

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

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

SOURCE: 53 FR 11210, Apr. 5, 1988, unless otherwise noted.

Subpart A—General

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

§ 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an educational institution qualifies in whole or in part as an eligible institution of higher education under the Higher Education Act of 1965, as amended (HEA). An eligible institution of higher education may apply to participate in programs authorized by the HEA (HEA programs).

(Authority: 20 U.S.C. 1088, 1094, 1099b, 1099c, and 1141)

§ 600.2 Definitions.

The following definitions apply to terms used in this part:

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

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

(2) Includes, but is not limited to—

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

(ii) Submitting an academic assignment;

(iii) Taking an assessment or an exam;

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

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

(vi) Interacting with an instructor about academic matters; and

(3) Does not include, for example—

(i) Living in institutional housing;

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

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

(iv) Participating in academic counseling or advisement.

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

Additional location: (1) A physical facility that is geographically separate from the main campus of the institution and within the same ownership structure of the institution, at which the institution offers at least 50 percent of an educational program. An additional location participates in the title IV, HEA programs only through the certification of the main campus.

(2) A Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution is considered to be an additional location even if a student receives instruction primarily through distance education or correspondence courses at that location.

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

Branch campus: A physical facility that is geographically separate from the main campus of the institution and within the same ownership structure of the institution, and that also—

(1) Is approved by the Secretary as a branch campus; and

(2) Is independent from the main campus, meaning the location—

(i) Is permanent in nature;

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

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

(iv) Has its own budgetary and hiring authority.

Clock hour: (1) A period of time consisting of—

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

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

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

(iv) In distance education, 50 to 60 minutes in a 60-minute period of attendance in—

(A) A synchronous or asynchronous class, lecture, or recitation where there is opportunity for direct interaction between the instructor and students; or

(B) An asynchronous learning activity involving academic engagement in which the student interacts with technology that can monitor and document the amount of time that the student participates in the activity.

(2) A clock hour in a distance education program does not meet the requirements of this definition if it does not meet all accrediting agency and State requirements or if it exceeds an agency's or State's restrictions on the number of clock hours in a program that may be offered through distance education.

(3) An institution must be capable of monitoring a student's attendance in 50 out of 60 minutes for each clock hour under this definition.

Confined or incarcerated individual: An individual who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution. An individual is not considered incarcerated if that individual is subject to or serving an involuntary civil commitment, in a half-way house or home detention, or is sentenced to serve only weekends.

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructors. Interaction between instructors and students in a correspondence course is limited, is not

regular and substantive, and is primarily initiated by the student.

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

(3) A correspondence course is not distance education.

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of student work defined by an institution, as approved by the institution's accrediting agency or State approval agency, that is consistent with commonly accepted practice in postsecondary education and that—

(1) Reasonably approximates not less than—

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

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

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

Distance education: (1) Education that uses one or more of the technologies listed in paragraphs (2)(i) through (iv) of this definition to deliver instruction to students who are separated from the instructor or instructors and to support regular and substantive interaction between the students and the instructor or instructors, either synchronously or asynchronously.

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

(i) The internet;

(ii) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave,

broadband lines, fiber optics, satellite, or wireless communications devices;

(iii) Audio conference; or

(iv) Other media used in a course in conjunction with any of the technologies listed in paragraphs (2)(i) through (iii) of this definition.

(3) For purposes of this definition, an instructor is an individual responsible for delivering course content and who meets the qualifications for instruction established by an institution's accrediting agency.

(4) For purposes of this definition, substantive interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least two of the following—

(i) Providing direct instruction;

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

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

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

(v) Other instructional activities approved by the institution's or program's accrediting agency.

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

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

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

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

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as

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described in 34 CFR part 668, subpart O; and

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

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

Eligible institution: An institution that—

(1) Qualifies as—

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

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

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

(2) Meets all the other applicable provisions of this part.

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

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

(1) Are accused of committing a delinquent act;

(2) Have been adjudicated delinquent; or

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

Main campus: The primary physical facility at which the institution offers eligible programs, within the same ownership structure of the institution, and certified as the main campus by the Department and the institution’s accrediting agency.

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

Nonprofit institution: (1) A nonprofit institution is a domestic public or private institution or foreign institution as to which the Secretary determines that no part of the net earnings of the institution benefits any private entity or natural person and that meets the requirements of paragraphs (2) through (4) of this definition, as applicable.

(2) When making the determination under paragraph (1) of this definition, the Secretary considers the entirety of the relationship between the institution, the entities in its ownership structure, and other parties. For example, a nonprofit institution is generally not an institution that—

(i) Is an obligor (either directly or through any entity in its ownership chain) on a debt owed to a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution;

(ii) Either directly or through any entity in its ownership chain, enters into or maintains a revenue-sharing agreement, unless the Secretary determines that the payments and the terms under the revenue-sharing agreement are reasonable, based on the market price and terms for such services or materials, and the price bears a reasonable relationship to the cost of the services or materials provided, with—

(A) A former owner or current or former employee of the institution or member of its board; or

(B) A natural person or entity related to or affiliated with the former owner or current or former employee of the institution or member of its board;

(iii) Is a party (either directly or indirectly) to any other agreements (including lease agreements) under which the institution is obligated to make any payments, unless the Secretary determines that the payments and terms under the agreement are comparable to payments in an arm's-length transaction at fair market value, with—

(A) A former owner or current or former employee of the institution or member of its board; or

(B) A natural person or entity related to or affiliated with the former owner or current or former employee of the institution or member of its board; or

(iv) Engages in an excess benefit transaction with any natural person or entity.

(3) A private institution is a “non-profit institution” only if it meets the requirements in paragraph (1) of this definition and is—

(i) Owned and operated by one or more nonprofit corporations or associations;

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

(iii) Determined by the U.S. Internal Revenue Service to be an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(4) A foreign institution is a “non-profit institution” only if it meets the requirements in paragraph (1) of this definition and is—

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

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

(B) If no recognized tax authority of the institution's home country is recognized by the Secretary for purposes

of making determinations of an institution's nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

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

Preaccreditation: The status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time (sometimes referred to as “candidacy”).

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

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

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

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

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

Recognized occupation: An occupation that is—

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

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

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

Religious mission: A published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

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

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

State authorization reciprocity 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 located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.

Teach-out: A process during which a program, institution, or institutional location that provides 100 percent of at least one program engages in an orderly closure or when, following the closure of an institution or campus, another institution provides an opportunity for the students of the closed school to complete their program, regardless of their academic progress at the time of closure.

Teach-out agreement: A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity

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for students to complete their program of study if an institution, or an institutional location that provides 100 percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

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

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998; 64 FR 58615, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006; 74 FR 55425, Oct. 27, 2009; 74 FR 55932, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010, 75 FR 67192, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014; 81 FR 92262, Dec. 19, 2016; 84 FR 58914, Nov. 1, 2019; 85 FR 54808, Sept. 2, 2020; 87 FR 65485, Oct. 28, 2022]

§ 600.3 [Reserved]

§ 600.4 Institution of higher education.

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

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

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

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

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

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

(4)(i) Provides an educational program—

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

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

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

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

(5) Is—

(i) Accredited or preaccredited; or

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58615, Oct. 29, 1999; 74 FR 55932, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010; 84 FR 58915, Nov. 1, 2019; 87 FR 65486, Oct. 28, 2022]

§ 600.5 Proprietary institution of higher education.

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

(1) Is not a public or private non-profit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

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

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

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the in-

stitution is physically located in accordance with § 600.9;

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

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

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

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

(6) Is accredited; and

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

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

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

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

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

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational

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program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

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

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

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

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

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

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that is a general instructional program falling within one or more of the following generally accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently designed programs, individualized programs, and unstructured studies:

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

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

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

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in

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paragraphs (e)(1) through (3) of this section.

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

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§ 600.6 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private nonprofit educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

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

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

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

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

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

(5) Is—

(i) Accredited or preaccredited; or

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

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

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

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

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

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

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

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

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education;

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

(iv) Except as provided in paragraph (b)(3)(iii) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher

education or postsecondary vocational institution.

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58616, Oct. 29, 1999; 74 FR 55933, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010; 84 FR 58915, Nov. 1, 2019]

§ 600.7 Conditions of institutional ineligibility.

(a) *General rule.* For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if—

(1) For its latest complete award year—

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

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

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

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

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

(A) Files for relief in bankruptcy, or

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

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

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

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

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

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

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

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

(2) *Calculating the number of correspondence students.* For purposes of paragraph (a)(1)(ii) of this section, a student is considered “enrolled in correspondence courses” if the student’s enrollment in correspondence courses constituted more than 50 percent of the courses in which the student enrolled during an award year.

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

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor’s-degree program if the students enrolled in the institution’s correspondence courses receive no

more than 5 percent of the title IV, HEA program funds received by students at that institution.

(c) *Special provisions regarding confined or incarcerated individuals.* (1)(i) The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma and has continuously provided an eligible prison education program approved by the Department under subpart P of 34 CFR part 668 for at least two years.

(ii) The Secretary does not grant the waiver of the prohibition contained in paragraph (a)(1)(iii) of this section if—

(A) For a program described under paragraph (c)(3)(ii) of this section, the program does not maintain a completion rate of 50 percent or greater; or

(B) For an institution described under paragraph (c)(2) or (3) of this section—

(1) The institution provides one or more eligible prison education programs that is not compliant with the requirements of 34 CFR part 668, subpart P; or

(2) The institution is not administratively capable under 34 CFR 668.16 or financially responsible under 34 CFR part 668, subpart L.

(2) If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma, the Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma, the Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section on a program-by-program basis—

(i) For the four-year and two-year programs for which the institution

awards a bachelor's degree, an associate degree, or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the confined or incarcerated individuals who are regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(4)(i)(A) For five years after the Secretary grants the waiver, no more than 50 percent of the institution's regular enrolled students may be confined or incarcerated individuals; and

(B) Following the period described in paragraph (c)(4)(i)(A) of this section, no more than 75 percent of the institution's regular enrolled students may be confined or incarcerated individuals.

(ii) The limitations in paragraph (c)(4)(i) of this section do not apply if the institution is a public institution chartered for the explicit purpose of educating confined or incarcerated individuals, as determined by the Secretary, and all students enrolled in the institution's prison education program are located in the State where the institution is chartered.

(5) The Secretary limits or terminates the waiver described in this section if the Secretary determines the institution no longer meets the requirements established under paragraph (c)(1) of this section.

(6) If the Secretary limits or terminates an institution's waiver under paragraph (c) of this section, the institution ceases to be eligible for the title IV, HEA programs at the end of the award year that begins after the Secretary's action unless the institution, by that time—

(i) Demonstrates to the satisfaction of the Secretary that it meets the requirements under paragraph (c)(1) of this section; and

(ii) The institution does not enroll any additional confined or incarcerated individuals upon the limitation or termination of the waiver and reduces its enrollment of confined or incarcerated individuals to no more than 25 percent of its regular enrolled students.

(d) *Special provision for a nonprofit institution if more than 50 percent of its enrollment consists of students who do not have a high school diploma or its equivalent.* (1) Subject to the provisions con-

tained in paragraphs (d)(2) and (d)(3) of this section, the Secretary waives the limitation contained in paragraph (a)(1)(iv) of this section for a nonprofit institution if that institution demonstrates to the Secretary's satisfaction that it exceeds that limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

(2) *Number of critical students.* The Secretary grants a waiver under paragraph (d)(1) of this section only if no more than 40 percent of the institution's enrollment of regular students consists of students who—

(i) Do not have a high school diploma or its equivalent; and

(ii) Are not served through contracts described in paragraph (d)(3) of this section.

(3) *Contracts with Federal, State, or local government agencies.* For purposes of granting a waiver under paragraph (d)(1) of this section, the contracts referred to must be with Federal, State, or local government agencies for the purpose of providing job training to low-income individuals who are in need of that training. An example of such a contract is a job training contract under the Job Training Partnership Act (JPTA).

(e) *Special provisions.* (1) For purposes of paragraph (a)(1) of this section, when counting regular students, the institution shall—

(i) Count each regular student without regard to the full-time or part-time nature of the student's attendance (i.e., "head count" rather than "full-time equivalent");

(ii) Count a regular student once regardless of the number of times the student enrolls during an award year; and

(iii) Determine the number of regular students who enrolled in the institution during the relevant award year by—

(A) Calculating the number of regular students who enrolled during that award year; and

(B) Excluding from the number of students in paragraph (e)(1)(iii)(A) of this section, the number of regular students who enrolled but subsequently

withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees less any administrative fee that the institution is permitted to keep under its fair and equitable refund policy.

(2) For the purpose of calculating a completion rate under paragraph (c)(3)(ii) of this section, the institution shall—

(i) Determine the number of regular incarcerated students who enrolled in the other programs during the last completed award year;

(ii) Exclude from the number of regular incarcerated students determined in paragraph (e)(2)(i) of this section, the number of those students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees, less any administrative fee the institution is permitted to keep under the institution's fair and equitable refund policy;

(iii) Exclude from the total obtained in paragraph (e)(2)(ii) of this section, the number of those regular incarcerated students who remained enrolled in the programs at the end of the applicable award year;

(iv) From the total obtained in paragraph (e)(2)(iii) of this section, determine the number of regular incarcerated students who received a degree, certificate, or other recognized educational credential awarded for successfully completing the program during the applicable award year; and

(v) Divide the total obtained in paragraph (e)(2)(iv) of this section by the total obtained in paragraph (e)(2)(iii) of this section and multiply by 100.

(f)(1) If the Secretary grants a waiver to an institution under this section, the waiver extends indefinitely provided that the institution satisfies the waiver requirements in each award year.

(2) If an institution fails to satisfy the waiver requirements for an award year, the institution becomes ineligible on June 30 of that award year.

(g)(1) For purposes of paragraph (a)(1) of this section, and any applicable waiver or exception under this section, the institution shall substantiate the required calculations by having the

certified public accountant who prepares its audited financial statement under 34 CFR 668.15 or its title IV, HEA program compliance audit under 34 CFR 668.23 report on the accuracy of those determinations.

(2) The certified public accountant's report must be based on performing an "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with or as part of the audit report referenced in paragraph (g)(1) of this section.

(3) The certified public accountant's attestation report must indicate whether the institution's determinations regarding paragraph (a)(1) of this section and any relevant waiver or exception under paragraphs (b), (c), and (d) of this section are accurate; *i.e.*, fairly presented in all material respects.

(h) *Notice to the Secretary.* An institution shall notify the Secretary—

(1) By July 31 following the end of an award year if it falls within one of the prohibitions contained in paragraph (a)(1) of this section, or fails to continue to satisfy a waiver or exception granted under this section; or

(2) Within 10 days if it falls within one of the prohibitions contained in paragraphs (a)(2) or (a)(3) of this section.

(i) *Regaining eligibility.* (1) If an institution loses its eligibility because of one of the prohibitions contained in paragraph (a)(1) of this section, to regain its eligibility, it must demonstrate—

(i) Compliance with all eligibility requirements;

(ii) That it did not fall within any of the prohibitions contained in paragraph (a)(1) of this section for at least one award year; and

(iii) That it changed its administrative policies and practices to ensure that it will not fall within any of the prohibitions contained in paragraph (a)(1) of this section.

(2) If an institution loses its eligibility because of one of the prohibitions contained in paragraphs (a)(2) and (a)(3) of this section, this loss is

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permanent. The institution's eligibility cannot be reinstated.

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

[59 FR 22336, Apr. 29, 1994; 59 FR 32082, June 22, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 34430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006; 85 FR 54810, Sept. 2, 2020; 87 FR 65486, Oct. 28, 2022]

§ 600.8 Treatment of a branch campus.

A branch campus of an eligible proprietary institution of higher education or a postsecondary vocational institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

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

[64 FR 58616, Oct. 29, 1999, as amended at 67 FR 67070, Nov. 1, 2002]

§ 600.9 State authorization.

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

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

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

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable

organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

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

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

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

(i) The Federal Government; or

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

(b) An institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt as a religious institution from State authorization under the State constitution or by State law.

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

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education

or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State not relating to State authorization of distance education. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(c)(2)(i) For purposes of this section, an institution must make a determination, in accordance with the institution's policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(ii) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.

(iii) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures, that the student's location has changed to another State.

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

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

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military

base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

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

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with § 602.22(a)(2)(ix) and (c).

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

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

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

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

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

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional

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location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

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

[75 FR 66946, Oct. 29, 2010, as amended at 81 FR 92262, Dec. 19, 2016; 81 FR 92261, Dec. 19, 2016; 85 FR 58915, Nov. 1, 2019]

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

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

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

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

(2) [Reserved]

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

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

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

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

(ii) The location is licensed and accredited, the institution does not have

to apply to the Secretary for approval of that location under § 600.20(c), and the institution has reported to the Secretary that location under § 600.21.

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

(i) Pursuant to a requirement regarding additional programs included in the institution's Program Participation Agreement (PPA) under 34 CFR 668.14;

(ii) For the first direct assessment program under 34 CFR 668.10, the first direct assessment program offered at each credential level, and for a comprehensive transition and postsecondary program under 34 CFR 668.232;

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3); and

(iv) For the first eligible prison education program under subpart P of 34 CFR part 668 offered at the first two additional locations as defined under § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution.

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

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

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

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

(d) *Duration of eligibility.* (1) If an institution participates in the title IV,

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HEA programs, the Secretary's designation of the institution as an eligible institution under the title IV, HEA programs expires when the institution's program participation agreement, as described in 34 CFR part 668, subpart B, expires.

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

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 65 FR 65671, Nov. 1, 2000; 71 FR 45692, Aug. 9, 2006; 75 FR 66676, Oct. 29, 2010; 79 FR 65006, Oct. 31, 2014; 84 FR 31452, July 1, 2019; 85 FR 54810, Sept. 2, 2020; 87 FR 63691, Oct. 20, 2022; 87 FR 65487, Oct. 28, 2022]

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§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) *Change of accrediting agencies.* (1) For purposes of §§ 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides the following to the Secretary and receives approval:

(i) All materials related to its prior accreditation or preaccreditation.

(ii) Materials demonstrating reasonable cause for changing its accrediting agency. The Secretary will not determine such cause to be reasonable if the institution—

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

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(2) Notwithstanding paragraph (a)(1)(ii) of this section, the Secretary may determine the institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights as defined in § 602.25, the agency applied its standards and criteria inconsistently, or if the adverse action or show cause or suspension order was the result of an agency's failure to respect an institution's stated mission, including religious mission.

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

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

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

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

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

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(ii) Notwithstanding paragraphs (b)(2)(i)(A) and (B) of this section, the Secretary may determine the institution's cause for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on that agency's geographic area, program-area focus, or mission; and

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

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

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

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

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

(ii) Is not related to its failure to satisfy the accrediting agency's standards.

(2) If the Secretary considers an unaccredited institution to be accred-

ited or preaccredited under the provisions of paragraph (d)(1) of this section, the Secretary will consider that unaccredited institution to be accredited or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.

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

[59 FR 22336, Apr. 29, 1994, as amended at 85 FR 58916, Nov.1, 2019]

§ 600.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[84 FR 58916, Nov. 1, 2019]

Subpart B—Procedures for Establishing Eligibility

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

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

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

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

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

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

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

(ii) Whether the school offers—

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

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

(C) Both; and

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

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

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

(A) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institu-

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tion's current eligibility and certification designation;

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

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

(ii) The Secretary must ensure prompt action is taken by the Department on any materially complete application required under paragraph (a)(2)(i) of this section.

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

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

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

(ii) Whether the school offers—

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

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

(C) Both; and

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

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

scope must apply to the Secretary and wait for approval to—

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

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

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

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

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

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

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

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

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

(5) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, add a location that offers all or a portion of the foreign graduate medical school's core clinical training or required clinical rotations, except for those locations that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and if the program qualifies, the date of eligibility.

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

(f) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (f)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (f)(1)(i) of this section may disburse title IV, HEA program funds to its students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 668.13(b)(2), and has not received a final decision from the Department on that application.

(2)(i) Except as provided under paragraph (f)(2)(ii) of this section and 34 CFR 668.26, if a private nonprofit, private for-profit, or public institution submits an application under paragraph (b)(2)(ii) or (iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change of ownership or status until the institution receives the Secretary's notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (f)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary issues a provisional extension of certification under paragraph (g) of this section.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch until the institution receives the Secretary's notification that the location, program, or branch is eligible to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary's approval of a new location, program, increased level of program offering, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburses to students enrolled at that location or branch or in that program.

(g) *Application for provisional extension of certification.* (1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in §600.31, the Secretary may continue the institution's participation in those programs on a provisional basis if—

(i) No later than 90 days prior to the change in ownership, the institution provides the Secretary notice of the proposed change on a fully completed form designated by the Secretary and supported by the State authorization and accrediting documents identified in paragraphs (g)(3)(i) and (ii) of this section, and supported by copies of the financial statements identified in paragraphs (g)(3)(iii) and (iv) of this section;

(ii) The institution promptly reports to the Secretary any changes to the proposed ownership structure identified under paragraph (g)(1)(i) of this section, provided that the change in ownership cannot occur earlier than 90

days following the date the change is reported to the Secretary; and

(iii) The institution under the new ownership submits a “materially complete application” that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) Notwithstanding the submission of the items under paragraph (g)(1) of this section, the Secretary may determine that the participation of the institution should not be continued following the change in ownership.

(3) For purposes of this section, a private nonprofit institution, a private for-profit institution, or a public institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution’s State license or equivalent document that authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located, supplemented with documentation that, as of the day before the change in ownership, the State license remained in effect;

(ii) A copy of the document from the institution’s accrediting agency that granted or will grant the institution accreditation status, including approval of any non-degree programs it offers, supplemented with documentation that, as of the day before the change in ownership, the accreditation remained in effect;

(iii) Audited financial statements for the institution’s two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23;

(iv)(A) Audited financial statements for the institution’s new owner’s two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23, or equivalent financial statements for that owner that are acceptable to the Secretary; or

(B) If such financial statements are not available, financial protection in the amount of—

(1) At least 25 percent of the institution’s prior year volume of title IV aid if the institution’s new owner does not have two years of acceptable audited financial statements; or

(2) At least 10 percent of the institution’s prior year volume of title IV aid if the institution’s new owner has only one year of acceptable audited financial statements; and

(v) If deemed necessary by the Secretary, financial protection in the amount of an additional 10 percent of the institution’s prior year volume of title IV aid, or a larger amount as determined by the Secretary. If any entity in the new ownership structure holds a 50 percent or greater direct or indirect voting or equity interest in another institution or institutions, the financial protection may also include the prior year volume of title IV aid, or a larger amount as determined by the Secretary, for all institutions under such common ownership.

(4) The institution must notify enrolled and prospective students of the proposed change in ownership, and submit evidence that such disclosure was made, no later than 90 days prior to the change.

(h) *Terms of the extension.* (1) If the Secretary approves the institution’s materially complete application, the Secretary provides the institution with a temporary provisional Program Participation Agreement (TPPPA).

(2) The TPPPA expires on the earlier of—

(i) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (h)(3) of this section apply;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The date on which the Secretary co-signs a new provisional program participation agreement (PPPA).

(3) If the TPPPA will expire under the provisions of paragraph (h)(2)(i) of this section, the Secretary extends the provisional TPPPA on a month-to-month basis after the expiration date described in paragraph (h)(2)(i) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) An audited “same-day” balance sheet for a proprietary institution or an audited statement of financial position for a nonprofit institution;

(ii) If not already provided, approval of the change of ownership from each State in which the institution is physically located or for an institution that offers only distance education, from the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

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

[85 FR 54810, Sept. 2, 2020, as amended at 86 FR 49479, Sept. 3, 2021; 87 FR 65487, Oct. 28, 2022]

§ 600.21 Updating application information.

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

(1) Its name, the name of a branch, or the name of a previously reported location.

(2) Its address, the address of a branch, or the address of a previously reported location.

(3) Its establishment of an accredited and licensed additional location at which it offers or will offer 50 percent or more of an educational program if the institution wants to disburse title IV, HEA program funds to students enrolled at that location, under the provisions in paragraph (d) of this section.

(4) Except as provided in 34 CFR 668.10, the way it measures program length (*e.g.*, from clock hours to credit hours, or from semester hours to quarter hours).

(5) A decrease in the level of program offering (*e.g.* the institution drops its graduate programs).

(6)(i) *Changes in ownership.* (A) Any change in the ownership of the institution, whereby a natural person or entity acquires at least a 5 percent ownership interest (direct or indirect) of the institution but that does not result in

a change of control as described in § 600.31.

(B) Changes representing at least 5 percent but under 25 percent (either on a single or combined basis) must be reported quarterly (instead of within 10 days) based on the institution's fiscal year. However, when an institution plans to undergo a change in ownership, all unreported ownership changes of 5 percent or more in the existing ownership must be reported prior to submission of the 90-day notice required by § 600.20. Thereafter, any changes of 5 percent or more in the existing ownership must be reported within the 10-day deadline, up through the date of the change in ownership.

(ii) *Changes in control.* A natural person or legal entity's ability to affect substantially the actions of the institution if that natural person or legal entity did not previously have this ability. The Secretary considers a natural person or legal entity to have this ability if—

(A) The natural person acquires, alone or together with another member or members of their family, at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution;

(B) The entity acquires, alone or together with an affiliated natural person or entity, at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution;

(C) The natural person or entity acquires, alone or together with another natural person or entity, under a voting trust, power of attorney, proxy, or similar agreement, at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution;

(D) The natural person becomes a general partner, managing member, chief executive officer, trustee or co-trustee of a trust, chief financial officer, director, or other officer of the institution or of an entity that has at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution; or

(E) The entity becomes a general partner or managing member of an entity that has at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution.

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(7) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.

(8) The closure of a branch campus or additional location that the institution was required to report to the Secretary.

(9) The governance of a public institution.

(10) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, the school adds a location that offers all or a portion of the school's clinical rotations that are not required, except for those that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA), or that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.

(11) For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—

(i) Establishing the eligibility or re-establishing the eligibility of the program;

(ii) Discontinuing the program's eligibility;

(iii) Ceasing to provide the program for at least 12 consecutive months;

(iv) Losing program eligibility under § 600.40; or

(v) Changing the program's name, CIP code or

(12) Its addition of a second or subsequent direct assessment program.

(13) Its establishment of a written arrangement for an ineligible institution or organization to provide more than 25 percent of a program pursuant to 34 CFR 668.5(c).

(14) Its establishment or addition of an eligible prison education program at an additional location as defined under § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution that was not previously included in the institution's application for approval as described under § 600.10.

(15) Any change in the ownership of the institution that does not result in

a change of control as described in § 600.31 and is not addressed under paragraph (a)(6) of this section, including the addition or elimination of any entities in the ownership structure, a change of entity from one type of business structure to another, and any excluded transactions under § 600.31(e).

(b) *Additional reporting from institutions owned by publicly traded corporations.* An institution that is owned by a publicly traded corporation must report to the Secretary any change in the information described in paragraph (a)(6) or (15) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

(c) *Secretary's response to reporting.* The Secretary notifies an institution if any reported changes affects the institution's eligibility, and the effective date of that change.

(d) *Disbursement rules related to additional locations.* When an institution must report to the Secretary about an additional location under paragraph (a)(3) of this section, the institution may not disburse title IV, HEA funds to students at that location before it reports to the Secretary about that location. Unless it is an institution that must apply to the Secretary under § 600.20(c)(1), once it reports to the Secretary about that location, the institution may disburse those funds to those students if that location is licensed and accredited.

(e) *Consequence of failure to report.* An institution's failure to inform the Secretary of a change described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against the institution.

(f) *Definition.* A family member includes a person's—

(1) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or step-grandchild;

(2) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child's spouse; and

(4) Sibling's spouse.

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[65 FR 65673, Nov. 1, 2000, as amended at 67 FR 67070, Nov. 1, 2002; 71 FR 45692, Aug. 9, 2006; 75 FR 67193, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014; 84 FR 31452, July 1, 2019; 85 FR 54812, Sept. 2, 2020; 87 FR 65488, Oct. 28, 2022]

§ 600.22 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

[87 FR 65488, Oct. 28, 2022]

Subpart C—Maintaining Eligibility

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

§ 600.30 [Reserved]

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

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

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

- (i) No later than 10 business days after the change occurs; or
- (ii) For an institution owned by a publicly-traded corporation, no later

than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

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

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

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

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

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

(i) A corporation that qualifies under the law of the State of its incorporation or organization as a statutory close corporation; or

(ii) If the State of incorporation or organization has no statutory close corporation provision, a corporation the stock of which—

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

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

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

Ownership or ownership interest. (i) Ownership or ownership interest means a direct or indirect legal or beneficial interest in an institution or legal entity, which may include a voting interest or a right to share in profits.

(ii) For the purpose of determining whether a change in ownership has occurred, changes in the ownership of the following are not included:

(A) A mutual fund that is regularly and publicly traded.

(B) A U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7).

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

(D) An employee stock ownership plan (ESOP).

Parent. The legal entity that controls the institution or a legal entity directly or indirectly through one or more intermediate entities.

Person. Person includes a natural person or a legal entity, including a trust.

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

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

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

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

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

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

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

(ii) (A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A

controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

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

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

(3) *Other entities.* (i) The term “other entities” means any entity that is not closely held nor required to be registered with the SEC, and includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities.

(ii) The Secretary deems the following changes to constitute a change in ownership resulting in a change of control of such an entity:

(A) A person (or combination of persons) acquires at least 50 percent of the total outstanding voting interests in the entity, or otherwise acquires 50 percent control.

(B) A person (or combination of persons) who holds less than a 50 percent voting interest in an entity acquires at least 50 percent of the outstanding voting interests in the entity, or otherwise acquires 50 percent control.

(C) A person (or combination of persons) who holds at least 50 percent of the voting interests in the entity

ceases to hold at least 50 percent voting interest in the entity, or otherwise ceases to hold 50 percent control.

(D) A partner in a general partnership acquires or ceases to own at least 50 percent of the voting interests in the general partnership, or otherwise acquires or ceases to hold 50 percent control.

(E) Any change of a general partner of a limited partnership (or similar entity) if that general partner also holds an equity interest.

(F) Any change in a managing member of a limited liability company (or similar entity) if that managing member also holds an equity interest.

(G) Notwithstanding its voting interests, a person becomes the sole member or shareholder of a limited liability company or other entity that has a 100 percent or equivalent direct or indirect interest in the institution.

(H) An entity that has a member or members ceases to have any members.

(I) An entity that has no members becomes an entity with a member or members.

(J) A person is replaced as the sole member or shareholder of a limited liability company or other entity that has a 100 percent or equivalent direct or indirect interest in the institution.

(K) The addition or removal of any entity that provides or will provide the audited financial statements to meet any of the requirements in § 600.20(g) or (h) or 34 CFR part 668, subpart L.

(L) Except as provided in paragraph (e) of this section, the transfer by an owner of 50 percent or more of the voting interests in the institution or an entity to an irrevocable trust.

(M) Except as provided in paragraph (e) of this section, upon the death of an owner who previously transferred 50 percent or more of the voting interests in an institution or an entity to a revocable trust.

(iii) The Secretary deems the following interests to satisfy the 50 percent thresholds described in paragraph (c)(3)(ii) of this section:

(A) A combination of persons, each of whom holds less than 50 percent ownership interest in an entity, holds a combined ownership interest of at least 50 percent as a result of proxy agreements, voting agreements, or other

agreements (whether or not the agreement is set forth in a written document), or by operation of State law.

(B) A combination of persons, each of whom holds less than 50 percent ownership interest in an entity, holds a combined ownership interest of at least 50 percent as a result of common ownership, management, or control of that entity, either directly or indirectly.

(C) A combination of individuals who are family members as defined in § 600.21, each of whom holds less than 50 percent ownership interest in an entity, holds a combined ownership interest of at least 50 percent.

(iv) Notwithstanding paragraphs (c)(3)(ii) and (iii) of this section—

(A) If a person who alone or in combination with other persons holds less than a 50 percent ownership interest in an entity, the Secretary may determine that the person, either alone or in combination with other persons, has actual control over that entity and is subject to the requirements of this section; and

(B) Any person who alone or in combination with other persons has the right to appoint a majority of any class of board members of an entity or an institution is deemed to have control.

(4) *Wholly owned subsidiary.* An entity that is a wholly owned subsidiary changes ownership and control when its parent entity changes ownership and control as described in this section.

(5) *Nonprofit institution.* A nonprofit institution changes ownership and control when a change takes place that is described in paragraphs (c)(3) and (d) of this section.

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

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

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

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

- (1) The sale of the institution;
- (2) The transfer of the controlling interest of stock of the institution or its parent corporation;
- (3) The merger of two or more eligible institutions;
- (4) The division of one institution into two or more institutions;
- (5) The transfer of the liabilities of an institution to its parent corporation;
- (6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets;
- (7) A change whereby the institution's ownership changes from an entity that is for-profit, nonprofit, or public to another one of those statuses. However, when an institution's ownership changes from a for-profit entity to a nonprofit entity or becomes affiliated with a public system, the institution remains a proprietary institution until the Department approves the change of status for the institution; or
- (8) The acquisition of an institution to become an additional location of another institution unless the acquired institution closed or ceased to provide educational instruction.

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

- (1) From an owner to a “family member” of that owner as defined in § 600.21(f);
- (2) As a result of a transfer of an owner's interest in the institution or an entity to an irrevocable trust, so long as the trustees only include the owner and/or a family member as defined in § 600.21(f). Upon the appointment of any non-family member as trustee for an irrevocable trust (or successor trust),

the transaction is no longer excluded and is subject to the requirements of § 600.20(g) and (h);

(3) Upon the death of a former owner who previously transferred an interest in the institution or an entity to a revocable trust, so long as the trustees include only family members (as defined in § 600.21(f)) of that former owner. Upon the appointment of any non-family member as trustee for the trust (or a successor trust) following the death of the former owner, the transaction is no longer excluded and is subject to the requirements of § 600.20(g) and (h); or

(4) A transfer to an individual owner with a direct or indirect ownership interest in the institution who has been involved in the management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer, either upon the death of another owner or by transfer from another individual owner who has been involved in the management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer, upon the resignation of that owner from the management of the institution.

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

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 33430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 65 FR 65673, Nov. 1, 2000; 67 FR 67070, Nov. 1, 2002; 84 FR 58916, Nov. 1, 2019; 87 FR 65488, Oct. 28, 2022]

§ 600.32 Eligibility of additional locations.

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

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

- (1) The location was a facility of another institution that has closed or ceased to provide educational programs

for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

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

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

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

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

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

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

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

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

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

(i) The closed institution ceased operations, or the closing institution is engaged in an orderly teach-out plan

and the Secretary has evaluated and approved that plan; and

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

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

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

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

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

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 74 FR 55933, Oct. 29, 2009; 84 FR 58916, Nov. 1, 2019]

§ 600.33 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its

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provisions to any person, act, or practice shall not be affected thereby.

[84 FR 58917, Nov. 1, 2019]

Subpart D—Loss of Eligibility

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

§ 600.40 Loss of eligibility.

(a)(1) Except as provided in paragraphs (a) (2) and (3) of this section, an institution, or a location or educational program of an institution, loses its eligibility on the date that—

(i) The institution, location, or educational program fails to meet any of the eligibility requirements of this part;

(ii) The institution or location permanently closes;

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

(iv) For purposes of the title IV, HEA programs—

(A) The institution's period of participation as specified under 34 CFR 668.13 expires; or

(B) The institution's provisional certification is revoked under 34 CFR 668.13.

(2) If an institution loses its eligibility because it violated the requirements of § 600.5(a)(8), as evidenced by the determination under provisions contained in § 600.5(d), it loses its eligibility on the last day of the fiscal year used in § 600.5(d), except that if an institution's latest fiscal year was described in § 600.7(h)(1), it loses its eligibility as of June 30, 1994.

(3) If an institution loses its eligibility under the provisions of § 600.7(a)(1), it loses its eligibility on the last day of the award year being evaluated under that provision.

(b) If the Secretary undertakes to terminate the eligibility of an institution because it violated the provisions of § 600.5(a)(8) or § 600.7(a), and the institution requests a hearing, the presiding official must terminate the institution's eligibility if it violated those

provisions, notwithstanding its status at the time of the hearing.

(c)(1) If the Secretary designates an institution or any of its educational programs or locations as eligible on the basis of inaccurate information or documentation, the Secretary's designation is void from the date the Secretary made the designation, and the institution or program or location, as applicable, never qualified as eligible.

(2) If an institution closes its main campus or stops providing any educational programs on its main campus, it loses its eligibility as an institution, and that loss of eligibility includes all its locations and all its programs. Its loss of eligibility is effective on the date it closes that campus or stops providing any educational program at that campus.

(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and

(2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

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

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998]

§ 600.41 Termination and emergency action proceedings.

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

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

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

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

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

(B) Its loss of accreditation or preaccreditation;

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

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

(E) Its permanently closing; or

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

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

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

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

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

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

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

students enrolled in that educational program.

(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the basis for the loss of eligibility of a foreign graduate medical school is one or more annual pass rates on the U.S. Medical Licensing Examination below the threshold required in § 600.55(f)(1)(ii), the sole issue is whether one or more of the foreign medical school's pass rate or rates for the preceding calendar year fell below that threshold. For a foreign graduate medical school that opted to have the Educational Commission for Foreign Medical Graduates (ECFMG) calculate and provide the pass rates directly to the Secretary for the preceding calendar year as permitted under § 600.55(d)(2) in lieu of the foreign graduate medical school providing pass rate data to the Secretary under § 600.55(d)(1)(iii), the ECFMG's calculations of the school's

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rates are conclusive; and the presiding official has no authority to consider challenges to the computation of the rate or rates by the ECFMG.

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

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40623, July 29, 1998; 75 FR 67193, Nov. 1, 2010; 84 FR 58917, Nov. 1, 2019; 87 FR 66039, Nov. 1, 2022]

§ 600.42 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[84 FR 58917, Nov. 1, 2019]

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

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

§ 600.51 Purpose and scope.

(a) A foreign institution is eligible to apply to participate in the Federal Family Education Loan (FFEL) programs if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary in accordance with the provisions of this subpart.

(b) This subpart E contains the procedures and criteria under which a foreign institution may be deemed eligible to apply to participate in the FFEL programs.

(c) Applicability of other title IV, HEA program regulations.

(1) A foreign institution must comply with all requirements for eligible and participating institutions except when made inapplicable by the HEA or when the Secretary, through publication in the FEDERAL REGISTER, identifies specific provisions as inapplicable to foreign institutions.

(2)(i) A public or nonprofit foreign institution that meets the requirements of this subpart, and that also meets the

requirements of this part except as provided in §§ 600.51(c)(1) and 600.54(a), is considered an “institution of higher education” for purposes of the title IV, HEA program regulations; and

(ii) A for-profit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this Part, except as provided in §§ 600.51(c)(1) and 600.54(a), is considered a “proprietary institution” for purposes of title IV, HEA program regulations.

(d)(1) A program offered by a foreign school through any use of a telecommunications course, correspondence course, or direct assessment program is not an eligible program;

(2) *Correspondence course* has the meaning given in § 600.2;

(3) *Direct assessment program* has the meaning given in § 668.10(a)(1) of this chapter;

(4) *Telecommunications course* is a course offered through any one or a combination of the technologies listed in the definition of telecommunications course in § 600.2, except that telecommunications technologies may be used to supplement and support instruction that is offered in a classroom located in the foreign country where the students and instructor are physically present.

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

[59 FR 22063, Apr. 28, 1994, as amended at 71 FR 45692, Aug. 9, 2006; 75 FR 67193, Nov. 1, 2010]

§ 600.52 Definitions.

The following definitions apply to this subpart E:

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

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

Collegiate school of nursing: A school that provides primarily or exclusively a minimum of a two-year program of postsecondary education in profes-

sional nursing leading to a degree equivalent to a bachelor of arts, bachelor of science, or bachelor of nursing in the United States, or to a degree equivalent to a graduate degree in nursing in the United States, and including advanced training related to the program of education provided by the school.

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

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

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

(i) Is not located in the United States;

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

(A) Has no U.S. location;

(B) Has no written arrangements, within the meaning of 34 CFR 668.5, with institutions or organizations located in the United States for those institutions or organizations to provide a portion of an eligible program, as defined under 34 CFR 668.8, except for written arrangements for no more than 25 percent of the courses required by the program to be provided by eligible institutions located in the United States; and

(C) Does not permit students to complete an eligible program by enrolling in courses offered in the United States, except that it may permit students to

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complete up to 25 percent of the program by—

(1) Enrolling in the coursework, research, work, or special studies offered by an eligible institution in the United States; or

(2) Participating in an internship or externship provided by an ineligible organization as described in 34 CFR 668.5(h)(2);

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

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

(2) Notwithstanding paragraph (1)(ii)(C) of this definition, independent research done by an individual student in the United States for not more than one academic year is permitted, if it is conducted during the dissertation phase of a doctoral program under the guidance of faculty, and the research is performed only in a facility in the United States.

(3) If the educational enterprise enrolls students both within the United States and outside the United States, and the number of students who would be eligible to receive title IV, HEA program funds attending locations outside the United States is at least twice the number of students enrolled within the United States, the locations outside the United States must apply to participate as one or more foreign institutions and must meet all requirements of paragraph (1) of this definition, and the other requirements of this part. For the purposes of this paragraph (3), an educational enterprise consists of two or more locations offering all or part of an educational program that are directly or indirectly under common ownership.

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

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

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

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

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

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

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

[59 FR 22063, Apr. 28, 1994, as amended at 75 FR 67193, Nov. 1, 2010; 85 FR 54812, Sept. 2, 2020]

§ 600.53 Requesting an eligibility determination.

(a) To be designated as eligible to apply to participate in the FFEL programs or to continue to be eligible beyond the scheduled expiration of the institution's current period of eligibility, a foreign institution must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of that eligibility.

(b) If a foreign institution fails to provide, release, or authorize release to the Secretary of information that is required in this subpart E, the institution is ineligible to apply to participate in the FFEL programs.

(Approved by the Office of Management and Budget under control number 1840-0673)

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

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

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the Direct Loan Program if the foreign institution meets the following requirements:

(a)(1) Except for a freestanding foreign graduate medical school, foreign veterinary school, or foreign nursing school, the foreign institution is a public or private nonprofit educational institution.

(2) For a public or private nonprofit foreign institution, the institution meets the requirements of § 600.4, except § 600.4(a)(1), (a)(2), (a)(3), (a)(4)(ii), (a)(5), (b), (c), and any requirements the HEA or the Secretary has designated as inapplicable in accordance with § 600.51(c)(1).

(3) For a for-profit foreign medical, veterinary, or nursing school, the school meets the requirements of § 600.5, except § 600.5(a)(2), (a)(3), (a)(4), (a)(5)(i)(B), (a)(5)(ii), (a)(6), (c), (d), (e) and any requirements the HEA or the Secretary has designated as inapplicable in accordance with § 600.51(c)(1).

(b) The foreign institution admits as regular students only persons who—

(1) Have a secondary school completion credential; or

(2) Have the recognized equivalent of a secondary school completion credential.

(c)(1) Notwithstanding 34 CFR 668.5, written arrangements between an eligible foreign institution and an ineligible entity are limited to those under which—

(i) The ineligible entity is an institution that meets the requirements in paragraphs (1)(iii) and (iv) of the definition of “foreign institution” in § 600.52; and

(ii) The ineligible foreign institution provides 25 percent or less of the educational program.

(2) For the purpose of this paragraph (c), written arrangements do not include affiliation agreements for the provision of clinical training for foreign medical, veterinary, and nursing schools.

(d) An additional location of a foreign institution must separately meet the definition of a foreign institution in § 600.52 if the additional location is—

(1) Located outside of the country in which the main campus is located, except as provided in § 600.55(h)(1), § 600.56(b), § 600.57(a)(2), § 600.55(h)(3), and the definition of foreign institution found in § 600.52; or

(2) Located within the same country as the main campus, but is not covered by the legal authorization of the main campus.

(e) The foreign institution provides an eligible education program—

(1) For which the institution is legally authorized to award a degree that is equivalent to an associate, baccalaureate, graduate, or professional degree awarded in the United States;

(2) That is at least a two-academic-year program acceptable for full credit toward the equivalent of a baccalaureate degree awarded in the United States; or

(3)(i) That is equivalent to at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation within the

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meaning of the gainful employment provisions.

(ii) An institution must demonstrate to the satisfaction of the Secretary that the amount of academic work required by a program in paragraph (e)(3)(i) of this section is equivalent to at least the definition of an academic year in § 668.3.

(f) For a for-profit foreign medical, veterinary, or nursing school—

(1) No portion of an eligible medical or veterinary program offered may be at what would be an undergraduate level in the United States; and

(2) The title IV, HEA program eligibility does not extend to any joint degree program.

(g) Proof that a foreign institution meets the requirements of paragraph (1)(iii) of the definition of a foreign institution in § 600.52 may be provided to the Secretary by a legal authorization from the appropriate education ministry, council, or equivalent agency—

(1) For all eligible foreign institutions in the country;

(2) For all eligible foreign institutions in a jurisdiction within the country; or

(3) For each separate eligible foreign institution in the country.

[75 FR 67194, Nov. 1, 2010, as amended at 85 FR 54812, Sept. 2, 2020]

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

(a) *General.* (1) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the title IV, HEA programs if, in addition to satisfying the criteria of this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the school satisfies the criteria of this section.

(2) A foreign graduate medical school must provide, and in the normal course require its students to complete, a program of clinical training and classroom medical instruction of not less than 32 months in length, that is supervised closely by members of the school's faculty and that—

(i) Is provided in facilities adequately equipped and staffed to afford students

comprehensive clinical training and classroom medical instruction;

(ii) Is approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary; and

(iii) As part of its clinical training, does not offer more than two electives consisting of no more than eight weeks per student at a site located in a foreign country other than the country in which the main campus is located or in the United States, unless that location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA).

(3) A foreign graduate medical school must appoint for the program described in paragraph (a)(2) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at medical schools in the United States.

(4) A foreign graduate medical school must have graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(b) *Accreditation.* A foreign graduate medical school must—

(1) Be approved by an accrediting body—

(i) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(ii) Whose standards of accreditation of graduate medical schools have been evaluated by the NCFMEA or its successor committee of medical experts and have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(2) Be a public or private nonprofit educational institution that satisfies the requirements in § 600.4(a)(5)(i).

(c) *Admission criteria.* (1) A foreign graduate medical school having a post-baccalaureate/equivalent medical program must require students accepted for admission who are U.S. citizens, nationals, or permanent residents to have taken the Medical College Admission

Test (MCAT) and to have reported their scores to the foreign graduate medical school; and

(2) A foreign graduate medical school must determine the consent requirements for, and require the necessary consents of, all students accepted for admission for whom the school must report to enable the school to comply with the collection and submission requirements of paragraph (d) of this section.

(d) *Collection and submission of data.*

(1) A foreign graduate medical school must obtain, at its own expense, and submit, by the date required by paragraph (d)(3) of this section—

(i) To its accrediting authority and, on request, to the Secretary, the scores on the MCAT or successor examination, of all students admitted during the preceding calendar year who are U.S. citizens, nationals, or eligible permanent residents, together with a statement of the number of times each student took the examination;

(ii) To its accrediting authority and, on request, to the Secretary, the percentage of students graduating during the preceding calendar year (including at least all graduates who are U.S. citizens, nationals, or eligible permanent residents) who obtain placement in an accredited U.S. medical residency program;

(iii) To the Secretary, except as provided for in paragraph (d)(2) of this section, all scores, disaggregated by step/test—i.e., Step 1, Step 2—Clinical Skills (Step 2-CS), and Step 2—Clinical Knowledge (Step 2-CK), or the successor examinations—and attempt, earned during the preceding calendar year by each student and graduate, on Step 1, Step 2-CS, and Step 2-CK, or the successor examinations, of the U.S. Medical Licensing Examination (USMLE), together with the dates the student has taken each test, including any failed tests;

(iv) To the Secretary, a statement of its citizenship rate for the preceding calendar year for a school that is subject to paragraph (f)(1)(i)(A) of this section, together with a description of the methodology used in deriving the rate that is acceptable to the Secretary.

(2) In lieu of submitting the information required in paragraph (d)(1)(iii) of

this section to the Secretary, a foreign graduate medical school that is not subject to paragraph (f)(4) of this section may agree to allow the Educational Commission for Foreign Medical Graduates (ECFMG) or other responsible third party to calculate the rate described in paragraph (f)(1)(ii) and (f)(3) of this section for the preceding calendar year and provide the rate directly to the Secretary on the school's behalf with a copy to the foreign graduate medical school, provided—

(i) The foreign graduate medical school has provided by April 30 to the Secretary written consent acceptable to the Secretary to reliance by the Secretary on the pass rate as calculated by the ECFMG or other responsible third party for purposes of determining compliance with paragraph (f)(1)(ii) and (f)(3) of this section for the preceding calendar year; and

(ii) The foreign graduate medical school agrees in its written consent that for the preceding calendar year the rate as calculated by the ECFMG or other designated third party will be conclusive for purposes of determining compliance with paragraph (f)(1)(ii) and (f)(3) of this section.

(3) A foreign graduate medical school must submit the data it collects in accordance with paragraph (d)(1) of this section no later than April 30 of each year, unless the Secretary specifies a different date through a notice in the FEDERAL REGISTER.

(e) *Requirements for clinical training.*
(1)(i) A foreign graduate medical school must have—

(A) A formal affiliation agreement with any hospital or clinic at which all or a portion of the school's core clinical training or required clinical rotations are provided; and

(B) Either a formal affiliation agreement or other written arrangements with any hospital or clinic at which all or a portion of its clinical rotations that are not required are provided, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.

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(ii) The agreements described in paragraph (e)(1)(i) of this section must state how the following will be addressed at each site—

(A) Maintenance of the school's standards;

(B) Appointment of faculty to the medical school staff;

(C) Design of the curriculum;

(D) Supervision of students;

(E) Evaluation of student performance; and

(F) Provision of liability insurance.

(2) A foreign graduate medical school must notify its accrediting body within one year of any material changes in—

(i) The educational programs, including changes in clinical training programs; and

(ii) The overseeing bodies and in the formal affiliation agreements with hospitals and clinics described in paragraph (e)(1)(i) of this section.

(f) *Citizenship and USMLE pass rate percentages.* (1)(i)(A) During the calendar year preceding the year for which any of the school's students seeks an title IV, HEA program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class must have been persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); or

(B) The school must have had a clinical training program approved by a State prior to January 1, 2008, and must continue to operate a clinical training program in at least one State that approves the program; and

(ii) Except as provided in paragraph (f)(4) of this section, for a foreign graduate medical school outside of Canada, for Step 1, Step 2-CS, and Step 2-CK, or the successor examinations, of the USMLE administered by the ECFMG, at least 75 percent of the school's students and graduates who took that step/test of the examination in the year preceding the year for which any of the school's students seeks a title IV, HEA program loan must have received a passing score on that step/test and are taking the step/test for the first time; or

(2)(i) The school must have had a clinical training program approved by a State as of January 1, 1992; and

(ii) The school must continue to operate a clinical training program in at least one State that approves the program.

(3) In performing the calculation required in paragraph (f)(1)(ii) of this section, a foreign graduate medical school shall—

(i) Include as a graduate each student who graduated from the school during the three years preceding the year for which the calculation is performed and who took that step/test for the first time in that year; and

(ii) Include students and graduates who take more than one step/test of the USMLE examination for the first time in the same year in the denominator for each of those steps/tests;

(4)(i) If the calculation described in paragraph (f)(1)(ii) of this section would result in any step/test pass rate based on fewer than eight students, a single pass rate for the school is determined instead based on the performance of the school's students and graduates on Step 1, Step 2-CS, and Step 2-CK combined;

(ii) If combining the results on all three step/tests as permitted in paragraph (f)(4)(i) of this section would result in a pass rate based on fewer than eight step/test results, the school is deemed to have no pass rate for that year and the results for the year are combined with each subsequent year until a pass rate based on at least eight step/test results is derived.

(g) *Other criteria.* (1) As part of establishing, publishing, and applying reasonable satisfactory academic progress standards, a foreign graduate medical school must include as a quantitative component a maximum timeframe in which a student must complete his or her educational program that must—

(i) Be no longer than 150 percent of the published length of the educational program measured in academic years, terms, credit hours attempted, clock hours completed, etc., as appropriate; and

(ii) Meet the requirements of § 668.16(e)(2)(ii)(B), (C) and (D).

(2) A foreign graduate medical school must document the educational remediation it provides to assist students in making satisfactory academic progress.

(3) A foreign graduate medical school must publish all the languages in which instruction is offered.

(h) *Location of a program.* (1) Except as provided in paragraph (h)(3)(ii) of this section, all portions of a graduate medical education program offered to U.S. students must be located in a country whose medical school accrediting standards are comparable to standards used in the United States, as determined by the NCFMEA, except for clinical training sites located in the United States.

(2) No portion of the graduate medical educational program offered to U.S. students, other than the clinical training portion of the program, may be located outside of the country in which the main campus of the foreign graduate medical school is located.

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, for any part of the clinical training portion of the educational program located in a foreign country other than the country in which the main campus is located or in the United States, in order for students attending the site to be eligible to borrow title IV, HEA program funds—

(A) The site must be located in an NCFMEA approved comparable foreign country;

(B) The institution's medical accrediting agency must have conducted an on-site evaluation and specifically approved the clinical training site; and

(C) Clinical instruction must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country.

(ii) A clinical training site located in a foreign country other than the country in which the main campus is located or in the United States is not required to meet the requirements of paragraph (h)(3)(i) of this section in order for students attending that site to be eligible to borrow title IV, HEA program funds if—

(A) The location is included in the accreditation of a medical program ac-

credited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

(B) No individual student takes more than two electives at the location and the combined length of the electives does not exceed eight weeks.

[75 FR 67195, Nov. 1, 2010]

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

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the Direct Loan Program if, in addition to satisfying the criteria in this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at veterinary schools in the United States.

(4) Effective July 1, 2015, the school is accredited or provisionally accredited by an organization acceptable to the Secretary for the purpose of evaluating veterinary programs.

(b)(1) No portion of the foreign veterinary educational program offered to U.S. students, other than the clinical

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training portion of the program as provided for in paragraph (b)(2) of this section, may be located outside of the country in which the main campus of the foreign veterinary school is located;

(2)(i) For a veterinary school that is neither public nor private nonprofit, the school's students must complete their clinical training at an approved veterinary school located in the United States;

(ii) For a veterinary school that is public or private nonprofit, the school's students may complete their clinical training at an approved veterinary school located—

(A) In the United States;

(B) In the home country; or

(C) Outside of the United States or the home country, if—

(1) The location is included in the accreditation of a veterinary program accredited by the American Veterinary Medical Association (AVMA); or

(2) No individual student takes more than two electives at the location and the combined length of the elective does not exceed eight weeks.

(Authority: 20 U.S.C. 1002 and 1092.)

[75 FR 67197, Nov. 1, 2010]

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

(a) Effective July 1, 2012 for a foreign nursing school that was participating in any title IV, HEA program on August 13, 2008, and effective July 1, 2011 for all other foreign nursing schools, the Secretary considers the foreign nursing school to be eligible to apply to participate in the Direct Loan Program if, in addition to satisfying the criteria in this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the nursing school satisfies all of the following criteria:

(1) The nursing school is an associate degree school of nursing, a collegiate school of nursing, or a diploma school of nursing.

(2) The nursing school has an agreement with a hospital located in the United States or an accredited school of nursing located in the United States that requires students of the nursing

school to complete the student's clinical training at the hospital or accredited school of nursing.

(3) The nursing school has an agreement with an accredited school of nursing located in the United States providing that students graduating from the nursing school located outside of the United States also receive a degree from the accredited school of nursing located in the United States.

(4) The nursing school certifies only Federal Stafford Loan program loans or Federal PLUS program loans, as those terms are defined in § 668.2, for students attending the nursing school.

(5) The nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution's cohort default rate during the previous fiscal year.

(6)(i) The nursing school determines the consent requirements for and requires the necessary consents of all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements of paragraph (a)(6)(ii) of this section.

(ii) The nursing school annually either—

(A) Obtains, at its own expense, all results achieved by students and graduates who are U.S. citizens, nationals, or eligible permanent residents on the National Council Licensure Examination for Registered Nurses (NCLEX-RN), together with the dates the student has taken the examination, including any failed examinations, and provides such results to the Secretary; or

(B) Obtains a report or reports from the National Council of State Boards of Nursing (NCSB), or an NCSB affiliate or NCSB contractor, reflecting the percentage of the school's students and graduates taking the NCLEX-RN in the preceding year who passed the examination, or the data from which the percentage could be derived, and provides the report to the Secretary.

(7) Not less than 75 percent of the school's students and graduates who are U.S. citizens, nationals, or eligible permanent residents who took the NCLEX-RN in the year preceding the

year for which the institution is certifying a Federal Stafford Loan or a Federal Plus Loan, passed the examination.

(8) The school provides, including under the agreements described in paragraphs (a)(2) and (a)(3) of this section, and in the normal course requires its students to complete, a program of clinical and classroom nursing instruction that is supervised closely by members of the school's faculty that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom nursing instruction, through a training program for foreign nursing students that has been approved by all nurse licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(9) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(10) The school employs only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at nursing schools in the United States.

(b) For purposes of paragraph (a)(5) of this section, the cost of a loan default is the estimated future cost of collections on the defaulted loan.

(c) The Department continues to collect on the Direct Loan after a school reimburses the Secretary for the amount specified in paragraph (b) of this section until the loan is paid in full or otherwise satisfied, or the loan account is closed out.

(d) No portion of the foreign nursing program offered to U.S. students may be located outside of the country in which the main campus of the foreign nursing school is located, except for clinical sites located in the United States.

[75 FR 67197, Nov. 1, 2010]

§ 600.58 Duration of eligibility determination.

(a) The eligibility of a foreign institution under this subpart expires six years after the date of the Secretary's determination that the institution is eligible to apply for participation, ex-

cept that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under § 600.55(a)(5)(i), subject to the terms described in § 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any of the criteria in this subpart E.

(c) Notwithstanding the provisions of 34 CFR 668.26, if a foreign institution loses its eligibility under this subpart E, an otherwise eligible student, continuously enrolled at the institution before the loss of eligibility, may receive an FFEL program loan for attendance at that institution for the academic year succeeding the academic year in which that institution lost its eligibility, if the student actually received an FFEL program loan for attendance at the institution for a period during which the institution was eligible under this subpart E.

(Authority: 20 U.S.C. 1082, 1088, 1099c)

[59 FR 22063, Apr. 28, 1994. Redesignated at 64 FR 58616, Oct. 29, 1999, as amended at 69 FR 12275, Mar. 16, 2004. Redesignated at 75 FR 67197, Nov. 1, 2010]

PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

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