other subcommittee members expressed support for the provision ensuring that States were not prohibited from ...

(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](http://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.

*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

**Commented [A26]:** Intended to protect religious freedom and ensure accreditors do not discriminate against an institution on the basis of their religious tenets, beliefs, or teachings.

**Commented [A28]:** Clarifying that a teach-out may include a period of time in which an institution engages in an orderly closure, or a period of time after a precipitous closure, when another institution steps in to enable students to complete their program.

**Deleted:** State authorization *Reciprocity agreement for State authorization*: 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 located in other States covered by the agreement and does not result in a conflict between a State's statutes and regulations and the requirements of the agreement 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. ¶

**Commented [A29]:** This definition is provided to allay confusion about the role of teach-out plans, which are generic frameworks for a school closure, and teach-out agreements that provide for the equitable treatment of students and a reasonable opportunity for students to complete their program of study.

offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study. An agency 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).

(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]

**Commented [A30]:** 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.**

(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.

**Commented [A31]:** Conforming changes related to 600.4

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that is a general instructional program 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:

**Commented [A32]:** Streamlining language regarding programs that lead to a baccalaureate degree in liberal arts.

**Deleted:** the institution's recognized regional accreditation agency or organization determines,

**Deleted:** in the liberal arts subjects, the humanities disciplines, or the general curriculum,

(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.

**Commented [A33]:** Conforming changes related to 600.4.

(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

(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

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(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 in correspondence courses constituted 50 percent or more of the student's total enrollment during an award year.

**Commented [A34]:** This change is designed to more clearly express what a "correspondence student" is for purposes of the institutional eligibility requirements.

(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.

**Commented [DM35]:** In response to subcommittee concerns about a loophole in the proposed definition, one option is to instead to define a correspondence student as one whose enrollment during an award year is comprised of at least 50 percent correspondence courses.

**Deleted:** was entirely in correspondence courses

(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.

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(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.

Deleted: (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.¶

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

[75 FR 66946, Oct. 29, 2010]

600.9 State authorization.

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(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 located 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

**Commented [DM37]:** One subcommittee member indicated that the 2016 regulations were inconsistent with State laws in using the concept of "residence" rather than "location." These changes are intended to implement that suggestion.

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(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.

(iii) For purposes of this paragraph and for disclosures related to State licensure under 34 CFR 668.43(a)(5)(v), an institution makes a determination regarding the State in which a student is located at the time the student is admitted to an educational program.

**Commented [DM38]:** One subcommittee member indicated that the 2016 regulations had been unclear regarding an institution's responsibility for tracking a student's location if the student moved while enrolled at the institution. During that discussion, one option was proposed to make that determination upon admission. This subparagraph would clearly indicate that an institution makes a determination about the State in which a student is located only once at the time of admission.

**Deleted:** ¶

(2) The institution must document that there is a State process for review and appropriate action on complaints from students concerning the institution.

(d)<sup>4</sup> 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:

**Deleted:** 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, t

(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—

**Commented [DM39]:** These changes are intended to address the concerns expressed by some subcommittee members that a complaint process for distance education students does not exist in all States.

**Deleted:** any of those enrolled

(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;

**Deleted:** —

(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;

**Deleted:** ¶  
(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

(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;

<sup>4</sup> Section 600.9(d) was effective July 1, 2018. We propose to retain this language.

(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;

(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 668.43(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.

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#### **§600.10 Date, extent, duration, and consequence of eligibility<sup>5</sup>.**

(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.

<sup>5</sup> 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).

(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.

(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.

**Commented [A40]:** We propose to limit the Secretary's approval of direct assessment programs to the institution's first program of that type.

(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.

**Commented [A41]:** We propose to establish the conditions under which the Secretary may determine an institution has reasonable cause for moving to another accreditor.

**Deleted:** ,

(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.

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 agency's geographic scope and national accreditation based on that agency'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—

Deleted: ; and

Commented [BM42]: We propose to establish the conditions under which the Secretary may determine an institution has reasonable cause to hold accreditation from multiple agencies.

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(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.

(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);

Deleted: if the institution wishes to—

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(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) 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.

(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) (C) or (E) 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.

(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.

(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

**Deleted:** (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)

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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 information<sup>6</sup>.

(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.

(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.

<sup>6</sup> 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).

Commented [A43]: Conforming change to align reporting requirement with proposed change to 602.22(a)(vii).

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(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]

## 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 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.

**Commented [A44]:** Modifying 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.

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*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 entity is the entity that controls the specified entity directly or indirectly through one or more intermediaries.

*Person.* Person includes a legal entity or a natural person.

*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 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 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

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(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.

(4) 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) Wholly-owned subsidiary. An entity that is a wholly-owned subsidiary changes ownership and control when its parent 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]

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Deleted: (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.¶

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### §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) Notwithstanding paragraphs (b) and (c) of this section, 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 accrediting agency may apply to have that site approved as an additional location that does not satisfy the two year requirement of § 600.5(a)(7) or § 600.6(a)(6) if—

(i) The closed institution ceased operations 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).

**Commented [A45]:** Removing 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; and permitting 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.

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(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 loss of accreditation or preaccreditation;

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

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

(E) Its permanently closing; or

(F) 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

**Deleted:** 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);¶  
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(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).  
*Deleted: ).*

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

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

(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 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 complete more than 25 percent of the program by enrolling in courses offered by the foreign institution in the United States, 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;

(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.

**Deleted:** courses from

**Deleted:** enroll

**Deleted:** any course

**Deleted:** including

**Deleted:** 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;

(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.**