# Report from the Distance Learning and Educational Innovation Subcommittee

# Part 600

### Definition of "academic engagement" in 34 CFR 600.2

Background:

- The Department originally proposed to incorporate the concept of academic activity, as it is currently defined in the Return of Title IV regulations under 34 CFR 668.22(l), into the definitions of "clock hour" in 34 CFR 600.2 and "academic year" in 34 CFR 668.3. One subcommittee member recommended making the concept of "academic engagement" into a separate definition to ensure consistency in each place it is applied. The Department agreed and incorporated the definition into 34 CFR 600.2.

- The subcommittee presented no objections to the revised definition.

Proposed regulatory text:

**34 CFR 600.2 Definitions**

*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 assessment or an exam;

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

(v) Participating in a study group, group project, or an 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

(iv) Participating in academic counseling or advisement.

## Definitions of "additional location" and "branch campus" in 34 CFR 600.2

Background:

- The Department originally proposed adding a definition of "additional location" for clarity and to more clearly connect the concept with the definition of a "branch campus."
- The subcommittee presented no objections to the revised definition, though one member expressed remaining uncertainty over why the change was considered necessary.

Proposed regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 600.2 Definitions**

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*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.

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## Definition of "clock hour" in 34 CFR 600.2

Background:

- The Department originally proposed to clarify the definition of a distance education program to accommodate clock hour programs taught through distance education. The Department's original proposal would have required an institution to monitor a student's academic engagement in each 50-to-60-minute period that the institution counted as a clock hour. The subcommittee noted that the previous definition would have permitted clock hour programs using distance education to provide clock hours for homework, which is not permitted for brick-and-mortar programs. The subcommittee also expressed concern about how institutions would adequately monitor activities other than direct instruction and whether adequate program integrity could be maintained under that framework. Given those concerns, the Department has revised its proposed definition to require a clock hour in a distance education format to involve direct, synchronous interaction.

- The subcommittee presented no objections to the revised definition.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 600.2 Definitions**

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*Clock hour:* A period of time consisting of—

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

(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) In distance education, 50 to 60 minutes in a 60-minute period of attendance in a synchronous class, lecture, or recitation where there is opportunity for direct interaction between the instructor and students, as described in paragraph (2)(i) of the definition of academic engagement.

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## Definition of "correspondence course" in 34 CFR 600.2

Background:

- The Department originally proposed several changes to the definition of "correspondence course," one of which would have eliminated the part of the definition indicating that

interaction in a correspondence course is primarily initiated by students. During the first subcommittee session, several members requested that this language be added back because it was an important distinguishing factor between correspondence courses and distance education. The Department did so prior to the second subcommittee meeting, resulting in the current proposed text.

- One subcommittee member indicated concern about the removal of the phrase "are typically self-paced" from the definition. The Department indicated that the concept of "self-pacing" was not strictly relevant to the distinction between correspondence courses and distance education, and the Department does not wish to discourage self-paced distance education programs as long as those programs meet applicable regulatory requirements.

- The subcommittee presented no other objections to the revised definition.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 600.2 Definitions**

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

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**Definition of "credit hour" in 34 CFR 600.2**

Background:

- The Department originally proposed revising the definition of a credit hour to eliminate time-based requirements and allow institutions to develop their own their own definitions as long as they met accrediting agency requirements.

- In response to suggestions from subcommittee members that guidance from Dear Colleague Letter (DCL) GEN-11-16, related to the definition of a credit hour, be incorporated into the regulation, the Department provided revised regulatory text (inclusive of the applicable language from the DCL) in advance of the third subcommittee meeting. The revised text did not restore subparagraphs (1) and (2) under the current definition, which impose time-based requirements relative to classroom instruction and other academic activities.

- Subcommittee members were generally supportive of including clarifying language from the DCL, considering it to be helpful. However, they continued to favor, by an overwhelming margin, retaining the time-based requirements found in the current definition of a credit hour. Several members indicated that they were unaware of any evidence suggesting that schools are having

a difficult time complying with the regulation in its current iteration. One member raised concerns about transferability of credit were the Department's proposed text adopted. A few members suggested that the proposed text might create opportunities for fraud and/or facilitate bad actors. The member representing accrediting agencies expressed the collective view of those entities that the current definition, including the requirement that credit hours map back to a specific number of hours of work, is a "useful tool" the removal of which would hinder meaningful enforcement of the regulation.

- One subcommittee member was supportive of the Department's eliminating the definition of a credit hour. The member's position was that academic autonomy dictates the Department not define a concept that is inherently the purview of individual institutions.

- In consideration of the majority opinion of subcommittee members, the Department proposed modifying the definition of a credit hour to retain the time-based requirements relative to classroom instruction and other academic work but not the out-of-class work component of the definition. This did not assuage the concerns of the majority of subcommittee members, with one member offering that it was not enough and would not help accreditors enforce the regulation and another worried that it could lead to widespread inflation of credit hours.

- Overall, the subcommittee was consistent in its position that, though favorably disposed to adding clarifying language from the DCL, they do not want the existing language changed. In view of the unity of opinion expressed by the subcommittee, the Department is proposing modified regulatory language that retains the current time-based requirements and incorporates clarifying guidance from DCL GEN-11-16.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text) to reflect the subcommittee's position. It should be noted that the subcommittee did not see this revision during the third meeting.

**34 CFR 600.2 Definitions**

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*Credit hour:* Except as provided in 34 CFR 668.8(k) and (l), a credit hour is ~~an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less~~ an amount of student work defined by an institution that, in the judgment of the institution's accrediting agency, is consistent with commonly accepted practice in postsecondary education and that—

(1) Reasonably approximates not less than—

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

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

(2) Permits an institution, in determining the amount of work associated with a credit hour, to take into account alternative delivery methods, measurements of student work, academic calendars, disciplines, and degree levels.

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**Definition of "distance education" in 34 CFR 600.2**

Background:

- The Department's original proposal would have revised the regulatory definition of "distance education" to include clarifications of the phrase "regular and substantive interaction between students and the instructor," which is a required component of the statutory definition. The Department proposed defining that phrase to include interactions between students and members of an instructional team. The Department indicated that its intent was to provide greater clarity to institutions regarding requirements for distance education and to accommodate innovative instructional models other than traditional synchronous instructional courses.

- During the third subcommittee meeting, the Department expressed its belief that Congress intended the "regular and substantive interaction" requirements in the definition for "distance education" to ensure that students received a similar amount of instructional support in such programs as they would in programs where students were not separated from instructors. The Department's goals in these regulations is to ensure that the requirements for interaction in distance education programs do not substantially differ from the amount of interaction that students typically receive in brick-and-mortar programs and to recognize the advances in distance education technologies that have taken place since that statutory change.

- A few subcommittee members disagreed with this interpretation of the purpose of the definition and voiced the opinion that the intent of the definition was *not* to make the programs similar to brick and mortar programs, but to stop a history of abusive correspondence schools that had hurt students and wasted taxpayer dollars.

*Which entity defines the terms?*

- The Department originally proposed to have accrediting agencies define the term "distance education" and "correspondence course" and define their own requirements for fulfillment of the definition. The subcommittee generally opposed that idea, and following the first subcommittee meeting the Department sent revised language that would once again have the Department define the terms.

*Definitions of "instructor" and "instructional team"*

- The Department's original proposal relied upon a new concept of an "instructional team" that would include more staff than a single instructor. The Department's intent was to permit certain interactions with members of an instructional team to qualify as "substantive" for purposes of meeting the requirements for "regular and substantive interaction." The subcommittee generally expressed support for the concept of an instructional team, but indicated a preference for a greater role for subject-matter experts on such teams. Following the first subcommittee session, the Department composed language incorporating the subcommittee's discussion regarding the importance of subject-matter experts to instructional teams.

- The subcommittee did not object to the use of a concept of an instructional team, but subcommittee members expressed several different views and concerns regarding the requirements and composition of an instructional team.

- Some members expressed the view that because the statutory definition of distance education requires regular and substantive interaction with the "instructor," any instructional team must include one or more subject-matter expert(s) that would be required to have regular and substantive interactions with students. Some members indicated that an instructional team should include a subject-matter expert who had the "primary responsibility" for interacting with students, where other members of the instructional team would identify problem areas and refer students to subject-matter experts when needed.

- Other members also indicated that requiring people to refer students to subject-matter experts does not reflect the current or future state of distance education, which is increasingly using analytics to identify struggling learners in order to refer them to subject-matter experts for assistance.

*Definitions of "regular" and "substantive"*

- The Department also presented proposals for definitions of the concepts of "regular" and "substantive" as they pertain to the definition of distance education. The Department proposed to define "regular" as "once per week" and "substantive" as "related to the course material under discussion."

- There were mixed reactions from the subcommittee on these proposals. Some members indicated that requirements for regularity that are too restrictive will impose unnecessary administrative burden, such as mandating an instructor "check-in" with a student when the student did not need or request such a check-in. Others noted that a definition of "regular" that is not sufficiently descriptive would not resolve confusion and uncertainty about the term and could dissuade institutions from using instructional models that lack scheduled class sessions (such as some programs offered utilizing competency-based education). Finally, one member indicated that a definition of "regular" that is too infrequent could impact quality in higher education programs and risk taxpayer funds.

- Several subcommittee members indicated that the Department's definition of "substantive" was too broad, and a definition that does not focus on an academic process involving student learning could lead to educational models that de-emphasize learning in favor of administrative check-ins with students.

*Waiver process*

- During the second subcommittee meeting, the Department offered an idea for a waiver process in which, following promulgation of regulations defining distance education, an institution could apply to its accrediting agency and the Department to use an instructional model that was not explicitly covered by that definition, but still met the statutory requirements for the definition of "distance education." The Department noted that if it defined the term "distance education", it would likely be unable to regulate to accommodate new instructional models (such as competency-based education) quickly enough to keep up with technology, and a waiver process could offer an "escape valve" for innovations to occur if they were compliant with the statute.

- There were mixed reactions for this proposal from the subcommittee. Some members expressed that an alternative system for handling innovative programs would be important as technology changed in the future. Other members indicated that the Department's language gave the Department too much authority to allow new models to qualify as "distance education," and it was unclear how such a waiver would be permitted under the statute.

*Compromise agreement*

- During the third subcommittee meeting, three subcommittee members circulated a proposal (included as Appendix A at the end of this document) to define "distance education" to require 1) regular and substantive interaction with an instructor, as defined by the institution's accrediting agency; 2) substantive interactions to occur through predictable and regular intervals; and 3) engage students in teaching and learning and provide systematic assessment of student learning. Following discussion in the third and final subcommittee meeting, the Department composed a new draft in an attempt to combine the framework presented by members of the subcommittee and elements of the Department's earlier draft emphasizing a process for monitoring each student's progress and achievement and ensuring interacting with students on that basis.

- The Department's new draft language would define an instructor as a "content expert" (which could include, but would not be limited to, faculty members or "instructors of record"), and would require an accrediting agency to define the term "content expert." The compromise language would require regular and substantive interaction between an instructor (or multiple instructors) and students. The draft language would define "substantive" as "is engaging students in teaching, learning, and assessment, consistent with the content under discussion" and provide examples of types of activities that were substantive. Finally, the draft language would provide two ways that an institution could comply with the requirements for "regular and substantive interaction": either by "scheduling substantive interactions with the student on a predictable and regular basis" or "[m]onitoring the student's academic engagement and success and ensuring that an instructor is responsible for" regularly and substantively interacting with the student on the basis of that monitoring. The draft language did not include a waiver process as described above.

- The subcommittee generally supported the final framework presented by the Department, though several members offered recommendations to improve the language (described in comment bubbles below).

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 600.2 Definitions**

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*Distance education* ~~means 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 instructors, and to support regular and substantive interaction between the students and the instructor or instructors, either synchronously or asynchronously. ~~The technologies may include~~

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

(i) The internet;

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

(~~3~~)(iii) Audio conferencing; or

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

(2) For purposes of this definition, an instructor is a content expert, as defined by the institution's accrediting agency and in accordance with that agency's requirements under 34 CFR 602.23.

(3) For purposes of this definition, substantive interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and includes—

(i) Providing direct instruction;

(ii) Assessing or providing feedback on a student's coursework;

(iii) Providing information or responding to questions about the content of a course or competency; or

(iv) Facilitating a group discussion regarding the content of a course or competency.

(4) An institution can ensure regular and substantive interaction between a student and an instructor or instructors by, prior to the student's completion of a course or competency—

(i) Scheduling substantive interactions with the student on a predictable and regular basis commensurate with the length of time and the amount of content in the course or competency; or

(ii) Monitoring the student's academic engagement and success and ensuring that an instructor is responsible for promptly and proactively engaging in substantive interaction with the student when needed, on the basis of such monitoring, or upon request by the student.

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## Definition of "eligible institution" in 34 CFR 600.2

Background:

- During the first session of the Distance Learning and Innovation subcommittee, the Department proposed to revise the definition of "eligible institution" in order to clearly exempt institutions that do not participate in the Title IV, HEA programs from requirements in 34 CFR 600.4, 600.5, or 600.6 that apply only to participating institutions.

- Several subcommittee members expressed concerns that the language, as written, would prohibit accrediting agencies from setting standards for non-participating institutions that happened to be the same as those set forth in 34 CFR 600.4, 600.5, or 600.6 (for example, requirements for enrolling only students who have attained a high school diploma or its recognized equivalent).

- During the third subcommittee meeting, the Department indicated that it had determined that separate provisions being proposed in Part 602 were sufficient to accomplish its goal, and agreed to eliminate the proposed changes to the definition of "eligible institution" in 34 CFR 600.2.

No regulatory text to review.

## Definitions of "incarcerated student" and "juvenile justice facility" in 34 CFR 600.2

- The Department originally proposed to add the phrase "youth incarceration facility" to the types of incarceration included in the definition of "incarcerated student." When asked at the first subcommittee meeting, the Department explained that this change was meant only to be a technical clarification and was not intended to have substantive effect.

- One subcommittee member recommended several changes to the definition in order to ensure that the change did not have unintended substantive effects, by incorporating the Department's current policy regarding students incarcerated in juvenile justice facilities. The Department treats such students as being incarcerated (and therefore ineligible for Direct Loan funds), but not in a Federal or State penal institution (and therefore eligible for Pell Grant funds). The Department's policy on this matter is described in a Dear Colleague Letter published December 8, 2014 (DCL GEN-14-21), which can be found at https://ifap.ed.gov/dpcletters/GEN1421.htm.

- The subcommittee did not voice concerns about the proposal.

- The Department is amenable to the change, but indicated to the subcommittee that it would propose its own language to implement the provisions. The subcommittee has not seen and therefore provides no comment on the language presented by the Department.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 600.2 Definitions**

*Incarcerated student:* A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, ~~youth correctional~~ juvenile justice 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. For purposes of Pell Grant eligibility under 34 CFR 668.32(b)(2)(ii), a student who is incarcerated in a juvenile justice facility is not considered to be incarcerated in a Federal or State penal institution, regardless of which governmental entity operates or has jurisdiction over the facility, including the Federal government or a State.

*Juvenile justice facility: A* public or private residential facility that is operated primarily for the care and rehabilitation of youth who, under State juvenile justice laws—

(1) Are accused of committing a delinquent act;

(2) Have been adjudicated delinquent; or

(3) Are determined to be in need of supervision.

**Definition of "non-profit institution" in 34 CFR 600.2**

- The Department proposed to change the definition of "non-profit institution" as it pertains to foreign institutions by removing a redundant provision that appears elsewhere in the definition.

- The subcommittee expressed no objections to this change.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 600.2 Definitions**

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*Nonprofit institution:* An institution that—

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

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

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

(2) For a foreign institution—

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

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

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

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

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**State authorization of distance education and related disclosures**

- The Department originally proposed to eliminate the regulations for State authorization for distance education that were promulgated in 2016, including both the institutional eligibility regulations in 34 CFR Part 600 and the disclosure requirements for distance education and correspondence courses in 34 CFR 668.50. However, during the first subcommittee session members expressed support for some aspects of the regulatory language promulgated in 2016. Following that session, the Department composed language designed to incorporate the subcommittee's discussion using the 2016 regulations as a starting point but incorporating a number of changes.

- The Department's proposed language included the provisions from the 2016 regulations that required an institution to document that it was permitted to offer programs through distance education in each State where its enrolled students were located, and stated that institutions could do so through a reciprocity agreement for State authorization.

- NOTE: The Department continues to propose eliminating 34 CFR 668.50 and replacing those provisions with disclosures that would apply to all postsecondary institutions participating in the Title IV, HEA programs. Please see further discussion of those professional licensure disclosure requirements under Part 668 below.

*"Location" versus "residence"*

- One subcommittee member asked that the Department eliminate references to "residence" in a State, since that concept could be conflated with legal residence requirements. That member asked that the Department use the term "located" in order to reflect the most common term used by States in policies related to distance education. The Department presented language implementing this change to the members during the second subcommittee meeting, and this change was supported by the subcommittee.

*Determining a student's location*

- As part of language provided during the second subcommittee session, the Department incorporated a suggestion by a subcommittee member that an institution should only be required to determine a student's location once. At the second session, another subcommittee member indicated than an annual verification would be preferable, and another member indicated that an institution should be required to update a student's location only if the student provides information about such a change. The Department is unwilling to support an annual requirement for verification of a student's location, but will support either a single verification or a requirement for an institution to update its records when it learns a student's location has changed.

- The Department has proposed language that would incorporate a single verification of a student's location upon initial enrollment at the institution and a requirement to update the student's location upon receipt of information from the student of a change. The subcommittee was supportive of the language provided by the Department during the third subcommittee meeting, but since that time the Department has updated its proposed language to include the phrase "from the student" following the phrase "upon receipt of information"; the subcommittee did not review this language and therefore has no position on this change.

*Reciprocity agreements for State authorization*

- During its discussion of the concept of reciprocity for State authorization, the subcommittee generally supported the concept of reciprocity agreements for State authorization, though there were differences of opinion regarding the requirements for such agreements. All subcommittee members agreed that the definition of reciprocity agreements should include the requirement that such an agreement not prohibit states from enforcing "laws or regulations of general applicability," and the Department has added that requirement to its proposed language.

- There were disagreements among the subcommittee members regarding whether or not the definition of a reciprocity agreement for State authorization should prohibit such an agreement from restricting States from enforcing statutes applying specifically to educational institutions. Some subcommittee members indicated that requiring reciprocity agreements to permit states to impose requirements specific to educational institutions could undermine the purpose of reciprocity by once again introducing requirements in each State with which each institution would have to research and comply with. Other subcommittee members indicated that without such a prohibition, reciprocity agreements could reduce consumer protections for students by prohibiting States from maintaining such protections if the States wished to participate in the reciprocity agreement.

- During the second subcommittee session, the Department introduced language that would prohibit a reciprocity agreement from creating a conflict with State laws or regulations. The majority of the subcommittee members supported that concept, but two subcommittee members opposed it, indicating that it did not resolve the concerns described above about reciprocity agreements reducing consumer protection requirements imposed by some States, including those directed specifically at educational institutions.

- Two subcommittee members submitted a proposal that would have required a reciprocity agreement's governing structure to allocate at least 50 percent of its governing board to employees of members state higher education agencies and at least one position on its primary governing board to a representative of a member state attorney general's office or a representative of a non-profit organization representing the interests of consumers and/or students. The subcommittee's reaction to this proposal was mixed, with some supporting and some opposing on the grounds that the Department should not be regulating the board structure of an agreement between States. During the third subcommittee meeting, the Department stated that it opposed the language because it believed that setting requirements for board members for a reciprocity agreement was not an appropriate role for the Department. The Department indicated that it did not plan to pursue the proposal with the full committee.

*State-based complaint process*

- Following discussions in the first subcommittee meeting, the Department presented language that would require an institution to document that a State-based complaint process existed either in the State in which the student was located or the State in which the institution was located. Between meetings, one subcommittee member submitted comments indicating support for a requirement that institutions document a State-based complaint process in each State where its enrolled students are located, except that institutions should default to their home State complaint process when none exists in the State where students are located. The Department incorporated this suggestion into its proposed language.

- One subcommittee member requested that the Department compile a list of State-based complaint processes for institutions to use in order to comply with these provisions. The Department indicated that it did not intend to perform that function, but agreed with another subcommittee member that the Department's current policy would allow an institution to link to a list of State complaint processes compiled by a third party. The subcommittee member asked if the Department could codify that policy into regulation, and the Department indicated it would take it under consideration with respect to the current regulations regarding disclosures of State complaint processes in 34 CFR 668.43(b).

- The subcommittee did not express objections to the proposed language regarding a State-based complaint process.

*Distance education data*

- A joint proposal from a subcommittee member and a member of the full committee would have required institutions to report data to the Department regarding the amounts of Title IV aid received by students who took no distance education or correspondence coursework, those who took some distance education or correspondence coursework, and those whose entire

program was offered through distance education or correspondence. The full proposal is included as Appendix B at the end of this document.

- The Department reviewed the proposal and provided another version of the proposal that it felt to be easier to implement. The Department's version would have required institutions to flag students in the Common Origination and Disbursement (COD) or National Student Loan Data System (NSLDS) systems if the students were enrolled only in distance education coursework, with no brick-and-mortar component. During the third subcommittee meeting, the Department noted that this method would be easier for schools to implement, in part because identifying programs that are solely offered through distance education or correspondence would be less difficult than determining which students took only some distance education or correspondence coursework.

- Several subcommittee members supported the general idea of requiring institutions to report the amounts of Title IV aid disbursed to students who were enrolled in distance education or correspondence, but several subcommittee members opposed the idea, citing increased administrative burden and difficulty in coding and identifying students in different categories (brick-and-mortar, hybrid, or fully distance education or correspondence). One subcommittee member noted that the Department's annual Integrated Postsecondary Education Data System (IPEDS) survey collects data on students enrolled in distance education, but the Department pointed out that this data does not include the number of distance education or correspondence students who receive Title IV aid or the amount of Title IV aid that such students receive.

- Given the mixed reaction to the proposal by the subcommittee, the Department does not plan to bring proposed regulatory text to the full committee, but will consider proposals offered by the full committee on this topic.

Revised regulatory text (with redlines from the existing regulatory text, including the regulations promulgated in 2016, to the current proposed text):

**34 CFR 600.2 Definitions**

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

(1) Prevent any State covered by the agreement from enforcing its statutes or regulations of general applicability; or

(2) Result in a conflict between a State's statutes and regulations and the requirements of the agreement.

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**34 CFR 600.9 State authorization.**

(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.

* * *

[*Black text below is the 2016 regulatory text that has yet not been implemented. This language comprises the baseline for the Department's proposed revisions in red text.*]

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students ~~residing~~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

(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 for State authorization, 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 or upon receipt of information from the student that the student's location has changed.

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

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

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

(2) The institution shall document and disclose under 34 CFR 668.43(b) the process for review and appropriate action on complaints from students concerning the institution established by each State in which the institution's enrolled students are located. If no such complaint process exists for a State in which one or more enrolled students are located, the institution shall refer students located in that State to the complaint process in the State in which the institution's main campus is located under paragraph (a)(1) of this section.

Proposal from subcommittee member Jessica Ranucci and full committee member Robyn Smith for distance education data and counter-proposal from the Department:

**Language from Ms. Ranucci and Ms. Smith relating to distance education data:**

Summary: Require an institution to report students who receive Title IV aid that are enrolled online, not online, or in a hybrid program where only a portion of the program is offered online [language provided by subcommittee and full committee members].

*(3) For all Title IV-receiving students, the institution must report whether each student is enrolled exclusively online, exclusively as a brick-and-mortar student, or as a hybrid student in both online and brick-and-mortar instruction, in accordance with the Department's reporting requirements.*

**Language from the Department relating to distance education data:**

Summary: Require an institution to report disbursements of Title IV aid that are provided to students who are enrolled exclusively in distance education or correspondence coursework.

*(3) In accordance with requirements established by the Secretary, an institution shall report amounts of disbursements that are made to students who are enrolled exclusively through distance education or correspondence courses.*

## Definitions of "institution of higher education," "proprietary institution of higher education," and "postsecondary vocational institution"

Background:

- The Department proposes to adjust the definitions of "institution of higher education", "proprietary institution of higher education," and "postsecondary vocational institution" to include additional types of adverse action that would require arbitration between the institution and the accrediting agency. The Department also made changes to the definition of a "program leading to a baccalaureate degree in liberal arts" to exclude aspects of that definition that are not present in the statute.

- Subcommittee members did not have substantive comments about the changes relevant to definitions of an "institution of higher education", "proprietary institution of higher education," and "postsecondary vocational institution,"; however, one commenter noted that the proposed definition of "a program leading to a baccalaureate degree in liberal arts" was not accurate per the statutory definition.

- Revised language reflects the statutory language.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

### §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.

### §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.

* * *

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

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

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

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

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

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

**§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.

**Definition of a "correspondence student" for purposes of institutional ineligibility**

Background:

- The Department proposes to definition of a "correspondence student" to the institutional eligibility requirements under 34 CFR 600.7, which establish limitations on the number of correspondence courses and students an institution may have while remaining eligible to participate in the Title IV, HEA programs. At present, a "correspondence student" is not defined, resulting in substantial ambiguity relating to a very important factor in determining institutional eligibility.

- The Department's original proposal was to define a "correspondence student" as one whose enrollment during an award year was entirely in correspondence courses. Several subcommittee members indicated that this would create a loophole whereby an institution could ensure that a student enrolled in a single distance education or brick-and-mortar course and avoid having that student counted as a correspondence student. Some subcommittee members indicated that enrollment in 50 percent or 75 percent correspondence courses would avoid that loophole. The Department has incorporated those suggestions below by establishing a definition that uses a 50 percent threshold of enrollment in correspondence courses.

- The subcommittee presented no objections to the revised language.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 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;

* * *

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

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

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

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

(2) *Calculating the number of correspondence students*. For purposes of paragraph (a)(1)(ii) of this section, a student is considered "enrolled in correspondence courses" if the student's enrollment in correspondence courses constituted 50 percent or more of the student's total enrollment during the award year.

~~(2)~~(3) *Exceptions.* (i) The provisions contained in paragraphs (a)(1) (i) and (ii) of this section do not apply to an institution that qualifies as a "technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market" under section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995.

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor's-degree program if the students enrolled in the institution's correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

* * *

## Changes to reporting requirements and requirements for seeking Department approval for direct assessment programs and written arrangements

Background:

- Given the changes it proposed to requirements for written arrangements and direct assessment programs (described below under Part 668), the Department proposed a number of changes to approval and reporting requirements for direct assessment programs and written arrangements. The Department proposed to add requirements for an institution to report any new direct assessment program and any written arrangement between an eligible institution and an ineligible entity in which the ineligible entity provides more than 25% of an educational program. The Department also proposed to require Department approval of direct assessment programs only for the first direct assessment program offered by an institution, rather than for every direct assessment program as is currently required in regulation.

- Several subcommittee members expressed concerns regarding the Department's proposal to require Department approval only of the first direct assessment program that the institution offered. One member indicated that the proposed change did not appear to be consistent with the statutory requirements for direct assessment programs under HEA Sec. 481(b)(4).

- Other subcommittee members noted that they were uncomfortable with the idea of permitting an institution to offer a direct assessment program at a new level of offering (e.g. offering a graduate-level direct assessment program when previously the institution had only offered bachelor's-level direct assessment programs) without Department approval. The Department indicated that it would consider revising the regulatory requirements in 34 CFR 600.10(c)(1)(iii) to incorporate this proposal, and has since provided new language to do so.

- The subcommittee presented no objections to the Department's proposed language regarding reporting requirements in 34 CFR 600.21. The subcommittee has not seen, and therefore provides no comment regarding the Department's new proposed language for approval of direct assessment programs in 34 CFR 600.10.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

### 34 CFR 600.10 Date, extent, duration, and consequence of eligibility

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

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

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

(2) [Reserved]

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

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

* * *

(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 first direct assessment program under 34 CFR 668.10, or for any direct assessment program offered at a greater level of offering than what the Secretary had previously approved, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval.

(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.

* * *

**34 CFR 600.21 Updating application information.**

(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).

* * *

**Requirement for prompt action by the Secretary on approval actions**

Background:

- The Department proposed adding language to the regulations governing procedures for Department approval of institutional eligibility expansions (e.g., additional locations, programs, etc.). The Department also proposed to remove language under 34 CFR 600.20(d)(1)(ii)(B) that currently requires prompt notification by the Department of a requirement for its approval because other proposed language would require prompt action to complete the review.

- The Department did not receive substantive comments from subcommittee members in any of the sessions over which the subcommittee met. Subcommittee members were generally in favor of the proposal.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

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

~~(i) Such an application must be submitted~~

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

~~(ii)~~(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

~~(iii)~~(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)(i).

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

## Types of entities that are subject to change in ownership provisions

Background:

- The Department proposed making adjustments to the regulations for changes in ownership to ensure that entities other than corporations or persons are subject to the requirements. These were largely technical changes designed to ensure the Department has appropriate means of enforcement for changes of ownership.

- Subcommittee members did not object to these changes during any of the sessions over which they met. The Department proposes moving forward with the changes.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

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

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

ownership interest in the entity that owns the institution or the parent ~~corporation~~ of that entity, acquires or loses the ability to control the institution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with

copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the "same day" balance sheet.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The sale of the institution;

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

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

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

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

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

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

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

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

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

## Acquisitions of locations of closing institutions

Background:

- The Department proposed changing the requirement s for the eligibility of additional locations in order to encourage other institutions to acquire locations of closed institutions for the purposes of performing teach-outs to students at the closing school. The proposal limits the liabilities incurred by the acquiring school to those related to the current and prior academic years, and would permit the Secretary to approve the acquisition without a suspension or termination action on the closing institution.

- Most subcommittee members did not express objections to this change. However, one member objected based on concerns over bad actors acquiring the assets of closing or ineligible institutions, and misgivings about the acquiring school being responsible for only some of the closed institution's liabilities.

- The current proposed regulatory language remains unchanged from the Department's original proposal.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**§600.32 Eligibility of additional locations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Foreign schools and classes in the United States**

Background:

- The Department proposed changing the definition of a foreign school to permit such an institution to allow a student to complete 25 percent of a program at an institution in the United States. The Department believes that the current total ban on classes in the United States is needlessly restrictive and results in certain students at foreign schools being unable to complete certain requirements for their programs in a timely manner.

- During the first subcommittee meeting, members did not provide substantive comments about this section. However, one member expressed concerns regarding the use of limited clinical

spaces by foreign medical schools, an issue the Department does not intend to address in this rulemaking. No further objections were raised by members during subsequent sessions, with the subcommittee generally in favor of the proposed change.

- The substance of current proposed regulatory language remains unchanged from the Department's original proposal. However, several textual revision were made in order to provide clarity.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

## §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 to provide a portion of the program to students, except for written arrangements for no more than 25 percent of the courses required by the program to be provided by Title IV participating institutions located in the United States~~for students enrolling at the foreign institution to take courses from institutions located in the United States~~;

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

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

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

(2) Notwithstanding paragraph (1)(ii)(C) of this definition, 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.

~~(2)~~(3) 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.

# Part 668

## Subscription period disbursement

Background:

- The Department originally proposed to create a new method of disbursing Title IV aid to students in direct assessment programs using "subscription periods" in which the institution charges the student for a period of time and permits the student flexibility on which courses or competencies the student works on during that period. The Department's proposal would resemble the current "non-term" process for disbursing Title IV aid, in which an institution is permitted to make an initial disbursement at the beginning of the student's program, but can only make subsequent disbursements when the student completes a period of time and receives a certain amount of credit. The proposal would incorporate this "pay-for-completion" model into a term-based format and require students to complete all the credits associated with their enrollment status in the prior term (e.g. 6 credits for half-time status or 12 for full-time status). The proposal is intended to avoid requiring institutions to designate specific coursework to apply toward a student's enrollment status during a given subscription period, allowing for greater student flexibility to start and end coursework when they choose.

- During the second subcommittee meeting, the Department presented a graphic representation of how the subscription-based model would work in comparison to how term-based and non-term disbursement works under the current regulatory system. That graphic is included as Appendix C at the end of this document.

- Following the Department's presentation, several subcommittee members indicated that there were two significant drawbacks to the Department's approach:

    1. The Department's approach would require institutions using this disbursement method to track each student's completion of credit hours or the equivalent, which is an administratively burdensome process that can be confusing for students.
    2. The Department's approach would be disadvantageous to students who fall behind on completing coursework because it would cut off their ability to receive Title IV aid. Institutions would also have little incentive to let such students continue.

- Following the second subcommittee meeting, one subcommittee member presented an alternative option to the Department that would allow disbursement based on attempted coursework rather than completed coursework. However, the Department indicated that it was unable to support this framework because we believe it would encourage "gaming" by allowing institutions to easily pay Title IV aid for the same course twice for a student whose work merely overlapped two subscription periods. The Department stated that it believes that the completion framework is the only way to permit adequate flexibility related to coursework while ensuring integrity of the Title IV, HEA programs.

- During the third subcommittee meeting, the Department acknowledged subcommittee members' concerns that the Department's original framework could lead to adverse consequences for students who fall only a small amount behind what they intended to complete. The Department also acknowledged the administrative burden associated with tracking completion both for disbursement and satisfactory academic progress purposes, but maintained its position that it would not consider a system that did not rely on student completion as the basis for future disbursements.

- During the third subcommittee meeting, the Department presented several options that were intended to alleviate the subcommittee's concerns about students who fell behind in their coursework by only a small amount. One option would have required a student only to complete 67% of the coursework associated with his/her enrollment status, while the second option would give the student one additional subscription period to complete coursework, giving one extra quarter or semester for the students to get up to speed.

- The subcommittee supported the second option, which would 1) require an institution to establish a single enrollment status that would apply to a student throughout his or her program; 2) provide an extra subscription period to permit students to catch up after falling behind by a few credits; and 3) eliminate requirements for satisfactory academic progress pace evaluations for subscription-based programs. The Department agreed to include the section option in its proposal to the full committee.

- One subcommittee member requested that the Department permit students to retake coursework in subscription-based programs similar to the allowances for retaking a passed course once in a term-based program. The Department indicated that it was willing to consider the proposal and encouraged the subcommittee members to submit examples of how the current proposal would harm students, but at this time the Department is against allowing students to receive Title IV aid again for the same class after completing it in a subscription-based program.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.2 Definitions**

* * *

*Full-time student:* An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program that is not subscription-based, the student's workload may include repeating any coursework previously taken in the program ~~but~~; however, the workload may not include more than one repetition of a previously passed course. ~~However, for~~For an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements, based on the type of program:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters, or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time course load must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(8) For a subscription-based program, completion of a full-time course load commensurate with the full-time definitions listed in paragraphs (1), (3), and (5) through (7) of this definition.

* * *

*Subscription-based program:* A standard or nonstandard term direct assessment program in which the institution charges a student for each term on a subscription basis with the expectation that the student completes a specified number of credit hours during that term. Coursework in a subscription-based program is not required to begin or end within a specific timeframe in each term. Students in subscription-based programs must complete a cumulative number of credit hours (or the equivalent) during or following the end of each term before receiving subsequent disbursements of Title IV, HEA program funds. An institution establishes an enrollment status (for example, full-time or half-time) that will apply to a student throughout the student's enrollment in the program, except that a student may change his or her enrollment status no more often than once per academic year. The

number of credit hours (or the equivalent) a student must complete before receiving subsequent disbursements is calculated by—

(1) Determining for each term the number of credit hours (or the equivalent) associated with the institution's minimum standard for the student's enrollment status (for example, full-time, three-quarter time, or half-time) for that period commensurate with paragraph (8) in the definition of full-time student, adjusted for less than full-time students in light of the definitions of half-time student and three-quarter-time students, and adjusted to at least one credit (or the equivalent) for a student who is enrolled less than half time; and

(2) Adding together the number of credit hours (or the equivalent) determined under paragraph (1) for each term in which the student was enrolled in and attended that program, excluding the current and most recently attended terms.

* * *

**34 CFR 668.164 Disbursing funds**

* * *

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length that is not a subscription-based program, 10 days before the first day of classes of a payment period; ~~or~~

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length~~,~~ that is not a ~~non-term~~subscription-based program, a non-term credit-hour program, or a clock-hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds~~.~~; or

(iii) If the student is enrolled in a subscription-based program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the cumulative number of credit hours associated with the student's enrollment status in all prior terms that the student attended under the definition of a subscription-based program in 34 CFR 668.2.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(5). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

* * *

**Definition of a week of instructional time for asynchronous distance education or correspondence courses**

Background:

- The Department originally proposed to clarify the definition of a week of instructional time, which is an important component in calculations for proration of Title IV aid, as well as determining the eligibility of certain programs shorter than an academic year in length. The current regulations define a week of instructional time as a week in which one day of scheduled instruction occurs; however, there are numerous instructional programs that do not schedule instruction, including asynchronous distance education and correspondence programs. The Department seeks to define a week of instruction for those types of programs.

- During the first subcommittee meeting, several members expressed concern that the definition would require only that materials and staff were made available to students rather than requiring certain actions by students. Another member indicated that a week of instruction should be defined differently for a program offered by distance education and a program offered by correspondence. The same member indicated that she did not believe it was appropriate to include direct assessment programs among the types of programs that would use the new definition. Another subcommittee member indicated concern about exempting distance education or correspondence programs from the prohibition on including homework in the concept of "instructional time."

- Following the first subcommittee meeting, the Department presented language to the subcommittee that incorporated the subcommittee's discussion in the prior meeting, differentiating between distance education and correspondence programs and establishing a requirement that a student perform educational activities including academic engagement during a week of instruction at a program offered through distance education. The Department also eliminated its proposed addition that would have limited the prohibition on including homework in instructional time to brick-and-mortar programs.

- Following the final subcommittee meeting, the Department made changes to the definition to eliminate references to "homework" since under a broad interpretation of that term, all or most distance education is essentially "homework." The Department revised that language to refer to the definition of academic engagement under 34 CFR 600.2.

- The subcommittee did not present objections to the language that the Department presented at the third subcommittee meeting. The subcommittee has not reviewed, and therefore provides no comment on the Department's replacement of the term "homework" following the final subcommittee meeting.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.3 Academic year.**

* * *

(b) *Definitions.* For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which ~~at~~ --

(i) At least one day of regularly scheduled instruction or examinations occurs, or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; or

(ii)(A) In a program offered using asynchronous coursework through distance education or correspondence, the institution makes available the instructional materials, other resources, and faculty support necessary for academic engagement and completion of course objectives; and

(B) In a program using asynchronous coursework through distance education, the institution requires enrolled students to perform educational activities demonstrating academic engagement during the week.

(3) Instructional time does not include any vacation periods, activities not included in the definition of academic engagement under 34 CFR 600.2, ~~homework,~~ or periods of orientation or counseling.

## Written arrangements for ineligible institutions or organizations to provide educational programs

Background:

- The Department proposed allowing a greater percentage of an accredited institution's program to be delivered through a written arrangement with an outside provider. This would permit greater flexibility in offering programs where institutions may lack the resources necessary to train students in high-demand occupations. More flexible written arrangements would further allow institutions to partner with organizations like building and trades unions to offer instruction at state-of the-art teaching facilities operated by these organizations.

- Opposition from the subcommittee to changing the current regulations governing written arrangements was strong and relatively unanimous across all three sessions over which the subcommittee met. In advance of the third subcommittee meeting, the Department offered proposed language that would permit an institution to enter into a written arrangement with a non-eligible entity to provide up to 50 percent of a program without accrediting agency approval and up to 75 percent of a program with such approval. However, this did not assuage the concerns of members, all of whom remained opposed to the proposed changes.

- Reasons offered by members of the subcommittee for opposing the Department's prosed changes to this section were varied; however, the primary criticism was that the proposed changes have the potential to turn the eligible institution into what is essentially a shell with all of the program being offered by an entity that is beyond eligibility requirements and not accountable.

- In response to discussions with the subcommittee, the Department is offering revised regulatory language that retains the 50 percent cap on the amount of a program that may be offered by an ineligible entity. However, the proposed language would remove the requirement that an institution obtain accrediting agency approval for written arrangements where an ineligible entity provides between 25 and 50 percent of a program. Institutions would be required to notify the accreditor within 10 days of executing such a written arrangement. Additionally, the Department proposes to add to 34 CFR 668.5 language clarifying its longstanding policy (outlined in the FSA Handbook in Volume 2, Chapter 2, p. 2-35 of the 2018-2019 edition) that internships and externships are not subject to the provisions of 34 CFR 668.5.The Department believes this will streamline the development of innovative programs while not in any way inhibiting accreditation agency review of written arrangements to whatever extent the accreditor believes to be necessary.

- The subcommittee did not have an opportunity to review the proposed rules shown below or comment on them. However, the proposed rules do reflect conversation with the subcommittee during the three sessions over which it met.

- Some subcommittee members expressed concern that after facing strong opposition to any proposed change to written arrangements in all three subcommittee sessions, the Department is proposing new language to the full committee that the subcommittee was not given an opportunity to review.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

## §668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides part of the educational program to students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree ~~or~~, certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8.

(2) If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Secretary considers the educational program to be an eligible program if~~—~~ the educational program offered by the institution that grants the degree, certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8.

~~(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of §668.8; and~~

~~(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.~~

(b) *Written arrangements for study-abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement under which an institution in another country, or an organization acting on behalf of an institution in another country, provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization ~~has not—~~

(i) Must be able to demonstrate experience in the delivery and assessment of the program or portion of program they will be contracted to deliver and must provide evidence that the program has been effective in meeting the stated learning objectives; and

(ii) Has not—

(A) Had its eligibility to participate in the title IV, HEA programs terminated by the Secretary;

~~(ii)~~(B) Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

~~(iii)~~(C) Had its certification to participate in the title IV, HEA programs revoked by the Secretary;

~~(iv)~~(D) Had its application for re-certification to participate in the title IV, HEA programs denied by the Secretary; or

~~(v)~~(E) Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

(2) The educational program offered by the institution that grants the degree ~~or~~, certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8;

(3) The ineligible institution or organization provides 50 percent or less of the educational program;

~~(3)(i) The ineligible institution or organization provides 25 percent or less of the educational program; or~~

~~(ii)(A) The ineligible institution or organization provides more than 25 percent but less than 50 percent of the educational program;~~

~~(B)~~(4) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

~~(C)~~(5) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency ~~listed in the FEDERAL REGISTER~~ approved by the Secretary under ~~accordance with~~ 34 CFR part 603, is notified of ~~the change~~ any written arrangement between the eligible institution and an ineligible institution or organization within 10 days of when it is executed. ~~has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.~~

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section or oversees an internship or externship portion of a program as provided in paragraph (h)(2), except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a third-party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the hours in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

(e) *Information made available to students.* If an institution enters into a written arrangement described in paragraph (a), (b), or (c) of this section, the institution must provide the information described in §668.43(a)(12) to enrolled and prospective students.

(f) *Workforce responsiveness.* Nothing in this or any other section shall prohibit an institution utilizing written arrangements from aligning or modifying their curriculum or academic requirements in order to meet the recommendations or requirements of industry advisory boards that include employers who hire program graduates, widely recognized industry standards and organizations, or industry-recognized credentialing bodies, including making governance or decision-making changes as an alternative to allowing or requiring faculty control or approval or integrating industry-recognized credentials into existing degree programs.

(g) *Calculation of percentage of a program.* When determining the percentage of the program that is provided by an ineligible institution or organization under paragraph (c) of this section, the institution shall divide the number of semester, trimester, or quarter credit hours, clock hours, or the equivalent that are provided by the ineligible organization or organizations by the total number of semester, trimester, or quarter credit hours, clock hours, or the equivalent required for completion of the program. A course is provided by an ineligible institution or organization if the contracted organization has authority over the design, administration, or instruction in the course, including, but not limited to—

(1) Establishing the requirements for successful completion of the course;

(2) Delivering instruction in the course; or

(3) Assessing student learning.

(h) *Non-applicability to other interactions with outside entities.* Written arrangements are not necessary for, and the limitations in this section do not apply to –

(1) Acceptance by the institution of transfer credits or use of prior learning assessment or other non-traditional methods of providing academic credit; or

(2) The internship or externship portion of a program if the internship or externship is governed by accrediting agency standards that require the oversight and supervision of the institution, where the institution is responsible for the internship or externship and students are monitored by qualified institutional personnel.

## Limitations on the length of gainful employment programs based on State licensure requirements

Background:

- The Department proposes to change the requirements limiting the number of hours that may be included in a program if the program is a gainful employment program designed to prepare students for gainful employment in a recognized occupation and the State in which the institution is located has minimum requirements for completion of hours in order for a student to become employed in that field. Currently, the regulations express that an institution must demonstrate a reasonable relationship between the number of hours in the program and the State's minimum requirement for hours, and indicates that the Secretary considers the relationship to be reasonable if the program has no more than 150 percent of the hours required for state licensure. By making changes to this section, the Department hopes to improve worker mobility by ensuring that institutions can offer programs with a sufficient number of hours for students to move between nearby States and become licensed in those States.

- The subcommittee generally expressed support for the concept of allowing an institution to offer a program with more than 150% of the hours required by the State in which the institution is located when the hours required for employment in an adjacent State exceed 150% of the hours required in the State where the institution is located.

- Some members expressed concerns that the provisions could allow institutions to use this authority to offer programs that were longer than students needed and noted that a borrower who wanted to work in a neighboring state could simply attend a program in that state; however, the Department's position is that in such cases, completing longer programs will be conducive to worker mobility in the larger region.

- The Department's current proposal would permit the length of a program to be one hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; or the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student established in a State adjacent to the State in which the institution is located.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

### 34 CFR 668.8 Eligible program.

* * *

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

* * *

(3) For purposes of the FFEL and Direct Loan programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section; or

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The institution can demonstrate, in accordance with 34 CFR 668.14(b)(26) that the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under §668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

* * *

**34 CFR 668.14 Program Participation Agreement.**

* * *

(b) By entering into a program participation agreement, an institution agrees that—

* * *

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed the greater of– ~~if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency;.~~

(A) One hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; or

(B) The minimum number of clock hours required for training in the recognized occupation for which the program prepares the student established in a State adjacent to the State in which the institution is located.

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in §668.414.

* * *

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency. The institution will update its teach-out plan upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under §668.83.

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

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations.

* * *

**Clock-to-credit conversion**

Background:

- The Department originally proposed to revise 34 CFR 668.8(k) and (l), restoring the clock-to-credit hour conversion formula that existed prior to the 2010 program integrity regulations. Accordingly (for programs subject to clock-to-credit conversion a semester credit hour would have to include at least 30 clock hours of instruction and a quarter credit hour at least 20 hours of instruction. Work outside of class would have no bearing on the conversion. Current regulations establish a conversion formula of 37.5:1 and 25:1 for semester credit hours and quarter credit hours respectively, unless (as approved by an accreditor or State agency) students' work outside of class combined with clock hours of instruction meets or exceeds 37.5 clock hours for a semester hour clock hours for a quarter hour in which case an institution may use a 30:1 (clock hours to semester hours) or 20:1 (clock hours to quarter credit hours).

- Department representatives offered that the current conversion formula is awkward, difficult to enforce and has accomplished little since most programs subject to clock-to-credit hour conversion have the requisite outside coursework to support using a 30:1 or 25:1 conversion and do so if permitted by their accrediting agencies.

- Most subcommittee members were supportive of the Department's position. A few members, while not outwardly supportive, indicated that they could accept the change. No members of the subcommittee expressed opposition to the change.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.8 Eligible program.**

* * *

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward completion of an eligible program offered by the institution that ~~institution's~~provides an associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the eligible program requires at least two academic years of study and the institution can demonstrate that at least one student graduated from the program during the current or most recently completed award year.~~—~~

~~(i) The institution's degree requires at least two academic years of study; and~~

~~(ii) The institution demonstrates that students enroll in, and graduate from, the degree program.~~

(l) *Formula.* ~~(1) Except as provided in paragraph (l)(2) of this section, for~~ For purposes of determining whether a program described in paragraph ~~(k)~~(h) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and ~~determining~~ the number of credit hours in that educational program ~~with regard to~~for purposes of the title IV, HEA programs—

~~(i)~~(1) A semester or trimester hour must include at least ~~37.5~~30 clock hours of instruction;

~~(ii) A trimester hour must include at least 37.5 clock hours of instruction;~~ and

~~(iii)~~(2) A quarter hour must include at least ~~25~~20 clock hours of instruction.

~~(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions for participation in the title IV, HEA programs, has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c), so long as—~~

~~(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and~~

~~(ii)(A) A semester hour must include at least 30 clock hours of instruction;~~ and

~~(B) A trimester hour must include at least 30 clock hours of instruction; and~~

~~(C) A quarter hour must include at least 20 clock hours of instruction.~~

(m) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for title IV, HEA program purposes if the program is offered by an institution, other than a foreign institution, that has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association that—

(1) Is recognized by the Secretary under subpart 2 of part H of the HEA; and

(2) Has accreditation of distance education within the scope of its recognition.

(n) For Title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under §668.10 and a comprehensive transition and postsecondary program approved by the Secretary under §668.232.

## Certification procedures

Background:

- The Department proposed to change the institutional certification regulations to clarify the procedures for certifying branch campuses and set a time limit on the amount of time that the Secretary may review an application for recertification before action is taken. The Department also presented technical changes allowing for electronic submission of supporting documentation for certification.

- During the second subcommittee meeting, one member asked whether the new 12-month timeframe for the Departments' approval of recertification applications would compromise the Department's exercise of its oversight functions. The Department indicated that the provision only set a limit on how long an application for recertification could remain under review, and noted that the final action that the Department takes could still be to deny recertification or grant a provisional certification to impose provisions on an institution's continued eligibility.

- The subcommittee did not express other objections to the proposed changes.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

### 34 CFR 668.13 Certification procedures.

(a) *Requirements for certification.* (1)(i) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

(ii) On application from the institution, the Secretary certifies a location of an institution that meets the requirements of 34 CFR 668.13(a)(1)(i) as a branch if it satisfies the definition of "branch" in 600.2.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under §668.14:

(i) The individual the institution designates under §668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates.

(3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) *Period of participation.* (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a title IV, HEA program. An institution's period of participation expires no more than six years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that—

(i) The period of participation for a private, for profit foreign institution expires three years after the date of the Secretary's certification; and

(ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(3) In the event that the Secretary does not make a determination to grant or deny certification within 12 months of the expiration of its current period of participation, the institution shall automatically be granted renewal of certification, which may be provisional.

* * *

(d) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the

institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (d)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in §668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or ~~facsimile~~electronic transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by ~~facsimile~~electronic transmission.

(iii) Documents filed by ~~facsimile~~electronic transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. ~~An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.~~

~~(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.~~

(4)(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)~~(i)~~ The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service or another service that provides delivery confirmation for that document.

~~(ii) The date on which a request for reconsideration of a revocation is submitted is—~~

~~(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and~~

~~(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.~~

**Direct assessment programs**

Background:

- The Department originally proposed to revise the regulations related to direct assessment programs to simplify and clarify those requirements while also streamlining the application process for such programs. The Department's proposal would require the Department's approval of only the first direct assessment program that an institution offers; subsequent programs would be subject to the Department's normal rules for approval or institution self-certification of program eligibility. The proposed changes would also permit institutions to use direct assessment to offer preparatory coursework and remedial coursework, as well as permit institutions to offer programs offered only partially using direct assessment.

- Several subcommittee members expressed concern about allowing a second or subsequent direct assessment program provided by an institution to be offered at a higher level (e.g. graduate-level when the institution had previously been approved only to offer undergraduate-level programs) without explicit approval by an accrediting agency. Others indicated support for provisions allowing for hybrid direct assessment programs. The Department has made several changes to the proposed language to incorporate discussions by the subcommittee.

- The subcommittee did not present objections to the Department's revised proposals except that one subcommittee member reiterated a concern that the regulations would permit the Department to approve only the first of an institution's direct assessment programs rather than requiring Department approval of all direct assessment programs, which the member believed is required by the statutory provisions for direct assessment under HEA Sec. 481(b)(4).

Proposed regulatory text (without redlines; the full redline is attached as Appendix D to this document):

**34 CFR 668.10 Direct assessment programs.**

(a)(1) A direct assessment program is ~~a~~ program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others. The assessment must be consistent with the accreditation of the institution or program utilizing the results of the assessment.

(2) Direct assessment of student learning means a measure of a student's, skills, and abilities designed to provide evidence of the student's proficiency in the relevant subject area.

(3) An institution must establish a methodology to reasonably equate each module in the direct assessment program to either credit hours or clock hours. This methodology must be consistent with the requirements of the institution's accrediting agency or State approval agency.

(4) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs according to whether they use credit or clock hour equivalencies, respectively.

(5) A direct assessment program that is not consistent with the requirements of the institution's accrediting agency or State approval agency is not an eligible program as provided under §668.8.

(b) An institution that wishes to offer a direct assessment program must apply to the Secretary to have its direct assessment program or programs determined to be eligible programs for title IV, HEA program purposes. Following the Secretary's initial approval of a direct assessment program, additional direct assessment programs may be determined to be eligible subject to the requirements in §600.10(c)(1)(iii), §600.20(c)(1), or §600.21(a), as applicable, if such programs are consistent with the institution's accreditation or its State approval, except that an institution must always seek approval for a direct assessment program the first time it offers such a program at a higher level of offering. The institution's direct assessment application must provide information satisfactory to the Secretary that includes—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

(2) A description of how the direct assessment program is structured, including information about how and when the institution determines on an individual basis what each student enrolled in the program needs to learn and how the institution excludes from consideration of a student's eligibility for title IV, HEA program funds any credits or competencies earned on the basis of prior learning;

(3) A description of how learning is assessed and how the institution assists students in gaining the knowledge needed to pass the assessments;

(4) The number of semester, trimester, or quarter credit hours, or clock hours, that are equivalent to the amount of student learning being directly assessed for the certificate or degree;

(5) The methodology the institution uses to determine the number of credit or clock hours to which the program or programs are equivalent;

(6) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of direct assessment program(s) and has included the program(s) in the institution's grant of accreditation; and approval documentation from the accrediting agency or State approval agency indicating agreement with the institution's methodology for determining the direct assessment program's equivalence in terms of credit or clock hours.

(7) Notwithstanding paragraphs (a) and (b) of this section, no program offered by a foreign institution that involves direct assessment will be considered to be an eligible program under §668.8.

(c) A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the institution providing the direct assessment program without regard to the limitations on contracting for part of an educational program in §668.5(c)(3).

(d) Title IV, HEA program funds may be used to support instruction provided, or overseen, by the institution, not for the portion of the program that the student completes based on prior mastery or tests of learning that are not associated with educational activities overseen by the institution.

(e) Unless an institution has received initial approval from the Secretary, to offer direct assessment programs, and the institution's offering of direct assessment coursework is consistent with the institution's accreditation and State authorization, if applicable, title IV, HEA program funds may not be used for—

(1) The course of study described in §668.32(a)(1)(ii) and (iii) and (a)(2)(i)(B), if offered using direct assessment; or

(2) Remedial coursework described in §668.20, if offered using direct assessment.

(f) Student progress in a direct assessment program may be measured using a combination of—

(1) Credit hours and credit hour equivalencies; or

(2) Clock hours and clock hour equivalencies.

**Return of Title IV funds**

Background:

- During the second subcommittee meeting, the Department presented its proposals to alter the requirements for Return of Title IV funds (R2T4) to accommodate non-traditional programs, especially those using modules, and eliminate unnecessary administrative burden associated with the current R2T4 requirements.

- The Department indicated that the 2010 Program Integrity regulations had made a number of changes to the R2T4 provisions in order to curb a specific form of abuse. Prior to 2010, the

Department considered a student who completed coursework in a module, no matter how long the module was or how much coursework was completed, to have completed the payment period. Some schools began creating very short (e.g. one week) modules at the beginning of a term, such that after a student completed that short module, the student could never be considered withdrawn even if the student failed to complete all of his or her other full-term courses, and thus the student would never be subject to the R2T4 provisions and no aid would ever be returned to the Department.

- The 2010 Program Integrity regulations changed the requirements for modules by requiring institutions to perform R2T4 calculations *even if a student completed a module* if the student was still scheduled to take other coursework when the student ceased attendance. However, these new requirements created an unintentional consequence. Some students who dropped future classes before completing or a module would not be subject to R2T4 because they were not scheduled to attend future classes in the same term when they ceased attendance. But if the very same student waited until after completing a module to drop future courses, that student *would* be subject to an R2T4 calculation. This created substantial differences in the treatment of Title IV aid for students who were not appreciably different, and without any policy purpose.

- The Department is seeking to mitigate these problems in two major ways: first, by treating students as having completed a payment period if the student completes a module or modules that comprise at least 50% of the payment period. The Department also proposes to include in the denominator of an R2T4 calculation all the days in all the modules that are part of the institution's calculation of a student's aid eligibility, rather than focusing on what the student was "scheduled to attend" at the time the student ceased attendance. These changes are intended to resolve most of the problems associated with students adding or dropping courses in future modules. The Department also proposes to stop applying the requirements for modules to nonterm or subscription-based programs where the provisions are not needed.

- During the second meeting, one subcommittee member indicated that there appeared to be several unintended errors in the proposed regulatory text and that the proposed requirements did not address the proposed disbursement process for programs using subscription periods. The Department has made a number of changes to its proposed language in order to address these concerns.

- The same subcommittee member also made a proposal to permit an institution to consider a student to have completed a payment period or period of enrollment if the student completed the equivalent of at least half-time status. The Department was supportive of this proposal, and indicated that it would include both options in its proposed changes. Therefore, under the Department's current proposal, a student would be considered to have completed a payment period or period of enrollment if:

    1) The student completed a module or modules that included at least half the days in the payment period or period of enrollment; or
    2) The student completed a module or modules that included coursework comprising at least half-time enrollment status, as defined by the institution.

- The subcommittee did not present objections to the Department's revised definition.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.22 Treatment of title IV funds when a student withdraws.**

* * *

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2)(i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, a student is considered to have withdrawn from a payment period or period of enrollment if—

(A) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete;

(B) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours and weeks of instructional time in the payment period or period of enrollment that the student was scheduled to complete; ~~or~~

(C) For a student in a ~~non-term~~ standard or nonstandard-term program, excluding a subscription-based program, the student is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending, unless the student is on an approved leave of absence, as defined in paragraph (d) of this section~~.~~; or

(D) For a student in a non-term program or a subscription-based program, the student is unable to resume attendance within a payment period or period of enrollment for more than 60 calendar days after ceasing attendance.

(ii)(A) Notwithstanding paragraph (a)(2)(i)~~(A), and (a)(2)(i)(B), and (a)(2)(i)(C)~~ of this section~~, for –~~

(*1*) A student who completes all the requirements for graduation from his or her program before completing the days or hours in the period that he or she was scheduled to complete is not considered to have withdrawn;

(*2*) In a program offered in modules, a student who completes the coursework in a module or modules that include a number of days equal to or greater than fifty percent of the number of days in the payment period or completes coursework in a module or modules that is equal to or greater than the coursework required for institution's definition of a half-time student under 34 CFR 668.2 is considered to have completed the period and is not considered to have withdrawn;

*(3)* For a payment period or period of enrollment in which courses in the program are offered in modules—

(~~1~~*i*) A student is not considered to have withdrawn if the institution obtains written confirmation, including electronic confirmation, from the student at the time that would have been a withdrawal of the date that he or she will attend a module that begins later in the same payment period or period of enrollment; and

(~~2~~*ii*) For ~~non-term~~ standard and nonstandard-term programs, excluding subscription-based programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending~~.~~; and

(*4*) For a subscription-based program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date occurs within the same payment period or period of enrollment and is no later than 60 calendar days after the student ceased attendance.

(*5*) For a non-term program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date is no later than 60 calendar days after the student ceased attendance.

(B) If an institution has obtained the written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) of this section—

(*1*) A student may change the date of return ~~to a module~~ that begins later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed; ~~and~~

(*2*) For ~~non-term~~ standard and nonstandard-term programs, excluding subscription-based programs, the later module that he or she will attend begins no later than 45 calendar days after the end of module the student ceased attending; and

(*3*) For non-term and subscription-based programs, the student's program permits the student to resume attendance no later than 60 calendar days after the student ceased attendance.

(C) If an institution obtains written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) and, if applicable, (a)(2)(ii)(B) of this section, but the student does not return as scheduled—

(*1*) The student is considered to have withdrawn from the payment period or period of enrollment; and

(*2*) The student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of a future date of attendance in accordance with paragraph (a)(2)(ii)(A) of this section.

(iii)(A) If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period,

subject to conditions established by the Secretary, the student is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section, provided the student's enrollment status continues to support the full amount of those funds.

(B) In accordance with §668.4(f), if a student withdraws from a clock-hour or non-term credit hour program during a payment period or period of enrollment and then reenters the same program within 180 calendar days, the student remains in that same period when he or she returns and, subject to conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section.

(3) For purposes of this section, "title IV grant or loan assistance" includes only assistance from the ~~Federal Perkins Loan,~~ Direct Loan, ~~FFEL,~~ Federal Pell Grant, ~~Academic Competitiveness Grant, National SMART~~Iraq and Afghanistan Service Grant, TEACH Grant, and FSEOG programs, not including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(4) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(5) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(6) of this section and §668.164~~(g)~~(i).

(6)(i) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(ii)(A) If outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of outstanding charges in accordance with §668.164(c) with all or a portion of any—

(*1*) Grant funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1);and~~ ~~(d)(2); and~~

(*2*) Loan funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1), (d)(2), and (d)(3)~~ only after obtaining confirmation from the student or parent in the case of a parent

PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(6)(iii) of this section.

* * *

(d) *Approved leave of absence.* (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student followed the institution's policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approved the student's request in accordance with the institution's policy;

(v) The leave of absence does not involve additional charges by the institution;

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

(vii) Except for a clock hour or non-term credit hour program, or a subscription-based program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

* * *

(i) *Order of return of title IV funds*—(1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Direct Stafford loans.

(ii) Subsidized Federal ~~Stafford loans.~~

~~(iii) Unsubsidized Federal~~ Direct Stafford loans.

~~(iv) Subsidized Federal Direct Stafford loans.~~

~~(v) Federal Perkins loans.~~

~~(vi) Federal PLUS loans received on behalf of the student.~~

~~(vii)~~(iii) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) ~~Academic Competitiveness~~Iraq and Afghanistan Service Grants.

(iii) ~~National SMART Grants.~~

~~(iv)~~ FSEOG Program aid.

~~(v)~~(iv) TEACH Grants.

* * *

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that "could have been disbursed" are determined in accordance with the late disbursement provisions in §668.164~~(g)~~(i).

(2) A "period of enrollment" is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The "date of the institution's determination that the student withdrew" for an institution that is not required to take attendance is—

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his of her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.

(4) A "recipient of title IV grant or loan assistance" is a student for whom the requirements of §668.164~~(g)~~(i)(2) have been met.

(5) Terms are "substantially equal in length" if no term in the program is more than two weeks of instructional time longer than any other term in that program.

(6) A program is "offered in modules" if the program uses a standard term or nonstandard term academic calendar, is not a subscription-based program, and a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) "Academic attendance" and "attendance at an academically-related activity" must include academic engagement as defined under 34 CFR 600.2~~—~~

~~(A) Include, but are not limited to—~~

~~*(1)* Physically attending a class where there is an opportunity for direct interaction between the instructor and students;~~

~~*(2)* Submitting an academic assignment;~~

~~*(3)* Taking an exam, an interactive tutorial, or computer-assisted instruction;~~

~~*(4)* Attending a study group that is assigned by the institution;~~

~~*(5)* Participating in an online discussion about academic matters; and~~

~~*(6)* Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and~~

~~(B) Do not include activities where a student may be present, but not academically engaged, such as—~~

~~*(1)* Living in institutional housing;~~

~~*(2)* Participating in the institution's meal plan;~~

~~*(3)* Logging into an online class without active participation; or~~

~~*(4)* Participating in academic counseling or advisement~~.

(ii) A determination of "academic attendance" or "attendance at an academically-related activity" must be made by the institution; a student's certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (a)(2) to calculate Federal Pell Grant payments under 34 CFR 690.63(b) or (c).

(9) A student in a program offered in modules is scheduled to complete the days in a module if the student's coursework in that module was used to determine the amount of the student's eligibility for Title IV, HEA funds for the payment period or period of enrollment.

## Satisfactory academic progress

Background:

- The Department originally proposed to revise 34 CFR 668.34 to simplify satisfactory academic progress (SAP) rules related to calculating pace for clock-hour programs, provide an additional option for establishing maximum timeframe for credit hour programs, and clarifying the application of SAP for the proposed concept of subscription-based programs.

- The Department proposed to remove the requirement to measure pace for non-term credit-hour programs and clock-hour programs. The Departments stated that since for these programs a student may not receive a subsequent disbursement of Title IV funds until successfully completing both the hours and weeks in a payment period, SAP rules related to pace are unnecessary. Following further discussion with the subcommittee during the third meeting, the Department altered its proposal to also exempt subscription-based program from requirements to evaluate SAP pace, indicating that the proposed requirements for completion in that system also made SAP pace evaluations unnecessary.

- Under the Department's proposal, institutions would be permitted to measure maximum timeframe for credit-hour programs in calendar time as well as in credit hours. Programs using measuring maximum timeframe in calendar time would be required to measure pace by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within maximum timeframe.

- Subcommittee members were generally supportive of the Department's redline language and the reasons it offered for wanting to make changes to the existing regulations governing SAP. One member expressed the desire for more flexibility in applying SAP to subscription-based programs given that the Department's proposed disbursement changes for such programs already have a progression element. Although the degree of support varied among members, no direct opposition to the Department's position was expressed.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

### 34 CFR 668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory

academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, *e.g.,* full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

(5)~~(i)~~ The policy specifies~~—~~

(i) for all programs, the maximum timeframe as defined in paragraph (b) of this section; and

(ii) for a credit hour program using standard or nonstandard terms that is not a subscription-based program, the pace, measured at each evaluation, at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, ~~as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and~~calculated by

~~(ii) An institution calculates the pace at which the student is progressing by(A) In a program that is not a subscription-based program,~~ either dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted~~.~~ or by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe. In making this calculation, the institution is not required to include remedial courses; ~~and~~

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

* * *

*Maximum timeframe.* Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours or expressed in calendar time;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

* * *

**Additional time to disburse Title IV aid for schools performing a teach-out**

Background:

- The Department originally proposed to amend the requirements for terminations of an institution's participation in the Title IV, HEA programs under 34 CFR 600.41 to permit an institution to continue to award and disburse Title IV aid to a students after it ceased participation as long as the institution was conducting a teach-out of its students prior to closing. These provisions were intended to ensure that an institution that has lost Title IV eligibility, but has not yet closed, can continue to receive Title IV aid for a limited period in order to ensure that those students complete their programs. This would provide a mechanism for an institution to teach-out its own students rather than relying on other institutions to step in after it closes.

- Following discussions with the subcommittee, the Department has moved these proposed provisions from their original proposed location under 34 CFR 600.41 and made revisions to the language to incorporate some of the suggestions and concerns discussed by members of the Distance Learning and Innovation subcommittee. The Department's current proposal limits the institution's ability to receive additional Title IV aid to students who can complete the program within 120 days, gives the Department discretion to determine whether to permit an institution to continue to award and disburse aid, and sets certain conditions on the institution's ability to do so, including written assurances that there are no threats to students' health or safety and that the institution has adequate financial resources to complete the teach-out.

- The subcommittee did not discuss the Department's revised provisions in 34 CFR 668.26 because the Department created those proposals after the end of the final subcommittee meeting. The subcommittee therefore does not take a position on these provisions. However, the subcommittee did discuss at length the general principle of whether such schools should be eligible for Title IV aid. In general, subcommittee members voiced concern that institutions that were leaving the program due to fraud or similar problems could continue to receive taxpayer

funds. However, some subcommittee members thought that allowing students who were near completion to finish their program would be beneficial. There was generally support in the subcommittee for allowing aid to continue only for students who would be able to finish their program within the 120 day period, which is reflected in the Department's new redlines here.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.26 End of an institution's participation in the Title IV, HEA programs.**

* * *

(d)(1) An institution may use funds that it has received under the Federal Pell Grant, ~~ACG, National SMART Grant, or~~ TEACH Grant Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—

(i) The institution's participation in that Title IV, HEA program ends during a payment period;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Family Education Loan Programs loan to satisfy any unpaid commitment made to the student under the Federal Family Education Loan Programs Loan Program only if—

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment.

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the Direct Loan Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or disburse to the student the proceeds of a Direct Loan Program loan only if—

(i) The institution's participation in the Direct Loan Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) Notwithstanding paragraph (d) of this section, the Secretary may permit an institution to continue to originate, award, or disburse funds under a Title IV, HEA program for no more than 120 days following the end of that the institution's participation in the program if—

(1) The institution has notified the Secretary of its plans to conduct an orderly closure in accordance with any applicable requirements of its accrediting agency;

(2) As part of the institution's orderly closure, it is performing a teach-out that has been approved by its accrediting agency;

(3) The institution agrees to abide by the conditions of the Program Participation Agreement that was in effect prior to the end of its participation, except that it will originate, award, or disburse funds under that program only to previously enrolled students who can complete the program within 120 days of the date that the institution's participation ended; and

(4) The institution presents the Secretary with acceptable written assurances that—

(i) The health and safety of the institution's students is not at risk; and

(ii) The institution has adequate financial resources to ensure that instructional services remain available to students during the teach-out.

~~(e)~~(f) For the purposes of this section—

(1) A commitment under the Federal Pell Grant~~, ACG, National SMART Grant,~~ and TEACH Grant programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report; and

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid.

**Disclosures for professional licensure and State complaint processes**

Background:

- The Department originally proposed to eliminate the regulations for State authorization for distance education that were promulgated in 2016, including both the institutional eligibility regulations in 34 CFR Part 600 and the disclosure requirements for distance education and correspondence courses in 34 CFR 668.50. However, during the first subcommittee session members expressed support for some aspects of the regulatory language promulgated in 2016. Following that session, the Department composed language designed to incorporate the subcommittee's discussion using the 2016 regulations as a starting point but incorporating a number of changes.

- The majority of the subcommittee supported the inclusion of disclosure requirements regarding whether programs that were intended to lead to professional licensure would meet educational requirements for licensure in a State, particularly a State in which a student was located, although at least one member expressed concern about the regulatory burden these requirements have imposed on institutions. Several subcommittee members noted that it was vital that students understand whether professional programs fulfill State licensure or certification requirements before students enroll in such programs.

- Following the first subcommittee session, the Department attempted to incorporate the ideas expressed in that discussion by drafting a general requirement – for all institutions, not just those using distance education – to disclose whether the program would meet State educational requirements for professional licensure if the institution had made such a determination for a given State. The Department continues to propose eliminating the disclosures in 34 CFR 668.50 (provided for reference in Appendix E to this document) that would have applied only to distance education and correspondence programs.

- During the second subcommittee meeting, a majority of the subcommittee also supported a student-specific disclosure that had been included in the 2016 regulation regarding whether the program would meet licensure requirements in the State in which the student was located. Institutions would be required to provide such a disclosure to a prospective student prior to enrollment. The Department drafted that requirement in response to discussions by the subcommittee and maintains that requirement in its current proposal to the full committee.

- Since the second meeting, one subcommittee member indicated support for a requirement that the institution document a student's written acknowledgement of receipt and understanding of the student-specific disclosure about whether the program would fulfill licensure requirements, noting that this requirement was present in the 2016 regulations. However, the Department indicated that it was unwilling to consider adding such a requirement because we believe it would add substantial administrative burden without a corresponding benefit for students. The same subcommittee member indicated support for a disclosure of which States authorize the institution to provide postsecondary education; however, the Department declined to consider that proposal as part of this negotiated rulemaking (provided as Appendix F to this document) because it is already required for all institutions under 34 CFR 668.43(a)(6), including for States in which the institution provides distance education.

- During the third subcommittee meeting, several members indicated that language for disclosures related to professional licensure should be strengthened to require an institution to make a determination in order to ensure that institutions do not shirk the work of determining

whether their programs fulfill State requirements for professional licensure. Following discussion with the subcommittee, the Department presented revised language that would require an institution to make an individualized disclosure to a student *only if* the institution either had not made a determination about whether the program would meet educational licensure requirements in that student's State or if the institution had determined that the program would *not* meet such licensure requirements. This would have the likely effect of incentivizing institutions to make determinations about whether its programs meet educational requirements for licensure in States where its students are located – and ensuring that its programs do meet such requirements – in order to avoid sending individualized disclosures to students.

- The subcommittee was generally supportive of the revised regulatory text, though several members still expressed reservations about the administrative burden it would impose on schools. Additionally, one subcommittee member raised a concern about the Department's proposal to eliminate the requirement for disclosure of recent adverse actions by accreditors, indicating that eliminating the disclosure would strip prospective students of important information.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.43 Institutional information.**

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

* * *

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;

(iii) The institution's faculty and other instructional personnel; ~~and~~

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

(A) A list of all States for which the institution has determined that completion of the program would fulfill educational requirements for licensure;

(B) A list of all States for which the institution has determined that completion of the program would not fulfill educational requirements for licensure; and

(C) A list of all States for which the institution has not made a determination regarding whether completion of the program would fulfill educational requirements for licensure; and

(vi)(A) Prior to each prospective student's enrollment, if the institution has made a determination under paragraph (v)(B) that the program does not fulfill educational requirements for licensure in the State in which the student is located, or if the institution has not made a determination regarding whether the program would fulfill educational requirements for licensure in that State, an attestation to that effect.

(B) Such disclosure shall be made directly to the student in writing, which may include through e-mail or other electronic communication.

* * *

**Disclosures for prior learning assessment and transfer of credit and other disclosures required by statute**

Background:

- The Department originally proposed to add several new requirements for disclosures relating to prior learning assessment and transfer of credit. The proposal would have required disclosures of criteria used to evaluate prior learning experience and would also have required disclosures of credits requested for transfer and the number of credits that actually transferred. The Department also proposed to add to the regulations disclosures that are required by statute under Sec. 485(a)(1), but that have not been represented in the regulations until this point.

- During the second subcommittee meeting, members expressed concern about the complexity of disclosing numbers of credits transferred and noted that there was not yet a clear system for how the institution was to calculate the number it disclosed (e.g. using an average or a total).

The Department considered the subcommittee's feedback and has removed provisions relating to disclosure of a number of transfer credits.

- During the third subcommittee meeting, several members asked the Department to include language expressing that placement rates that an institution discloses must be calculated in accordance with any requirements by the institution's accrediting agency. In reviewing that proposal, the Department determined that merely adding a requirement for accrediting agency approval would be insufficient. The Department is therefore proposing revised regulatory language to the full committee that more closely reflects the statutory requirements for these disclosures and expresses the various types of placement rates that an accrediting agency can approve. The subcommittee did not see or discuss the Department's revised proposal, which was created after the end of the third subcommittee meeting.

- The subcommittee did not present objections to the language that the Department presented during the third subcommittee meeting. The subcommittee has not reviewed, and therefore does not take a position on the Department's revised language for placement rates below.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**34 CFR 668.43 Institutional information.**

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

* * *

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and

(ii) A list of institutions with which the institution has established an articulation agreement; and

(iii) Written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other informal learning.

(12) A description of written arrangements the institution has entered into in accordance with §668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(13) The percentage of those enrolled, full-time students at the institution who—

(i) Are male;

(ii) Are female;

(iii) Receive a Federal Pell Grant; and

(iv) Are a self-identified member of a racial or ethnic group;

(14) The placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources approved by the institution's accrediting agency, including but not limited to program-level data from the College Scorecard;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(16) The fire safety report prepared by the institution pursuant to §668.49;

(17) The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and

(18) Institutional policies regarding vaccinations.

**Use of accrediting agency definitions for audit or program review appeals**

Background:

- The Department originally proposed to change the requirements for appeals of final audit or program review determinations to incorporate the definitions of accrediting agencies for concepts where those definitions applied. The Department did not receive substantive comments about these provisions in prior subcommittee sessions but has made several conforming changes given discussions on other topics and seeks to continue discussions of these provisions with the subcommittee.

- Since the end of the third subcommittee meeting, the Department has made additional changes to the text to address changes that were made to requirements for the credit hour and for the definition of distance education following the end of the third subcommittee meeting.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**§668.111 Scope and purpose.**

(a) This subpart establishes rules governing the issuance by the Department of, and appeal by an institution or third-party servicer from, a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

* * *

**34 CFR 668.113 Request for review.**

* * *

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer must file its request for review no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(d)(1) If the final audit determination or final program review determination in subsection (a) of this section results from the institution's classification of a course or program as distance education, or the institution's assignment of credit hours, the Secretary relies upon the institution's accrediting agency with respect to what constitutes a "content expert," and what amount of work is consistent with commonly accepted practice in postsecondary education, in applying the definitions of "distance education" and "credit hour" in 34 CFR 600.2.

~~(1)~~(2) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

~~(2)~~(3) If the institution is charged with a liability as a result of an error described in paragraph (d)(~~1~~)(2) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

**Past performance and financial responsibility**

Background:

- The Department proposed to change the requirements under the financial responsibility provisions in order to permit the Department to deny an institution's application for certification or recertification if the Department has determined that the institution is not financially responsible. The Department also proposed to make changes to the regulations for past performance in order to ensure that entities other than corporations or persons are subject to those requirements, and to provide for electronic submission of forms or other documentation needed. The latter changes are largely technical in nature.

- The subcommittee did not present substantial objections to the Department's proposed changes, though one subcommittee member expressed concern about adding a new enforcement method when schools that are not at risk of closure are deemed not financially responsible due to problems with the calculation of financial responsibility scores. The Department acknowledged the member's concerns with the financial responsibility provisions, but argued for the importance of having an array of enforcement tools, especially since the Department has the discretion to apply its oversight carefully until the financial responsibility provisions themselves are improved.

Revised regulatory text (with redlines from the existing regulatory text to the current proposed text):

**§668.171 General.**

* * *

(e) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in §668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under §668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; ~~or~~

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in §668.13(d)~~.~~; or

(3) Deny the institution's application for certification or recertification to participate in the Title IV, HEA programs.

* * *

**§668.174 Past performance.**

(a) *Past performance of an institution.* An institution is not financially responsible if the institution—

(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, as defined in 34 CFR part 682, within the preceding five years;

(2) In either of its two most recent compliance audits had an audit finding, or in a report issued by the Secretary had a program review finding for its current fiscal year or either of its preceding two fiscal years, that resulted in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

(3) Has been cited during the preceding five years for failure to submit in a timely fashion acceptable compliance and financial statement audits required under this part, or acceptable audit reports required under the individual title IV, HEA program regulations; or

(4) Has failed to resolve satisfactorily any compliance problems identified in audit or program review reports based upon a final decision of the Secretary issued pursuant to subpart G or H of this part.

(b) *Past performance of persons or entities affiliated with an institution.* (1)(i) Except as provided under paragraph (b)(2) of this section, an institution is not financially responsible if a person or entity who exercises substantial control over the institution, as described under 34 CFR 600.30, or any member or members of that person's family, alone or together—

(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a title IV, HEA program requirement; or

(B) Owes a liability for a violation of a title IV, HEA program requirement; and

(ii) That person, entity, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary.

(2) The Secretary may determine that an institution is financially responsible, even if the institution is not otherwise financially responsible under paragraph (b)(1) of this section, if—

(i) The institution notifies the Secretary, within the time permitted and in the manner provided under 34 CFR 600.30, that the person or entity referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

(ii) The person or entity referenced in paragraph (b)(1) of this section repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(A) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that entity, person or any member or members of that person's family, either alone or in combination with one another;

(B) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the entity, person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why—

(A) The person or entity who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person or entity who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) *Ownership interest.* (1) An ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, an institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation. The term “ownership interest” includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term “ownership interest” does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person or entity to exercise substantial control over an institution or third-party servicer if the person or entity —

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, a general partner, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

(4) "Family member" is defined in §600.21(f) of this chapter.

* * *

## §668.175 Alternative standards and requirements.

* * *

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative. (i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

(2) Under this zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in §668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;

(C) Any violation by the institution of any loan agreement;

(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;

(E) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or

(F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under §668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described under paragraph (d)(2)(ii) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic ~~or facsimile~~ transmission no later than 10 days after that event occurs. An institution that provides this information electronically ~~or by facsimile transmission~~ is responsible for confirming that the Secretary received a complete and legible copy of that transmission; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraphs (d) (2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) [Reserved]

* * *

# Appendix A

**Proposal by Jillian Klein, Leah Matthews, and Russell Poulin for an alternative definition of distance education**

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

1. The technologies that may be used to deliver 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) Video cassettes, DVDs, and CD– ROMs, if the cassettes, DVDs, or CD– ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

2. Regular interaction is defined as –

(i) being initiated by the instructor or a member of the instructional team, as defined in 600.2, and

(ii) occurring through predictable and recurring intervals, commensurate with the length of time and amount of material covered, prior to completion of all required assignments and demonstration of competency.

3. Substantive interaction is defined as engaging students in teaching, learning and assessment consistent with the subject matter under discussion.

**600.2**

*Instructional team:* An instructional team is comprised of more than one person employed by the institution, so long as this team includes at least one faculty member, as defined by the criteria established by the institution's accrediting agency, who, independently or as a member of an instructional team, must provide regular and substantive interactions to students.

# Appendix B

## Proposal by Jessica Ranucci and Robyn Smith to require reporting of Title IV aid disbursements to students enrolled in distance education or correspondence courses

**To:** Main Committee; Distance Learning and Educational Innovation Subcommittee

**From:** Jessica Ranucci, New York Legal Assistance Group

Robyn Smith, Legal Aid Foundation of Los Angeles

**Date:** March 5, 2019

**Re:** Proposal for the Department to Collect Data on Distance Education

**Background:**

The Education Department does not currently collect data from institutions regarding which of their Title IV-receiving students are enrolled in programs that are exclusively online, exclusively brick-and-mortar, or hybrid. As a result, the Department cannot answer basic questions, like how the financial aid usage and outcomes of distance education students differ from those of students in hybrid programs or brick-and-mortar programs. The Department could also use this information to better target its program reviews; provide flexibilities from certain reporting requirements; assess compliance with state authorization and other requirements; or support Department research.

We propose a regulation that would require the Department to collect such information. These data would help the Department and Congress to better determine how to implement innovation in education in ways that reduce the risk to students and taxpayers. We offer the proposed text below as one option for the Department.

**Proposal:**

The redline text that appears in italics is proposed by the Department. The additional text we propose is in bold.

*600.9 State authorization.*

*****

(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

(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.

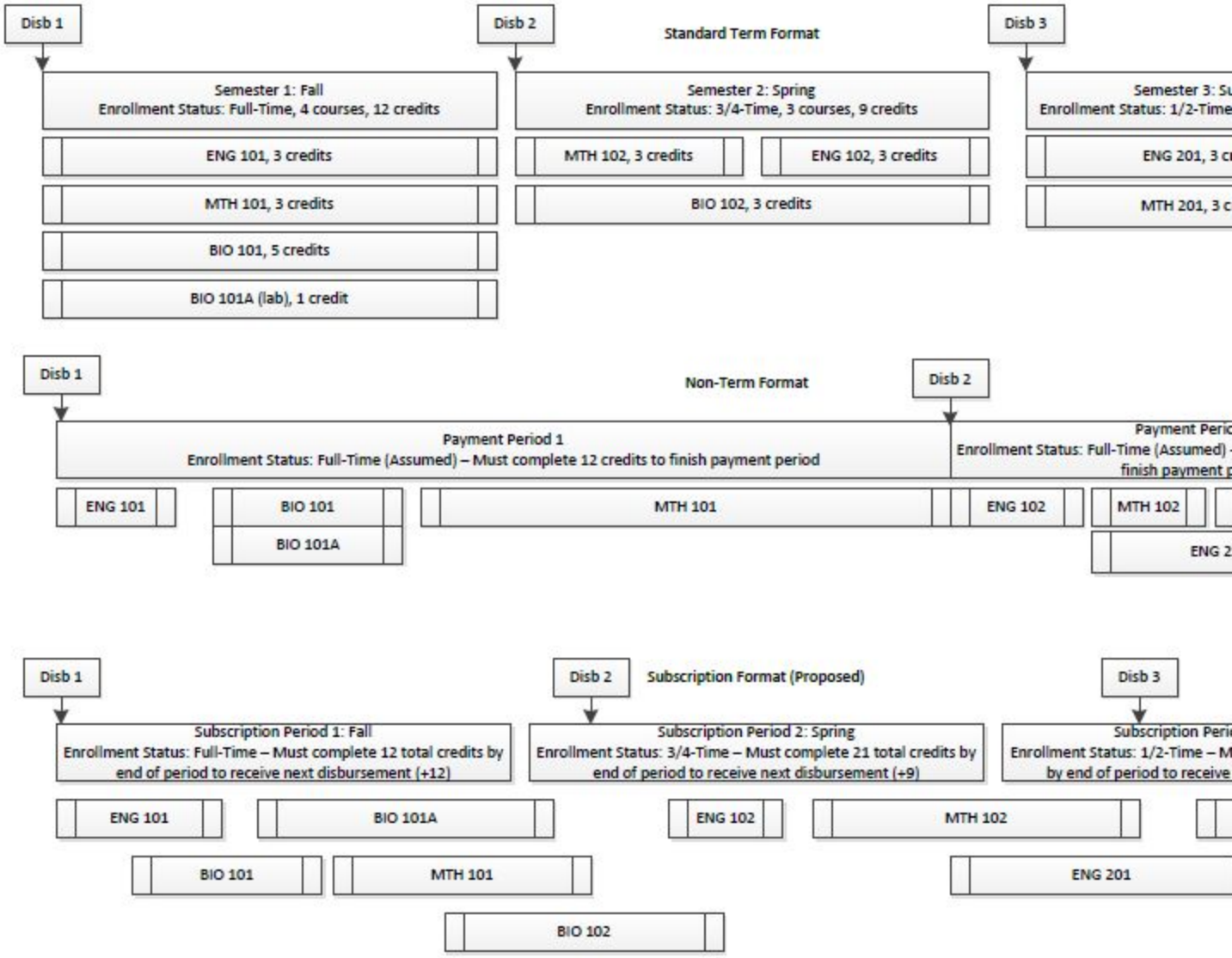
*(iii) For purposes of this paragraph and for disclosures related to State licensure under 34 CFR 668.43(a)(5)(v), an institution makes a determination regarding the State in which a student is located at the time the student is admitted to an educational program.*

*(2) The institution must document that there is a State process for review and appropriate action on complaints from students concerning the institution either in the States in which it the students are located, or the State in which the institution's main campus is located.*

**(3) For all Title IV-receiving students, the institution must report whether each student is enrolled exclusively online, exclusively as a brick-and-mortar student, or as a hybrid student in both online and brick- and-mortar instruction, in accordance with the Department's reporting requirements.**

# Appendix C

**Department's graphic comparison of term-based, non-term, and proposed subscription-based disbursement systems**



# Appendix D

**Redline of proposed changes to 34 CFR 668.10, direct assessment programs**

**34 CFR 668.10 Direct assessment programs.**

(a)(1) A direct assessment program is ~~an instructionala~~ program that, in lieu of credit hours or clock hours as ~~a~~the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others. The assessment must be consistent with the accreditation of the institution or program utilizing the results of the assessment.

(2) Direct assessment of student learning means a measure ~~by the institution of what~~of a ~~student knows and can do in terms of the body of~~ student's knowledge ~~making up the educational program. These measures~~, skills, and abilities designed to provide evidence ~~that a student has command of a specific~~of the student's proficiency in the relevant subject~~, content~~ area~~, or skill or that the student demonstrates a specific quality such as creativity, analysis or synthesis associated~~.

(3) An institution must establish a methodology to reasonably equate each module in the direct assessment program to either credit hours or clock hours. This methodology must be consistent with the ~~subject matter of the program. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios~~requirements of the institution's accrediting agency or State approval agency.

(~~3~~4) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs~~. Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours~~ according to whether they use credit or clock hour equivalencies, respectively.

~~(i) An academic year in a direct assessment program is a period of instructional time that consists of a minimum of 30 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete the equivalent of at least 24 semester or trimester credit hours, 36 quarter credit hours or 900 clock hours.~~

~~(ii) A payment period in a direct assessment program for which equivalence in credit hours has been established must be determined under the requirements in §668.4(a), (b), or (c), as applicable, using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program). A payment period in a direct assessment program for which equivalence in clock hours has been established must be determined under the requirements in §668.4(c), using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program).~~

~~(iii) A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.~~

~~(iv) A full-time student in a direct assessment program is an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in the program. However, for an undergraduate student, the institution's minimum standard must equal or exceed the minimum full-time requirements specified in the definition of *full-time student* in §668.2 based on the credit or clock hour equivalency established by the institution for the direct assessment program.~~

~~(b) An institution that offers a direct assessment program must apply to the Secretary to have that program determined to be an eligible program for title IV, HEA program purposes. The institution's~~(5) A direct assessment program that is not consistent with the requirements of the institution's accrediting agency or State approval agency is not an eligible program as provided under §668.8.

(b) An institution that wishes to offer a direct assessment program must apply to the Secretary to have its direct assessment program or programs determined to be eligible programs for title IV, HEA program purposes. Following the Secretary's initial approval of a direct assessment program, additional direct assessment programs may be determined to be eligible subject to the requirements in §600.10(c)(1)(iii), §600.20(c)(1), or §600.21(a), as applicable, if such programs are consistent with the institution's accreditation or its State approval, except that an institution must always seek approval for a direct assessment program the first time it offers such a program at a higher level of offering. The institution's direct assessment application must provide information satisfactory to the Secretary that includes—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

~~(2) A description of how the assessment of student learning is done;~~

~~(3)~~(2) A description of how the direct assessment program is structured, including information about how and when the institution determines on an individual basis what each student enrolled in the program needs to learn and how the institution excludes from consideration of a student's eligibility for title IV, HEA program funds any credits or competencies earned on the basis of prior learning;

(~~4~~3) A description of how learning is assessed and how the institution assists students in gaining the knowledge needed to pass the assessments;

(~~5~~4) The number of semester, trimester, or quarter credit hours, or clock hours, that are equivalent to the amount of student learning being directly assessed for the certificate or degree~~, as required by paragraph (b)(3) of this section~~;

(~~6~~5) The methodology the institution uses to determine the number of credit or clock hours to which the program ~~is~~or programs are equivalent;

~~(7) The methodology the institution uses to determine the number of credit or clock hours to which the portion of a program an individual student will need to complete is equivalent;~~

(~~8~~6) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of direct assessment program(s) and has included the program(s) in the institution's grant of accreditation~~; or~~and approval documentation from the accrediting agency or State approval agency indicating agreement with the institution's methodology for determining the direct assessment program's equivalence in terms of credit or clock hours.

~~(9) Documentation from the accrediting agency or relevant state licensing body indicating agreement with the institution's claim of the direct assessment program's equivalence in terms of credit or clock hours; and~~

~~(10) Any other information the Secretary may require to determine whether to approve the institution's application.~~

~~(c) To be an eligible program, a direct assessment program must meet the requirements in §668.8 including, if applicable, minimum program length and qualitative factors.~~

(~~d~~)(7) Notwithstanding paragraphs (a) ~~through (~~and (b) of this section, no program offered by a foreign institution that involves direct assessment will be considered to be an eligible program under §668.8.

(c) A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the institution providing the direct assessment program without regard to the limitations on contracting for part of an educational program in §668.5(c)(3).

~~(f~~ (d) Title IV, HEA program funds may be used ~~only for learning that results from~~ to support instruction provided, or overseen, by the institution, not for the portion of the program that the student ~~has demonstrated~~ completes based on prior mastery ~~of prior~~ or tests of learning that are not associated with educational activities overseen by the institution.

(e) Unless an institution has received initial approval from the Secretary, to ~~(g) Title IV, HEA program eligibility with respect to~~offer direct assessment programs ~~is limited to~~, and the institution's offering of direct assessment ~~programs approved by the Secretary. Title~~coursework is consistent with the institution's accreditation and State authorization, if applicable, title IV, HEA program funds may not be used for—

(1) ~~t~~The course of study described in §668.32(a)(1)(ii) and (iii) and (a)(2)(i)(B), if offered ~~by~~using direct assessment~~;~~; or

(2) ~~r~~Remedial coursework described in §668.20, if offered ~~by~~using direct assessment. ~~However, remedial instruction that is offered~~

(f) Student progress in ~~credit or clock hours in conjunction with~~ a direct assessment program ~~is eligible for title IV, HEA program funds.~~may be measured using a combination of—

~~(h) The Secretary's approval of a direct assessment program expires on the date that the institution changes one or more aspects of the program described in the institution's application submitted under paragraph (b) of this section. To maintain program eligibility, the institution must obtain prior approval from the Secretary through reapplication under paragraph (b) of this section that sets forth the revisions proposed.~~

(1) Credit hours and credit hour equivalencies; or

(2) Clock hours and clock hour equivalencies.

# Appendix E

## Requirements under 34 CFR 668.50 for disclosures related to distance or correspondence programs (implementation currently delayed)

### §668.50 Institutional disclosures for distance or correspondence programs[1].

*(a) General. In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.*

*(b) Public disclosures. An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:*

*(1)(i) Whether the institution is authorized by each State in which enrolled students reside to provide the program;*

*(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2, to provide the program; and*

*(iii) An explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;*

*(2)(i) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b); and*

*(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9 (c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;*

*(3) A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside, including contact information for receipt of consumer complaints at the appropriate State authorities;*

[1] Section 668.50 was added through the publication of 81 FR 92232 on 12/19/2016. Its effective date has been delayed until July 1, 2020. The Department proposes to delete this section.

*(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;*

*(5) Any adverse actions an accrediting agency has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;*

*(6) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees; and*

*(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—*

*(A) Each State in which the program's enrolled students reside; and*

*(B) Any other State for which the institution has made a determination regarding such prerequisites;*

*(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and*

*(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect.*

*(c) Individualized disclosures. (1) An institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—*

*(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence; and*

*(ii) To each enrolled and prospective student—*

*(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or*

*(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.*

*(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that*

*student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.*

# Appendix F

**Proposal by Carolyn Fast and Sue Huppert to ensure reciprocity agreements are governed and controlled by member states**

**State Authorization for Distance Education**
**Proposed Language – February 2019**

Submitted by Carolyn Fast and Sue Huppert.

(1) The Department should retain the Department's 2016 regulatory language defining state authorization reciprocity agreements.

In 2016, the Department issued a regulation that defined "state authorization reciprocity agreement" in Part 600.2 to require that such agreements permit member states to enforce all state consumer protection laws, including education-specific consumer protection laws, against member schools operating in their states. The Department should retain this language, which would ensure that online students have the same protections as students enrolled at traditional brick-and-mortar schools.

(2) The Department should add language to the "state authorization reciprocity agreement" definition that ensures that reciprocity agreements are governed and controlled by member states.

The National Council on State Authorization Reciprocity Agreements ("NC-SARA"), has grown to include 49 member states. NC-SARA is administered by a non-state entity which is governed by a board that includes few state regulators, yet has ultimate authority for establishing NC-SARA policies. While states can chose to withdraw from the agreement, states have little direct control over NC-SARA policy. State "portal agencies," the agencies that administer NC-SARA in member states, hold only a few positions on the governing board. There are also no representatives of state consumer-protection agencies, such as state attorneys general offices, and no representatives of nonprofits that serve consumer or student interests, on the governing board. The Department should add language to Part 600.2 that ensures that state authorization reciprocity agreements are governed and controlled by member states.

**Proposed language:**

The Department should retain the language added to Part 600.2 in 2016 (in italics below) and add a provision on state governance and control (in italics and bolded below):
*State authorization reciprocity agreement:*

***(a)*** *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 course to students residing in other States covered by the agreement* ***that (1)*** *does not prohibit any State in the agreement from enforcing its*

*own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions****; and (2) is governed and controlled by member states.***

***(b) State authorization reciprocity agreements comply with section (a)(2) where the agreement's governing structure:***

***(1) allocates at least 50% of positions on its primary governing board to state higher education officials currently employed by a member state higher education agency; and***

***(2) allocates at least one position on its primary governing board to a representative of a member state attorney general's office or a representative of a non-profit organization representing the interests of consumers and/or students.***