

**DEPARTMENT OF EDUCATION****34 CFR Parts 600 and 668****[Docket ID ED–2016–OPE–0050]****RIN 1840–AD20****Program Integrity and Improvement****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the State authorization sections of the Institutional Eligibility regulations issued under the Higher Education Act of 1965, as amended (HEA). In addition, the Secretary proposes to amend the Student Assistance General Provisions regulations issued under the HEA, including the addition of a new section on required institutional disclosures for distance education and correspondence courses.

**DATES:** We must receive your comments on or before August 24, 2016.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned format.* Using a print-to-PDF format allows the Department of Education (Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “help” tab.

- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Sophia

McArdle, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W256, Washington, DC 20202. Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W253, Washington, DC 20202.

*Privacy Note:* The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:**

Sophia McArdle, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W256, Washington, DC 20202. Telephone (202) 453–6318 or by email at: [sophia.mcardle@ed.gov](mailto:sophia.mcardle@ed.gov). Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W253, Washington, DC 20202. Telephone (202) 453–7249 or by email at: [scott.filter@ed.gov](mailto:scott.filter@ed.gov).

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

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Purpose of This Regulatory Action:* This regulatory action establishes requirements for institutional eligibility to participate in title IV, HEA programs. These financial aid programs are the Federal Pell Grant program, the Federal Supplemental Educational Opportunity Grant, the Federal Work-Study program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, Federal Family Educational Loan Program, and the William D. Ford Direct Loan program.

The HEA established what is commonly known as the program integrity “triad” under which States, accrediting agencies, and the Department act jointly as gatekeepers for the Federal student aid programs mentioned above. This triad has been in existence since the inception of the HEA; and as an important component of this triad, the HEA requires institutions of higher education to obtain approval from the States in which they provide postsecondary educational programs. This requirement recognizes the important oversight role States play in protecting students, their families, taxpayers, and the general public as a whole.

The Department established regulations in 2010 to clarify the

minimum standards of State authorization that an institution must demonstrate in order to establish eligibility to participate in title IV programs. While the regulations established in 2010 made clear that all eligible institutions must have State authorization in the States in which they are physically located, the U.S. Court of Appeals for the District of Columbia set aside the Department’s regulations regarding authorization of distance education programs or correspondence courses, and the regulations did not address additional locations or branch campuses located in foreign locations. As such, these proposed regulations would clarify the State authorization requirements an institution must comply with in order to be eligible to participate in title IV programs, ending uncertainty with respect to State authorization and closing any gaps in State oversight to ensure students, families and taxpayers are protected.

The Office of the Inspector General (OIG), the Government Accountability Office (GAO), and others have voiced concerns over fraudulent practices, issues of non-compliance with requirements of the title IV programs, and other challenges within the distance education environment. Such practices and challenges include misuse of title IV funds, verification of student identity, and gaps in consumer protections for students. The clarified requirements related to State authorization will support the integrity of the title IV, HEA programs by permitting the Department to withhold title IV funds from institutions that are not authorized to operate in a given State.

Because institutions that offer distance education programs usually offer the programs in multiple States, there are unique challenges with respect to oversight of these programs by State and other agencies.

Many States and stakeholders have expressed concerns with these unique challenges, especially those related to ensuring adequate consumer protections for students as well as compliance by institutions participating in this sector. For example, some States have expressed concerns over their ability to identify what out of State providers are operating in their States, whether those programs prepare their students for employment, including meeting licensure requirements in those States, the academic quality of programs offered by those providers, as well as the ability to receive, investigate and address student complaints about out-of-State institutions.

One stakeholder provided an example of a student in California who enrolled in an online program offered by an institution in Virginia, but then informed the institution of her decision to cancel her enrollment agreement. Four years later, that student was told that her wages would be garnished if she did not begin making monthly payments on her debt to the institution. Although the State of California had a cancellation law that may have been beneficial to the student, that law did not apply due to the institution's lack of physical presence in the State. According to the stakeholder, the Virginia-based institution was also exempt from oversight by the appropriate State oversight agency, making it problematic for the student to voice a complaint or have any action taken on it.

Documented wrong-doing has been reflected in the actions of multiple State attorneys general who have filed lawsuits against online education providers due to misleading business tactics. For example, the attorney general of Iowa settled a case against a distance education provider for misleading Iowa students because the provider stated that their educational programs would qualify a student to earn teacher licensure, which the programs did not lead to.

As such, this regulatory action also establishes requirements for institutional disclosures to prospective and enrolled students in programs offered through distance education or correspondence courses, which we believe will protect students by providing them with important information that will influence their attendance in distance education programs or correspondence courses as well as improve the efficacy of State-based consumer protections for students. Since distance education may involve multiple States, authorization requirements among States may differ, and students may be unfamiliar with or fail to receive information about complaint processes, licensure requirements, or other requirements of authorities in States in which they do not reside.

These disclosures will provide consistent information necessary to safeguard students and taxpayer investments in the title IV, HEA programs. By requiring disclosures that reflect actions taken against a distance education program, how to lodge complaints against a program they believe has misled them, and whether the program will lead to certification or licensure will provide enrolled and

prospective students with important information that will protect them.

*Summary of the Major Provisions of This Regulatory Action:* The proposed regulations would—

- Require an institution offering distance education or correspondence courses to be authorized by each State in which the institution enrolls students, if such authorization is required by the State, in order to link State authorization of institutions offering distance education to institutional eligibility to participate in title IV programs, including through a State authorization reciprocity agreement.
- Define the term “State authorization reciprocity agreement” to be 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 in other States covered by the agreement.
- Require an institution to document the State process for resolving complaints from students enrolled in programs offered through distance education or correspondence courses.
- Require that an additional location or branch campus located in a foreign location be authorized by an appropriate government agency of the country where the additional location or branch campus is located and, if at least half of an educational program can be completed at the location or branch campus, be approved by the institution's accrediting agency and be reported to the State where the institution's main campus is located.
- Require that an institution provide public and individualized disclosures to enrolled and prospective students regarding its programs offered solely through distance education or correspondence courses.

#### **Costs and Benefits**

The proposed regulations support States in their efforts to develop standards and increase State accountability for a significant sector of higher education—the distance education sector. In 2014, over 2,800,000 students were enrolled in over 23,000 separate distance education programs. The potential primary benefits of the proposed regulations are: (1) Increased transparency and access to institutional/program information through additional disclosures, (2) updated and clarified requirements for State authorization of distance education and foreign additional locations, and (3) a process for students

to access complaint resolution in either the State in which the institution is authorized or the State in which they reside. The clarified requirements related to State authorization also support the integrity of the title IV, HEA programs by permitting the Department to withhold title IV funds from institutions that are not authorized to operate in a given State. Institutions that choose to offer distance education will incur costs in complying with State authorization requirements as well as costs associated with the disclosures that would be required by the proposed regulations.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data, as well as other supporting materials in the request for comment, even when there is no specific solicitation of data. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments outside the scope of the specific proposed regulations in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See **ADDRESSES:** for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person in Room 6C105, 400 Maryland Ave. SW., Washington, DC, between 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request, we will

provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Public Participation

On May 1, 2012, we published a document in the **Federal Register** (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV of the HEA, Federal student aid program funds, especially within the context of current technologies. On April 16, 2013, we published a document in the **Federal Register** (78 FR 22467), which we corrected on April 30, 2013 (78 FR 25235), announcing additional topics for consideration for action by a negotiated rulemaking committee. The following topics for consideration were identified: Cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock-to-credit- hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Clery Act made by the Violence Against Women Act; and the definition of “adverse credit” for borrowers in the Federal Direct PLUS Loan program. In that notice, we announced three public hearings at which interested parties could comment on the topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. Transcripts from the public hearings are available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html>.

Written comments submitted in response to the April 16, 2013, document may be viewed through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), within docket ID ED-2012-OPE-0008. Instructions for finding comments are also available on the site under the “help” tab.

### Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, in most cases the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: <http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>.

On November 20, 2013, we published a document in the **Federal Register** (78 FR 69612) announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the HEA. That document set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State attorneys general and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities (HBCUs), Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial

enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; regional accrediting agencies; national accrediting agencies; specialized accrediting agencies; financial aid administrators at postsecondary institutions; business officers and bursars at postsecondary institutions; admissions officers at postsecondary institutions; institutional third-party servicers who perform functions related to the title IV Federal Student Aid programs (including collection agencies); State approval agencies; and lenders, community banks, and credit unions. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Chris Lindstrom, U.S. Public Interest Research Group, and Maxwell John Love (alternate), United States Student Association, representing students.

Whitney Barkley, Mississippi Center for Justice, and Toby Merrill (alternate), Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, representing legal assistance organizations that represent students.

Suzanne Martindale, Consumers Union, representing consumer advocacy organizations. Carolyn Fast, Consumer Frauds and Protection Bureau, New York Attorney General’s Office, and Jenny Wojewoda (alternate), Massachusetts Attorney General’s Office representing State attorneys general and other appropriate State officials.

David Sheridan, School of International & Public Affairs, Columbia University in the City of New York, and Paula Luff (alternate), DePaul University, representing financial aid administrators.

Gloria Kobus, Youngstown State University, and Joan Piscitello (alternate), Iowa State University, representing business officers and bursars at postsecondary institutions.

David Swinton, Benedict College, and George French (alternate), Miles College, representing minority serving institutions.

Brad Hardison, Santa Barbara City College, and Melissa Gregory (alternate), Montgomery College, representing two-year public institutions.

Chuck Kneppfle, Clemson University, and J. Goodlett McDaniel (alternate), George Mason University, representing four-year public institutions.

Elizabeth Hicks, Massachusetts Institute of Technology, and Joe Weglarz (alternate), Marist College, representing private, nonprofit institutions.

Deborah Bushway, Capella University, and Valerie Mendelsohn (alternate), American

Career College, representing private, for-profit institutions.

Casey McGuane, Higher One, and Bill Norwood (alternate), Heartland Payment Systems, representing institutional third-party servicers.

Russ Poulin, WICHE Cooperative for Educational Technologies, and Marshall Hill (alternate), National Council for State Authorization Reciprocity Agreements, representing distance education providers.

Dan Toughey, TouchNet, and Michael Gradisher (alternate), Pearson Embanet, representing business and industry.

Paul Kundert, University of Wisconsin Credit Union, and Tom Levandowski (alternate), Wells Fargo Bank Law Department, Consumer Lending & Corporate Regulatory Division, representing lenders, community banks, and credit unions.

Leah Matthews, Distance Education and Training Council, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing accrediting agencies.

Carney McCullough, U.S. Department of Education, representing the Department.

Pamela Moran, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on February 19–21, 2014, March 26–28, 2014, and April 23–25, 2014. During the March session, the Department proposed adding a negotiated rulemaking session to the schedule to give the negotiators more time to consider the issues and reach consensus on proposed regulatory language. The negotiators agreed to add a fourth and final session. On April 11, 2014, we published in the **Federal Register** (79 FR 20139) a document announcing the addition of a fourth session. That final session was held on May 19–20, 2014.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. These protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: Clock-to-credit-hour conversion;

State authorization of distance education; State authorization of foreign locations of domestic institutions; cash management; retaking coursework; and PLUS loan adverse credit history. Under the protocols, a final consensus would have to include consensus on all six issues, which was not achieved in these negotiations. If consensus were reached, we would have been required to propose the agreed upon language. As it was not reached, there is no such requirement; the Department has discretion with regard to the regulations it proposes on the negotiated issues.

*Significant Proposed Regulations:* We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

#### § 600.2 Definitions

##### State Authorization Reciprocity Agreement

*Statute:* Section 101(a)(2) of the HEA defines the term “institution of higher education” to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State.

*Current Regulations:* None.

*Proposed Regulations:* The Department proposes to add under § 600.2 a definition of a “State authorization reciprocity agreement”. The Department proposes to define a State authorization reciprocity agreement as 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 in other States covered by the agreement and does not prohibit a participating State from enforcing its own consumer protection laws.

*Reasons:* The HEA requires that an institution be legally authorized in States to provide a program of education beyond secondary education for purposes of institutional eligibility for funding under the HEA. One way a State could authorize an institution that provides postsecondary education through distance education or correspondence courses to students in that State is to enter into a reciprocity

agreement with the State where the institution providing that educational program is located. Such an agreement can provide institutions located in participating States with greater ease by which to achieve State authorization in multiple States. However, we strongly believe that a State should be active in protecting its own students, and therefore such agreements should not prohibit a participating State from enforcing its own consumer protection laws. Thus, any reciprocity agreement that would prohibit a participating State from enforcing its own consumer protection laws would not comply with our proposed definition of a State authorization reciprocity agreement, nor meet the requirements for State authorization under 34 CFR 600.9.

#### § 600.9 State Authorization

##### State Authorization of Distance or Correspondence Education Providers

*Statute:* Section 101(a)(2) of the HEA defines the term “institution of higher education” to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State.

*Current Regulations:* Following negotiations that occurred in 2010 on a number of program integrity issues, the Department promulgated a regulation in § 600.9(c) regarding the State authorization of institutions providing distance education programs (75 FR 66832). On July 12, 2011, in response to a legal challenge by the Association of Private Sector Colleges and Universities, the U.S. District Court for the District of Columbia vacated § 600.9(c) on procedural grounds. On August 14, 2012, on appeal, the U.S. Court of Appeals for the D.C. Circuit ruled that § 600.9(c) was not a logical outgrowth of the Department’s proposed rules published at 75 FR 34806 (June 18, 2010) and vacated the regulation. Therefore the Department needed to go through a new rulemaking and public comment process.

The vacated regulations under § 600.9(c) had provided that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located, or in which it is otherwise subject to State jurisdiction as determined by the State, the institution

would be required to meet any State requirements in order to legally offer postsecondary distance or correspondence education in that State. Furthermore, an institution was required to be able to provide, upon request, documentation of the State's approval for the distance or correspondence education to the Secretary.

*Proposed Regulations:* Under proposed § 600.9(c)(1)(i), an institution described under § 600.9(a)(1) that offers postsecondary education through distance education or correspondence courses to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, except as provided in § 600.9(c)(1)(ii), would need to meet any State requirements in order to legally offer postsecondary distance or correspondence education in that State. An institution would be required to document to the Secretary the State's approval upon request.

Under proposed § 600.9(c)(1)(ii), if an institution described under § 600.9(a)(1) offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution offering the program is located in a State where it is covered by such an agreement, the institution would be considered to be legally authorized to offer postsecondary distance or correspondence education in the State students enrolled in the program reside, subject to any limitations in that agreement. An institution would be required to document its coverage under such an agreement to the Secretary upon request.

In addition, under proposed § 600.9(c)(2)(i), if an institution described under § 600.9(a)(1) is offering postsecondary education through distance education or correspondence courses to students residing in a State in which it is not physically located, in order for the institution to be considered legally authorized in that State, the institution would be required to document that there is a State process in each State in which its enrolled students reside to review and take appropriate action on complaints from any of those enrolled students concerning the institution, including enforcing applicable State law. Alternatively, under § 600.9(c)(2)(ii), an institution could document that it was covered under a State authorization reciprocity agreement which included a process, in either the States in which students reside or the State in which the

institution's main campus, as identified by the Department of Education and the institution's accrediting agency, is located, to review and take appropriate action on complaints from any of those enrolled students concerning the institution.

*Reasons:* These proposed regulations would operationalize the requirement in the HEA that an institution described in § 600.9(a)(1) be legally authorized in a State to provide a program of education beyond secondary education for purposes of institutional eligibility for funding under the HEA in the case of institutions providing distance education or correspondence courses in States that have State authorization requirements. It is reasonable to expect that, if a State has requirements regarding its approval for an institution to offer postsecondary educational programs through distance education or correspondence courses in the State, then an institution would have to meet those State requirements to be considered legally authorized to operate in that State for purposes of institutional eligibility for funding under the HEA and that the institution would be able to demonstrate that it has met those requirements. Similarly, in the case where a State is participating in a State authorization reciprocity agreement, an institution described in § 600.9(a)(1) that participates in such agreement should be able to meet any requirements of such an agreement to be considered legally authorized to operate in a State and to demonstrate that it meets those requirements.

We have previously stated that, with respect to institutions subject to 34 CFR 600.9(a), State authorization for an institution must include a process where the State reviews and appropriately acts on complaints arising under State law (75 FR 66865–66, Oct. 29, 2010). We further clarified in Dear Colleague Letter GEN–14–04 that, while a State may refer the review of complaints concerning an institution to another entity, the final authority to ensure that complaints are resolved timely is with the State. Similarly, we believe that States should also play an important role in the protection of students who enroll in postsecondary educational programs provided through distance education or correspondence courses. Therefore, just like institutions physically located in a State, in order for an institution offering postsecondary educational programs through distance education or correspondence courses to students residing in one or more States in which the institution is not physically located to be considered legally authorized in those States, the

institution would need to document that there is a State complaint process in each State in which the students reside. This State process must include steps to review and appropriately act in a timely manner on complaints by any of those students concerning the institution, including enforcing applicable State law. Students enrolled in programs offered through distance education or correspondence courses would therefore be able to access a complaint process under both current § 600.9(a)(1), which requires a process in the State in which the institution is physically located, and proposed § 600.9(c)(2), which requires a process in a student's State of residence. Because a State authorization reciprocity agreement may also designate a State process for these complaints, an institution could alternatively show that it was covered by that agreement's process for resolving complaints.

#### State Authorization of Foreign Additional Locations and Branch Campuses of Domestic Institutions

*Statute:* Sections 101(a)(2), 102(a)(1), 102(b)(1)(B), and 102(c)(1)(B) of the HEA require an educational institution to be legally authorized in a State to provide a program of education beyond secondary education in order to be eligible to apply to participate in programs approved under the HEA, unless an institution meets the definition of a foreign institution.

*Current Regulations:* Although the State authorization regulations in current §§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), and 600.9 delineate the requirements for State authorization of institutions, they do not specifically address State authorization requirements for foreign locations of domestic institutions.

*Proposed Regulations:* The proposed regulations would specify the requirements for State authorization of foreign additional locations and branch campuses of domestic institutions.

Proposed § 600.9(d)(1) would specify the requirements for legal authorization for any foreign additional location at which a student can complete 50 percent or more of an educational program, and for any foreign branch campus. Proposed § 600.9(d)(1)(i) would require these additional locations and branch campuses to be legally authorized to operate by an appropriate government authority in the country where the foreign additional location or branch campus is physically located, unless the additional location or branch campus is located on a U.S. military base and is exempt from obtaining such authorization from the foreign country.

Under proposed § 600.9(d)(1)(ii), an institution would be required to provide documentation of that authorization by the foreign country to the Department upon request. The documentation would be required to demonstrate that the government authority for the foreign country is aware that the additional location or branch campus provides postsecondary education and does not object to those activities. In addition, proposed § 600.9(d)(1)(iii) would require these additional locations and branch campuses to be approved in accordance with the existing regulations for the approval of additional locations and branch campuses in the regulations for the Secretary's recognition of accrediting agencies (§ 602.24(a) and § 602.22(a)(2)(viii)). Proposed § 600.9(d)(1)(iv) would require institutions to be in compliance with any additional requirements for legal authorization established by the foreign country. Proposed § 600.9(d)(1)(v) would specify that an institution would be required to report the establishment or operation of a foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State. Although these regulations would not require an institution to obtain authorization in the State in which the main campus is located for the foreign additional location or branch campus, § 600.9(d)(1)(vi) would require the institution to comply with any limitations on the establishment or operation of a foreign additional location or branch campus set by that State.

Proposed § 600.9(d)(2) would require that foreign additional locations at which less than 50 percent of an educational program is offered, or will be offered, be in compliance with any requirements for legal authorization established by the foreign country.

Proposed § 600.9(d)(3) would provide that an institution must disclose to enrolled and prospective students the information regarding the student complaint process described in § 668.43(b), in accordance with 34 CFR 668.41 and would be satisfied by making this information available to prospective and enrolled students on the institution's Web site, which would then make it available to the general public. The requirement would apply to all foreign additional locations and branch campuses where students are attending and receiving title IV funds, regardless of the amount of the program offered there.

Proposed § 600.9(d)(4) would make clear that if the State in which the main

campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus would not be considered to be authorized regardless of the percentage of the program offered at a foreign additional location or branch campus.

*Reasons:* The negotiating committee reached tentative agreement on the proposed regulations related to additional locations or branch campuses in a foreign location. The Department did not make substantive changes to the regulatory language to which the committee tentatively agreed.

The proposed regulations would allow an institution with a foreign additional location or branch campus to meet the statutory State authorization requirement for the foreign location or branch campus in a manner that recognizes both the domestic control of the institution as a whole, while ensuring that the foreign location or branch campus is legally operating in the foreign country in which it is located. In addition, the proposed regulations would recognize the importance of extending the protections provided to U.S. students attending an institution in a State to those attending at a foreign additional location or branch campus.

The proposed regulations would only apply to foreign additional locations and branch campuses of domestic institutions. They would not apply to study abroad arrangements that domestic institutions have with foreign institutions whereby a student attends a portion of a program at a separate foreign institution, which are regulated under current § 668.5. These proposed regulations also would not apply to foreign institutions. The requirements for additional locations of foreign institutions are contained in current § 600.54(d).

Proposed § 600.9(d)(1) would limit the applicability of the proposed legal authorization and accreditation requirements to (1) foreign additional locations at which 50 percent or more of an educational program is offered, or will be offered, and (2) all foreign branch campuses. This is consistent with current § 600.10(b)(3) which provides that, generally, title IV eligibility does not automatically extend to any branch campus or additional location where the institution provides at least 50 percent of the educational program, so institutions are required to apply for separate approval of such locations under current § 600.20. It would also be consistent with current § 602.24(a), which requires accrediting

agencies to approve the addition of branch campuses, and current § 602.22(a)(2)(viii), which generally requires accrediting agencies to have substantive change policies that include the evaluation of additional locations that provide at least 50 percent of a program, unless the location meets certain exceptions.

Because of the protections provided by State authorization of the main campus of an institution and accrediting agency oversight, the proposed legal authorization standard for foreign additional locations and branch campuses in § 600.9(d)(1)(i), (ii) and (iv) is more lenient than the standard for foreign schools, which provides that legal authorization must be obtained from 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. Under the proposed regulations, a license for an additional location of a U.S. based postsecondary educational institution to operate from an appropriate foreign government authority would be sufficient to demonstrate compliance with § 600.9(d)(1)(i). In addition, unlike foreign schools, which must provide documentation of legal authorization up front, § 600.9(d)(1)(ii) would require that the institution provide documentation of the authorization by the foreign country in which the additional location or branch campus is located *upon request* to demonstrate that the government authority for the foreign country is aware that the additional location or branch provides postsecondary education and does not object to the institution's activities. This would allow the Department to ensure that a foreign additional location or branch campus actually has the appropriate authorization to operate. It would also demonstrate that a foreign additional location or branch campus is not operating under a license for a purpose other than providing postsecondary education and, therefore, is in compliance with section 101(a)(2) of the HEA, which defines the term "institution of higher education" to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. The proposed regulations would require that the government authority for the foreign country is aware that the additional location or branch provides postsecondary education. Although the Department originally proposed requiring an institution to demonstrate that the government entity had actively

consented to the location's or branch's provision of postsecondary education, again because of the protections provided by State authorization of the main campus of an institution and accrediting agency oversight, the committee ultimately agreed that it was only necessary that the foreign government entity not object to it.

Some negotiators suggested that State authorization of the institution's main campus and compliance with the accreditation requirements for a foreign additional location or branch campus was sufficient for the location or branch campus to be title IV eligible. However, the negotiated rulemaking committee discussed and tentatively agreed that this standard did not provide enough protection for students who would be harmed if a country sought to close an additional location or branch campus that it had not authorized to operate. For this same reason, proposed § 600.9(d)(1)(iv) would require that foreign additional locations and branch campuses be in compliance with any additional requirements for legal authorization established by the foreign country. While the committee agreed that it was not necessary that the specific legal authorization requirements of proposed § 600.9(d)(1)(i) and (ii) would apply to foreign additional locations at which less than 50 percent of an educational program is offered, or will be offered (discussed above), the committee agreed that proposed § 600.9(d)(2) would require that foreign additional locations at which less than 50 percent of an educational program is offered, or will be offered, be in compliance with any requirements for legal authorization established by the foreign country.

Under the proposed regulations, a foreign additional location or branch campus that is located on a U.S. military base and is exempt from obtaining legal authorization from the foreign country would be exempt from being legally authorized to operate by an appropriate government authority in the country where the additional location or branch campus is physically located. Although some negotiators suggested that all additional locations or branch campuses located on U.S. military bases should be exempt from the laws and regulations of the countries in which they are located because they are considered to be located on "U.S. soil," the Department's understanding is that U.S. military bases are not automatically considered to be located on "U.S. soil." Rather, they are governed by individual Status of Forces Agreements and vary by country and base. These regulations would defer to those agreements regarding the

applicability of authorizing requirements of the foreign country.

Proposed § 600.9(d)(1)(iii) would not create a new requirement for accrediting agency approval of foreign additional locations or branch campuses. Rather, approval would be required in accordance with the existing regulations for the approval of additional locations and branch campuses in the regulations for the Secretary's recognition of accrediting agencies. That is, under the current regulations, if an institution plans to establish a branch campus, the accrediting agency must require the institution to notify the agency, submit a business plan for the branch campus, and wait for accrediting agency approval (§ 602.24(a)). For additional locations that provide at least 50 percent of a program, accrediting agencies must have substantive change policies that include the evaluation of additional locations that provide at least 50 percent of a program, unless the location meets certain exceptions (§ 602.22(a)(2)(viii)). In order to facilitate the oversight role of the State in which the institution's main campus is located with respect to a foreign additional location or branch campus, proposed § 600.9(d)(1)(v) would require an institution with a main campus in the State to report the establishment or operation of a foreign additional location or branch campus to the State at least annually, or more frequently if required by the State. Although the proposed regulations would not specifically require an institution to obtain authorization in the State in which the main campus is located for the foreign additional location or branch campus, in recognition that a State may set limitations on the establishment or operation of foreign locations or branch campuses other than simply denying eligibility, proposed § 600.9(d)(1)(vi) would provide that an institution must comply with any State limitations on the establishment or operation of a foreign additional location or branch campus set by that State.

To ensure that students are aware of the complaint process of the State in which the main campus of the institution is located, proposed § 600.9(d)(3) would require institutions to disclose information regarding the student complaint process to enrolled and prospective students at that foreign additional location or branch campus. To minimize burden, the proposed regulations would require that this disclosure be made in accordance with the existing consumer disclosure requirements of subpart D of part 668, rather than through the establishment of a separate disclosure.

Proposed § 600.9(d)(4) would make clear that if the State limits the authorization of the institution to exclude the additional foreign location or branch campus in a foreign country, the additional location or branch campus would not be considered to be authorized by the State. This would mean that a State is not required to authorize a foreign additional location or branch campus, but if a State expressly prohibits an institution then the location is not considered to be authorized. A State may also provide conditions by which an institution must abide by to have its foreign additional locations or branch campuses be authorized. In such an instance, the institution must abide by those conditions to be considered authorized.

#### *§ 668.50 Institutional Disclosures for Distance or Correspondence Programs*

*Statute:* Section 485(a)(1) of the HEA provides that an institution must disclose information about the institution's accreditation and State authorization.

*Current Regulations:* None.

*Proposed Regulations:* The Department proposes to add new § 668.50, which would require an institution to disclose certain information about the institution's distance education programs or correspondence courses to enrolled and prospective students. The Department proposes seven general disclosures to be made publicly available and three individualized disclosures that will require direct communication with enrolled and prospective students, but only if certain conditions are met. The proposed regulations state that the Secretary may determine the form and content of these disclosures in the future. These proposed disclosures will not alter or reduce any other required disclosures that are required in this subpart.

For distance education programs and correspondence courses offered by an institution of higher education, the institution must disclose:

- How the distance education program or correspondence course is authorized (34 CFR 668.50(b)(1));
- How to submit complaints to the appropriate State agency responsible for student complaints or to the state authority reciprocity agreement, whichever is appropriate based on how the program or course is authorized (34 CFR 668.50(b)(2));
- How to submit complaints to the appropriate State agency in the student's State of residence (34 CFR 668.50(b)(3));

- Any adverse actions taken by a State or accrediting agency against an institution of higher education's distance education program or correspondence course and the year that the action was initiated for the previous five calendar years (34 CFR 668.50(b)(4) and 34 CFR 668.50(b)(5));

- Refund policies that the institution is required to comply with (34 CFR 668.50(b)(6));

- The applicable licensure or certification requirements for a career a student prepares to enter, and whether the program meets those requirements (34 CFR 668.50(b)(7)).

Additionally, these institutions must also disclose directly:

- When a distance education program or correspondence course does not meet the licensure or certification requirements for a State to all prospective students (34 CFR 668.50(c)(1)(i));

- When an adverse action is taken against an institution's postsecondary education programs offered by the institution solely through distance education or correspondence student to each enrolled and prospective student (34 CFR 668.50(c)(2)); and

- Any determination that a program ceases to meet licensure or certification requirements to each enrolled and prospective student (34 CFR 668.50(c)(2)).

Under proposed § 668.50(b)(1), an institution would be required to disclose whether the program offered by the institution through distance education or correspondence courses is authorized by each State in which students enrolled in the program reside. If an institution is authorized through a State authorization reciprocity agreement, the institution would be required to disclose its authorization status under such an agreement.

Under proposed § 668.50(b)(2)(i), an institution authorized by a State agency would be required to disclose the process for submitting complaints to the appropriate State agency in the State in which the main campus of the institution is located, including providing contact information for the appropriate individuals at the State agencies that handle consumer complaints.

Under proposed § 668.50(b)(2)(ii), an institution that is authorized by a State authorization reciprocity agreement would be required to disclose the complaint process established by the reciprocity agreement, if the agreement establishes such a process. In addition to the State authorization reciprocity agreement's complaint process, an institution authorized through such an

agreement would also be required to provide contact information for the individual responsible for handling such complaints, as set out in the State authorization reciprocity agreement, if applicable.

Under proposed § 668.50(b)(3), an institution would be required to disclose the process for submitting complaints to the appropriate State agency for all States in which the institution enrolls students in distance education programs or correspondence courses, regardless of whether the institution is authorized by the State in which the main campus of the institution is located or by a State authorization reciprocity agreement.

Under proposed § 668.50(b)(4) and (5), an institution would be required to disclose any adverse actions a State entity or an accrediting agency has initiated related to the institution's distance education programs or correspondence courses for a five calendar year period prior to the year in which the institution makes the disclosure.

Under proposed § 668.50(b)(6), an institution would be required to disclose, for any State in which the institution enrolls students in distance education programs or correspondence courses, any State policies requiring the institution to refund unearned tuition and fees.

Under proposed § 668.50(b)(7), an institution would be required to disclose the applicable educational prerequisites for professional licensure or certification which the program prepares the student to enter in any State in which the program's enrolled students reside, or any other State for which the institution has made a determination regarding such prerequisites. The institution would also be required to disclose whether the distance education program or correspondence course does or does not satisfy those applicable educational prerequisites for professional licensure or certification. Distance education programs and correspondence courses enroll students from a multitude of States where they do not have a physical presence and their programs may not necessarily lead to licensure or certification, which would be important for students to know. For any State as to which an institution has not made a determination with respect to the licensure or certification requirement, an institution would be required to disclose a statement to that effect. This disclosure does not require an institution to make a determination with regard to how its distance education programs or correspondence courses

meet the prerequisites for licensure or certification in States where none of its enrolled students reside, but does require an institution to disclose whether it has made such determinations and, if it has made a determination, whether its programs meet such prerequisites.

Under proposed § 668.50(c), an institution offering programs solely through distance education or correspondence courses would be required to provide individualized disclosures to students to disclose certain information, but only if certain conditions are met. An individualized disclosure would be providing a disclosure through direct contact, such as through an email or written correspondence, unlike a public disclosure, such as through the program's Web site or in promotional material.

Under proposed § 668.50(c)(1)(i), an institution would be required to provide an individualized disclosure to prospective students when the institution determines that an educational program is being offered solely through distance education or correspondence courses, excluding internships or practicums, does not meet licensure or certification prerequisites in the State of the student's residence. The institution would be required to obtain an acknowledgment from the student that the communication was received prior to the student's enrollment in the program. The Department believes this can be solved relatively easily by including attestation as part of a student's enrollment agreement or other paperwork required for new students by the institution, which an institution would already prepare and maintain.

Under proposed § 668.50(c)(1)(ii), an institution would be required to provide an individualized disclosure to enrolled and prospective students of any adverse action initiated by a State or an accrediting agency related to the institution's programs, including the years in which such actions were initiated, and when the institution determines that its program ceases to meet licensure or certification prerequisites of a State. These individualized disclosures would have to occur within 30 days and 7 days of the institution becoming aware of the event, respectively.

*Reasons:* The proposed regulations in § 668.50 would increase transparency and accountability in the distance education sector by providing enrolled and prospective students with essential information about postsecondary



institutions that offer distance education programs and correspondence courses.

Through these proposed requirements, a student enrolled or planning to enroll in programs offered through distance education or correspondence courses would receive information regarding whether programs or courses are authorized by the State in which he or she lives and whether those programs or courses also meet State prerequisites for licensure and certification. Without such requirements, students could unknowingly enroll in programs that do not qualify them for Federal student aid or that do not fulfill requirements for employment in a particular profession or field, either in the State in which they reside or in the State in which they intend to seek employment.

These requirements would also strengthen the effectiveness of the program integrity triad by ensuring that enrolled and prospective students are aware of any adverse actions a State or accrediting agency has initiated against an institution that may potentially impact the post-secondary success or financial well-being of students. This requirement would also limit the time period for disclosing such information to the past five years, so that institutions would not be required to disclose every adverse action ever made against them, and institutions that have improved over time will be able to distance themselves from an adverse compliance history.

We believe it is important to provide information to students on whatever adverse actions have been initiated against an institution regarding its distance education program or correspondence course regardless of the status of the action. For example, if an institution appeals an adverse action being taken against it by a State, we believe that an institution should still disclose that adverse action to an enrolled or prospective student. However, the institution is permitted to provide qualifying information to the student about any appeal that is being pursued by the institution regarding its distance education program or correspondence course offered by the institution.

Additionally, through these requirements, students would receive information about the complaint processes available to them. This information should be readily available to students as a way to ensure transparency and to protect students from bad actors in the field. We also believe that students should be provided with the complaint process for their State of residence regardless of

how their distance education program or correspondence course was authorized.

Providing information to a student about tuition refund policies is also important as it may impact a student's finances and their decision to enroll in a distance education program or correspondence courses. This information can help a student navigate the refund process if they decide to withdraw from a course or program.

Given the multi-State environment in which distance education programs and correspondence courses may be offered, it is important that students understand and make informed decisions about the educational options available to them through distance and correspondence education. As such, these proposed regulations would require that certain individualized disclosures be made to students, but only in certain situations. Under these proposed regulations, when a State or accrediting agency initiates an adverse action against an institution offering programs offered through distance education or correspondence courses or if a program does not meet or ceases to meet prerequisites for State licensure or certification, this information will be directly communicated to enrolled and prospective students. In those situations, these disclosures will help a student evaluate whether enrollment or continued enrollment in a particular program is in his or her best interest.

Overall, the public and individualized disclosures provided under these proposed regulations establish important consumer protections within the distance education field and help enrolled and prospective students make informed choices about postsecondary distance education programs and correspondence courses.

#### **Executive Orders 12866 and 13563**

##### *Regulatory Impact Analysis*

##### *Introduction*

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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 stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned

determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this Regulatory Impact Analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. Although the majority of the costs related to information collection are discussed within this RIA, elsewhere in this NPRM under Paperwork Reduction Act of 1995, we also identify and further explain burdens specifically associated with information collection requirements.

#### Need for Regulatory Action

The landscape of higher education has changed over the last 20 years. During that time, the role of distance education in the higher education sector has grown significantly. For Fall 1999, eight percent of all male students and ten percent of all female students participated in at least one distance education course.<sup>1</sup> Recent IPEDS data indicate that in the fall of 2013, 26.4 percent of students at degree-granting, title IV participating institutions were enrolled in at least one distance education class.<sup>1</sup> The emergence of online learning options has allowed students to enroll in colleges authorized in other States and jurisdictions with relative ease. According to the National Center for Education Statistics' Integrated Postsecondary Education Data System (IPEDS), in the fall of 2014, the number of students enrolled exclusively in distance education programs totaled 843,107. Distance education industry sales have increased alongside student enrollment. As students continue to embrace distance education, revenue for distance

education providers has increased steadily. In 2014, market research firm Global Industry Analysts projected that 2015 revenue for the distance education industry would reach \$107 billion.<sup>2</sup> For the same year, gross output for the overall non-hospital private Education Services sector totaled \$332.2 billion.<sup>3</sup> Distance education has grown to account for roughly one-third of the U.S. non-hospital private Education Services sector. In this aggressive market environment, distance education providers have looked to expand their footprint to gain market share. An analysis of recent data from IPEDS indicates that 2,301 title-IV-participating institutions offered 23,434 programs through distance education in 2014. Approximately 2.8 million students were exclusively enrolled in distance education courses, with 1.2 million of those students enrolled in programs offered by institutions from a different State. Table 1 summarizes the number of institutions, programs, and students involved in distance education by sector.

TABLE 1—2014 PARTICIPATION IN DISTANCE EDUCATION BY SECTOR

Sector	Institutions offering distance education programs	Number of distance education programs	Students exclusively in distance education programs	Students exclusively in out-of-state distance education programs
Public 4-year .....	540	5,967	692,074	144,039
Private Not-for-Profit 4-year .....	745	6,555	607,224	333,495
Proprietary 4-year .....	255	5,153	820,630	628,699
Public 2-year .....	625	5,311	690,771	45,684
Private Not-for-Profit 2-year .....	15	42	814	388
Proprietary 2-year .....	87	339	21,421	5,291
Public less-than-2-year .....	7	10	55	-
Private Not-for-Profit less-than- 2-year .....	1	1	-	-
Proprietary less-than-2-year .....	26	56	1,056	382
<b>Total .....</b>	<b>2,301</b>	<b>23,434</b>	<b>2,834,045</b>	<b>1,157,978</b>

Some States have entered into reciprocity agreements with other States in an effort to address the issues that distance education presents, such as States having differing and conflicting requirements that institutions of higher education will have to adhere to, potentially causing increased costs and burden for those institutions. For example, as of June 2016, 40 States and the District of Columbia have entered into a State Authorization Reciprocity

Agreement (SARA) administered by the National Council for State Authorization Reciprocity Agreements, which establishes standards for the interstate offering of postsecondary distance-education courses and programs. Through a State authorization reciprocity agreement, an approved institution may provide distance education to residents of any other member State without seeking authorization from each member State.

However, even where States accept the terms of a reciprocity agreement, that agreement may not apply to all institutions and programs in any given State.

There also has been a significant growth in the number of American institutions and programs enrolling students abroad. As of May 2016, American universities were operating 80 foreign locations worldwide according to information available from the

<sup>1</sup> 2014 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: fall 2012 and fall 2013.

<sup>2</sup> Online Learning Industry Poised for \$107 Billion In 2015 (<http://www.forbes.com/sites/tjmccue/2014/08/27/online-learning-industry-poised-for-107-billion-in-2015/#46857a0966bc>).

<sup>3</sup> US Bureau of Economic Analysis GDP-by-Industry interactive table (<http://bea.gov/iTable/iTableHtml.cfm?reqid=51&step=51&isuri=1&5101=1&5114=a&5113=61go&5112=1&5111=2014&5102=15>).

Department's Postsecondary Education Participation System (PEPS). Many institutions are also allowing foreign students to enroll in distance education programs in conjunction with, or in lieu of, taking courses at a foreign location.

American institutions operating foreign locations are still relatively new. As such, data about the costs involved in these operations is limited. Some American institutions establishing locations in other countries have negotiated joint ventures and reimbursement agreements with foreign governments to share the startup costs. The Department found no evidence suggesting that institutions make payments to foreign governments in order to operate in the foreign country.

With the expansion of these higher education models, the Department believes it is important to maintain a minimum standard of State approval for higher education institutions. The proposed regulations support States in their efforts to develop standards for this growing sector of higher education. The clarified requirements related to State authorization also support the integrity of the Federal student aid programs by not supplying funds to programs and institutions that are not authorized to operate in a given State.

### Summary of Proposed Changes

The proposed regulations:

- Require an institution offering distance education or correspondence courses to be authorized by each State in which the institution enrolls students, if such authorization is required by the State, including through a State authorization reciprocity agreement.

- Define the term "State authorization reciprocity agreement" to be an agreement between two or more States that authorizes an institution located in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students in other States covered by the agreement.

- Require an institution to document the State process for resolving complaints from students enrolled in programs offered through distance education or correspondence courses.

- Require that an additional location or branch campus located in a foreign location be authorized by an appropriate government agency of the country where the additional location or branch campus is located and, if at least half of an educational program can be completed at the location or branch campus, be approved by the institution's accrediting agency and be

reported to the State where the institution's main campus is located.

- Require that an institution provide public and individualized disclosures to enrolled and prospective students regarding its programs offered solely through distance education or correspondence courses.

### Discussion of Costs, Benefits, and Transfers

The potential primary benefits of the proposed regulations are: (1) Increased transparency and access to institutional and program information, (2) updated and clarified requirements for State authorization of distance education and foreign additional locations, and (3) a process for students to access complaint resolution in either the State in which the institution is authorized or the State in which they reside.

We have identified the following groups and entities we expect to be affected by the proposed regulations:

- Students
- Institutions
- Federal, State, and local government

#### Students

Students who made public comments during negotiated rulemaking stated that the availability of online courses allowed them to earn credentials in an environment that suited their personal needs. We believe, therefore, that students would benefit from increased transparency about distance education programs. The disclosures of adverse actions against the programs, refund policies, and the prerequisites for licensure and whether the program meets those prerequisites in States for which the institution has made those determinations would provide valuable information that can help students make more informed decisions about which institution to attend. Increased access to information could help students identify programs that offer credentials that potential employers recognize and value. Additionally, institutions would have to provide an individualized disclosure to enrolled and prospective students of adverse actions against the institution and when programs offered solely through distance education or correspondence courses do not meet licensure or certification prerequisites in the student's State of residence. The disclosure regarding adverse actions would help ensure that students have information about potential wrongdoing by institutions. Similarly, disclosures regarding whether a program meets applicable licensure or certification requirements would provide students with valuable information about whether attending the program will

allow them to pursue the chosen career upon program completion. The licensure disclosure requires acknowledgment by the student before enrollment, which emphasizes the importance of ensuring students receive that information. It also recognizes that students may have specific plans for using their degree, potentially in a new State of residence where the program would meet the relevant prerequisites.

Students in distance education or at foreign locations of domestic institutions would also benefit from the disclosure and availability of complaint resolution processes that would let them know how to submit complaints to the State in which the main campus of the institution is located or, for distance education students, the students' State of residence. This can help to ensure the availability to students of consumer protections and make it more convenient for students to access those supports.

#### Institutions

Institutions will benefit from the increased clarity concerning the requirements and process for State authorization of distance education and of foreign additional locations. Institutions will bear the costs of ensuring they remain in compliance with State authorization requirements, whether through entering into a State authorization reciprocity agreement or researching and meeting the relevant requirements of the States in which they operate distance education programs. The Department does not ascribe specific costs to the proposed State authorization regulations and associated definitions because it is presumed that institutions are complying with applicable State authorization requirements. Additionally, nothing in the proposed regulations would require institutions to participate in distance education. However, in the event that the clarification of the State authorization requirements in the proposed regulations, among other factors, would provide an incentive for more institutions to be involved to offer distance education courses, the Department has estimated some costs as an illustrative example of what institutions can expect from complying with State authorization requirements.

The costs for each institution will vary based on a number of factors, including the institutions' size, the extent to which an institution provides distance education, and whether it participates in a State authorization reciprocity agreement or chooses to obtain authorization in specific States. The Department has estimated annual



loans originated in a given fiscal year. 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.

In the absence of evidence that the proposed regulations will significantly change the size and nature of the student loan borrower population, the Department estimates no significant net budget impact from the proposed regulations. While the clarity about the requirements for State authorization and the option to use State authorization reciprocity agreements may expand the availability of distance education; that does not necessarily mean the volume of student loans will expand greatly. Additional distance education could serve as a convenient option for students to pursue their education and loan funding may shift from physical to online campuses. Distance education has expanded significantly already and the proposed regulations are only one factor in institutions' plans within this field. The distribution of title IV, HEA program funding could continue to evolve, but the overall volume is also driven by demographic and economic conditions that are not affected by the proposed regulations and State authorization requirements are not expected to change loan volumes in a way that would result in a significant net budget impact. Likewise, the availability of options to study abroad at foreign locations of domestic institutions offers students flexibility and potentially rewarding experiences, but is not expected to significantly change the amount or type of loans students use to finance their education. Therefore, the Department does not estimate that the requirements that an additional location or branch campus located in a foreign location be authorized by an appropriate government agency of the country where the additional location or branch campus is located and, if at least half of an educational program can be completed at the location or branch campus, be approved by the institution's accrediting agency and be reported to the State where the institution's main campus is located will have a significant budget impact on title IV, HEA programs. The Department welcomes comments on this analysis and will consider them in the development of the final rule.

#### Assumptions, Limitations and Data Sources

In developing these estimates, a wide range of data sources were used,

including data from the National Student Loan Data System, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2012 National Postsecondary Student Aid Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

#### Alternatives Considered

In the interest of promoting good governance and ensuring that these proposed regulations produce the best possible outcome, the Department reviewed and considered various proposals from both internal sources as well as from non-Federal negotiators. We summarize below the major proposals that we considered but ultimately declined to adopt in these proposed regulations.

The Department has addressed State authorization during two previous rulemaking sessions, one in 2010 and the other in 2014. In 2010, State authorization of distance education was not a topic addressed in the negotiations, but the Department addressed the issue in the final rule in response to public comment. The distance education provision in the 2010 regulation was struck down in court on procedural grounds, leading to the inclusion of the issue in the 2014 negotiations. The 2014 proposal would have required, in part, an institution of higher education to obtain State authorization wherever its students were located. That proposal would also have allowed for reciprocity agreements between States as a form of State authorization, including State authorization reciprocity agreements administered by a non-State entity. The Department and participants of the 2014 rulemaking session were unable to reach consensus.

As it developed the proposed regulations, the Department considered adopting the 2010 or 2014 proposals. However, the 2010 rule did not allow for reciprocity agreements and did not require a student complaint process for distance education students if a State did not already require it. The 2014 proposal raised concerns about complexity and level of burden involved. The Department therefore used elements of both proposals in formulating these proposed regulations. Using the 2010 rule as a starting point, the proposed regulations allow for State authorization reciprocity agreements and provide a student complaint process requirement to achieve a balance between appropriate oversight and burden level. The Department and non-Federal negotiators reached agreement on the provisions related to

foreign locations without considering specific alternative proposals.

#### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.50 *Institutional disclosures for distance education or correspondence education programs.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

#### Initial Regulatory Flexibility Analysis

The proposed regulations would affect institutions that participate in the title IV, HEA. The U.S. Small Business Administration (SBA) Size Standards define "for-profit institutions" as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. The SBA Size Standards define "not-for-profit institutions" as "small organizations" if they are independently owned and operated and not dominant in their field of operation, or as "small entities" if they are institutions controlled by governmental entities with populations below 50,000. Under these definitions, approximately 4,267 of the IHEs that would be subject to the proposed paperwork compliance provisions of the final regulations are small entities. Accordingly, we have prepared this initial regulatory

flexibility analysis to present an estimate of the effect on small entities of the proposed regulations. The Department welcomes comments on this analysis and requests additional information to refine it.

**Description of the Reasons That Action by the Agency Is Being Considered**

The Secretary is proposing to amend the regulations governing the title IV, HEA programs to provide clarity to the requirements for, and options to: obtain State authorization of distance education, correspondence courses, and foreign locations; document the process to resolve complaints from distance education students in the State in which they reside; and make disclosures about distance education and correspondence courses.

**Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Regulations**

Section 101(a)(2) of the HEA defines the term “institution of higher education” to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State. Section 485(a)(1) of the HEA provides that an institution must disclose information about the institution’s accreditation and State authorization.

**Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Regulations Will Apply**

These proposed regulations would affect IHEs that participate in the Federal Direct Loan Program and borrowers. Approximately 60 percent of IHEs qualify as small entities, even if the range of revenues at the not-for-profit institutions varies greatly. Using data from IPEDS, the Department estimates that approximately 4,267 IHEs participating in the title IV, HEA programs qualify as small entities—1,878 are not-for-profit institutions, 2,099 are for-profit institutions with programs of two years or less, and 290 are for-profit institutions with four-year programs. The Department believes that most proprietary institutions that are heavily involved in distance education should not be considered small entities because the scale required to operate substantial distance education programs would put them above the relevant revenue threshold. However, the private non-profit sector’s involvement in the field may mean that a significant number of small entities could be affected. The Department also expects this to be the case for foreign locations of domestic institutions, with proprietary institutions operating foreign locations unlikely to be small entities and a number of private not-for-profit classified as small entities involved.

Distance education offers small entities, particularly not-for-profit entities of substantial size that are classified as small entities, an opportunity to serve students who could not be accommodated at their physical locations. Institutions that choose to provide distance education could potentially capture a larger share of the

higher education market. Overall, as of Fall 2013, approximately 13 percent of students receive their education exclusively through distance education while 73 percent took no distance education courses. However, at proprietary institutions almost 52 percent of students were exclusively distance education students and 40 percent had not enrolled in distance education courses. As discussed above, we assume that most of the proprietary institutions offering a substantial amount of distance education are not small entities, but if not-for-profit institutions expand their role in the distance education sector, small entities could increase their share of revenue. On the other hand, small entities that operate physical campuses could face more competition from distance education providers. The potential reshuffling of resources within higher education would occur regardless of the proposed regulations, but the clarity provided by the distance education requirements and the acceptance of State authorization reciprocity agreements could accelerate those changes.

However, in order to accommodate students through distance learning, institutions would face a number of costs, including the costs of complying with the authorization requirements of the proposed regulations. As with the broader set of institutions, the costs for small entities would vary based on the scope of the distance education they choose to provide, the States in which they operate, and the size of the institution. Applying the same costs from the National Council for State Authorization Reciprocity Agreements as in the Regulatory Impact Analysis, we estimate that small entities will face annual costs of \$7.0 million.

TABLE 3—ESTIMATED COSTS FOR STATE AUTHORIZATION OF DISTANCE EDUCATION FOR SMALL ENTITIES

Institutions	Count	SARA fees	Additional state fees
Private Not-for-Profit 2-year or less			
Under 2,500 .....	16	32,000	48,000
2,500 to 9,999 .....	—	—	—
10,000 or more .....	—	—	—
Proprietary 2-year or less			
Under 2,500 .....	109	218,000	327,000
2,500 to 9,999 .....	—	—	—
10,000 or more .....	—	—	—
Private Not-for-Profit 4-year			
Under 2,500 .....	474	948,000	1,422,000
2,500 to 9,999 .....	227	908,000	1,362,000
10,000 or more .....	44	264,000	440,000
Proprietary 4-year			
Under 2,500 .....	198	396,000	594,000
2,500 to 9,999 .....	—	—	—
10,000 or more .....	—	—	—
<b>Total</b>	<b>1,068</b>	<b>2,766,000</b>	<b>4,193,000</b>

**Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record**

Table 3 relates the estimated burden of each information collection

requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of the preamble. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of the 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 small entities participating in the title IV, HEA programs by 13,981 hours. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at [www.bls.gov/ncs/ect/sp/ecsuhst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuhst.pdf), is \$510,991. This cost was based on an hourly rate of \$36.55.

TABLE 4—PAPERWORK REDUCTION ACT BURDEN FOR SMALL ENTITIES

Provision	Reg section	OMB control number	Hours	Costs
Reporting related to foreign additional locations or branch campuses.	600.9 .....	1845-NEW1 .....	86	3,158
Public disclosure made to enrolled and prospective students in the institution's distance education programs or correspondence courses. Requires 7 disclosures related to State authorization, complaints process, adverse actions, refund policies, and whether the program meets prerequisites for licensure or certification..	668.50(b) .....	1845-NEW2 .....	13,623	497,921
Individualized disclosure to and attestation by enrolled and prospective students of distance education programs about adverse actions or the program not meeting licensure requirements in the student's State..	668.50(c) .....	1845-NEW2 .....	271	9,912
Total .....	.....	.....	13,981	510,991

**Identification, to the Extent Practicable, of All Relevant Federal Regulations that May Duplicate, Overlap, or Conflict with the Regulations**

The regulations are not expected to duplicate, overlap, or conflict with existing Federal regulations.

**Alternatives Considered**

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

**Paperwork Reduction Act of 1995**

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 600.9 and 668.50 contain information collection requirements. Under the PRA, the Department has

submitted a copy of these sections, and an Information Collection Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

**Background**

The following data will be used throughout this section: For the year 2014, there were 2,301 institutions that reported to IPEDS that they had enrollment of 2,834,045 students attending a program through distance education as follows:

1,172 public institutions reported 1,382,900 students attending a program through distance education;

761 private, not-for-profit institutions reported 608,038 students attending a program through distance education;

368 private, for-profit institutions reported 843,107 students attending a program through distance education.

According to information available from the Department's Postsecondary Education Participation System (PEPS), there are currently 80 domestic institutions with identified additional locations in 60 foreign countries; 35 public institutions, 42 private, not-for-profit institutions, and 3 private, for-profit institutions.

*Section 600.9 State Authorization*

State Authorization of Foreign Additional Locations and Branch Campuses of Domestic Institutions

*Requirements:* Proposed § 600.9(d)(1)(v) would specify that, for any foreign additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus, an institution would be required to report the establishment or operation of the foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State.

*Burden Calculation:* There will be burden on each domestic institution reporting the establishment or continued operation of a foreign additional location or branch campus to the State in which the main campus of the domestic institution is located. We estimate that each institution will require 2 hours annually to draft and submit the required notice. The total estimated burden would be 160 hours

under OMB Control Number 1845–NEW1. We estimate that 35 public institutions will require a total of 70 hours to draft and submit the required State notice (35 institutions × 2 hours). We estimate that 42 private, not-for-profit institutions will require a total of 84 hours to draft and submit the required State notice (42 institutions × 2 hours). We estimate that 3 private, for-profit institutions will require a total of 6 hours to draft and submit the required State notice (3 institutions × 2 hours).

The total estimated burden for 34 CFR 600.9 would be 160 hours under OMB Control Number 1845–NEW1.

*Section 668.50 Institutional Disclosures for Distance or Correspondence Programs*

*Requirements:* The Department proposes to add new § 668.50(b) and (c), which would require disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Seven proposed disclosures would be made publicly available, and three disclosures would require direct communication with enrolled and prospective students when certain conditions have been met. These proposed disclosures would not change any other required disclosures of subpart D of Student Assistance General Provisions.

*Public Disclosures*

Under proposed § 668.50(b)(1), an institution would be required to disclose whether or not the program offered through distance education or correspondence courses is authorized by each State in which enrolled students reside. If an institution is authorized through a State authorization reciprocity agreement, the institution would be required to disclose its authorization status under such an agreement.

Under proposed § 668.50(b)(2)(i), an institution authorized by a State agency would be required to disclose the process for submitting complaints to the appropriate State agency in the State in which the main campus of the institution is located, including contact information for the appropriate individuals at those State agencies that handle consumer complaints.

Under proposed § 668.50(b)(2)(ii), an institution authorized by a State authorization reciprocity agreement would be required to disclose the complaint process established by the reciprocity agreement, if the agreement established such a process. An institution would be required to provide a contact responsible for handling such

complaints, as set out in the State authorization reciprocity agreement.

Under proposed § 668.50(b)(3), an institution would be required to disclose the process for submitting complaints to the appropriate State agency in the State in which enrolled students reside, including contact information for the appropriate individuals at those State agencies that handle consumer complaints.

Under proposed § 668.50(b)(4), an institution would be required to disclose any adverse actions a State entity has initiated related to the institution's distance education programs or correspondence courses for a five calendar year period prior to the year in which the institution makes the disclosure.

Under proposed § 668.50(b)(5) an institution would be required to disclose any adverse actions an accrediting agency has initiated related to the institution's distance education programs or correspondence courses for a five calendar year period prior to the year in which the institution makes the disclosure.

Under proposed § 668.50(b)(6), an institution would be required to disclose any refund policies for the return of unearned tuition and fees with which the institution is required to comply by any State in which the institution enrolls students in a distance education program or correspondence courses. This disclosure would require publication of the State-specific requirements on the refund policies as well as any institutional refund policies that would be applicable to students enrolled in programs offered through distance education or correspondence courses with which the institution must comply.

Under proposed § 668.50(b)(7), an institution would be required to disclose the applicable educational prerequisites for professional licensure or certification which the program offered through distance education or correspondence course prepares the student to enter for each State in which students reside, and for which the institution has made a determination regarding such prerequisites. For any State for which an institution has not made a determination with respect to the licensure or certification requirement, an institution would be required to disclose a statement to that effect.

*Burden Calculation:* We anticipate that institutions will provide this information electronically to enrolled and prospective students regarding their distance education or correspondence courses. We estimate that the seven

public disclosure requirements would take institutions an average of 15 hours to research, develop, and post on a Web site. We estimate that 1,172 public institutions would require 17,580 hours to research, develop, and post on a Web site the required public disclosures (1,172 institutions × 15 hours). We estimate that 761 private, not-for-profit institutions would require 11,415 hours to research, develop, and post on a Web site the required public disclosures (761 institutions × 15 hours). We estimate that 368 private, for-profit institutions would require 5,520 hours to research, develop, and post on a Web site the required public disclosures (368 institutions × 15 hours).

The total estimated burden for proposed § 668.50(b) would be 34,515 hours under OMB Control Number 1845–NEW2.

*Individualized Disclosures*

Under proposed § 668.50(c)(1)(i), an institution would be required to provide an individualized disclosure to prospective students when it determines a program offered solely through distance education or correspondence courses does not meet licensure or certification prerequisites in the State of the student's residence.

Under proposed § 668.50(c)(1)(ii), an institution would be required to provide an individualized disclosure to both enrolled and prospective students within 30 days of when it becomes aware of any adverse action initiated by a State or an accrediting agency related to the institution's programs offered through distance education or correspondence courses; or within seven days of the institution's determination that a program ceases to meet licensure or certification prerequisites of a State.

For prospective students who receive any individualized disclosure and subsequently enroll, proposed § 668.50(c)(2) would require an institution to obtain an acknowledgment from the student that the communication was received prior to the student's enrollment in the program.

*Burden Calculation:* We anticipate that institutions will provide this information electronically to enrolled and prospective students regarding their distance education or correspondence courses. We estimate that institutions would take an average of 2 hours to develop the language for the individualized disclosures. We estimate that it would take an additional average of 4 hours for the institution to individually disclose this information to enrolled and prospective students for a total of 6 hours of burden to the



institutions. We estimate that five percent of institutions would meet the criteria to require these individual disclosures. We estimate that 59 public institutions would require 354 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (59 institutions × 6 hours). We estimate that 38 private, not-for-profit institutions would require 228 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (38 institutions × 6 hours). We

estimate that 18 private, for-profit institutions would require 108 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (18 institutions × 6 hours).

The total estimated burden for proposed § 668.50(c) would be 690 hours under OMB Control Number 1845–NEW2.

The combined total estimated burden for proposed § 668.50 would be 35,205 hours under OMB Control Number 1845–NEW2.

Consistent with the discussion above, the following chart describes the

sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using BLS wage data, available at [www.bls.gov/ncs/ect/sp/ecsuphst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf), is \$1,292,591 as shown in the chart below. This cost was based on an hourly rate of \$36.55 for institutions.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control number and estimated burden [change in burden]	Estimated costs
§ 600.9 .....	The proposed regulations would specify that, for any foreign additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus, an institution would be required to report the establishment or operation of the foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State.	1845–NEW1—This would be a new collection. We estimate that the burden would increase by 160 hours.	\$5,848
§ 668.50(b) .....	The proposed regulations would require institutions to produce disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Seven proposed disclosures must be made publicly available. These disclosures include: (1) Whether the distance education programs are authorized by the State where the student resides; (2) The process for submitting a complaint to the appropriate State agency in the State where the main campus of the institution is located; (3) The process for submitting a complaint if the institution is covered by a State authorization reciprocity agreement and it has such a process; (4) The disclosure of any adverse action initiated by the institution's State entity related to the distance education program; (5) The disclosure of any adverse action initiated by the institution's accrediting agency related to the distance education program; (6) The disclosure of any refund policy required by any State in which the institution enrolls students; (7) The disclosure of any determination made regarding whether or not the distance education program meets applicable prerequisites for professional licensure or certification in the State where the student resides, if such a determination has been made. If such a determination has not been made, a statement to that effect would be required.	1845–NEW2—This would be a new collection. We estimate that the burden would increase by 34,515 hours.	1,261,523
§ 668.50(c) .....	The proposed regulations would require institutions to produce disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Three proposed disclosures must be made available to individuals. These disclosures include: (1) Notice of an adverse action by the State or accrediting agency related to the distance education program. This disclosure must be provided within 30 days of when the institution becomes aware of the action; (2) Notice of the institution's determination that the distance education program no longer meets the prerequisites for licensure or certification of a State. This disclosure must be provided within 7 days of when the institution makes such a determination.	1845–NEW2—This would be a new collection. We estimate that the burden would increase by 690 hours	25,220

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control number	Total proposed burden hours	Proposed change in burden hours
1845-NEW1 .....	160	160
1845-NEW2 .....	35,205	35,205
Total .....	35,365	35,365

We have prepared an Information Collection Request (ICR) for these information collection requirements. If you want to review and comment on the ICR, please follow the instructions in the **ADDRESSES** section of this notice.

**Note:** The Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), and the Department of Education review all comments posted at [www.regulations.gov](http://www.regulations.gov).

In preparing your comments, you may want to review the ICR, including the supporting materials, in [www.regulations.gov](http://www.regulations.gov) by using the Docket ID number specified in this notice. These proposed collections are identified as proposed collections *1845-NEW1* and *1845-NEW2*.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on this ICR by August 24, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the ICRs for these proposed regulations, please specify the Docket ID number and indicate “Information Collection

Comments” on the top of your comments.

#### 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, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

#### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. “Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 600.9(c) and (d) may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person [one of the persons] listed under **FOR FURTHER INFORMATION CONTACT**.

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Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance: 84.007 FSEOG; 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; 84.379 TEACH Grant Program)

#### List of Subjects

##### 34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

##### 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: July 13, 2016.

**John B. King, Jr.,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600 and 668 as follows:

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

- 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 600.2 is amended by adding, in alphabetical order, a definition of “State authorization

reciprocity agreement” to read as follows:

§ 600.2 Definitions.

\* \* \* \* \*

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 in other States covered by the agreement and does not prohibit a participating State from enforcing its own consumer protection laws.

\* \* \* \* \*

■ 3. Section 600.9 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 600.9 State authorization.

\* \* \* \* \*

(c)(1)(i) If an institution described under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students 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 State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document to the Secretary the State’s approval.

(ii) If an institution described 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. The institution must, upon request, document its coverage under such an agreement to the Secretary.

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

from any of those enrolled students concerning the institution—

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

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

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

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

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

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

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

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

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

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

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

that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations the information regarding the student complaint process described in 34 CFR 668.43(b).

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

\* \* \* \* \*

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 4. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474, unless otherwise noted.

§ 668.2 [Amended]

■ 5. Section 668.2 is amended in paragraph (a) by adding to the list of definitions, in alphabetical order, “Distance education”.

■ 6. Section 668.50 is added to subpart D to read as follows:

§ 668.50 Institutional disclosures for distance or correspondence programs.

(a) General. In addition to the other institutional disclosure requirements established in this subpart, an institution described under 34 CFR 600.9(a)(1) that offers a program solely through distance education or correspondence courses 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 to provide the program by each State in which enrolled students reside; or

(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2;

(2)(i) If the institution is required to provide a disclosure under paragraph

(b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b); and

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9(c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

(3) A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(5) Any adverse actions an accrediting agency has initiated, and the years in

which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(6) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees; and

(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

(A) Each State in which the program's enrolled students reside; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect.

(c) *Individualized disclosures.* (1) An institution described under 34 CFR 600.9(a)(1) that offers a program solely

through distance education or correspondence courses must disclose directly and individually—

(i) To each prospective student, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence, prior to the student's enrollment; 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 7 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.

(Authority: 20 U.S.C. 1092)

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