Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 13, 2010.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–26659 Filed 10–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation, and Enforcement

30 CFR Parts 201, 202, 203, 204, 206, 207, 208, 210, 212, 217, 218, 219, 220, 227, 228, 229, 241, 243, and 290

Office of Natural Resources Revenue

30 CFR Parts 1201, 1202, 1203, 1204, 1206, 1207, 1208, 1210, 1212, 1217, 1218, 1219, 1220, 1227, 1228, 1229, 1241, 1243, and 1290

[Docket No. MMS–2010–MRM–0033]

RIN 1010–AD70

Reorganization of Title 30, Code of Federal Regulations

In rule document 2010–24721 beginning on page 61051 in the issue of Monday, October 4, 2010, make the following corrections:

PART 1206—PRODUCT VALUATION [CORRECTED]

1. On page 61070, in the table, in the first column, in the fourth row, "§ 1206.52(c)(2)" should read "§ 1206.52(c)(2)(i)".

2. On the same page, in the same table, in the same column, in the eleventh row, "§ 1206.53(e)(5) two times" should read "1206.52(e)(5) two times".

3. On the same page, in the same table, in the same column, in both the fifteenth and sixteenth rows, "§ 1206.52(c) introductory text" should read "§ 1206.53(c) introductory text".

4. On page 61071, in the table, in the third column, in the eighteenth row from the bottom of the page, "part 207" should read "part 1207."

5. On the same page, in the same table, in the same column, in the seventh row from the bottom of the page, the blank entry should read "ONRR."

6. On page 61072, in the table, in the third column, in the 22nd row, the blank entry should read "§ 1206.111".

7. On page 61073, in the table, in the third column, in the 16th row, "Associate Director" should read "Director".

PART 1208—SALE OF FEDERAL ROYALTY OIL [CORRECTED]

8. On page 61081, in the table, in the third column, in the first row, "§ 208.8(a)" should read "§ 1208.8(a)".

9. On the same page, in the same table, in the same column, in the fifth row, "§ 208.7(g)" should read "§ 1208.7(g)".

[FR Doc. C1–2010–24721 Filed 10–28–10; 8:45 am]

BILLING CODE 4310–MR–W–P

DEPARTMENT OF EDUCATION

34 CFR Part 600

RIN 1840–AD04

[Docket ID ED–2010–OPE–0012]

Program Integrity: Gainful Employment—New Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for Institutional Eligibility Under the Higher Education Act of 1965, as amended (HEA), to establish a process under which an institution applies for approval to offer an educational program that leads to gainful employment in a recognized occupation.

DATES: These regulations are effective July 1, 2011. However, affected parties do not have to comply with the information collection requirements in § 600.20(d) until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: John Kolotos or Fred Sellers. Telephone: (202) 502–7762 or (202) 502–7502, or via the Internet at: *John.Kolotos@ed.gov* or *Fred.Sellers@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On July 26, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for gainful employment issues in the **Federal Register** (75 FR 43616).

In the preamble to the NPRM, the Secretary discussed on pages 43617 through 43624 the major regulations proposed in that document to establish measures for determining whether certain programs lead to gainful employment in recognized occupations and the conditions under which those programs remain eligible for title IV, HEA program funds. In these final regulations, we address in a limited way only one issue from the proposed regulations: The provisions relating to the Secretary's approval of additional programs. The remaining issues will be addressed in final regulations that we intend to publish in the next few months.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and to specify the conditions under which the entity may implement the provisions early.

The Secretary has not designated any of the provisions in these final regulations for early implementation.

Analysis of Comments and Changes

These final regulations were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach

consensus on the proposed regulations that were published on July 26, 2010. The Secretary invited comments on the proposed regulations by September 9, 2010.

Over 90,000 parties submitted comments, many of which were substantially similar. Of those comments several hundred pertained to the regulations in proposed § 668.7(g) regarding institutions' applications for and the Secretary's approval of additional programs. We have reviewed all of the comments related to this specific provision. In the following section we address those comments in the context of the limited nature of the changes we are making in these final regulations. Our analysis and the changes we are making in these regulations regarding additional programs follow.

Generally, we do not address minor, nonsubstantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that do not relate to the additional programs provision or were not within the scope of the NPRM.

Additional Programs (§§ 600.10 and 600.20)

Comments: Several commenters generally supported the employer affirmation provisions in proposed § 668.7(g)(1)(iii), but made several recommendations. First, the commenters recommended that employers should specify the location of the anticipated job vacancies because pursuing a job across the country may be a reasonable choice for a graduate with a degree that provides training for a high-paying profession, but unreasonable for a graduate with a certificate or degree that provides training for a low-paying occupation. Second, the commenters stated that regulations should require the employer to identify for the employer's business the number of current or expected job vacancies and whether those vacancies are for full-time, part-time, or temporary jobs. Third, the commenters stated that the Department should specify that the affirmations apply to time periods related to the length of the program. For example, the affirmations for a new eight-month program should cover the period after the first group of students completes that program. Fourth, the commenters asked that the regulations be revised to prohibit an employer from providing an affirmation to several different institutions if the employer does not have jobs for graduates from all of those institutions. Finally, to ensure that employer affirmations are clear and uniform, the commenters presented a model form detailing the information an employer would provide for these purposes.

With regard to the remaining provisions in proposed § 668.7(g), some of the commenters suggested that any provisions limiting the establishment of new programs apply only to institutions whose programs are currently restricted or determined in the previous three years to be ineligible. The commenters believed this approach would provide a stronger incentive for institutions to keep their programs fully eligible and reduce the burden on institutions that have a strong record of preparing students for gainful employment.

Other commenters acknowledged the criticism that employer affirmations and attestations are often pro forma, but supported the regulations because seeking affirmation of demand could lead to closer connections with employers. The commenters recommended that institutions include, as part of the affirmation process, the number of students hired by an employer who attended a program and the percentage of students hired by the employer who completed that program.

Some commenters stated that the provisions in proposed § 668.7(g) place significant limitations on a cosmetology school's ability to grow and meet the demands of employers, which include not only positions in salons and spas, but also in marketing, distribution, and sales. The commenters were particularly concerned about how the Department would use five-year enrollment projections and employer affirmations in determining whether to approve a program or limit its growth. The commenters argued that if growth limitations are determined based on an institution's ability to document national and regional demand through employer affirmations, it would be unfair and unrealistic for the Department to rely only on affirmations from nonaffiliated employers. According to the commenters, many institutions work closely with salon owners and cosmetics manufacturers and distributors, and in some cases school owners have separate businesses making them affiliated employers. In addition, relying solely on nonaffiliated affirmations would eliminate one of the primary uses of program integrity boards which are designed to work in collaboration with institutions on the continued development and refinement of program expectations. The commenters believed that precluding affirmations from these sources is not only at cross-purposes with common business practices but also with guidance under other statutes, such as the Workforce Investment Act. The commenters concluded that the Department should withdraw or significantly revise the regulations to return the primary responsibility for aligning curricula with job demand back to accrediting agencies and States.

A number of commenters stated that the regulations for additional programs in proposed § 668.7(g) would hamper an institution's ability to develop, roll out, adapt, and improve new educational programs. For example, an institution that is developing a technical training program related to alternative fuels and green technologies would not be able to demonstrate projected job vacancies or expected demand, and it would be virtually impossible for such an employer to affirm that the program's curriculum aligns with recognized occupations. In addition, the commenters stated that the regulations were too vague and lacked clarity in key areas. Some of the commenters asked the Department to clarify or explain the following:

- In what ways the Department would consider employers qualified to determine educational quality or appropriate content of educational programs? The commenters contend that employers are not qualified to make these determinations.
- What would constitute a local employer when education is delivered through an online medium? The commenters believe that any national employer should suffice.
- What is an affiliated employer? Some commenters suggested that the institution may not have an ownership stake in the employer but may have a relationship with the employer along the lines of providing internships and externships to current and graduated students. Other commenters noted that an institution may have relationships or partnership arrangements with manufacturers, dealers, or other businesses and questioned whether these arrangements would preclude these businesses from providing affirmations.
- How many employer affirmations are needed and what is the extent of the required documentation?
- What criteria will be used to accept or reject a new program? If a program becomes ineligible under proposed § 668.7(f) but in a subsequent year satisfies the gainful employment provisions, would the program be treated as a new program under proposed § 668.7(g)?
- What are the metrics that would be used to align the size of the employers'

projected needs to the size of the program? Would an institution be required to obtain affirmations from employers proximate to each location at which a program is offered? In this case, will program approvals be location-specific or will an institution continue to be able to offer a program at its additional locations under the same Program Participation Agreement?

• How does the Department want institutions to determine projected enrollment and how will the Department use enrollment projections? Will an institution be able to update its enrollment projections?

Other commenters believed that enrollment projections have no bearing on whether a program provides gainful employment. Some of the commenters argued that rather than the Department attempting to control the number of individuals entering an occupation by limiting the number of students who enroll in a particular program, students should have the option of choosing a program so long as the program satisfies the standards of quality established by an accrediting agency. The commenters believed that the Department should not attempt to exert control over the educational options available to students in any capacity that exceeds ensuring program quality. In addition, the commenters objected to obtaining affirmations from nonaffiliated employers, particularly for online and graduate-level programs. With respect to online programs, the commenters contended that it would be overly burdensome to obtain affirmations from employers all over the country. With regard to graduate programs at institutions where most of the students enrolled in these programs are employed full-time, the commenters opined that employer affirmations are unnecessary because students taking these programs to advance their careers already understand the employment demands in their field. The commenters also believed that because section 496 of the HEA mandates that an accrediting agency may not be recognized by the Department unless the agency monitors the growth of programs at institutions that are experiencing significant enrollment growth, accrediting agencies are in a much better position than the Department to assess the impact of growth on an institution's operations and whether that growth impacts educational quality.

Another commenter asserted that the proposed additional program requirements violate 20 U.S.C. 1232a, which limits the amount of control or oversight that the Department may exercise over program curricula and other internal decisions made by schools. Moreover, the commenter believed that the HEA does not give the Department any authority to restrict a title IV, HEA program because the Department predicts it will be difficult for program graduates to secure employment.

One commenter asserted that neither the Department nor employers should be able to control new programs. Rather, the commenter said that programs should be allowed to prove their worth over time. The commenter concluded that innovation and growth will be severely hindered because the proposed regulations prejudge the efficacy of, and market for, new programs.

Many commenters opined that the Department should rely on data from the U.S. Department of Labor's Bureau of Labor Statistics (BLS), instead of employer affirmations, to evaluate expected demand for an additional program. The commenters argued that one benefit of using BLS data is that an institution has access to the data and can confirm the need for new programs before expending substantial funds to develop the programs. In addition, the commenters stated that the Department would receive an endless number of appeals if it determined the eligibility of programs through ad hoc employer recommendations and decisions by Department employees who lack expertise in the labor markets. The commenters recommended that the Department establish a process under which an institution could appeal a decision denying the eligibility of a new program, where the decision maker would have substantial expertise in curriculum development and analyzing labor trends and occupational needs.

A commenter stated that the proposed approval process for new programs was unfair and cumbersome and should be eliminated. Nevertheless, the commenter suggested that institutions offering new programs provide some form of expanded notice to the Department or the proposed process should be modified to apply only to an institution where over 50 percent of its programs are on a restricted status.

Several commenters believed the proposed approval process for new programs is costly, redundant, and unnecessary. Some of the commenters stated that State and accrediting agencies already require approval of new programs and reinforced that view by claiming that provisions in the NPRM that the Department published on June 18, 2010 (75 FR 34806) would expand State oversight. The commenters stated that one institution alone implemented scores of new programs over the last year and questioned how the Department would be able to review efficiently the anticipated number of programs with the speed required for institutions to function effectively. The commenters opined that requiring employer affirmations does not fall within any reasonable understanding of the statutory requirements that programs prepare students for gainful employment. Moreover, because the proposed regulations do not adequately explain how the process for employer affirmations will be conducted, how the Department would review and verify the affirmations, or how the Department will determine that a program is acceptable, the regulations would leave the Department with vague, arbitrary, and ultimate power to approve or deny a program. The commenters concluded that the Department would be the arbiter of program offerings, which would result in a system that does not best serve students or the national economic interests. Another commenter believed that employer affirmations are not needed because job vacancies in any market can be obtained easily online.

Another commenter opined that it is infeasible to obtain employer affirmations because no employer would affirm job openings for a specific number of a program's graduates. According to the commenter, doing so could amount to a commitment to hire and employers would not expose themselves to that liability. In addition, an employer's ability to foresee demand is limited and governed by economic conditions over which the employer has little or no control. The commenters concluded that requiring employer affirmations would effectively ban new programs leading to gainful employment. In addition, the commenters contended that the Department does not have the authority to impose such requirements.

Some commenters argued that because postbaccalaureate degree and certificate programs enable an individual to refine his or her expertise or obtain a specialization associated with a recognized occupation, the programs are not necessarily intended to train individuals to move into the job market or a basic career field. Therefore, according to the commenters, these programs should be excluded from the regulations. Along the same lines, other commenters suggested excluding graduate programs from the regulations because many students in these programs are working adults seeking to advance their careers. Alternatively, one of the commenters suggested that the Department consider exempting from

these regulations institutions with a history of low default rates.

One commenter believed that the number of program approvals, estimated in the NPRM at 650 over the first 3 years, is vastly underestimated. Based on the approvals that would be required at the commenter's institution, the commenter estimated that 6,000 or more would occur over that timeframe, presenting an unworkable burden to the Department. The commenter suggested that the Department use a different mechanism to address concerns that institutions may attempt to circumvent the regulations by renaming existing programs or by other means. At a minimum, the commenter recommended that institutions be allowed to bypass Department approval entirely if (1) BLS data show a demand in the region where the new program will be offered, or (2) programs representing 50 percent or more of the institution's total enrollment or programs representing 50 percent of its enrollment in the same job family, are not restricted or ineligible, or (3) the State in which the program will be offered requires a demand assessment.

Some commenters requested that programs training alternative oral health workforce professionals be exempted from the regulations. The commenters explained that to address access to oral health care, States and national organizations have implemented programs that create new members of the dental team. Some of these new workforce models require the completion of a degree program while others require the completion of a certificate program. Because these are new programs, it would be difficult to project growth in coming years. In addition, because these new workforce models aim to serve a constituency that has historically faced barriers to oral health care, prospective employers may not be in a position to adequately gauge the need for these new practitioners. The Children's Health Insurance Program Reauthorization Act, Public Law 111–3, requires the GAO to conduct a study and report on issues pertaining to the oral health of children, including "the feasibility and appropriateness of using qualified mid-level dental health practitioners, in coordination with dentists, to improve access for children to oral health services and public health overall." In addition, the Affordable Care Act, Public Law 111–148, authorized an alternative dental health provider demonstration project grant program for States. The commenters concluded that it would be contradictory for the Federal Government to provide funding to a State to create a program for a new oral health professional, and then deny prospective students access to title IV, HEA loans to matriculate in the program.

Another commenter suggested that the Department apply the two-year rule used for new institutions (a new institution must operate for two years before it applies to participate in the title IV, HEA programs) to institutions where a change in control results in control vested in a person or organization that does not have previous experience in administering the title IV, HEA programs. Under this approach, title IV, HEA funds would be capped at prechange levels for two years until the Department conducts a program review to assure that no substantial change in mission or educational outcomes has occurred as a result of the change in control. The commenter believed this approach would mitigate potential misalignment of the interests of a new owner and the educational and career expectations of the institution's students.

Many commenters noted that workforce education programs offered by community colleges and technical colleges are designed to meet local market needs. The commenters stated that as public institutions, these colleges undergo thorough oversight before adding new programs, including the use of business advisory committees. In addition, board, public agency, accrediting agency, and State approval is often required. Although the commenters believed that the additional regulations may be appropriate for some institutions, in their view the regulations are redundant and unnecessary for community colleges in light of this oversight and approval process.

Several commenters suggested that, to avoid confusion, the provisions in proposed § 668.7(g) belong more appropriately in § 600.10(c,) which currently addresses the approval of additional programs. The commenters recommended retaining the exception in § 600.10(c)(2), which allows an institution to add a program without obtaining approval from the Department if the program leads to a degree or prepares students for gainful employment in the same or related occupation as a program previously approved by the Department. The commenters believed that this exception should continue to apply so long as the previously approved program is not in a restricted status, as proposed under proposed § 668.7(e), or is not subject to debt warning disclosures under proposed § 668.7(d). In addition, the commenters believed that it would be impracticable for an institution to make the five-year enrollment projections under proposed § 668.7(g)(1)(ii), but did not offer any alternatives.

Some commenters expressed concern that the approval process for additional programs places a high burden of proof on institutions and would hamper the ability of colleges to respond to new and emerging workforce needs. In addition, the commenters requested that the Department clarify how the program approval requirements in proposed § 668.7(g) would apply to programs that institutions may now offer without approval under current § 600.10(c)(2). As noted previously, under that section an institution is not currently required to obtain the Department's approval of an additional program if the program leads to a degree or prepares students for gainful employment in the same or related occupation as a program previously approved by the Department. The commenters recommended that any expanded approval process apply only in cases where there is a record of poor performance sufficient to justify additional oversight. Along the same lines, other commenters recommended that any approval process for new programs should apply only to institutions with programs in a restricted or ineligible status.

Discussion: As a threshold matter, we disagree that the review and approval of an application from an institution to offer a new program is prohibited by 20 U.S.C. 1232a. That provision prevents the Department from exercising control over the content of a curriculum, program, or personnel at an institution. The HEA establishes requirements for institutions and programs to be eligible to participate in the title IV, HEA student financial aid programs, and the Department is charged with the responsibility to ensure that institutions participating in these programs have the financial strength and administrative capability needed to do so. In this context, the Department proposed in the NPRM and establishes in these final regulations a requirement that an institution must notify the Department of its intent to offer a new program and if necessary obtain the Department's approval to add a new program that is subject to the gainful employment regulations. Such review and approval do not constitute exercising control over the substance of the curriculum for that program, but rather involve a review of the institution and the institution's decision to offer a particular program. Furthermore, regardless of the Department's determination of a program's title IV, HEA program

eligibility, nothing under the HEA would prevent any institution from offering an ineligible program for which students would receive no title IV, HEA program assistance.

In general, we agree with the commenters who suggested that the program approval process for additional programs should apply, in some way, only to an institution with programs in a restricted or ineligible status or otherwise be based on the performance of the institution's gainful employment programs. This more focused approval process would not only reduce burden on institutions and the Department, but would enable institutions with good performance records to offer new programs more expediently. However, as noted in the **SUPPLEMENTARY INFORMATION** section of the preamble, these final regulations do not address the standards that will be used to gauge the performance of gainful employment programs and the consequences of not meeting those standards over time. Therefore, in these final regulations, the Department is establishing in § 600.20(d) requirements intended to remain in place until performance based standards can be implemented for approving additional programs using gainful employment measures along the lines suggested by the commenters.

Under these requirements that go into effect on July 1, 2011, the Department does not require employer affirmations or enrollment projections before approving a program. Instead, the Department will rely on a notice from the institution, submitted at least 90 days prior to the time when the institution plans to offer the new program, that provides a narrative explanation of why and how the new program was developed. Specifically, an institution must describe how it determined the need for the new program and how the program was designed to meet local market needs, or for an online program, regional or national market needs by, for example, consulting BLS data or State labor data systems or consulting with State workforce agencies. The institution also must describe 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. Additionally, the institution must include in its notice 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. The notice from an institution should also include any information that describes how the program would be offered in connection with, or in response to, an initiative by a governmental entity, such as the oral health program with the Federal support described in the comments. Additionally, an institution must include in its notice a description of any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program.

Department staff will review the notices to identify instances where additional information may be needed about the program. Unless otherwise required to obtain approval for the new program, an institution that provides a notice may proceed with its plans to offer the new program based on its determination that the program is an eligible program that prepares students for gainful employment in a recognized occupation. If a concern or need for additional information about the new program is identified, the Department, under its authority in § 600.20(c)(1)(v), will send a letter to the institution alerting it that the Department must approve the program for title IV, HEA program purposes.

If the Department denies approval of an institution's new program, we will explain the basis for that decision and permit the institution to respond to our concerns and to request reconsideration of the denial. We note that even if the new program is not yet approved or is denied, an institution may still offer the program but students would be ineligible to receive title IV, HEA program funds to pay the costs of attendance associated with that program. In the case of a denial, the institution could later seek to add the program and provide additional information about students who completed it.

In deciding whether to seek additional information regarding a program, the Department will assess the institution's administration of its current programs, its capability to add the new program and provide the additional resources associated with it, and evaluate the institution's determination that the program should be offered. This review includes examining (1) the institution's demonstrated financial responsibility and administrative capability in operating existing programs, (2) whether the additional educational program is one of several new programs that would replace similar programs currently offered 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, and (4) the sufficiency of the institution's process and determination to offer an additional educational program that leads to gainful employment in a recognized occupation.

In evaluating the institution's determination, we may consult external sources including the State, the institution's accrediting agency, BLS, and State resources, and may contact entities identified in the institution's notice. The Department may also require the institution to submit other information related to the new program.

When determining whether to deny a new program, the Department will consider factors (2) through (4) of the four factors described above. The Department will consider any tie-in with a governmental entity as an indication that the new program is intended to meet either current or expected employment demands. The Department may also consider BLS wage data related to the new program when reviewing information from an institution.

In general, for institutions with a history of good performance administering their programs, we believe that no approval will be needed for new programs under these requirements. However, the Department is concerned that some institutions might attempt to circumvent the proposed gainful employment standards (*see* the July 26, 2010 NPRM, 75 FR 43638–43640) by adding new programs before those standards would take effect. Although the proposed standards would evaluate most programs based on past performance, newly offered programs would not be subject to the standards for several years until they established an operating history. For example, an institution may seek to offer a significant number of new programs that would not be evaluated under the new standards for up to five years as a contingency plan in case its current programs are eliminated or restricted under measures that would be established in the final gainful employment regulations. We believe that such an approach by an institution should be examined closely to determine whether those new programs are substantially different and offer more potential benefits to its students.

With these regulations, the Department intends to mitigate the potential for this type of response by identifying such circumstances and requiring those new programs to be approved.

We believe this approach, based on a program development process articulated by a wide range of commenters and augmented by other information available to the Department, will provide some assurance that a new gainful employment program is needed at an institution and is responsive to student and employer needs. Moreover, we believe that these requirements correspond to the process an institution should follow in performing its due diligence responsibilities with respect to establishing an additional program.

The Department will continue to consider changes to these approval requirements as part of its consideration of the remaining issues presented in the gainful employment NPRM. Toward that end, we are continuing to consider carefully the suggestions to exclude postbaccalaureate certificate programs from the new program notice and approval process and ways to provide a more flexible approach for approving programs in new and emerging fields. In addition, we intend to address the questions raised on employer affirmations and enrollment projections in the subsequent final regulations for gainful employment.

Finally, we intend to implement administrative procedures that should mitigate the burden on institutions and the Department in submitting and reviewing notices for new programs. For example, the Department may allow an eligible institution to combine several new programs in one notice if the institution used the same, or similar, processes in developing those programs. An eligible institution may submit a notice for a new program that will be offered at multiple locations of the institution.

With regard to the concern that the number of program approvals, estimated in the NPRM at 650 over the first 3 years, is underestimated, we looked at the number of new program submissions to Federal Student Aid over the period from October 1, 2009 through September 30, 2010. Based on this data, we determined that a better estimate was a total of 1,919 new programs annually. Thus, over a three-year period the estimate would be 5,757 new programs. We note that the procedure in the regulations will result in most of those new programs being offered solely by providing notice to the Department, and that the separate approval process will be used for a much smaller number of those new programs.

Changes: We have revised § 600.10(c), as suggested by some of the commenters, to provide that an institution must provide at least 90 days advance notice to the Department of its plans to offer a new educational program that leads to gainful employment in a recognized occupation. Section 600.10(c)(1)(v) has also been revised to provide that the Secretary may notify an institution it is required to obtain approval for a new educational program. An institution does not have to provide notice to add a non-gainful-employment program under this section, except for direct assessment programs under 34 CFR 668.10 or unless required to do so by a provision in its Program Participation Agreement. Under revised § 600.10(c)(3), an institution that is required to obtain approval from the Department for a new program, but does not obtain the Department's approval or that incorrectly determines that an educational program is an eligible program for title IV, HEA program purposes, must repay to the Secretary all HEA program funds received by the institution for that educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program.

We have amended § 600.20(d) to specify that an institution must provide notice at least 90 days in advance for a new educational program that leads to gainful employment in a recognized occupation. The notice must describe 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. The institution also must 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. Additionally, the institution must include 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. In addition, an institution must include in its notice a description of any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program. The institution must also provide the date of the first day of class of the new program.

Section 600.20(d) also provides that the Department may require the institution to obtain approval of the new program, and submit additional information about it. This section also describes the factors the Department will consider in evaluating the institution's application and specifies that if the Department denies an application from an institution to offer an additional program under § 600.10(c), the Department will explain in the denial how the institution failed to demonstrate the new program would likely lead to gainful employment in a recognized occupation. The institution will be permitted to respond to the concerns raised by the Department in the denial and request reconsideration of the denial.

As discussed in the *Paperwork Reduction Act of 1995* section of this preamble, we have corrected the OMB control number for § 600.20 to read "1845–0012".

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, we have determined that this regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866.

Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

Need for Federal Regulatory Action

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at four-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt. The availability of Federal student aid allows students to access postsecondary educational opportunities crucial to employment. For-profit postsecondary education along with occupationally specific training at other institutions has long played an important role in the nation's system of postsecondary education. Many of the institutions offering these programs have recently pioneered new approaches to enrolling, teaching, and graduating students. In recent years, enrollment in for-profit institutions has grown rapidly to 1.8 million students, nearly tripling between 2000 and 2008. This trend is promising and supports President Obama's goal of leading the world in the percentage of college graduates by 2020. This goal cannot be achieved without a healthy and productive for-profit sector of higher education. However, the programs offered by the for-profit sector must lead to measurable outcomes, or those programs will devalue postsecondary credentials through oversupply.

The proposed gainful employment regulations described in the NPRM published on July 26, 2010 received a record number of comments for a regulation proposed by the Department. The Department expects to publish the subsequent, final gainful employment regulations in early 2011 with an effective date of July 1, 2012. The provision related to approval of additional programs is addressed separately in these final regulations and will take effect on July 1, 2011. Specifically, these regulations establish interim requirements regarding the approval of gainful employment programs with initial enrollment beginning after July 1, 2011.

In general, for institutions with good records administering their programs, we believe that most new programs will satisfy these requirements and will not need to obtain approval of their programs from the Department. However, the Department is concerned that some institutions might attempt to circumvent the proposed gainful employment standards (*see* the July 26, 2010 NPRM, 75 FR 43638–43640) by adding new programs before those standards would take effect. Although the proposed standards would evaluate most programs based on past performance, newly offered programs would not be subject to the standards for several years until they established an operating history. For example, an institution may seek to offer a significant number of new programs that would not be evaluated under the new standards for up to five years as a contingency plan in case its current programs are eliminated or restricted under measures that would be used in the final gainful employment regulations. We believe that such an approach should be examined closely to determine whether those new programs are substantially different and offer more potential benefits to its students. With these regulations, the Department intends to mitigate the potential for this type of response. Accordingly, where an institution is required to obtain approval from the Department, the Department will consider the following factors when reviewing an institution's notice: (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 would replace similar programs currently offered 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, and (4) the sufficiency of the process used and determination made by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation. The Department may decline to approve a new program based upon the last three of these four factors. The Department will also take into consideration other publicly available data, including data from the U.S. Department of Labor, about the job prospects for individuals that would complete the new programs.

If the Department denies an application from an institution to offer an additional program under § 600.10(c), the Department will explain in the denial how the institution failed to demonstrate the new program would likely lead to gainful employment in a recognized occupation. The institution will be permitted to respond to the concerns raised by the Department in the denial and request reconsideration of the denial. We also note that even if the new program is not yet approved or is denied, an institution may still offer the program but students would be ineligible to receive title IV, HEA program funds to pay the costs of attendance associated with that program. In the case of a denial, the institution could later seek to add the program and provide additional information about students who completed it.

We intend to establish performance-based requirements in subsequent regulations early in 2011 for approving additional programs. Until those subsequent regulations take effect, institutions must comply with the interim requirements in these regulations. As discussed elsewhere in this preamble, we will continue to consider whether to exclude certain programs from these approval requirements as a part of our consideration of the remaining issues presented in the gainful employment NPRM. Toward that end, we are continuing to consider carefully the suggestions to exclude postbaccalaureate certificate programs from the new program approval process and ways to provide a more flexible approach for approving programs in new and emerging fields. In addition, we intend to address the questions raised on employer affirmations and enrollment projections in the context of the subsequent final regulations for gainful employment in early 2011.

As described earlier, we also intend to implement administrative procedures that mitigate the burden on institutions and the Department in submitting and reviewing information for new programs. For example, the Department may allow an institution to combine several new programs in one notification if the institution used the same, or similar, processes in developing those programs. Further, an eligible institution may submit a notice for a new program that will be offered at multiple locations of the institution.

A description of the additional programs proposed regulations, the reasons for adopting them, and an analysis of the regulations' effects was presented in the NPRM published on July 26, 2010. This updated Regulatory Impact Analysis describes changes considered in response to comments received about the additional programs provision.

Regulatory Alternatives Considered

In the NPRM published on July 26, 2010, the Department proposed requirements for institutions to establish additional programs subject to the gainful employment regulations. In that regard, the NPRM provided that, as part of an institution's application to establish an additional program, the institution would need to provide (1) the projected enrollment for the program for the next five years for each location of the institution that will offer the additional program, (2) documentation from employers not affiliated with the institution that the program's curriculum aligns with recognized occupations at those employers' businesses and that there are projected job vacancies or expected demand for those occupations at those businesses, and (3) if the additional program constitutes a substantive change, documentation of the approval of the substantive change from its accrediting agency.

As described elsewhere in this preamble, we received a range of comments related to this provision. Some were supportive of the proposed regulations but had specific recommendations for the form and content of the affirmations from unaffiliated employers. Other commenters requested clarification about how many affirmations would be needed and what is considered a local employer and how a local employer would be determined with respect to online programs or programs whose students pursue jobs nationally. Commenters also asked us to clarify how the proposed requirement that the employer be unaffiliated with the institution would affect the valuable internship and externship relationships between institutions and employers, and what metrics would be used to align an employer's projected needs to the size of the program. Other commenters expressed concern that the proposed provisions would stifle an institution's ability to establish innovative programs for emerging fields in anticipation of future job opportunities. Several commenters suggested that the proposed provision interfered with curriculum development and internal decisions of schools and would undermine the close relationships programs subject to the proposed gainful employment regulations develop with local employers.

In general, we agree with commenters who suggested that the program approval process for additional programs should apply only to an institution with programs in a restricted or ineligible status. This would relieve the burden on institutions and the Department, and would allow institutions with a record of strong performance to establish new programs more expediently. However, we are not addressing in these regulations the standards that will be used to gauge the performance of gainful employment programs and the consequences of not meeting those standards. These regulations address in only a very limited manner the provisions relating to the Secretary's approval of additional educational programs. Modifications to make the approval process for additional programs performance based will be addressed in subsequent regulations.

Under the requirements established in these regulations, the Department will instead rely on a notice from the institution submitted at least 90 days prior to the time when the institution plans to offer the new program that provides a narrative explanation of why and how the new program was developed. Specifically, an institution must describe how it determined the need for the new program and how the program was designed to meet local market needs, or for an online program, regional or national market needs by, for example, consulting BLS data or State labor data systems or consulting with State workforce agencies. The institution also must describe 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. Additionally, the institution must include in its notice 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. The notice from an institution should also include any information that describes how the program would be offered in connection with, or in response to, an initiative by a governmental entity, such as the oral health program with the Federal support described in the comments. Additionally, an institution must include in its notice a description of any wage analysis it may have performed, including any consideration of BLS wage data that is related to the new program. Based on this information, the Department will determine whether approval is required, and if required the Department will consider the notice as an application. Under the regulations, an institution does not have to apply for approval to add a program under § 600.20 unless (a) it has been directed to do so by the Department under § 600.20(c)(5), (b) it is a direct assessment programs under 34 CFR 668.10, or (c) it is required to do so by a provision in its Program Participation Agreement.

As discussed in the *Paperwork Reduction Act of 1995* section of this preamble, the Department estimates that institutions will submit notifications for approximately 914 new nondegree programs and 1,005 new degree programs annually under the process set forth in these final regulations, or a total of 5,757 over a three-year period.

The effect of these changes on the cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM is discussed in the *Costs* section of this *Regulatory Impact Analysis.*

Benefits

We believe the approach set forth in these regulations, based on a program development process articulated by commenters representing both the public and private sectors, provides some assurance that new gainful employment programs are needed and responsive to student and employer needs. This provision results in no net costs to the government over 2011–2015. The administrative expenses associated with the approval process will be covered by the Department's existing discretionary funds.

Costs

The process established by these regulations is based on institutional practices described in comments received from representatives of public and private institutions. Accordingly, many entities wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs related to implementing these regulations, and additional costs would primarily be due to documenting the program development process. Other institutions may have to establish a program development process, but the regulations allow flexibility in meeting the core requirements.

In assessing the potential impact of these regulations, the Department recognizes that the provision may increase workload for some program participants. This additional workload is discussed in more detail under the

Paperwork Reduction Act of 1995 section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on entities participating in the Federal Student Assistance programs by 3,591 hours.

As detailed in the *Paperwork Reduction Act of 1995* section of this preamble, the additional paperwork burden is attributable to the process of documenting and submitting a description of how the institution determined to develop a new program. We estimate that this process would take institutions 3,591 hours and the costs would be $91,032 under information collection 1845–0012. In response to comments that the regulations would be costly, we reviewed the wage rates for more recent information and the share of work performed by office workers and management and professional staff. This increased the wage rate for gainful employment related matters from $20.71 to $25.35.

Because data underlying many of these burden estimates was limited, in the NPRM, the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing the regulations regarding additional programs. Some commenters believed the estimate of 650 new programs annually was low and suggested 6,500 per year was a more reasonable figure. The Department reviewed internal data sources and estimated that 1,919 programs would be reviewed annually, or a total of 5,757 over a three-year period. As discussed above, we also reviewed the wage rates for more recent data and the share of work allocated to managerial and professional staff.

Net Budget Impacts

The regulations are estimated to have a net budget impact of $0.0 million over FY 2011–2015. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's Credit Subsidy Calculator. This calculator will also be used for reestimates of prior-year costs, which will be performed each year beginning in FY 2009. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, however, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence on the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Two-year and less proprietary institutions; two-year and less public and private nonprofit institutions; freshmen and sophomores at four-year institutions; juniors and seniors at four-year institutions; and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

The Department estimates no budgetary impact for these regulations as there is no data indicating that the provisions will have any impact on the volume or composition of Federal student aid programs.

Assumptions, Limitations, and Data Sources

Impact estimates provided in the preceding section reflect a prestatutory baseline in which the Higher Education Opportunity Act changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a range of data sources were used, including data from the National Student Loan Data System, and operational and financial data from Department of Education systems. Data from other sources, such as the U.S. Census Bureau or the U.S. Bureau of Labor Statistics, were also used. Data on administrative burden at participating institutions are extremely limited.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2, we have prepared an accounting statement showing the classification of the estimated expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Costs	$0.1. Cost of compliance with paperwork requirements.
Annualized Monetized Transfers	$0.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES—Continued

[In millions]

Category	Transfers
From Whom To Whom?	Federal Government To Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. These regulations would affect institutions that participate in title IV, HEA programs and loan borrowers. The definition of "small entity" in the Regulatory Flexibility Act encompasses "small businesses," "small organizations," and "small governmental jurisdictions." The definition of "small business" comes from the definition of "small business concern" under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration (SBA). The SBA defines a "small business concern" as one that is "organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor * * *" "Small organizations," are further defined as any "not-for-profit enterprise that is independently owned and operated and not dominant in its field." The definition of "small entity" also includes "small governmental jurisdictions," which includes "school districts with a population less than 50,000."

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 4,379 institutions participating in the Federal student assistance programs meet the definition of "small entities." The following table provides the distribution of institutions and students by revenue category and institutional control.

Revenue category	Public		Private NFP		Proprietary		Tribal	
	Number of schools	Number of students	Number of schools	Number of students	Number of schools	Number of students	Number of schools	Number of students
$0 to $500,000	43	2,124	103	13,208	510	38,774	.....	.....
$500,000 to $1 million	44	7,182	81	9,806	438	61,906	1	137
$1 million to $3 million	98	29,332	243	65,614	745	217,715	3	555
$3 million to $5 million	75	65,442	138	60,923	303	182,362	.....	.....
$5 million to $7 million	49	73,798	99	62,776	224	185,705	5	2,525
$7 million to $10 million	78	129,079	110	84,659	228	235,888	9	4,935
$10 million and above	*1,585*	*18,480,000*	*1,067*	*4,312,010*	*383*	*1,793,951*	*14*	*18,065*
Total	1,972	18,786,957	1,841	4,608,996	2,831	2,716,301	32	26,217

Approximately two-thirds of these institutions are for-profit schools subject to these final regulations. Other affected small institutions include small community colleges and tribally controlled schools. For these institutions, the program development documentation requirements imposed under the regulations could impose some new costs as described below. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

As detailed in the *Paperwork Reduction Act of 1995* section of these final regulations, the regulations will require institutions to have and to document a process for establishing additional programs for programs subject to the gainful employment regulations that begin enrolling students after July 1, 2011. There are no explicit growth limitations or employer verification requirements. The estimated total hours, costs, and requirements applicable to small entities from these provisions on an annual basis are 2,370 hours and $60,081, of which $53,104 is associated with the initial submission and $10,571 is associated with institutions that submit additional information and work with the Department on a program subject to denial. We estimate that approximately 350 of the institutions submitting programs in the interim period will be small institutions, resulting in estimated burden of 7 hours and $152 per small institution for initial submission of material. For the smaller number of institutions with programs that are initially rejected, there would be additional costs to submit additional paperwork and respond to the Department's denial. We estimate that 10 percent of submissions would go through this process, resulting in an additional 12 hours and $302 per institution. In response to comments that the regulations would be costly, we reviewed the wage rates for more recent information and the share of work performed by office workers and management and professional staff. This increased the wage rate for gainful employment related matters from $20.71 to $25.35.

No alternative provisions were considered that would target small institutions with exemptions or additional time for compliance as this provision builds on existing industry practices. In the NPRM, the Secretary invited comments from small institutions and other affected entities as to whether they believed the proposed changes would have a significant economic impact on them and requested evidence to support that belief. The comments received related to this provision were described in the *Analysis of Comments and Changes* section of this preamble.

Paperwork Reduction Act of 1995

Section 600.20(d) in these final regulations contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review. However, affected parties do not have to comply with the information collection requirements in § 600.20(d) until the Department of Education publishes in the **Federal Register** the control number assigned by

the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Section 600.20—Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification

The final regulations require institutions to apply to the Department for approval to add new educational programs that are subject to the gainful employment regulations. The Department will review the institution's narrative application that explains why and how the new program was designed to meet local market needs or in the case of an online program, regional or national market needs. The institution's notification must indicate 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 employ graduates of the new program. Because this regulatory approach parallels current practice, the only increase in burden relates to the development of the narrative, which will be a relatively small additional effort. We did not include the other tasks, analysis, and burden associated with activities which, separate and apart from this collection, are already part of an institution's due diligence in determining whether to offer a new program.

In addition, we expect that an institution developing multiple new programs will combine its submissions into a single notice for all the new programs, thus reducing the burden associated with creating and submitting the narrative.

Our estimate of increased burden is divided into two components. The first component is the burden associated with providing notice of nondegree programs that train students for gainful employment in a recognized occupation. The second component is the burden associated with providing notice of degree programs that train students for gainful employment in a recognized occupation, consistent with § 668.8(d).

We estimate that annually there will be 914 new nondegree programs that train students for gainful employment in a recognized occupation submitted by notice. We estimate that there will be 267 new nondegree programs submitted by proprietary institutions and that the average amount of time to collect the information and submit it to the Department will be 2.5 hours per submission, which will increase burden by 668 hours under OMB 1845–0012.

We estimate that there will be 110 new nondegree programs submissions by private nonprofit institutions and that the average amount of time to collect the information and submit it to the Department will be 2.5 hours per submission, which will increase burden by 275 hours under OMB 1845–0012.

We estimate that there will be 537 new nondegree programs submissions by public institutions and that the average amount of time to collect the information and submit it to the Department will be 2.5 hours per submission, which will increase burden by 1,343 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of nondegree programs will increase by 2,286 hours under OMB 1845–0012. We estimate that annually there will be 1,005 new degree programs that train students for gainful employment in a recognized occupation submitted to the Department. Consistent with these final regulations and the requirements of § 668.8(d), all new degree programs at proprietary institutions will have to submit their narrative descriptions of why and how the institution determined to offer their new program or programs, as well as send us documentation of any accrediting agency or State agency approvals. We estimate that there will be 1,005 new degree programs for which proprietary institutions will submit notifications on an annual basis. Of the 1,005 new degree programs, we estimate that 335 will be included in individual notifications and that the average amount of time to collect the information and submit it to the Department will be 1.75 hours per submission, which will increase burden by 586 hours under OMB 1845–0012. Of the remaining 670 new degree programs, we estimate that these will be included in grouped submissions averaging five new programs in each group, resulting in 134 submissions (670 divided by 5). We estimate that the average amount of time to collect this information and submit it to the Department will be 2.25 hours per submission, which will increase burden by 302 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of notifications for new degree programs will increase by 888 hours under OMB 1845–0012.

The final regulations in § 600.20(d) also provide a process by which the Department will contact the institution prior to denying a new program notification to identify concerns and permit the institution to supplement its notification with additional information.

We estimate that of the 914 new nondegree program submissions that there will be questions regarding 92 of the new programs where those institutions will have the opportunity to provide additional information to the Secretary. We estimate that of the 267 new nondegree programs submitted by proprietary institutions that in 27 of those submissions, upon contact from the Department, the institution will submit additional information. We estimate the collection and reporting of the additional information, on average to take 3 hours per submission, which will increase burden by 81 hours under OMB 1845–0012.

We estimate that of the 110 new nondegree programs submitted by private not-for profit institutions that in 11 of those submissions, upon contact from the Department, the institution will submit additional information. We estimate the collection and reporting of the additional information, on average to take 3 hours per submission, which will increase burden by 33 hours under OMB 1845–0012.

We estimate that of the 537 new nondegree program submitted by public institutions that in 54 of those submissions, upon contact from the Department, the institution will submit additional information. We estimate the collection, submission, and reporting of the additional information, on average to take 3 hours per submission, which will increase burden by 162 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of additional information after being contacted by the Department regarding the new nondegree programs will increase by 276 hours under OMB 1845–0012.

We estimate that of the 1,005 new degree program submissions that there will be questions raised by the Department regarding 34 individual program submissions and that the average amount of time to collect and to report the additional information will be 3 hours per submission, which will increase burden by 102 hours under OMB 1845–0012. Of the remaining 67 new degree programs that are submitted as multiple program submissions (averaging 5 new programs per submission), we estimate that there will be 13 multiple submissions (67 divided by 5) where questions will be raised by the Department and that the average amount of time to collect and to report

the additional information will be 3 hours per submission, which will increase burden by 39 hours under OMB 1845–0012.

Collectively, we estimate that the annual burden associated with the submission of additional information after being contacted by the Department regarding the new degree programs will increase by 141 hours under OMB 1845–0012.

In total, the final regulations in § 600.20(d) will increase burden by 3,591 hours under OMB 1845–0012.

[Note: The prior OMB designation for all new degree and nondegree programs submitted for approval was OMB 1840–0098 which was then transposed to OMB 1845–0098, but is corrected in these final regulations to OMB 1845–0012.]

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
600.20(d)	This regulatory section requires institutions to apply to the Department for approval to add new programs that are subject to the gainful employment regulations. Institutions will describe 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. In addition, the institution will describe how the program was reviewed or approved by, or developed in conjunction with outside entities such as, but not limited to, business advisory committees, program integrity boards, and public or private oversight or regulatory agencies. The institution will also submit under these final regulations copies of documentation that the program has been approved by its accrediting agency or recognized State agency. The Department will contact institutions before it denies a new program and identify areas of concern and permit the institution to supplement its notification with additional information.	OMB 1845–0012. The burden will increase by 3,591 hours.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index/html.*

(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/SMART; 84.379 TEACH Grant Program)

List of Subjects in 34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: October 26, 2010.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 600 of title 34 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.10(c) is revised to read as follows:

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

* * * * *

(c) *Subsequent additions of educational programs.* (1) An eligible institution must notify the Secretary at least 90 days before the first day of class when it intends to add an educational program that prepares students for gainful employment in a recognized occupation, as provided under 34 CFR 668.8(c)(3) or (d). The institution may proceed to offer the program described in its notice, unless the Secretary advises the institution that the additional educational program must be approved under § 600.20(c)(1)(v). Except as provided for direct assessment programs under 34 CFR 668.10, or pursuant to a requirement included in an institution's Program Participation Agreement under 34 CFR 668.14, the institution does not have to apply for approval to add any other type of educational program.

(2) For purposes of paragraph (c)(1) of this section, an additional educational program is—

(i) A program with a Classification of Instructional Programs (CIP) code under the taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics that is different from any other program offered by the institution;

(ii) A program that has the same CIP code as another program offered by the institution but leads to a different degree or certificate; or

(iii) A program that the institution's accrediting agency determines to be an additional program.

(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 obtain the Secretary's approval to offer an additional educational program that prepares students for gainful employment in a recognized occupation as provided under 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.

* * * * *

■ 3. Section 600.20 is amended by:
■ A. Revising the section heading.
■ B. Revising paragraph (c)(1)(v).
■ C. Revising paragraph (d).
■ D. In the OMB control number parenthetical that appears after paragraph (h), removing the number "1845–0098" and adding, in its place, the number "1845–0012".

The revisions read as follows:

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

* * * * *

(c) * * *

(1) * * *

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

* * * * *

(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) 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) 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) 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)(*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.

* * * * *

[FR Doc. 2010–27395 Filed 10–28–10; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–34, et al.]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the postal product lists. This action reflects the disposition of recent dockets, as reflected in Commission orders, and a publication policy adopted in a recent Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which are re-published in their entirety, include these updates.

DATES: *Effective Date:* October 29, 2010.

Applicability Dates: September 29, 2010 (Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1); September 30, 2010 (Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Multi-Service Agreements).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION: This document identifies recent updates to the product lists, which appear as 39 CFR appendix A to subpart A of part