

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

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

**DATES:** These regulations are effective July 1, 2018.

**FOR FURTHER INFORMATION CONTACT:**

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

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

The HEA established what is commonly known as the program integrity “triad” under which States, accrediting agencies, and the Department act jointly as gatekeepers for the Federal student aid programs mentioned above. This triad has been in existence since the inception of the HEA; and as an important component of this triad, the HEA requires institutions of higher education to obtain approval

from the States in which they provide postsecondary educational programs.

This requirement recognizes the important oversight role States play in protecting students, their families, taxpayers, and the general public as a whole. The Department established regulations on October 29, 2010 (75 FR 66832) to clarify the minimum standards of State authorization that an institution must demonstrate in order to establish eligibility to participate in HEA title IV programs. While the regulations established in 2010 made clear that all eligible institutions must have State authorization in the States in which they are physically located, the U.S. Court of Appeals for the District of Columbia set aside the Department’s regulations requiring authorization of distance education programs or correspondence courses by other States where students were located outside of the State with the physical location. Furthermore, the 2010 regulations did not address additional locations or branch campuses located in foreign locations. As such, these regulations clarify the State authorization requirements an institution must comply with in order to be eligible to participate in HEA title IV programs, ending uncertainty with respect to State authorization and closing any gaps in State oversight to ensure students, families, and taxpayers are protected.

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

Many States and stakeholders have expressed concerns with these unique challenges, especially those related to ensuring adequate consumer protections for students as well as compliance by institutions participating in this sector. For example, some States have expressed concerns over their ability to identify which out of State providers are

operating in their States; whether those programs prepare their students for employment, including meeting licensure or certification requirements in those States; the academic quality of programs offered by those providers; as well as the ability to receive, investigate and address student complaints about out-of-State institutions. One stakeholder provided an example of a student in California who enrolled in an online program offered by an institution in Virginia, but then informed the institution of her decision to cancel her enrollment agreement. Four years later, that student was told that her wages would be garnished if she did not begin making monthly payments on her debt to the institution. Although the State of California had a cancellation law that may have been beneficial to the student, that law did not apply due to the institution’s lack of physical presence in the State. According to the stakeholder, the Virginia-based institution was also exempt from oversight by the appropriate State oversight agency, making it problematic for the student to voice a complaint or have any action taken on it. Documented wrong-doing has been reflected in the actions of multiple State Attorney Generals who have filed lawsuits against online education providers due to misleading business tactics. For example, the Attorney General of Iowa settled a case against a distance education provider for misleading Iowa students because the provider incorrectly represented that its educational programs would qualify a student to earn teacher licensure. As such, this regulatory action also establishes requirements for institutional disclosures to prospective and enrolled students in programs offered through distance education or correspondence courses, which we believe will protect students by providing them with important information that will aid their decisions regarding whether to enroll in distance education programs or correspondence courses as well as improve the efficacy of State-based consumer protections for students.

Since distance education may involve multiple States, authorization requirements among States may differ, and students may be unfamiliar with or fail to receive information about complaint processes, licensure requirements, or other requirements of authorities in States in which they do not reside. These disclosures will provide consistent information necessary to safeguard students and taxpayer investments in the title IV, HEA programs. By requiring disclosures

that reflect actions taken against a distance education program, how to lodge complaints against a program they believe has misled them, and whether the program will lead to certification or licensure will provide enrolled and prospective students with important information that will protect them.

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

- Require an institution offering distance education or correspondence courses to be authorized by each State in which the institution enrolls students, if such authorization is required by the State, in order to link State authorization of institutions offering distance education to institutional eligibility to participate in the title IV, HEA programs, including through a State authorization reciprocity agreement.

- Define the term “State authorization reciprocity agreement” to be an agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

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

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

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

*Costs and Benefits:* The regulations support States in their efforts to develop standards and increase State accountability for a significant sector of higher education—the distance education sector. In 2014, over 2,800,000 students were enrolled in

distance education programs.<sup>1</sup> The potential primary benefits of the regulations are: (1) Increased transparency and access to institutional/program information for prospective students through additional disclosures, (2) updated and clarified requirements for State authorization of distance education and foreign additional locations, and (3) a process for students to access complaint resolution from the State in which the institution is authorized and the State in which the students reside. The clarified requirements related to State authorization also support the integrity of the title IV, HEA programs by permitting the Department to withhold title IV funds from institutions that are not authorized to operate in a given State. Institutions that choose to offer distance education will incur costs in complying with State authorization requirements as well as costs associated with the disclosures that would be required by the regulations.

*Public Comments:* In response to our invitation in the notice of proposed rulemaking (NPRM) published July 25, 2016 (81 FR 48598), 139 parties submitted comments on the proposed regulations. We also had a consultative meeting with staff from the Department of Defense. We group major issues according to subject, with appropriate sections of the regulations to which they pertain. Generally, we do not address technical or other minor changes.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes to the regulations since publication of the NPRM follows:

#### General Comments

*Comments:* Commenters were concerned that the Department has overstepped its statutory authority under the HEA, stating that, much like the previous State Authorization regulations, the requirement under the proposed regulations that schools offering online and distance learning programs meet licensing requirements in every State where their students happen to be found is contrary to the HEA. Rather, the commenters asserted that HEA requires only that an institution be authorized in the State where it is located, not where the student is located. The commenters noted a discussion from H.R. Rep. No. 105–481, at 148 (1998) (explaining that “States have a number of options in

overseeing institutions within their boundaries”) and conclude that the Department’s distance education requirements exceed the statutory scope.

*Discussion:* We disagree with the commenters and believe that we have the authority to require an institution to obtain any required State approval for distance education programs by each and every State in which its enrolled students reside. The HEA requires institutions to be authorized by States, and the Department recognizes that this encompasses a State’s authority to set standards for in-State students for educational programs that originate outside of that State. Additionally, the language in the legislative history that the commenters quoted was a statement made to explain the elimination from the HEA of the State Postsecondary Review Program that had required States to create certain postsecondary oversight functions to conduct reviews at physical school locations, and that language did not address whether States could establish requirements over distance education programs.

*Changes:* None.

#### Section 600.2 Definitions

##### State Authorization Reciprocity Agreement

*Comments:* Several commenters supported the Department’s definition of the term “State authorization reciprocity agreement.” Many commenters requested clarification on the term “consumer protection laws” under the definition of a State authorization reciprocity agreement. Some commenters suggested that the Department’s clarification specify that “consumer protection laws” encompasses a State’s consumer protection statutes and the regulations interpreting those statutes, both general and specific, including those directed at all or a subset of educational institutions. Some commenters further asked that “consumer protection laws” include laws specifically applicable to higher education institutions that cover the following: Disclosures to current and prospective students, the contents of any documents provided to students or prospective students, prohibited practices, refunds, cancellation rights, student protection funds or bonds, private causes of action, and student complaint standards and procedures. Other commenters asked for clarification that any State authorization reciprocity agreement that the Department authorizes for the purpose of institutional title IV eligibility must be governed and controlled by member

<sup>1</sup> 2015 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2013 and Fall 2014.

States under clearly defined policies and procedures that allow the member States to exercise ultimate authority for establishing, maintaining, and enforcing conditions of State and institutional participation in the agreement. Commenters also recommended that reciprocity agreements be required to include standard due process requirements, similar to those provided in proceedings by State agencies, the Department, and by accrediting agencies. Several commenters argued that States should not be forced to accept conditions that would limit specific State requirements such as refund policies in order to join a State authorization reciprocity agreement.

Other commenters were concerned that the proposed provision on “consumer protection laws” would make the institutions need to comply with additional State requirements besides the conditions required under the State reciprocity agreement. This was described as something that could result in the end of reciprocity agreements because States would still be able to enforce their own rules, regardless of the reciprocity agreement. Other commenters suggested that “consumer protection laws” be clarified to refer to a State’s general consumer protection laws (commonly dealing with issues such as fraud, misrepresentation or abuse, and applicable to all entities doing business in the State) rather than any consumer protection aspects of laws dealing specifically with postsecondary education. Some commenters specifically cited the existing State Authorization Reciprocity Agreement (SARA) administered by the National Council for State Authorization Reciprocity Agreement (NC-SARA) as allowing SARA member States to have authority to enforce all their general purpose laws against non-domestic institutions (including SARA participating institutions) providing distance education in the State, including, but not limited to, those laws related to consumer protection and fraudulent activities, where the term “general-purpose law” is defined as “one that applies to all entities doing business in the State, not just institutions of higher education.” Commenters stated that this type of definition would ensure that distance education providers operating in a given State under SARA must still comply with the consumer protection standards any other business must meet, and noted that those provisions are commonly enforced by the offices of Attorneys General. The commenters further said that this approach also

ensures that a given State may limit the applicability of its own laws by recasting State authorization requirements focused solely on institutions of higher education as “consumer protection laws.”

In a related vein, commenters recommended that the Department clarify that a State authorization reciprocity agreement cannot bar any State from membership on grounds related to its consumer protection laws because a State’s consumer protection statutes and regulations should never be a barrier to its entry into a reciprocity agreement. Commenters recommended that the word “participating” should be replaced with the word “any” so that a prospective State authorization reciprocity agreement would not be able to cite the word “participating” to refuse to admit an otherwise eligible State for membership in, or force a State to withdraw from, an agreement on the grounds that the State’s consumer protection laws are too rigorous.

*Discussion:* We appreciate commenters’ support regarding the definition of the term State authorization reciprocity agreement.

We define a State authorization reciprocity agreement as “an agreement between two or more States,” not an agreement between States and a non-State entity. Therefore, while States may permit a non-State entity to oversee the requirements of a State authorization reciprocity agreement, we agree with the comment that the ultimate responsibility for establishing, maintaining, and enforcing such requirements must rest with the member States that are parties to the agreement. An agreement that placed such responsibilities with a non-State entity would not fulfill the definition of a State authorization reciprocity agreement. While we agree that the ultimate responsibility for resolving disagreements between two participating States who are party to an agreement rests with those States, not with a non-State entity, we decline to define due process procedures for resolving conflicts or disagreements between States. The member States to an agreement have the discretion to establish due process requirements in the manner that they so choose.

We disagree with the recommendation by some commenters that the term “consumer protection laws” be clarified to only refer to the laws that apply to all entities doing business in the State, not just institutions of higher education, so that the resulting outcome would be that laws that applied only to institutions of higher education would be displaced by

a State reciprocity agreement. Rather, we believe that if a State has laws that are specific to postsecondary institutions, the State’s laws should not be preempted by a reciprocity agreement that does not recognize those State laws. Thus, we believe that the definition of a State authorization reciprocity agreement should encompass a State’s statutes and the regulations interpreting those statutes, both general and specific, including those directed at all or a subset of educational institutions. We decline to further specify the content of State statutes and regulations, and we also decline to require specific State policies and procedures.

Moreover, we agree that States should be active in protecting their own students, and thus, agree that the word “participating” should be replaced with “any” when referring to reciprocity agreements, so that a State authorization reciprocity agreement does not prohibit any State from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions. We would expect States to work together to implement a reciprocity arrangement to resolve conflicts between their respective State statutes and regulations and the provisions of the State authorization reciprocity agreement.

*Changes:* We have revised the definition of State authorization reciprocity agreement by deleting the words “consumer protection laws” and adding in their place “statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.” In addition, we have replaced the word “participating” with reference to a participating State with the word “any” so that a State authorization reciprocity agreement does not prohibit any State from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions. We add the word “residing” after the word “students” to clarify that the agreement authorizing and institution to provide postsecondary education through distance education or correspondence courses is to students residing in other States covered by the agreement. We also add the words “in the agreement” after “any State” to clarify that the agreement does not prohibit any State in the agreement from enforcing its own statutes and regulations.

*Comments:* Some commenters stated concerns that certain institutions will not be able to participate in the currently existing SARA because they

are not degree-granting institutions and that there is no way for those institutions to develop a SARA-type structure due to differences between States in length, curriculum, examination requirements, and licensure prerequisites. Commenters stated that although utilization of technology at their institutions is in its infancy, the proposed regulations create a roadblock that will prohibit advances that are beneficial to students and recommended that the Department provide some form of accommodation so as not to impede the potential benefits students attending these institutions would be able to access under State authorization reciprocity agreements.

*Discussion:* We do not agree with the commenter's recommendation that the Department provide accommodations for institutions that cannot join an existing reciprocity agreement. The proposed definition of the term "State authorization reciprocity agreement" is intended to apply to any State authorization reciprocity agreement, not just the existing SARA. States are able to develop reciprocity agreements as they deem necessary or desirable, and there is nothing in the final regulations that would prohibit a State from developing or participating in a State authorization reciprocity agreement that authorizes non-degree-granting institutions.

*Changes:* None.

*Comments:* A commenter requested that the Department clearly define or create a process that provides reciprocity based on accreditation status and mandate that all States participate in this as many State requirements for approving institutions of higher education were created for brick-and-mortar institutions and do not fit well with new technologies and pedagogy that crosses State lines.

*Discussion:* We disagree that the Department should define or create a process that provides reciprocity based on accreditation status and mandate that all States participate in this. As we discussed in the preamble to the NPRM, the HEA established what is commonly called the triad under which States, accrediting agencies, and the Department act jointly as gatekeepers for the Federal student aid programs. State authorization is an important part of the triad, recognizing the important oversight role States play in protecting students, their families, taxpayers, and the general public as a whole. Accepting the commenter's recommendation would undermine the concept of the triad and would jeopardize the State's important oversight role. Lastly, it is the

State, not accrediting agencies, that has jurisdiction over who operates in that State.

*Changes:* None.

*Comments:* Some commenters stated that State and Federal laws treat for-profit entities very differently from nonprofit and public entities, and that while the governing boards of for-profit entities may spend their revenue virtually without restriction, including taking the money for themselves, the corporate structure of public and other nonprofit entities is designed to provide built-in protections against self-interest. The structural difference results in contrasting behavior by colleges, the commenters stated, with for-profit colleges far more likely to engage in predatory practices. The commenters indicate that some States may not wish to adopt reciprocity that recognizes the approval of for-profit colleges by other States and that States should not be forced by a reciprocity agreement to accept all of a State's approvals without regard to sector. The commenters recommend that the Department add a provision that would require reciprocity agreements to allow States to adopt reciprocity for public and nonprofit colleges without automatic inclusion of for-profit companies.

*Discussion:* We do not agree that the Department should require reciprocity agreements to allow States to adopt reciprocity for public and nonprofit colleges without automatic inclusion of for-profit companies. If States want to develop and participate in such reciprocity agreements, they are able to do so.

*Changes:* None.

#### *Section 600.9(c)(1) State Authorization of Distance Education and Correspondence Courses*

*Comments:* A few commenters cited a letter urging the Department to explicitly exempt clinical education rotations from any future rulemaking on distance education to avoid compounding the harmful impacts of the existing State authorization regulations on educational and health professions institutions.

*Discussion:* While we understand the commenters' concern regarding the effects of this rulemaking on health professions institutions, Dear Colleague Letter GEN-12-13 states that, for State authorization purposes, in the case of an additional location of an institution where a student cannot complete more than 50 percent of a program, the student is considered to be enrolled at the main campus of the institution, and thus, no additional State authorization would be required. We believe that most

clinical education rotations would fall under this policy, and students enrolled in such rotations would not be considered enrolled in distance education or correspondence courses. However, it should be noted that States may independently have requirements that an institution obtain approval of such locations.

*Changes:* None.

*Comments:* Some commenters were concerned that the proposed regulation would render institutions entirely ineligible to participate in title IV programs because they have not met applicable State authorization requirements for distance education programs that are not title-IV eligible. An institution could be ineligible for Federal financial aid for all of its on-campus programs even if none of its distance education programs were eligible for title IV aid—or, for that matter, if any one non-title IV program or course, including a course offered free of charge to students worldwide, failed to exclude a student from a State that had not authorized the instruction. The commenters asked that if the Department does intend to apply the State authorization requirement to overall institutional eligibility, even in cases in which no HEA title IV funds are used for students enrolled in an institution's distance education programs, clarification be provided as to the Department's authority and interest to regulate non-title IV distance education programs. Other commenters asked the Department to clarify in the case where an institution does not obtain or maintain State authorization for distance education programs or correspondence courses in any particular State, what financial aid eligibility would be at risk in that State—eligibility of the institution or eligibility of certain programs?

*Discussion:* These regulations do not apply to education programs that are not title IV-eligible. However, for title IV-eligible programs that include distance education or correspondence courses, if an institution does not obtain or maintain State authorization for distance education or correspondence courses in any particular State that has such requirements, such programs would only lose eligibility for HEA title IV funding for students residing in that State. An institution's inadvertent or unintentional failure to obtain State authorization for distance education or correspondence courses in a State where its enrolled students reside would not jeopardize the entire institution's eligibility if the institution otherwise met eligibility requirements.

*Changes:* None.

*Comments:* Some commenters were concerned that the State authorization requirement in proposed section 600.9(c) applies at such time as an institution “offers” postsecondary education through distance education or correspondence courses to students in a State in which the institution is not physically located, whether or not the institution actually enrolls students in the State. Thus, under the proposed rule, an institution may face a loss of Federal financial aid for failure to comply with requirements of a State in which it has not enrolled any distance education students. The commenters recommended that the final rule should permit institutions to identify the States in which applicants to particular programs reside, and then make determinations regarding the need for authorization based on expected enrollment, regardless of whether or not courses have been offered more broadly.

*Discussion:* We disagree with the commenters’ recommendation. Institutions should not market to, nor enroll students in, a program in a State unless the institution has met applicable State authorization requirements. A State may also have specific State requirements for how postsecondary institutions market distance education programs within that State, and we would expect institutions to comply with those requirements. We note that, if an institution does not obtain or maintain State authorization for distance education or correspondence courses in any particular State that has such requirements, such programs would only lose eligibility for HEA title IV funding for students residing in that State.

*Changes:* None.

*Comments:* A few commenters expressed concerns regarding the case of a student from a State in which the institution was approved at the time the student initially enrolled relocating during the period of enrollment to a State which requires authorization and in which the institution is not authorized. The commenters ask whether, in order to maintain compliance with the requirement to be authorized in every State in which students are served, would the institution be required to administratively dismiss the student from the program. They note that if so, this seems unfair to the student who invested time and resources in the program and for whom transfer to a different institution that is authorized in her new State of residence may be costly and burdensome. In addition, commenters argue that such a case also creates an untenable situation for the

institution that may not, due to financial constraints or strategy regarding market area, be in a position to seek or obtain approval in the student’s new State of residence so the student can stay enrolled through completion of the program. Even if willing and able to do so, and in the interest of supporting the student’s educational goals, obtaining such approval will take time for the institution and may result in a period of noncompliance while in process. The commenters also posit that a rigid approach in this circumstance could have a disproportionate impact on certain classes of students, including those who are in the military and employees who may be required to relocate as a condition of a military or work assignment. The commenters recommend some consideration for an amnesty, exemption, or “safe harbor” that would allow these students to remain enrolled in the institution through the completion of the program, as long as the institution was in compliance in the student’s original State of residence at the time the student initially enrolled or through a modification to the attestation language in the program participation agreement to reflect that the institution was in compliance with the Federal program integrity rules related to distance education at the time of student enrollment in the online program.

*Discussion:* An institution is not required to dismiss a student from a program if the student moves to a State in which the institution is not authorized under the requirements in § 600.9(c); however, the institution may not disburse additional Federal student aid to the student if the institution has information that the student has moved to another State in which the institution is not authorized. For purposes of this rulemaking, a student is considered to reside in a State if the student meets the requirements for residency under that State’s law. In general, when determining the State in which a student resides, an institution may rely on a student’s self-determination unless the institution has information that conflicts with that determination. An institution should be providing the student with information about its State authorization status and should be informing the student that, if the student relocates to a State where the institution is not authorized, the institution cannot disburse Federal student aid to the student as long as the student continues to reside in that State.

With respect to military personnel, just as with non-military personnel, we treat the student’s State of residence to be the State for which the student meets

the requirements for residency under State law. Further, similar to non-military personnel, when determining the State in which the military student resides, the institution may rely on the student’s self-determination unless the institution has information that conflicts with that determination. The Department expects institutions who already offer distance education programs to be in compliance with State laws and we decline to create any safe harbors that would permit an institution to provide title IV funds to a student in a State where the program does not meet State requirements. Institutions must use the disclosure process and conversations with prospective students to ensure the students understand and consider that relocating to other States could affect the title IV funding for their program.

*Changes:* None.

*Comments:* Some commenters stated that some educational programs, including hybrid programs with on-campus components, are subject to the laws of the State in which the institution’s physical campus is located, and thus, no additional purpose is served by requiring hybrid programs to meet both home State requirements and authorization requirements from each State in which students reside, simply because a portion of the program is offered through distance education. If students attend any portion of a program at the physical campus where the institution is located, the program is subject to the oversight of authorities in the State where the campus is located. The commenters recommend that the Department amend § 600.9(c) to apply only to educational programs that can be completed “solely” through distance education or correspondence courses.

*Discussion:* The regulations do not require that hybrid programs meet both home State requirements and authorization requirements from each State in which students reside, simply because a portion of the program is offered through distance education. Rather, an institution is required to meet any State requirements for it to be legally offering postsecondary distance education or correspondence courses in the State. If a State has applicable requirements for students taking a portion of a hybrid program through distance education, the institution must meet those state requirements.

*Changes:* None.

*Comments:* A commenter recommended that the Department clarify that any institution offering distance education has the option to decide whether it chooses to be authorized individually in each

required State or whether it participates in a reciprocity agreement between States. The commenter suggested that the regulations clearly state the option, perhaps by adding “or” between paragraphs (i) and (ii) of § 600.9(c)(1).

*Discussion:* We agree with the commenter that the regulations provide any institution offering distance education with the option to decide whether it chooses to be authorized individually in each required State or whether it participates in a reciprocity agreement between States and that adding “or” between paragraphs (i) and (ii) of § 600.9(c)(1) clarifies this point. In addition, we note that an institution could simultaneously participate in multiple State authorization reciprocity agreements and simultaneously be authorized individually in multiple States.

*Changes:* We have added “or” between paragraphs (i) and (ii) of § 600.9(c)(1).

*Comments:* Some commenters opined that proposed § 600.9(c)(1)(i) did not appear to address those States that regulate—in some way—institutions offering distance education courses to residents, but that do not require full State approval or authorization in order to do so. They recommended that § 600.9 be revised to address these types of situations as there are many States that have an exemption process or otherwise have a registration process that results in something less than full approval yet still allows the institution to enroll residents.

*Discussion:* We decline to revise the regulations. It is a State’s discretion as to how it may choose to regulate by establishing requirements that exceed the minimum requirements for title IV program eligibility. An institution is responsible for meeting any State requirements and should maintain the applicable documentation.

*Changes:* None.

*Comments:* Some commenters requested clarification regarding what entity the Department would rely upon to determine whether an institution covered by a State authorization reciprocity agreement is operating in a State outside of the limitations of that agreement. These commenters also asked the Department to affirm that each State in which an institution is offering distance education remains the ultimate authority for determining whether an institution is operating lawfully in that State, regardless of whether a non-State entity administers the agreement.

*Discussion:* We agree with the commenters that each State in which an institution is offering distance education remains the ultimate authority for

determining whether an institution is operating lawfully in that State, regardless of whether a non-State entity administers the agreement, including whether an institution covered by a State authorization reciprocity agreement is operating in a State outside of the limitations of that agreement.

*Changes:* None.

*Comments:* Some commenters stated that though the regulation is given the title of “State authorization” it seems that an institution will need to prove compliance with more State agencies than just the State higher education agency, such as a State Secretary of State or a State’s licensing board. These commenters stated that this issue is important for institutions so that they can make plans for compliance, and if necessary, restrict enrollments in certain States until all State requirements are met.

*Discussion:* Institutions are required to know what State requirements exist for an educational program to be offered to a student in a particular State, and the required approvals that constitute what is needed for the program to be authorized by that State. While we agree that institutions should not enroll students from a State until all State requirements are met, we believe institutions should routinely identify this information and ensure State requirements are being met where their students live.

*Changes:* None.

*Comments:* A commenter asked the Department to declare that, for the purpose of this regulation, an institution authorized to provide higher education in its own State is also authorized to serve students from any other State in the country.

*Discussion:* We disagree with the commenter’s suggestion as it would allow one State to preempt another State’s requirements.

*Changes:* None.

#### *Section 600.9(c)(2) State Authorization of Distance Education and Correspondence Courses—Complaint Process*

*Comments:* Some commenters supported the proposal that students enrolled in an out-of-State online school are eligible for title IV aid only if they are able to seek and receive action on their complaints from the authorizing agency in their State of residence. However, the commenters were concerned that complaint-handling is inadequate if the State does not have the ability to enforce its decisions. They recommended language clarifying that the State’s process must be able to ultimately lead to denying the

institution’s authority to enroll residents of that State.

*Discussion:* We appreciate the commenters’ support. We further agree that a State should be able to deny an institution’s authorization to enroll students who reside in that State and believe that the regulations as drafted do not interfere with the State’s ability to exercise this authority. We decline to specify that the State complaint process must allow a State to deny an institution from enrolling students because that is an issue best left to each State.

*Changes:* None.

*Comments:* Some commenters were concerned that, for institutions that do not have access to reciprocity agreements, the proposed regulations would impose a number of new compliance requirements that will require significant resources on an ongoing basis. For instance, States would be required to document the existence of a State process for action on complaints in each State from which a distance education program enrolls students. The commenters asked that the Department or another agency make the determination if a State process exists and publish this information, or alternatively, to write into the final regulations the previous guidance from the Department (Dear Colleague Letter (DCL) GEN–12–13, July 27, 2013, Question 9) which permitted institutions offering distance education in multiple States to satisfy the requirement to provide State contact information for filing complaints by providing a link to non-institutional Web sites that identified contact information for filing student complaints for multiple States.

*Discussion:* We believe that access to a complaint process is an important student protection that an institution should be able to document and provide to a student regardless of whether the institution participates in a reciprocity agreement. This policy is not new, since every institution already has to provide this information under 34 CFR 668.43(b). In addition, DCL GEN–12–13 states that an institution must make sure that all of its students are provided with the applicable consumer information that corresponds to their enrollment and that the information must be for every State in which the institution is operating, including every State where students are enrolled for distance education. The consumer information to be provided includes the complaint process.

We make a distinction, however, between an institution that provides documentation to the Department in order to satisfy the requirements under

the State authorization regulations and an institution that is providing information to a student regarding the State's complaint process to satisfy the consumer information requirements. DCL GEN-12-13 Question 9 was related to consumer information requirements, thus we would not include this guidance for compliance with the State authorization regulations. We discuss consumer information requirements further under the consumer disclosures section.

*Changes:* None.

*Comments:* A few commenters asked that the regulations include compliance for their students from States such as California that reportedly lack oversight for their out-of-State student complaints. Other commenters opined that the proposed rule would require all States to have a process for reviewing complaints from any student located in that State enrolled in a distance education program or at an out-of-State institution even if the State law does not require the institution to be authorized in that State. Other commenters noted that the California Bureau for Private Postsecondary Education (CA-BPPE) does not currently require purely online institutions to be authorized and will not accept complaints against non-authorized institutions. These commenters recommended that the Department determine that these students in distance education programs are not adequately covered by a complaint process and, therefore, not eligible for title IV funding. Some commenters recommended allowing institutions to use their home State's complaint processes for students in States lacking adequate complaint procedures.

*Discussion:* Section 600.9(c)(2) provides that if an institution offers postsecondary education or correspondence courses to students residing in a State in which the institution is not physically located, the institution must document that there is a State complaint process in each State in which the institution's enrolled students reside or through a State authorization reciprocity agreement which designates for this purpose either the State in which the institution's enrolled students reside or the State in which the institution's main campus is located. In addition, any student who is enrolled in distance or correspondence education provided by an institution must have access to the consumer complaint system in the State where the institution's main campus is located (the home State), as that complaint process is described under 34 CFR 600.9(a). Thus, we agree with

commenters that, if a State does not provide a complaint process as described in a State where an institution's enrolled students reside, the institution would not be able to disburse Federal student aid to students in that State. Additionally, if the State in which the institution's main campus is located does not provide an appropriate complaint process to students enrolled through distance or correspondence education at that institution, none of those students would be eligible to receive Federal student aid.

*Changes:* None.

*Comments:* Commenters stated that policymakers may see not establishing a complaint process and not entering into a reciprocity agreement as a way to protect their in-State institutions from out-of-State competition, which would limit opportunities and create considerable confusion for students. The commenters recommended that the regulations be revised to say that, in cases where a student resides in a State that does not participate in a reciprocity agreement or have its own student complaint process, a distance or correspondence education program located in a State with a student complaint process should be able to use such home State complaint procedures, or other procedures designated in a reciprocity agreement, to satisfy the Department's requirement if clearly and conspicuously disclosed to the student under § 668.50(b)(1) and (2).

*Discussion:* We disagree with the commenter's suggestion. A State is not required to have a complaint process, although, if it does not, institutions would not be able to disburse Federal student aid to resident students in that State. A State is also not required to participate in a reciprocity agreement, thus, it cannot be required to be subject to a complaint process under a reciprocity agreement. However, as provided in 34 CFR 600.9(a), the complaint process in the State where the institution's main campus is located may be utilized.

*Changes:* None.

*Comments:* Several commenters felt that it is unclear what the term "document" in the proposed regulations requires, stating that some commenters are interpreting that term to require that institutions verify the efficacy of the process, as opposed to its mere existence. They also stated that it is not appropriate for institutions to be put in the position of determining whether a student complaint process in a particular State contains "appropriate action" on complaints, as required by the proposed regulations because such a

subjective determination puts an institution in a position of potential sanctions or liabilities for substantial misrepresentation should the institution make an incorrect, though good faith, determination. The commenters asked that the Department provide clarification or delete the requirement. Other commenters asked whether institutions would be required to provide yearly proof of compliance.

*Discussion:* Institutions will be asked to provide documentation of the State's complaint process when an institution is seeking certification or recertification or if a question arises due to a complaint, program review or audit, not on an annual basis. The Department will subsequently determine if the State's complaint process is compliant with the State authorization regulations. This same process is currently used for institutions under § 600.9(a) and (b). If the Department determines that the complaint process is not compliant with the State authorization regulations, it will notify the institution and subsequently work with the institution to address this issue.

*Changes:* None.

*Comments:* Commenters said that the Disclosures section of the proposed regulations are only applicable to students completing programs "solely" through distance education, yet, the term "solely" is not employed elsewhere to define distance education and asked for clarification that distance education in § 600.9(c) pertains only to programs offered 100 percent off campus. Commenters further stated that the NPRM did not address the issue of hybrid style courses or programs and the regulations seem to omit any Federal oversight of hybrid programs and requested a formal definition of distance education be provided. Some commenters recommended that the term "distance education" include both purely online programs and online programs which include a requirement for a credit-bearing internship or practicum that the student could complete in his or her State of residence. Other commenters were concerned that the NPRM did not adequately distinguish between distance education "programs" and "courses" and suggested that the Department focus the intent of the NPRM on the programmatic level and amend the regulations to clearly refer to "distance education programs," as opposed to distance education courses.

*Discussion:* We disagree that a formal definition of distance education should be provided. A State has discretion as to whether it has any State authorization requirements with respect to an

institution offering postsecondary education through distance education in that State and that discretion includes how the State defines distance education. States may therefore choose whether or not to exercise authority over hybrid distance education or correspondence programs, but any requirements established by the State must be complied with in order for an institution to be considered authorized for title IV eligibility purposes.

*Changes:* None.

*Comments:* Commenters stated that the NPRM uses disclosure in its attempt to address situations in which a college's program does not satisfy the occupational licensing or prerequisites in the State where the student lives and that, in these situations, disclosure is not an adequate or appropriate solution. Instead, the commenters argued that the regulations should generally prohibit using title IV funds for programs that do not meet State requirements for the occupation, allowing for exceptions only when the student has provided the specific, personal reason he or she is seeking to enroll in a program that does not qualify them for the occupation in the State where they live (for example, an intention to relocate). Commenters asked that the Department add § 600.9(c)(3) to say that "If an institution described under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses, its programs must meet the applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter, in the student's State of residence, unless prior to enrollment the student affirmatively states in writing, in his or her own words, that he or she knows that the program does not meet the State requirements, and explains the reason he or she is seeking to enroll in the program."

*Discussion:* While we agree with the focus and spirit of this comment, we do not agree with the recommendation that we withhold Federal student aid where programs provided through distance education do not meet State requirements where a student resides unless an institution documents the reasons each student decided to enroll in that program anyway. We are requiring an institution to determine whether a program it offers meets State requirements in each State where the students enrolled in that program reside, and to publicly disclose that information to students. We also believe that the complaint process and program review process will readily identify any instances where institutions fail to

provide this information through disclosures. Furthermore, we note that, upon implementation of this final rule, institutions offering GE programs will need to ensure that those programs fulfill licensure or certification requirements in each State in which the institution is required to be authorized, or in which the institution is authorized through a State authorization reciprocity agreement. This will ensure that institutions certify that distance education or correspondence GE programs fulfill requirements for licensure or certification in the majority of States where enrolled students reside.

More specifically, the GE final regulations include several provisions under 34 CFR 668.414(d) that are connected to the State authorization rules under 34 CFR 600.9. In particular, § 668.414(d)(2) requires an institution to certify that each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity, in each State in which the institution is required to obtain State approval under 34 CFR 600.9. Similarly, § 668.414(d)(3) requires an institution to certify that, for each State in which the institution is required to obtain State approval under 34 CFR 600.9, each eligible GE program that it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter. Under these final regulations an institution must fulfill any requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, or be authorized under a State authorization reciprocity agreement if the State chooses that mechanism to authorize postsecondary institutions. Therefore, for the purposes of institutional compliance with the GE regulations in 34 CFR 668.414(d)(2) and (3), a GE program will be required to have the appropriate programmatic accreditation and/or lead to licensure or certification in each State in which at least one enrolled student resides and where there is either a State requirement for authorization or where the State is part of a State authorization reciprocity agreement that confers authorization to the institution.

We believe that the combination of the disclosure requirements regarding licensure and certification in new 34

CFR 668.50(b)(7) and the requirements for GE programs to meet licensure and certification requirements in each State where students reside (if such States require authorization or are part of a reciprocity agreement) are sufficient to mitigate the commenter's concerns about distance education programs not leading to licensure or certification.

*Changes:* None.

*Comments:* One commenter expressed concern that a student residing in one State could not take an online course from a school located in another State, unless the latter conformed to the educational standards set for schools in the first State. The commenter further stated that what recent experience has shown is that the proposed regulations are unlikely to be value-neutral across the board and that some of the regulations would establish norms and goals for diversity that would be impossible for private, confessional schools to meet in good conscience and that the proposed regulations should be withdrawn.

*Discussion:* We disagree with the commenter. The regulations do not prohibit a student residing in one State from taking an online course from a school located in another State, unless the latter conformed to the educational standards set for schools in the first State. Rather, the regulations establish that an institution that offers postsecondary education through distance or correspondence courses to students in a State in which the institution is not physically located, or in which the institution is otherwise subject to that State's jurisdiction as determined by the State, must meet any State requirements for it to be legally offering postsecondary distance or correspondence courses in the State and offer a complaint process. Institutions may also meet the requirements by participating in a State authorization reciprocity agreement. In addition, institutions are required to document the State's complaint process.

*Changes:* None.

#### *Section 600.9(d) State Authorization of Foreign Additional Locations and Branch Campuses of Domestic Institutions*

##### General Opposition

*Comments:* Some commenters did not support a rulemaking to address State authorization of foreign additional locations and branch campuses of domestic institutions. A few commenters asserted that the Department does not have the authority to regulate foreign locations of domestic institutions. Commenters argued that

the HEA does not grant the Department the authority to regulate institutions outside of the United States as it defines an “institution of higher education” as an educational institution *in any State* that is legally authorized *within such State* to provide a program of education beyond secondary education. Commenters also stated that the proposed regulations exceeded the Department’s authority by mandating compliance with the requirements of foreign governments, with one commenter stating that enforcement of foreign requirements is the responsibility of the foreign country, not the Department. Some commenters asserted that the provisions of § 600.9(d) also raise significant federalism issues, as they impose substantive requirements for foreign authorization that go beyond what individual States may decide to require with respect to authorization of institutions with locations outside U.S. borders. The commenter noted that State agencies may decline to regulate the foreign locations of in-State institutions. One commenter stated that education in foreign locations is a complex topic and any rulemaking addressing foreign locations should not be conflated with the State authorization rulemaking. Some commenters opposed regulations for foreign locations on the grounds that they would be too complex to implement and too difficult to enforce.

*Discussion:* Sections 101(a)(2), 102(a)(1), 102(b)(1)(B), and 102(c)(1)(B) of the HEA require an educational institution to be legally authorized in a State in order to be eligible to apply to participate in programs approved under the HEA, unless an institution meets the definition of a foreign institution. As stated in the NPRM, these regulations allow an institution with a foreign additional location or branch campus to meet the statutory State authorization requirement for the foreign location or branch campus in a manner that recognizes both the domestic control of the institution as a whole, while ensuring that the foreign location or branch campus is legally operating in the foreign country in which it is located. The Department believes it is consistent with the HEA and in the best interest of students to allow the provision of title IV, HEA program funds to students attending a foreign additional location or branch campus of a domestic institution. Thus, we are establishing authorization regulations that provide the protections to United States students intended by the HEA to those attending foreign locations or branch campuses of domestic

institutions. To permit an institution to operate in violation of a foreign country’s requirements would be irresponsible and, in many cases, ineffectual as it is the Department’s responsibility to ensure the proper administration of the title IV, HEA programs. We address commenters’ specific concerns regarding the difficulty in working with foreign countries to comply with the regulations in the discussion of the difficulty in obtaining foreign authorization below.

The Department will not be enforcing the requirements of any foreign country on behalf of the foreign country. Rather, we will be determining whether or not an institution is in compliance with any requirements of a foreign country in order to ensure whether title IV, HEA program funds are appropriately available to students at any foreign additional location or branch.

*Changes:* None.

#### Applicability

*Comments:* Commenters asked for clarification of the applicability of the regulations. Commenters asked whether the regulations would cover programs through agreements that domestic schools have with foreign institutions. For example, commenters stated that they have agreements to offer programs at foreign “host” universities, and it is not clear whether the regulations extend to such situations. Commenters also asked for clarification of what constitutes a branch campus or an additional location of an institution. Specifically, one commenter asked whether a faculty-led overseas trip constitutes a university establishing a branch campus or additional location since the presence in the foreign country is temporary. Commenters also questioned whether these regulations would apply to educational programs that are not title IV eligible. Commenters, referencing the proposed differentiation of requirements for additional locations or branch campuses where 50 percent or more of an educational program is offered and those where less than 50 percent of the educational program is offered, asked what the definition of an “educational program” is. One commenter asked whether educational program means a degree-seeking program only, or whether a study abroad experience would stand alone as an educational program. One commenter, an institution contracted to offer educational services on military bases abroad, requested that the Department include language declaring that (1) as an education services contractor, it is fully exempt without proving any foreign

government’s proof of exemption, since the Department of Defense requires it to provide educational services on the specified foreign bases/additional locations; or (2) that compliance could be verified by providing proof of the Education Services contract with the Department of Defense. Another commenter, a university active in serving an international school by way of distance education, stated that, should they choose to offer more than 50 percent of their programs on-site, the international school should be treated in a manner similar to military bases. Commenters asked whether the regulations would apply when an institution does not have a physical presence in a foreign country, but offers programs to students in foreign countries through distance education. One commenter was also concerned that if the logic of domestic requirements for State authorization is eventually extended to students in online programs who live abroad (that is, they would need to seek authorization in every country in which an international student is taking an online class) they would have to discontinue enrolling those students.

*Discussion:* The requirements of § 600.9(d) apply to foreign additional locations and branch campuses of a domestic institution at which all or more than half of a title IV, HEA eligible educational program is offered by a domestic institution. They do not apply to study abroad arrangements or other agreements that domestic institutions have with foreign institutions whereby a student attends less than half of a program at separate foreign institutions, which are regulated under § 668.5. They do not apply to foreign institutions (*i.e.*, institutions that have their main campus located outside of a State). They do not apply to programs for which the institution does not seek title IV, HEA program eligibility. They also do not apply when a domestic institution is offering an educational program to title IV eligible students in a foreign country through distance education.

These regulations note that the term “educational program,” as used in § 600.9(d)(1) and (2), is defined in § 600.2. That is, an educational program is a legally authorized postsecondary program of organized instruction or study that: (1) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and (2) 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.

A branch campus is defined in § 600.2 as a location of an institution that is geographically apart and independent of the main campus of the institution. The Department considers an institution to be independent of the main campus if the location (1) is permanent in nature; (2) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential; (3) has its own faculty and administrative or supervisory organization; and (4) has its own budgetary and hiring authority. Institutions are required to obtain approval from the Department for a location to be designated as a branch campus. All other locations of an institution are referred to as additional locations. An additional location is any location of an institution that is geographically apart from the main campus and does not meet the definition of a branch campus.

An institution that is contracted by the U.S. military may be exempt from obtaining legal authorization from an appropriate government authority to operate in the country for an additional location at which 50 percent or more of an educational program is offered. That additional location or branch campus would be exempt if it 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. The Department believes the regulations provide clear language that reflects when a contractor may be exempt from obtaining foreign authorization to offer programs and we decline to provide additional regulatory language to further this exemption. However, an institution that does not contract with the U.S. military as stated that offers more than 50 percent or more of an educational program, as defined in § 600.2, would not be eligible for that exemption. Institutions that contract with the U.S. military are in a unique position in that they have a contract with a U.S. military base which has a Status of Forces Agreement with a foreign government that may address the inclusion of educational programs offered through a contract with the U.S. military.

The Department wishes to clarify that military bases, for purposes of the

foreign authorization exemption, are any areas that are under use by the U.S. military, including facilities and areas that foreign countries have allowed the U.S. military to use.

A temporary class site may qualify as an additional location. If an institution offers or will offer 50 percent or more of an educational program at that temporary location, then that temporary location would meet the definition of an additional location. Similarly, if an institution only rents space that it does not own, then it may still be considered an additional location if the institution is offering or will offer 50 percent of more of an educational program in that temporary space. The Department expects that institutions will comply with the appropriate requirements to operate in the foreign country for any temporary or permanent locations they establish.

*Changes:* The exemption to obtaining foreign authorization in § 600.9(d)(1)(i) has been altered to include facilities and areas in which the foreign country has granted the U.S. military usage.

#### Difficulty in Obtaining Authorization

*Comments:* Some commenters expressed concern about the difficulty of obtaining legal authorization from a foreign country for a foreign additional location or branch campus under proposed § 600.9(d)(1)(i). Commenters argued that requiring institutions to obtain legal authorization by a foreign government would leave institutions in a likely impossible position of attempting to determine the appropriate authority amidst multiple levels of government, often in countries in which there is no formal governmental process for oversight of foreign or private institutions. One commenter asserted that there will be certain situations where the foreign government itself will not know which of its agencies is responsible for issuing an approval. Commenters were also concerned about the difficulty of obtaining legal authorization in a foreign country if the foreign country is unaware of the requirement that an institution must seek their authorization. Commenters asserted that it is also possible that foreign governments may see United States-required authorization as a revenue source and charge institutions significant sums of money for their required approval. Commenters stated that the difficulty in obtaining the required legal authorization may limit enriching international opportunities for students.

Commenters asserted that foreign governments are sometimes unresponsive. One commenter noted

that they have contacted foreign governments on occasion and have experienced difficulties getting an official response, or any response at all, from certain governments. One commenter noted that some foreign governments are highly adverse to provide specific wording in an authorization letter. Some commenters were concerned with the amount of time it can take to obtain legal authorization from a foreign country.

*Discussion:* The Department believes that locations should meet the legal requirements where they are located in order to provide educational programs to students receiving title IV funds. This includes institutions operating additional locations or branch campuses in foreign countries. This authorization will serve as a protection to students against potential interruptions in their education should that operation be suspended or shut down due to noncompliance. Institutions must perform the due diligence of learning what additional requirements a foreign government may put on an institution to offer educational programs in their jurisdiction and comply with those requirements as a basic price of doing business in that foreign country. An institution of higher education is not required to create additional locations in foreign countries and should follow the laws of the foreign Nation in order to legally operate in that location. An institution that would be unable to meet the requirements of a foreign country or that cannot show that it has received authorization to operate in that country would not have the ability to offer title IV financial aid programs to students enrolled at those additional locations.

Section 600.9(d)(1) specifies the requirements for legal authorization for any additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus. These additional locations and branch campuses are required to be legally authorized to operate by an appropriate government authority in the country where the foreign additional location or branch campus is physically located. An institution is required to provide documentation of that authorization by the foreign country to the Department upon request, unless the additional location or branch campus is located on a U.S. military base and is therefore exempt from obtaining such authorization from the foreign country. The documentation is required to demonstrate that the government authority for the foreign country is aware that the additional location or branch provides postsecondary

education and does not object to those activities. Beyond that, the Department declines to provide specific requirements of what that documentation must look like, to allow flexibility to institutions since foreign countries may vary in what documentation they provide. The regulations do not require that any statement of authorization from a foreign government include the phrase "does not object to those activities." The Department expects that any authorization given by a foreign government will show that the foreign government is aware of what it is authorizing and that it has given approval to an institution that is offering educational programs in its jurisdiction. The Department expects that an institution will determine if and what authorization requirements a foreign country has for institutions that wish to offer educational programs within its jurisdiction. If there are legitimate barriers to obtaining authorization, such as a lack of authorization requirements in the foreign jurisdiction, then the institution should document its efforts to obtain authorization, but the Department does not expect that an institution would not offer programs in these instances. However, an institution should ensure that the lack of receiving written correspondence authorizing the institution to offer educational programs at a branch campus or additional location is not a denial of authorization by that foreign entity. If an institution can readily determine that its locations or programs do not meet the authorization requirements, the institution cannot operate its program under the guise of an inability to navigate a foreign country's authorization process. As mentioned previously, an institution that does not meet the clear authorization requirements of a foreign country would not be considered authorized under these regulations.

An institution must receive authorization from a foreign government prior to enrolling title IV eligible students who would take more than 50 percent of a program at an additional location or branch campus. An institution should plan ahead for a country's authorization process before enrolling title IV eligible students so that it is compliant with the authorization requirements. For institutions that have enrolled students prior to these regulations' effective date, we encourage the institution to provide information to students about the potential loss of title IV aid for programs that do not receive foreign authorization

when these regulations go into effect. If an institution is advertising a program and recruiting students for a program that meets this 50 percent threshold, the Department believes that the institution must have obtained authorization from a foreign government for that additional location before enrolling any title IV eligible students in that program. The Department believes that an institution must meet these requirements as the cost of doing business in a foreign location, regardless of what those requirements are or if there is a monetary cost to meeting the authorization requirements in a foreign country.

We disagree with the commenter that believes that requiring an institution to meet any authorization requirements established by the foreign country would unfairly limit the opportunities of institutions to limit the international experiences of students. The Department believes that an institution should follow the requirements of a foreign country if an institution is planning on having a branch campus or additional location in that country.

*Changes:* None.

#### Sufficient Documentation

*Comments:* The commenters also asked, for purposes of § 600.9(d)(1)(ii), what would constitute sufficient documentation of the foreign government's lack of objection. Commenters asserted that it was unclear exactly what types of legal authorization and documentation of legal authorization would satisfy the requirement. Some commenters stated that the Department should provide a list of appropriate foreign government authorities that may provide acceptable legal authorization and should delineate the types of legal authorizations that would be acceptable to demonstrate compliance with the legal authorization requirement. Commenters stated that regulations should provide specific guidance as to what would be considered sufficient evidence of appropriate legal authorization that a foreign government is aware of a program and does not object to operation of a program. One commenter suggested that the regulations consider a response from a foreign government stating it does not prohibit any higher education institution of other countries to grant college credit to its citizens to be sufficient authorization. With respect to a Status of Forces agreement between the U.S. and another country, commenters wanted the Department to clarify that this counts as sufficient documentation of foreign authorization if the agreement specifically mentions

the offering of educational programs at additional locations or branch campuses located in the country. Commenters asked whether an institution would be required to obtain legal authorization if a foreign government chooses to exempt the institution from needing authorization.

*Discussion:* Each country may provide a wide variety of documentation to reflect that an institution has authorization to have a branch campus or additional location in their country. As such, the Department declines to provide an exhaustive list of what documentation would be appropriate to prove authorization in a foreign country to allow for maximum flexibility to an institution in obtaining documentation. However, an institution should ensure that the documentation they obtain to prove foreign authorization has made it clear that the institution has indeed received authorization. If an institution receives documentation stating that a foreign entity does not provide authorization approvals to institutions but does not object to the establishment of a branch campus or additional location of U.S. institutions, then the Department would consider that to be sufficient documentation for obtaining foreign authorization. This would also apply if an appropriate foreign entity provides documentation that the institution is exempt from authorization requirements in that country. A Status of Forces Agreement may be used to demonstrate authorization if that Status of Forces Agreement addresses and provides for authorization of branch campuses or additional locations of domestic institutions or provides for exemption to foreign authorization for these facilities.

The Department does not require a specific foreign government agency to provide authorization to an institution for the operation of branch campuses or additional locations because the relevant approving authority will vary from country to country. An institution should receive authorization from an appropriate agency that would have the authority to legally authorize an educational entity in a foreign location. An institution could identify this agency, for example, if the agency provided similar authorization for other entities for schools within the country, or for other foreign entities or businesses. It is also up to the institution to be aware of, and comply with, any additional requirements of a foreign country to ensure legal operations within the country.

*Changes:* None.

### No Objection From Foreign Country

*Comments:* Commenters argued that it was unfair to require an institution to obtain such legal authorization if a country has no such authorization process in place. Commenters stated that, if it is not the Department's intent to require legal authorization if the foreign government has no mechanism or requirement for such authorization, the Department should change § 600.9(d)(1)(i) to a conforming "no objection" standard. Commenters asserted that there was an inconsistency between the language in § 600.9(d)(1)(i), which requires that any additional location at which 50 percent or more of an education program is offered, or will be offered, or at a branch campus "must be legally authorized" to operate by an appropriate government authority, and the wording of § 600.9(d)(1)(ii), which requires the institution to provide, upon request, documentation to the Secretary that the government authority is aware that the additional location or branch campus provides postsecondary education and does not object. One commenter asserted that the additional requirement that an institution's documentation of their authorization to operate must also include a statement by the foreign government that the government "does not object to those activities" should be removed from the regulations. The commenter asserted that it is easy to imagine circumstances in which a domestic institution may be operating abroad in full compliance with all relevant laws and regulations, but the government may object to how specific topics are taught. For example, foreign governments may condition approval based on changes in curriculum, such as revising history to be more favorable to that country. With the other provisions that require notification to, and approval of, foreign additional locations and branch campuses by relevant accreditation agencies and State governments, the commenter stated that this requirement is unnecessary to protect student interests and is likely to cause significant problems for institutions operating abroad.

*Discussion:* The Department disagrees with the commenters that believe it is unfair to require an institution to obtain legal authorization even when their authorization process is unclear. Institutions should make an effort to understand the requirements of foreign authorization in any country it wishes to do business. As mentioned earlier in this preamble, if there are no requirements for authorization or a country exempts an institution from its

authorization requirements, then the Department would consider that being legally recognized by a foreign government. However, the institution should retain documentation reflecting their efforts in determining the authorization process, results of any inquiries with appropriate foreign entities, and any exemptions provided by the foreign government. The Department does not believe there is contradictory wording in § 600.9(d)(1)(i) and (ii).

If a foreign country has a process in which a U.S. institution can be legally recognized in their jurisdiction, it is expected that the institution will follow that process and obtain proper authorization from an appropriate foreign governmental agency. However, if that process does not exist, an institution must obtain some documentation that the foreign country does not object to the operation of a branch campus or additional location in their jurisdiction, which is established in § 600.9(d)(1)(i). An institution must have documentation on file and be able to provide that documentation to the Secretary, if requested, which is established in § 600.9(d)(1)(ii). As stated earlier in the preamble, the regulations do not require that any statement of authorization from a foreign government include the phrase "does not object to those activities." It is expected that institutions doing business in foreign countries follow the requirements in those countries. An institution would not be considered to be authorized if a foreign country objects to the institution providing educational programs within their country, regardless of the nature of the foreign country's objection.

*Changes:* None.

### Miscellaneous

*Comments:* One commenter argued that, because the proposed requirements would be too difficult to implement, for all foreign additional locations and branch campuses, the regulations should require only that the educational program does not violate the laws of the country in which it is present. One commenter encouraged the Department to allow an optional reciprocity agreement for countries similar to what is available between States in order to provide a cost-effective and efficient process for any additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus. Some commenters asserted that the proposed legal authorization requirements for foreign additional locations and branch campuses are unnecessary because accrediting agency

criteria for adding international locations are sufficient.

Some commenters asked the Department to clarify what programs that "will be offered" means for purposes of foreign authorization in proposed § 600.9(d). The commenter wanted to know at what point the Department considered a program to be one that "will be offered." For example if an institution commences development of a program with an intent to offer it at a new foreign additional location at some undetermined point in the future, but has not yet advised students of the potential program, much less enrolled them, is the institution required to have met the provisions of the regulations for the location?

One commenter asserted that, as the proposed regulations would exempt from legal authorization a foreign additional location or branch campus at which 50 percent or more of an educational program is offered, or will be offered, that is located on a U.S. military base and is exempt from obtaining legal authorization from the foreign country, the Department should provide a current and updated list of which military bases are exempt in which countries.

*Discussion:* The Department disagrees with the commenter who suggested that it would be too difficult to obtain authorization for all branch campuses in all foreign countries and that it should be sufficient to just ensure that the programs do not break the laws of the foreign country. If a country has requirements for institutions offering programs in their country for authorization, the Department expects an institution to follow those requirements and if those requirements do not exist, as addressed earlier, an institution should make a good faith effort to determine any requirements and document the lack of authorization in a country that does not have requirements. Should multiple countries establish some sort of reciprocity in which a particular foreign government accepts the authorization of another country or organization in lieu of making their own determinations on any requirements for an institution to be considered legally authorized in the country, the Department would not interfere with that country's process in authorizing institutions. While accrediting agencies may have criteria, the Department believes that these regulations provide needed protections to students by reinforcing the State's—or in this case the foreign government's—role in the program

integrity “triad” of accrediting agencies, states, and the Department.

An institution should have legal authorization from an appropriate foreign governmental agency by the time that it enrolls students at a branch campus or additional location in that foreign country. An institution should plan for this process when deciding to open a branch campus or additional location in a foreign country.

While these regulations provide an exemption for branch campuses that is physically located on a military base, facility, or area that a foreign country has granted the U.S. military to use, the Department declines to publish a complete listing of these areas. These areas would be decided by a Status of Forces agreement between the U.S. and a foreign country. Based on the unique nature of having a branch campus on a U.S. military base, the Department believes that an institution with a branch campus on a military base would know if they fall within that exemption.

*Changes:* None.

#### State Provisions

Some commenters stated that proposed § 600.9(d)(1)(v), which would require an institution to report at least annually to the State in which its main campus is located regarding the establishment or operation of each foreign additional location or branch campus, will force States to create a costly reporting mechanism for receiving and processing such information, without evident benefit. The commenters questioned why the Department does not defer to the States with respect to what reporting obligations institutions should or should not have with respect to foreign additional locations and branch campuses. One commenter, who asserted that the proposed regulation is over-reach by the Department, asked to which State an institution would be required to report the establishment of a foreign additional location or branch campus under proposed § 600.9(d)(1)(v). The commenter also asked how the requirement would apply to SARA-participating institutions. A few commenters suggested that the Department change the proposed regulations to allow those States that do not currently oversee foreign additional locations and branch campuses to become compliant without adjusting State laws.

Some commenters were unclear as to the legal authority for States to place limitations on institutions’ establishment or operation of foreign additional locations or branch campuses. These commenters asked the

Department to clarify the premise underlying proposed § 600.9(d)(1)(vi), which would require an institution to comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

One commenter requested that the Department reconsider the proposed regulation that would require State agencies to monitor institutions’ compliance with international authorizing bodies. The commenter, who noted that their experience shows that many State authorizing agencies already struggle with limited staff and resources, questioned how a State would be able to monitor international authorizations in addition to their current responsibilities.

One commenter asked the Department to clarify the institution’s home State’s role in an institution’s compliance with the requirement in proposed § 600.9(d)(4), in instances where the home State prohibits the foreign additional location or branch campus.

*Discussion:* The regulations delineate requirements with which a foreign additional location or branch campus of a domestic institution must comply to meet the State authorization requirements. They do not impose any requirements on State agencies, but instead ensure that those State agencies are informed about any foreign locations an institution is operating. The State where the institution’s main location is located will know all locations in which the institution is operating within the State, in other States, and in foreign locations so that the State is aware of what locations it is authorizing. The Department believes that this is basic information that should be provided to State agencies when an institution applies for new and renewal approvals. Authorization from a State for an institution’s main campus after the State has been notified of an institution’s foreign location is required in order for the institution to provide title IV financial aid to students attending courses at those foreign locations.

These regulations do not require States to create sophisticated and costly mechanisms for receiving and processing this information on additional locations or branch campuses in foreign locations, and each State may establish its own application and notification process for institutions to provide this information. Additionally, these regulations do not require State agencies to monitor an institution’s compliance with foreign requirements, but instead make sure that States are aware the foreign locations are in operation so that further inquiry may be

made if a State chooses to do so. These regulations do not require States to change their laws, as they do not create any requirements for States. The regulations in § 600.9(d) create requirements for institutions with branch campuses or additional locations in foreign locations to be compliant with authorization standards, but do not require States to do anything. States can determine the level of oversight they deem necessary. These regulations do not impose requirements on State agencies and would not necessarily require States to increase staff or resources to comply with these regulations. Institutions should already be following any requirements that a State providing their authorization has established, whether that applies to their main campus located in that State or to branch campuses in foreign locations.

The regulations at § 600.9(d) do not delineate any difference in authorization for those institutions that may participate in a State authorization reciprocity agreement. A State authorization reciprocity agreement handles authorization for distance education programs or correspondence courses, not the authorization requirements for branch campuses or additional locations in foreign countries.

*Changes:* None.

#### Complaint Process

*Comments:* One commenter asserted that it would be very complicated for an institution to obtain information on the student complaint process that is required by proposed § 600.9(d)(3). This commenter suggested that the regulations instead require students at foreign locations and branches to follow the complaint process of the State in which the main campus of the institution is physically located, or as prescribed by a reciprocity agreement.

*Discussion:* As stated in the preamble to the NPRM on page 48604, proposed § 600.9(d)(3) required institutions to disclose information regarding that student complaint process to enrolled and prospective students to ensure that students at foreign additional locations and branches are aware of the complaint process of the State in which the main campus of the institution is located and we have clarified this point in the final regulations. Section 600.9(d)(3) does not impose any new requirements regarding what consumer information must be disclosed to students. Note also that an institution is only required to make disclosures under § 600.9(d)(3) to title IV-eligible students enrolled at the foreign location.

*Changes:* Section 600.9(d)(3) has been changed to clarify that institutions must disclose to enrolled and prospective students information regarding that student complaint process of the State in which the main campus of the institution is located.

*Comments:* None.

*Discussion:* The intent of proposed § 600.9(d)(3), as indicated in the preamble to the NPRM on page 48603, was to require institutions to disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses, the information regarding the institution's student complaint process as described in § 668.43(b). However, we inadvertently left out the reference to foreign branch campuses in the proposed regulatory language.

*Changes:* Section 600.9(d)(3) has been changed to make clear that an institution must disclose to enrolled and prospective students at both foreign additional locations and foreign branch campuses the information regarding the institution's student complaint process.

#### More Time Needed for Implementation

*Comment:* Some commenters requested a longer implementation period for the requirements applicable to foreign additional locations and branch campuses because they asserted that some States and institutions would not be equipped to implement the new requirements by July 1, 2017. One commenter stated that complying with the proposed requirements that any foreign additional location at which 50 percent or more of an education program is offered, or will be offered, and any branch campus, be legally authorized by the foreign country in which it is located (proposed § 600.9(d)(1)(i)) and receive accrediting agency approval (proposed § 600.9(d)(1)(iii)), would impede an institution's ability to comply in a short period of time. One commenter argued that the Department should not enforce the regulations for at least three years after enactment because institutions will need time to do initial research and coordinate with the State agency, which cannot be done quickly. The commenter added that States that have no current process in place will need the extra time to put one in place. Commenters from public institutions in Alabama stated that, currently, the Alabama Commission on Higher Education and the Alabama State Portal Agency consider foreign locations to be outside their jurisdiction for regulatory authorization. The commenters asserted that the State would need time to make appropriate legislative changes to

address this. These commenters also asked the Department to prepare a timeline to phase in full compliance with this regulation.

*Discussion:* These regulations do not require a State to establish any authorization requirements or procedures for foreign additional locations or branch campuses of a domestic institution, and instead ensure that institutions with foreign locations are advising States about those locations.

An 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 additional foreign location or branch campus for any additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus. If an institution cannot comply with this requirement through a procedure that is already known to the institution, the State can provide the institution the proper format to submit this information to the State.

We note that the Department will review an institution's documentation of legal authorization by a foreign jurisdiction, established under § 600.9(d)(2), and therefore the State is under no obligation to review that documentation if they choose to take no action with that information.

We believe that institutions operating foreign locations should already be aware of, and in compliance with, any applicable foreign requirements. These regulations will go into effect on July 1, 2018, and that should provide institutions with adequate time to ensure they are in compliance.

In the example of Alabama, these regulations do not require the State to change their regulatory jurisdiction. These regulations require institutions to submit to their State a report of their branch campuses or additional locations in foreign locations, but do not require States to change their oversight of institutions in their State. States may claim regulatory oversight of these locations, but may choose to take no action.

*Changes:* None.

#### Section 668.50 Institutional Disclosures for Distance or Correspondence Programs

*Comments:* Multiple commenters identified conflicting language in proposed § 668.50(a) and (c), which referred to an institution that offers a program solely through distance education or correspondence course, and proposed § 668.50(b), which

referred to an institution that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums. The commenters believed that these regulatory provisions should be worded the same.

*Discussion:* We agree with the commenters regarding the inconsistency between proposed § 668.50(a) and (c) and proposed § 668.50(b) and with the recommendation to change the regulatory language for consistency and clarity.

*Changes:* We have revised § 668.50(a) and (c) to say an institution that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums.

#### Public Disclosures

*Comments:* A commenter requested clarification on the meaning of "enrolled student" and "prospective student" in the context of these disclosures. A second commenter stated that these disclosures create additional protections that were not given to students who enrolled in traditional brick and mortar campuses. Another commenter believed that the disclosures in § 668.50 were excessive in number. The same commenter asked whether an institution would be required to provide these disclosures separately or if an institution could combine them all into a larger disclosure for students. Another commenter recommended that the Department revise the regulatory language of this disclosure to ensure that the institution provides this information prominently, clearly and concisely, and that it is readable at a 6th grade level.

*Discussion:* The term "enrolled student" is defined in § 668.2(b) and is the status of a student who has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson after being accepted for enrollment that the student completed without the help of a representative of the institution. We define the term prospective student as an individual who has been in contact with an eligible institution requesting information concerning admission to that institution. These definitions apply to 34 CFR 668.50.

The Department is requiring these disclosures because they create additional protections that do not exist

for students enrolling in traditional programs. The distance education sector has been fraught with problems where students were not provided adequate information that may have informed them of deficiencies in a particular program and these disclosures for distance education programs are intended to address this problem. We disagree with the commenter who believes the disclosures in § 668.50(b) and (c) are excessive. The Department believes that this is important information that a prospective or enrolled student in a distance education program should receive about his or her educational program. An institution may combine these disclosures or provide them separately as it sees fit in order to ensure that important information will be presented to students in a clear and concise manner. The Department believes that institutions will make a good faith effort to provide these disclosures to students in a way that will clearly convey the information, so the Department declines to regulate the exact parameters of these disclosures at this time. However, the Secretary may provide additional guidance on this matter in the future.

*Changes:* None.

#### Authorization Status Disclosure

*Comments:* One commenter supported the regulation by agreeing that institutions should notify students whether an institution is authorized directly by a State or through participation in a reciprocity agreement.

Other commenters asked for clarification on the level of detail that must be disclosed under § 668.50(b)(1).

*Discussion:* We appreciate the support for the requirement to disclose whether an institution is authorized to enroll students in a distance education program.

This disclosure only requires an institution to inform students whether it is authorized to enroll students in a distance education program to students residing in a particular State. It does not require institutions to provide details related to the authorization process it completed to obtain authorization.

*Changes:* None.

*Comments:* Some commenters asked for additional guidance on how the proposed State authorization regulations would coexist with the June 16, 2016 proposed Defense to Repayment regulations. Commenters discuss a hypothetical situation where an online or correspondence student resides in a non-SARA participating State or, during their course of study, relocates to a non-SARA State, and thus, an institution would be faced with either completing

the burdensome process of State authorization in the non-SARA State in order to ensure that student could continue his/her course of study, or disenroll that student. If the student is disenrolled, at potentially no fault of the institution, the commenter suggests that the student could then potentially begin a Defense to Repayment claim against the institution. Under the proposed Defense to Repayment regulation, there could be circumstances where the institution would be required to post a 10 percent letter of credit. Commenters stated this hypothetical case places institutions in a regulatory Catch-22 and asked the Department to consider this likely scenario and address it either through changes to the regulatory text or through a "Dear Colleague" letter. The commenters specifically recommended that the Department allow students currently enrolled through online or correspondence courses to continue to be exempt from the proposed regulation through a grandfather clause or delaying implementation of the regulation to afford students ample time to complete their course of study.

*Discussion:* We appreciate the commenter's concern, and we also believe that the potential consequences to students of relocating to a State where an institution is not authorized or where the student's program does not lead to licensure or certification are sufficiently severe that disclosure of these consequences by institutions should be required. If a school misrepresents or omits information that a student reasonably relies on to his or her detriment, it may give rise to a borrower defense claim; however, at this stage, without sufficient evidence surrounding the potential misrepresentation, it is unclear whether the commenter's hypothetical would apply.

*Changes:* We revised the disclosures in § 668.50(b)(1) to include a disclosure that explains the potential consequences for students who change their State of residence to a State where the institution does not meet State requirements, or in the case of a GE program, where the program does not lead to licensure or certification in the State.

#### Complaint Process Disclosure

*Comments:* Multiple commenters asked for clarification about an institution's obligation to disclose complaint processes to distance education students when the institution participates in a State authorization reciprocity agreement, and also when the institution does not participate in such an agreement. They specifically asked whether an institution would be

prohibited from enrolling students in a distance education program if those students reside in a State that lacks an appropriate complaint process. One commenter stated that providing information about complaint processes will confuse students. This commenter also recommended that for institutions that participate in the currently operating SARA, an institution does not have to provide both the disclosure under § 668.50(b)(2) and the disclosure under § 668.50(b)(3).

One commenter believed that this requirement was superfluous and should be tied to § 668.43(b), which requires institutions to provide prospective and current students with contact information for filing complaints with its accreditor and with its State approval or licensing entity.

One commenter believed that this requirement would inappropriately cause institutions to interfere and lobby in the legislative process for other States. One commenter requested that the Department of Education collect the information required for the disclosure in § 668.50(b)(3) and provide a centralized Web site in which this information could be accessed by students. Other commenters also recommended that the Department indicate which States it believes to have an inadequate student complaint process.

Other commenters asked whether this disclosure would still be required for States that do not require authorization to offer distance education programs or for States that choose to not assert jurisdiction over a complaint process. Additionally, another commenter recommended adding in language to limit this disclosure to those States that have an appropriate State complaint process in place by adding the phrase "to the extent the State has a complaint process applicable to the institution."

*Discussion:* Under § 668.50(b)(2), an institution that is authorized directly by a State would need to disclose the process for submitting a complaint to an appropriate State agency for the State in which the institution's main campus is located. If an institution is authorized by a State authorization reciprocity agreement, it would be required to provide a description for submitting complaints that was established in the reciprocity agreement. For both types of authorization, an institution also must provide a description of a complaint process for the student's State of residence under § 668.50(b)(3), if such a process applies. In a State that has not joined a State authorization reciprocity agreement and does not have an appropriate complaint process for its

resident, an institution would not meet the authorization requirements established in § 600.9(c)(2)(i) and would be precluded from providing title IV aid to enrolled students who reside in that particular State.

The Department does not believe § 668.50(b) creates a situation where institutions are forced to become involved in the legislative process of States without an appropriate complaint process, though such institutions could choose to contact States to request that they create or revise this process in order to ensure that the State's residents become title IV-eligible. We disagree with the commenter that believes providing information on State complaint processes will confuse students. We believe that students are best served when provided with important information regarding their institution that will support their decision to enroll or remain enrolled.

While we agree with the commenter that there may be some overlap between the requirements in §§ 668.50(b)(2) and 668.43(b), we believe that the focus of the information is substantively different. The information disclosed under § 668.43(b) focuses on complaint processes in States where the institution maintains physical locations, and those complaint processes may differ from the complaint process disclosed under § 668.50(b)(2). For example, the disclosures in § 668.50(b)(2)(ii) refer to complaint processes that are designated by a State reciprocity agreement, which could feasibly require an institution to disclose complaint processes in any of the fifty States and additional jurisdictions within the country. We believe that students who reside in States other than the ones in which the institution is physically located benefit when they are able to easily identify the complaint process that is applicable to them, and the place where such students find information about how to file a complaint may differ because they are not enrolled to know specifically at a physical location of the institution where hard copies of information about filing complaints could be readily obtained. Therefore, we believe that it is important to require a disclosure about the complaint process in the State where the institution's main campus is located and any complaint process that is provided through an approved State authorization reciprocity agreement that the institution is a part of.

*Discussion:* The Department does not agree that it should provide a centralized Federal Web site listing the complaint processes of each State. The Department is concerned that providing this information on its Web site may be

misperceived as indicating a formal approval of such processes by the Department. Additionally, information may become outdated regarding State-based complaint processes because these processes that change, and the Department does not have the authority to compel States to provide and update this information in a timely way. We believe that each individual institution is in a better position to identify and obtain the necessary approvals from the States where it provides educational programs to students, since the institution would need to establish and maintain a working relationship with those State agencies. The Department does not believe that an institution necessarily has to do all the work to provide this disclosure to students. The administrators of a State authorization reciprocity agreement could provide this information to its members as a potential service, which could reduce the burden on individual institutions while still providing necessary information for the protection of students. The Department expects that all distance education programs will provide this disclosure regardless of the level of active review a State provides in providing authorization to distance education programs. For a distance education program to be considered to be authorized in a State, that State must have a complaint process in place. Therefore, there should not be programs operating in States that are not exerting jurisdiction over a complaint process.

The Department does not believe that adding exemptions to this disclosure is in the best interest of protecting students. As previously discussed, an institution would be prohibited from using title IV funds for students enrolling in distance education programs or correspondence courses in States that do not offer an appropriate complaint process to students who reside in the State.

*Changes:* None.

#### State Initiated Adverse Actions Disclosure

*Comments:* Many commenters requested additional information on the definition of "adverse action" in § 668.50(b)(4), which requires an Institution to disclose any adverse actions related to a postsecondary education program that a State entity has initiated. They noted that adverse action has a clear definition in the world of accreditation, but does not have a clear definition in State law or regulation. One commenter recommended that the Department use language established in NC-SARA's Agreement's Policies and Standards as a

definition for adverse actions. One commenter also asked for a definition for the word "initiated," stating that there may be investigations occurring that take years to resolve, but never result in any actions actually taken against the institution. A third commenter asked for a definition for the term "State entity." This commenter also recommended that those actions initiated by State entities be reported to any reciprocity agreement the institution is a member of, but only actions taken against the institution be reported to students. Another commenter requested that the rule be revised to only require that those adverse actions that remain pending or unresolved be required to be disclosed to students. One commenter requested that the Department eliminate this disclosure because these terms vary State by State and may cause confusion among students. One commenter requested clarification on whether this disclosure would need to be provided only to students in the State where the adverse action occurred, or whether it would need to be provided to all students enrolled in an institution's distance education programs. One commenter recommended the Department use these regulations to limit the title IV eligibility of institutions that receive legitimate complaints of malfeasance.

*Discussion:* The Department declines to define State adverse action in these regulations because it is difficult to capture all the different States' processes in one comprehensive definition. However, we agree that some further clarification is merited regarding what constitutes a State initiated adverse action that an institution must disclose to students. Adverse actions include any official finding for which an institution can appeal an administrative or judicial review, any penalty against an institution including a restriction on an institution's State approval, or the initiation of a civil or criminal legal proceeding. These actions include anything related to distance programs offered by an institution, as well as actions that apply to the institution as a whole. The Department also considers an adverse action to include any settlement of a legal proceeding initiated by a State entity, regardless of whether the institution had to admit to any wrongdoing. This disclosure is intended to provide students with information about adverse actions that either are being taken or were taken against an institution or program. An institution must disclose any adverse action at the point that it is publicly

announced or, for instances in which there will be no public announcements, within 14 days of being notified of the action, which is when the Department considers an adverse action to have been initiated. The Department believes that an institution that is a member of a State authorization reciprocity agreement should report adverse actions to other States members if it is required as part of their agreement, but that does not absolve the institution from disclosing that information to students, who should be informed of any adverse actions taken against an institution or program. Additionally, we believe that institutions should disclose information about adverse actions after the action concludes to ensure that a student is informed that an action was taken, including any settlement, so that the student may seek further information about it from the State or from the institution.

The Department believes that these disclosures should be made to all prospective or enrolled students in distance education at an institution, not just to students who reside in the State that has initiated the particular adverse action. This is because such disclosures may demonstrate risk indicators that any student should be aware of to determine their comfort level with enrollment in a particular program.

A State entity is any State department or agency that has the authority of the State to initiate an investigation or lawsuit against an institution of higher education. The Department believes that institutions which receive legitimate complaints of malfeasance will be handled through other mechanisms within the Department, such as audit findings and program reviews. As such, the Department does not believe these disclosures should be tied to specific penalties for issues beyond State authorization.

*Changes:* None.

#### Accreditation Adverse Action Disclosure

*Comments:* One commenter expressed concern at the term “adverse actions” with regards to accrediting agencies in § 668.50(B)(5), stating that what may be considered an adverse action for one accrediting agency may be a minor issue to another accrediting agency. The commenter requested that the Department standardize adverse actions initiated by an accrediting agency. Another commenter stated that information-gathering activities or those that might place an institution or program on probation or show cause should not constitute adverse actions under currently used definitions by

accrediting agencies. That commenter continued by stating that actions that should be considered adverse actions are: Denial, withdrawal, suspension, revocation, or termination of accreditation. The same commenter also noted that those actions of lesser severity that do not incorporate any right of appeal should not constitute adverse actions under this disclosure. One commenter noted that they felt it was unjustified to only require the disclosure of adverse actions of programs offered solely through distance education, but that all institutions of higher education should be required to disclose this information to students. Another commenter stated that accrediting agencies generally take actions against an institution and not a program and recommended the Department revisit their terminology throughout the regulation.

*Discussion:* “Adverse accrediting action,” as defined in 34 CFR 602.3, is the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program. While the Department believes that these examples provide a starting point for adverse actions initiated by an accrediting agency, the Department believes that, for purposes of this regulation, any downgrade in accreditation status, such as being placed on show cause or probation, is an adverse action and must be disclosed to students.

Information being requested for any type of accreditation review would not be considered an adverse action, but if the accrediting agency ends their review with a downgrade of accreditation status, then the institution would be required to disclose that downgrade as an adverse action. While we appreciate the support of the commenter who believes a disclosure for accreditation agency initiated adverse actions should be provided to students who are enrolled in traditional programs, we believe that is beyond the scope of this rulemaking. Institutions are required to provide information pertaining to their accreditation status per the requirements in 34 CFR 668.43(a)(6) by providing the names and addresses of the organizations that accredit the institution and their programs to students and prospective students upon request, even if it does not require calling specific attention to any downgraded status in their accreditation status. The Department believes that an institution must disclose adverse actions that pertain either to an institution’s accreditation status from a

regional accrediting agency or a programmatic accreditation that the institution’s programs may have. If a particular adverse action by an accrediting agency could affect the ability of an institution to continue to offer title IV funds to students enrolled in one of its programs, such as a downgrade in accreditation status, we would expect that institution to disclose this information. The Department believes that the language used in the regulation clearly indicates that any adverse actions by an accrediting agency that could have a negative impact on a distance education program or correspondence course would need to be disclosed to students.

*Changes:* None.

#### Refund Policies Disclosure

*Comments:* A number of commenters questioned the efficiency of the refund policy disclosure in § 668.50(b)(6) and they believed there would be significant errors in accuracy. They recommended that this disclosure would be more effective if the information could be collected once and then a centralized portal could be created to disclose the information to students. One commenter noted that the Department should also specifically require institutions to disclose, in writing, any refund promises that an institution of higher education makes to students beyond what is required by State law. One commenter stated that colleges and universities should not be required to comply with individual State tuition refund policies due to the high administrative burden since all title IV participating institutions are required to comply with Return of Title IV funds (R2T4) regulations, as established in 34 CFR 668.22. Another commenter asked for clarification on whether an institution that is exempt from State regulations, such as through a State authorization reciprocity agreement, can use its own refund policies.

*Discussion:* The Department believes that an institution of higher education is required to follow the laws in the State in which it operates or enrolls students, including any refund policies that the State enacts. While there may be a lack of efficiency in each institution providing a disclosure related to the refund policies in each State it enrolls students, an institution of higher education would still need to know those refund policies in order to follow them. Again, this disclosure is one that the Department believes that the administrators of a State authorization reciprocity agreement could provide as a service to its members, which would increase the efficiency and accuracy of

the information as the reciprocity agreement would have established relationships with State agencies to ensure accurate information. Even in cases where an institution participates in a State authorization reciprocity agreement, the institution must follow the individualized State refund policies. The Department considers refund policies as an integral part of a State's consumer protection laws and believes that institutions of higher education enrolling students within a State's jurisdiction are required to follow the laws of that State, even if it participates in a State authorization reciprocity agreement. As such, based on the definition of State authorization reciprocity agreement in § 600.2, a State authorization reciprocity agreement does not have the ability to overrule State law with regards to consumer protection, including refund policies. Institutions must follow the R2T4 regulations to determine the proper return of Federal, title IV funds when a student does not complete an academic term, however the Department does not have any specific requirements for tuitions to make tuition refunds to students. While not mandated in this disclosure, institutions of higher education must provide information about any institutional refund policies that a college or university follows under 34 CFR 668.43(a)(2), which requires an institution to disclose any refund policy with which the institution is required to comply for the return of unearned tuition and fees and other refundable portions of costs paid to the institution.

*Changes:* None.

#### Licensure or Certification Disclosure General Support

*Comments:* Multiple commenters supported the disclosure of educational prerequisites for professional licensure or certification in each State under § 668.50(b)(7)(i)(A) and (B). One commenter specifically encouraged the Department to keep this disclosure despite any opposition to its inclusion in these regulations.

*Discussion:* We appreciate the commenters' support for this disclosure under § 668.50(b)(7)(i)(A) and (B).

*Changes:* None.

#### Determining State Prerequisites for Licensure

*Comments:* Multiple commenters recommended that these regulations should generally prohibit using title IV funds for programs that do not meet State requirements for the occupation that it prepares students for, allowing exemptions only when a particular

student has provided a specific, personal reason on why they are enrolling in a program that does not qualify them for the licensure or certification requirements in their state of residence. One commenter specifically asked under what circumstances it would be permissible for an institution to not make a determination on whether their program meets the licensure or certification requirements in a particular State. The same commenter asked if it would be permissible for an institution to provide the licensure and certification prerequisites for a particular State and then distribute a "do not know" statement on whether their program meets those prerequisites. Another commenter asked that this disclosure be limited to States where the program is offered by the institution. Another commenter requested that this disclosure be limited to those programs that lead to professions that have licensure or certification prerequisites in a particular State.

*Discussion:* This disclosure is limited to programs that lead to a profession where the State has established licensure or certification prerequisites. If a State has not established prerequisites to work in the jobs associated with the program training, then the institution would have nothing to disclose. Obviously, certain professions are more regulated than others. For example, programs that lead to teaching or nursing as a career would be more likely to have established prerequisites, while a general studies program, which could lead to a multitude of other careers, may not have established prerequisites. However, if an academic program offered in a State may foreseeably lead to careers that require licensure or certification in that State, based on how an institution markets or advertises a particular distance education program or correspondence course, an institution must provide information to students on the requirements to meet that licensure or certification. We expect that if an institution has determined what the licensure or certification prerequisites are for a given State, the institution would also determine whether its programs fulfill those prerequisite requirements.

Many distance education programs are also held to the standards established by the GE regulations. GE programs are forbidden from using title IV aid for students enrolled in programs that do not meet the licensure or certification prerequisites of a State. However, these regulations do not extend that prohibition to distance

education programs that are not also GE programs.

*Changes:* None.

#### Determining the Applicable State for Licensure Disclosure

*Comments:* One commenter expressed concern that this disclosure was unfair to distance education programs which may be offered in States where the institution does not have a physical presence. They continued that this may be a problem for students who do not plan to remain in a particular State after they receive their degree. Another commenter recommended a change that a program be given an entire year in which to make a determination on whether their program meets licensure or certification requirements when a student moves to a State that the institution has not made a determination about their program.

Other commenters expressed concern that these regulations may require that they be held responsible for personal characteristics of the student that may disqualify the individual from licensure, such as moral character issues. Two commenters specifically recommended that this disclosure provide information on obtaining a job in-field and if the student needs to do anything beyond simply graduating in order to meet the State standard.

One commenter requested that this requirement be revised to include providing this disclosure to prospective students in any State where the institution is marketing its programs. Multiple commenters asked for clarification on the meaning of "where a student resides."

*Discussion:* We disagree with the commenter that believes it is unfair to require this disclosure of distance education programs because they do not have a physical presence in the State. In fact, we believe that is a strong justification that makes this an important justification for this disclosure. It is important that students being enrolled by an institution in a distance education program are provided information on how their educational program relates to career opportunities in the State in which they reside. Institutions should make the effort to provide students not in the same State as the institution with accurate information about licensure or certification prerequisites. As stated above, many distance education programs are also GE programs and are required to comply with the GE regulations, which prohibit enrollment of title IV eligible students in programs that do not meet licensure or certification requirements in a State.

However, these regulations do not extend that prohibition to distance education programs that are not GE programs. However, we expect that institutions will provide accurate information to students about the licensure or certification prerequisites in their State of residence. The Department believes that institutions should make these determinations as a part of doing business in a State. Where an institution does the research to determine the licensure or certification prerequisites for a State, then that institution should go the next step and determine whether their programs meet such prerequisites.

While the Department agrees with the commenter that this disclosure provides important information that could be shared with students, we believe it would be too difficult for institutions to be able to accurately identify every possible State in which a potential student could reside. Oftentimes, students find information on a program and contact an institution about a program from conducting Internet searches, rather than the recruitment techniques of an institution. In such cases, it would be unrealistic for an institution to be able to provide certification or licensure prerequisites to prospective students across the country. However, by the time a student enrolls, the institution should know what the prerequisites for that student's State of residence is and whether the program fulfills those requirements. The Department expects institutions to have provided this disclosure by the time the student enrolls.

The Department believes that if graduates of a program are able to sit for any type of licensure or certification examination, then the distance education program they were enrolled in meets State requirements for licensure or certification. If a program does not meet State requirements for licensure or certification, the Department believes that graduates of that program will be denied the ability to sit for licensure or certification. We agree that an institution of higher education is only responsible for how their programs meet or do not meet the requirements for licensure or certification in a State and are not responsible for student-level qualifications to sit for licensure or certification. The Department does not feel that providing information on obtaining a job in-field is necessary because information on State licensure or certification prerequisites is sufficient to allow a student to make an informed choice about whether to enroll or continue in an educational program.

The student's State of legal residence is the residency or domicile of a student's true, fixed, and permanent home of a student, usually where their domicile is located. As noted above, a student is considered to reside in a State if the student meets the requirements for residency under State law, and an institution may rely on a student's self-determination of the State in which he or she resides unless the institution has information to the contrary.

*Changes:* None.

#### Miscellaneous Issues Related to Licensure Disclosure

*Comments:* Multiple commenters noted that they believed that the Department should provide a centralized Web site or searchable government data base to ease the burden on institutions of higher education. Outside of a Federal Web site, other commenters requested clarification on whether an institution could link to a non-institutional Web site, such as a third-party Web site or a State professional licensure board Web site to provide appropriate disclosures to students. A number of commenters noted that this disclosure is difficult to fulfill because State agencies are not equipped to provide responses to institution requests for information on licensure and certification requirements. Other commenters requested guidance on how to provide this disclosure to students, recommending size, format and wording. One commenter specifically requested permission to encourage students to confirm whether the program meets the licensure or certification requirements of a State. Other commenters asked for sufficient time to become compliant with this regulation. One commenter asked for clarification on how it will be determined if a program leads to a career that would in fact need licensure or certification. One commenter requested that the Department exempt graduate programs from this disclosure requirement. Another commenter recommended that this disclosure only be required for those programs and States where schools have awarded more than ten degrees in the previous five years. One other commenter recommended that this disclosure be waived for institutions that are accredited by a regional accreditation agency and for programs that are accredited by a nationally recognized accrediting agency. One commenter requested clarification on which State's licensure and certification prerequisites should be disclosed to students. One commenter asked for clarification on how often an institution would need to

confirm accurate licensing or certification prerequisites to determine that their program continues to meet those prerequisites.

*Discussion:* The Department does not plan on developing a centralized Federal Web site to house information on the licensure or certification requirements of each State for those professions that States have implemented licensure or certification requirements. However, the Department does not believe that this information must necessarily be collected by each and every institution independently. Rather, an institution can be in compliance with this requirement by referring to a non-institutional Web site, including relevant State professional licensure board Web sites, which contains such information. Institutions that link to a non-institutional Web site should follow the guidance issued in Dear Colleague Letter GEN-12-13, and make the link accessible from the institution's Web site and have the link prominently displayed and accurately described. The institution is also responsible for ensuring that the link is functioning and accurate. Additionally, an institution should not need to request information on the licensure and certification requirements through official communications with a State agency. As pointed out by other commenters, many State agencies have licensure and certification prerequisites listed on a Web site and the Department believes that institutions could find this information on the Internet easily and they do not need to rely on State agency staff for official information. An institution would still be responsible for ensuring accurate information is being provided to their students though. Administrators of a State authorization reciprocity agreement could also offer the collection of this information to institutions as a service for membership in the agreement, which would reduce the burden on institutions.

The Department, at this time, declines to mandate any particular requirements about how these disclosures must be provided to students, but reserves the right to provide further guidance on that issue. However, we expect that institutions of higher education will collect and disclose this information for students and not put the onus of discovering the information on the student. Institutions should not try to hide this information deep on their Web sites, but should instead make these disclosures easily accessible for students. The institution is ultimately responsible for ensuring that this information is disclosed to students and should not put the burden on the

student making the determination about whether the program meets the prerequisites for licensure or certification. The Department believes that an institution makes the determination about the careers that potential academic programs can lead to when developing programs as a matter of conducting business. Institutions of higher education advertise these linkages between their academic programs and potential careers as part of the advertising and student recruitment process. Institutions report these linkages, especially in GE reporting, by connecting the programs' Classification of Instructional Program (CIP) codes to their related Standard Occupational Classification (SOC) codes. These regulations become active on July 1, 2018, and the Department believes that is sufficient time for institutions of higher education to prepare for compliance. The Department disagrees with the recommendation that graduate programs should be exempted from this disclosure. We believe that graduate students would also benefit from this information and should be provided this disclosure, as graduate programs may also be preparing students for careers in subject areas that States have established licensure or certification prerequisites.

The Department also disagrees with the recommendation that the disclosure only be required of programs for States where the institution has awarded more than ten degrees in five years. We believe that this information should be provided to all students so they will know whether the program they enroll in will meet the licensure or certification prerequisites regardless of how many degrees are given in a particular program. The Department disagrees with the recommendation to provide an exemption to institutions with regional accreditation or programs with national accreditation. While accreditation status is another disclosure required under these regulations, we believe that students should be informed of whether a program meets licensure and certification prerequisites and obtaining accreditation does not mean that an institution's program necessarily meets those prerequisites. The Department believes that an institution must disclose the licensure and certification requirements to students for the State in which the student resides because that is the State where a student would most likely be searching for employment upon completing their academic program. The Department does not intend to define the minimum

timeframe required for an institution to confirm licensing or certification prerequisites with State agency information, but believes that an institution should do so regularly to ensure that each prospective student receives accurate information. The Department would like to remind institutions that in addition to providing accurate public disclosures that it would also need to ensure accurate information when providing individualized disclosures to prospective students that a program they are enrolling in does not meet licensure or certification prerequisites in their State of residence, as required by § 668.50(c)(1)(i).

*Changes:* None.

#### Programs That Do Not Satisfy Licensure or Certification Prerequisites

*Comments:* Multiple commenters expressed concern with § 668.50(b)(7)(ii), which requires disclosing whether a program does or does not satisfy the applicable educational prerequisites for licensure or certification where the institution determines a State's requirements. These commenters were concerned that § 668.50(b)(7)(ii) does not require a program to meet certification or licensure prerequisites to be eligible to award title IV aid to students. One commenter requested that the Department require institutions with distance education programs to make a determination with respect to certification or licensure prerequisites for all States, regardless of whether the institution is recruiting students for enrollment. One commenter also requested clarification on what it means to make a "determination with respect to certification or licensure prerequisites." Specifically, the commenter asked whether an institution that has made an incorrect determination of whether a program meets licensure or certification requirements would still be considered in compliance with this requirement. The commenter provided as an example an institution that advertises that a certain program will lead to a career such as teaching, but fails to conduct the research on whether the program meets those prerequisites established by the State.

*Discussion:* The Department believes that students are best served by having accurate information to be able to make decisions regarding their academic pursuits, including with regard to the certification or licensure prerequisites of potential careers. As stated above, most distance education programs are also GE programs, which means that an

institution cannot provide Title IV aid to students enrolled in those programs unless the program meets the licensure or certification status of a State. The GE regulations do not forbid non-GE distance education programs from enrolling title IV eligible students.

However, the Department expects that institutions will make a good faith effort in determining whether their programs meet State licensure or certification prerequisites. We do not believe that requiring institutions to research and provide information on States that it does not plan on recruiting or enrolling students will be useful to students, as the individuals that the information would pertain to are not being solicited for enrollment.

Therefore, we believe that requiring institutions to research State certification or licensure prerequisites for States in which it is not actively recruiting or enrolling students would significantly increase the burden associated with this disclosure without substantial benefit to those individuals that enroll in their programs. If an institution advertises that a distance education program could lead to a career that would require certification or licensure in a State, such as teaching, but does not follow through to research the licensure requirements to determine how the program matches up against the prerequisites, then the institution has not provided accurate licensure requirements to students nor stated that its program meets the academic requirements of those prerequisites, as required by this regulation.

*Changes:* None.

#### Timeline for Individualized Disclosures

*Comments:* One commenter requested that the timeframe in which an institution must disclose any determination that its program ceases to meet licensure or certification prerequisites be increased from 7 days to 45 days under § 668.50(c)(1)(ii)(B). The commenter continued by stating that it would take significantly more than 7 days to understand the impact of a change in licensure requirements, inform internal stakeholders, determine impacted learners, craft and route communications for approval, educate employees who may receive questions from learners, and execute a mass communication. The same commenter also asked for clarification on when the clock would start to provide this disclosure. Another commenter asked whether an institution would be allowed to make a determination that it has not made a determination with respect to how their program meets the licensure or certification prerequisites

in a State, rather than disclosing that the institution no longer meets those prerequisites.

*Discussion:* The Department believes that a 45-day window from determining that an institution's distance education program ceases to meet licensure or certification programs to informing enrolled and prospective students of that determination is too long. However, the Department recognizes that seven days may be too small a window to inform prospective and enrolled students of a determination. This disclosure's time-frame would not start until an institution has made a determination that a distance education program no longer meets the certification or licensure prerequisites for a State. Once that determination has been made, we believe an institution can move quickly to prepare notifications and inform students, especially with the use of technology in mass communications.

We believe that a 14-calendar day period from the point that an institution has determined a program no longer meets the licensure or certification requirements of a State is sufficient to notify prospective and enrolled students. If an institution determines that a program ceases to meet the licensure or certification requirements in a State, the institution must inform students of that determination within 14 calendar days. That institution cannot avoid providing students with accurate information by claiming the institution is not making a determination with respect to those prerequisites.

*Changes:* We revised § 668.50(c)(1)(ii)(B) to provide institutions 14-calendar days to disclose any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State.

#### Individualized Disclosure Acknowledgement

*Comments:* One commenter stated that § 668.50(c)(2) should not require institutions, under the penalty of losing title IV eligibility, to obtain acknowledgment from students that they received notification of any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence, prior to the student's enrollment. Another commenter stated that institutions with a very mobile student population, such as military students, would have particular difficulty in obtaining this acknowledgment.

*Discussion:* The Department disagrees with the commenters that receiving

acknowledgment of this disclosure would be extremely difficult to achieve. As mentioned in the NPRM, the Department believes that an institution could simply add in a paragraph to their enrollment agreement, a process that takes place electronically for many distance education programs already, that addresses receiving this disclosure. This disclosure does not require a separate, stand-alone affirmation and can be combined with other acknowledgments that the student may have to provide to an institution during the enrollment process. As such, the Department does not believe that an institution would have to create a separate process for record keeping of these disclosures outside of the record keeping an institution would already do on enrollment agreements. Based on the flexibility of how an institution can obtain acknowledgement from a student that they received the disclosure that the program they are enrolling in does not meet the licensure or certification prerequisites in their State of residence, we believe that institutions with a highly mobile population should not have any difficulty obtaining this acknowledgement from individuals enrolling in their distance education programs. We believe that the best way to demonstrate to students that they are receiving important information that may influence their decision to enroll in a program would be for the student to attest to receiving such information before enrollment.

*Changes:* None.

#### Executive Orders 12866 and 13563

##### Regulatory Impact Analysis

##### Introduction

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

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

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

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

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

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

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

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

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

We are issuing these regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these

regulations are consistent with the principles in Executive Order 13563.

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

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

**Need for Regulatory Action**

States have a vital and unique role in the oversight of higher education and the Department believes that states are a key partner in setting minimum standards for institutions to operate. Recognizing the important role that States play in the oversight of distance education and the interest that States

have in protecting their residents, the Department’s regulation requires that institutions fulfill any requirements imposed by States whose residents are enrolled in the institution’s postsecondary programs. The landscape of higher education has changed over the last 20 years. During that time, the role of distance education in the higher education sector has grown significantly. For the 1999–2000 Academic Year, eight percent of undergraduate students participated in at least one distance education course.<sup>2</sup> Recent National Center for Education Statistics’ Integrated Postsecondary Education Data System (IPEDS) data indicate that in the fall of 2014, 28.5 percent of students at degree-granting, title IV participating institutions were enrolled in at least one distance education class.<sup>3</sup> The emergence of online learning options has allowed students to enroll in colleges authorized in other States and jurisdictions with relative ease. According IPEDS, in the fall of 2014, the number of students enrolled exclusively in distance education programs totaled 2,824,334.<sup>4</sup> Distance education industry sales have increased alongside student enrollment.

As students continue to embrace distance education, revenue for distance education providers has increased steadily. In 2014, market research firm Global Industry Analysts projected that 2015 revenue for the distance education industry would reach \$107 billion.<sup>5</sup> For the same year, gross output for the overall non-hospital private Education Services sector totaled \$332.2 billion. Distance education has grown to account for roughly one-third of the U.S. non-hospital private Education Services sector.

In this aggressive market environment, distance education providers have looked to expand their footprint to gain market share. An analysis of recent data from IPEDS indicates that 2,301 HEA title-IV-participating institutions offered 23,434 programs through distance education in 2014. Approximately 2.8 million students were exclusively enrolled in distance education courses, with 1.2 million of those students enrolled in programs offered by institutions from a different State. Table 1 summarizes the number of institutions, programs, and students involved in distance education by sector.

**TABLE 1—2014 PARTICIPATION IN DISTANCE EDUCATION BY SECTOR**

Sector	Institutions offering distance education programs	No. of distance education programs	Students exclusively in distance education programs	Students exclusively in out-of-state distance education programs
Public 4-year .....	540	5,967	692,074	144,039
Private Not-for-Profit 4-year .....	745	6,555	607,224	333,495
Proprietary 4-year .....	255	5,153	820,630	628,699
Public 2-year .....	625	5,311	690,771	45,684
Private Not-for-Profit 2-year .....	15	42	814	388
Proprietary 2-year .....	87	339	21,421	5,291
Public less-than-2-year .....	7	10	55	.....
Private Not-for-Profit less-than- 2-year .....	1	1	.....	.....
Proprietary less-than-2-year .....	26	56	1,056	382
<b>Total .....</b>	<b>2,301</b>	<b>23,434</b>	<b>2,834,045</b>	<b>1,157,978</b>

States have differing requirements that institutions of higher education must meet, such as varying application requirements and fees. The different requirements can potentially cause increased costs and burden for those institutions, and some States have entered into reciprocity agreements with other States in an effort to coordinate oversight of distance education. For example, as of June 2016, 40 States and

the District of Columbia have entered into a State Authorization Reciprocity Agreement administered by the National Council for State Authorization Reciprocity Agreements, which establishes standards for the interstate offering of postsecondary distance-education courses and programs. Through a State authorization reciprocity agreement, an approved institution may provide distance

education to residents of any other member State without seeking authorization from each member State. However, even where States accept the terms of a reciprocity agreement, that agreement may not apply to all institutions and programs in any given State. The regulation defines the type of reciprocity agreements that are an acceptable means for States to confer

<sup>2</sup> NCES, “A Profile of Participation in Distance Education: 1999–2000”, p.6 available at <http://nces.ed.gov/pubs2003/2003154.pdf>.

<sup>3</sup> 2015 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled

in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2013 and Fall 2014.

<sup>4</sup> Id.

<sup>5</sup> Online Learning Industry Poised for \$107 Billion In 2015 (<http://www.forbes.com/sites/tjmccue/2014/08/27/online-learning-industry-poised-for-107-billion-in-2015/#46857a0966bc>).

authorization to distance education programs.

There also has been a significant growth in the number of American institutions and programs enrolling students abroad. As of May 2016, American universities were operating 80 foreign locations worldwide according to information available from the Department's Postsecondary Education Participation System (PEPS).

American institutions operating foreign locations are still relatively new. As such, data about the costs involved in these operations is limited. Some American institutions establishing locations in other countries have negotiated joint ventures and reimbursement agreements with foreign governments to share the startup costs or other costs of doing business.

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

#### Summary of Comments and Changes

Following the publication of the NPRM on July 25, 2016 (81 FR 48598), the Department received 139 comments on the proposed regulations. Many of these comments have been addressed in the *Analysis of Comments and Changes* in this preamble. A number of commenters expressed concern about the costs of complying with these State authorization regulations. These commenters state that the Department underestimated the costs of researching State authorization requirements, coordination between the institution and foreign locations, and interactions with State agencies. Commenters representing HBCUs and other Minority Serving Institutions ("MSIs") raised concerns about the costs and effect on those institutions, with some commenters requesting additional resources be made available to help them comply if the regulations passed. Additionally, commenters representing small institutions stated that the regulations and associated compliance costs would serve as a barrier to entry that would prevent small, highly reputable institutions from competing in the distance education market and potentially deny students a high-quality

and cost-effective educational opportunity. The commenters noted that, in recent years, distance education has become an important source of revenue and a way to level the playing field with larger and better funded public and private institutions. The comments asserted that the Department underestimated the complexity and burden of complying with the regulations, and that the costs, including unintended negative consequences of the regulations such as cost transfers to students, outweigh the benefits.

The Department appreciates the comments and the specificity with which some commenters discussed the calculation of burden for the regulations. Where applicable, comments about the relevant burden calculation will be addressed in the *Paperwork Reduction Act* section of this preamble. Other comments about the overall costs of the regulation relative to the benefits are addressed in the *Discussion of Costs, Benefits, and Transfers* section.

Based on the comments received and the Department's internal review, a number of changes have been made from the proposed regulations. In particular, with respect to distance education, the final regulations: (1) State that for a reciprocity agreement to be valid under these regulations, it may not prohibit a State from enforcing its own statutes and regulations; (2) clarify that institutions may choose to be authorized individually in each State required or to participate in a reciprocity agreement between States; (3) revise the language in § 668.50(a) and (c) to be consistent with § 668.50(b) in requiring the specified disclosure from institutions that offer programs solely through distance education or correspondence courses, excluding internships and practicums; (4) Add a new requirement under § 668.50(b)(1)(iii) that an institution must explain to students the consequences of relocating to a State where the institution does not meet State requirements or where one of the institution's GE programs does not meet licensure or certification requirements in the State; and (5) revise the timeframe in § 668.50(c)(1)(ii)(B) for disclosing that the program ceases to meet licensure or certification prerequisites of a State within 14 days of that determination, not 7 days as proposed in the NPRM. With respect to foreign locations, the final regulations make the following changes: (1) Revise § 600.9(d)(1)(i) to clarify that military bases, for purposes of foreign authorization exemption, are any area that is under use by the U.S. military, including facilities and areas

that foreign countries have allowed the U.S. military to use; (2) revise § 600.9(d)(3) to clarify that institutions must disclose to enrolled and prospective students information regarding the student complaint process of the State in which the main campus of the institution is located; and (3) revise § 600.9(d)(3) to make clear that an institution must disclose to enrolled and prospective students at both foreign additional locations and foreign branch campuses the information regarding the institution's student complaint process.

#### Discussion of Costs, Benefits, and Transfers

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

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

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

#### Students

During the negotiated rulemaking students stated that the availability of online courses allowed them to earn credentials in an environment that suited their personal needs. We believe, therefore, that students would benefit from increased transparency about distance education programs. The disclosures of adverse actions against the programs, refund policies, consequences of moving to a State in which the program does not meet requirements, and the prerequisites for licensure and whether the program meets those prerequisites in States for which the institution has made those determinations will provide valuable information that can help students make more informed decisions about which institution to attend.

Increased access to information could help students identify programs that offer credentials that potential employers recognize and value. Additionally, institutions have to provide an individualized disclosure to enrolled and prospective students of adverse actions against the institution and when programs offered solely through distance education or correspondence courses do not meet licensure or certification prerequisites

in the student's State of residence. The disclosure regarding adverse actions will ensure that students have information about potential wrongdoing by institutions. Similarly, disclosures regarding whether a program meets applicable licensure or certification requirements will provide students with valuable information about whether attending the program will allow them to pursue the chosen career upon program completion, helping students make a better choice of program before they incur significant loan debt or use up their Pell Grant and subsidized loan eligibility.

In response to comments received about the NPRM, the Department has added a requirement that institutions disclose the potential loss of title IV eligibility or disenrollment of students who relocate to a State in which the program does not meet the requirements. This information does not require an individualized disclosure, but should provide students with generalized information on where the program meets requirements and the consequences if the student relocates to a State not on that list and will give the student information about how their choice of residence and program interact with respect to eligibility for title IV funding. The licensure disclosure requires acknowledgment by the student before enrollment, which emphasizes the importance of ensuring students receive that information. It also recognizes that students may have specific plans for using their degree, potentially in a new State of residence where the program would meet the relevant prerequisites.

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

Some commenters did note that students could bear the costs of compliance with the regulations through increased tuition and fees or through reduced options for pursuing their education. The Department recognizes that some colleges may choose to pass some costs through to students, but we believe that the increased value of a program that is legally authorized to operate in a State, has a clear complaints process, and lets students know if it leads to valid licensure opportunities, if applicable, is worth the potential cost increase.

Commenters representing small colleges expressed concern that the costs of compliance with the regulations would favor larger and better resourced institutions, potentially reducing competition and options for students. The Department appreciates these comments and acknowledges that the burden will vary for different types of institutions, but we believe that requiring institutions to comply with State standards is a minimum expectation to operate a program.

#### *Institutions*

Institutions will benefit from the increased clarity concerning the requirements and process for State authorization of distance education and of foreign additional locations. Institutions will bear the costs of complying with State authorization requirements, whether through entering into a State authorization reciprocity agreement or researching and meeting the relevant requirements of the States in which they operate distance education programs. The Department does not ascribe specific costs to the State authorization regulations and associated definitions because it is presumed that institutions are already complying with applicable State authorization requirements. Additionally, nothing in these regulations would require institutions to participate in distance education. In the NPRM, the Department estimated potential costs of complying with State authorization requirements as an illustrative example in the event that the clarification of the State authorization requirements in the regulations, among other factors, would provide an incentive for more institutions to offer distance education courses. As noted in the NPRM, the actual costs to institutions would vary based on a number of factors including the institutions' size, the extent to which an institution provides distance education, and whether it participates in a State authorization reciprocity agreement or chooses to obtain authorization in specific States. The Department applied the costs associated with a SARA arrangement to all 2,301 title IV participating institutions reported as offering distance education programs in IPEDS for a total of \$19.3 million annually in direct fees and charges associated with distance education authorization. Additional State fees to institutions applied were \$3,000 for institutions under 2,500 FTE, \$6,000 for 2,500 to 9,999 FTE, and \$10,000 for institutions with 10,000 or more FTE.

As discussed previously, several commenters stated that the Department

underestimated the costs of compliance with the regulations, noting that extensive research would be required for each program in each State. One institution noted that it costs \$23,520 to obtain authorization for a program with an internship in all 50 States and \$3,650 to obtain authorization for a new 100 percent online program in all 50 States. To renew the authorization for its existing programs, this institution estimates a cost of \$75,000 including fees, costs for surety bonds, and accounting services, and notes these costs have been increasing in recent years. The commenter noted the institution currently has one full-time employee to oversee the State authorization process and contracts with State authorization and licensing experts and expects those personnel and contracting costs would increase significantly under the proposed regulations from the NPRM. We appreciate the cost information provided by the commenters. These comments demonstrate that the costs of establishing distance education programs could vary significantly, but, as stated earlier, we assume that institutions are already operating programs with appropriate authorizations. Domestic institutions that choose to operate foreign locations may incur costs from complying with the requirements of the foreign country or the State of their main campus, and these will vary based on the location, the State, the percentage of the program offered at the foreign location, and other factors. As with distance education, nothing in the regulation requires institutions to operate foreign locations and we assume that institutions have complied with applicable requirements in operating their foreign locations.

In addition to the costs institutions incur from identifying State requirements or entering a State authorization reciprocity agreement to comply with the regulations, institutions will incur costs associated with the disclosure requirements. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble. In total, these regulations are estimated to increase burden on institutions participating in the title IV, HEA programs by 152,565 hours. The monetized cost of this burden on institutions, using wage data developed using Bureau of Labor Statistics BLS data available at: [www.bls.gov/ncs/ect/sp/ecsuphst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf), is \$5,576,251. This burden estimate is based on an hourly rate of \$36.55.

### *Federal, State, and Local Governments*

These regulations maintain the important role of States in authorizing institutions and in providing consumer protection for residents. The increased clarity about State authorization should also assist the Federal government in administering the title IV, HEA programs. The regulations do not require States to take specific actions related to authorization of distance education programs. States may choose the systems they establish, their participation in a State authorization reciprocity agreement, and the fees they charge institutions and States have the option to do nothing in response to the regulations. Therefore, the Department has not quantified specific annual costs to States based on these regulations.

### **Net Budget Impacts**

As indicated in the NPRM, these regulations are not estimated to have a significant net budget impact in costs over the 2017–2026 loan cohorts. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

In the absence of evidence that these regulations will significantly change the size and nature of the student loan borrower population, the Department estimates no significant net budget impact from these regulations. While the clarity about the requirements for State authorization and the option to use State authorization reciprocity agreements may expand the availability of distance education, that does not necessarily mean the volume of student loans will expand greatly. Additional distance education could serve as a convenient option for students to pursue their education and loan funding may shift from physical to online campuses. Distance education has expanded significantly already and these regulations are only one factor in institutions' plans within this field. The distribution of title IV, HEA program funding could continue to evolve, but the overall volume is also driven by demographic and economic conditions that are not affected by these regulations and State authorization requirements are not expected to change loan volumes in a way that would result in a significant net budget impact.

Likewise, the availability of options to study abroad at foreign locations of domestic institutions offers students flexibility and potentially rewarding

experiences, but is not expected to significantly change the amount or type of loans students use to finance their education. Therefore, the Department does not estimate that the foreign location requirements in § 600.9(d) will have a significant budget impact on title IV, HEA programs. The changes made from the proposed regulations discussed in the *Summary of Comments and Changes* section of this RIA are not expected to significantly change the budget impact of these regulations.

### **Assumptions, Limitations, and Data Sources**

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

### **Alternatives Considered**

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

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

As it developed the regulations, the Department considered adopting the approaches considered in 2010 or 2014. However, the 2010 rule did not allow for reciprocity agreements and did not

require a student complaint process for distance education students if a State did not already require it. The option considered in 2014 raised concerns about complexity and the level of burden involved. The Department therefore used elements of both the 2010 and 2014 rulemakings in formulating these regulations. Using the 2010 rule as a starting point, these regulations allow for State authorization reciprocity agreements and provide a student complaint process requirement to achieve a balance between appropriate oversight and burden level. In 2014, the Department and non-Federal negotiators reached agreement on the provisions related to foreign locations without considering specific alternative proposals.

### **Regulatory Flexibility Analysis**

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

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

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

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

Section 101(a)(2) of the HEA defines the term “institution of higher education” to mean, in part, an

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

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

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

number of small entities could be affected. The Department also expects this to be the case for foreign locations of domestic institutions, with proprietary institutions operating foreign locations unlikely to be small entities and a number of private not-for-profits classified as small entities involved.

Distance education offers small entities, particularly not-for-profit entities of substantial size that are classified as small entities, an opportunity to serve students who could not be accommodated at their physical locations. Institutions that choose to provide distance education could potentially capture a larger share of the higher education market. Overall, as of Fall 2014, approximately 14.5 percent of students receive their education exclusively through distance education while 71.5 percent took no distance education courses. However, at proprietary institutions almost 53.9 percent of students were exclusively distance education students and 38.6 percent had not enrolled in distance education courses.<sup>6</sup> As discussed above, we assume that most of the proprietary institutions offering a substantial amount of distance education are not small entities, but if not-for-profit institutions expand their role in the distance education sector, small entities could increase their share of revenue. On the other hand, small entities that operate physical campuses could face more competition from distance education providers. The potential reshuffling of resources within higher education would occur regardless of the final regulations, but the clarity provided by the distance education

requirements and the acceptance of State authorization reciprocity agreements could accelerate those changes.

In order to accommodate students through distance learning, institutions face a number of costs, including the costs of complying with authorization requirements. As with the broader set of institutions, the costs for small entities would vary based on the scope of the distance education they choose to provide, the States in which they operate, and the size of the institution. In the Initial Regulatory Flexibility Analysis in the NPRM, we estimated that small entities will face annual costs of \$7.0 million for SARA fees and additional state fees, using the same analysis and costs as in Table 2 of the NPRM.<sup>7</sup> As noted in the Regulatory Impact Analysis, several commenters stated that the Department's illustrative costs were understated, and, in particular, that the cost of complying with State authorization requirements would be a greater burden for small institutions. The Department acknowledges that the costs of obtaining State authorization will vary by type and existing resources of institutions and that these considerations may influence the extent to which small entities operate distance education programs. It is possible that some costs can be mitigated through shared research on compliance requirements through national organizations or other approaches, but the Department maintains that State authorization is an important oversight mechanism and a minimum expectation for institutions to operate a program, whatever their size.

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

Institutions	Count	SARA fees	Additional State fees
Private Not-for-Profit 2-year or less			
Under 2,500 .....	16	\$32,000	\$48,000
2,500 to 9,999 .....			
10,000 or more .....			
Proprietary 2-year or less			
Under 2,500 .....	109	218,000	327,000
2,500 to 9,999 .....			
10,000 or more .....			
Private Not-for-Profit 4-year			
Under 2,500 .....	474	948,000	1,422,000
2,500 to 9,999 .....	227	908,000	1,362,000
10,000 or more .....	44	264,000	440,000
Proprietary 4-year			
Under 2,500 .....	198	396,000	594,000
2,500 to 9,999 .....			

<sup>6</sup> 2015 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of

student, level of enrollment, and control and level of institution: Fall 2013 and Fall 2014.

<sup>7</sup> Notice of Proposed Rulemaking published July 25, 2016, Table 2, p.48609 available at <https://www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-17068.pdf>.

[www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-17068.pdf](https://www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-17068.pdf).

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

Institutions	Count	SARA fees	Additional State fees
10,000 or more .....	.....	.....	.....
Total .....	1,068	2,766,000	4,193,000

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

Table 3 relates the estimated burden of each information collection

requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of the preamble. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the

reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 13,981 hours. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at [www.bls.gov/ncs/ect/sp/ecsuhst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuhst.pdf), is \$510,991. This cost was based on an hourly rate of \$36.55.

TABLE 4—PAPERWORK REDUCTION ACT BURDEN FOR SMALL ENTITIES

Provision	Reg. section	OMB control number	Hours	Costs
Reporting related to foreign additional locations or branch campuses. ....	600.9	1845–0144	86	\$3,158
Public disclosure made to enrolled and prospective students in the institution’s distance education programs or correspondence courses. Requires 7 disclosures related to State authorization, complaints process, adverse actions, refund policies, and whether the program meets prerequisites for licensure or certification. ....	668.50(b)	1845–0145	57,743	2,110,547
Individualized disclosure to and attestation by enrolled and prospective students of distance education programs about adverse actions or the program not meeting licensure requirements in the student’s State. ....	668.50(c)	1845–0145	271	9,912
Total .....	.....	.....	58,101	2,123,577

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

As acknowledged in the Analysis of Comments and Changes, the disclosure requirement about the State complaint process in § 668.50(b)(2) overlaps the more generalized institutional information disclosure requirement in § 668.43(b). The Department believes this overlap is warranted because of the importance of these disclosures to distance education students and the means of providing the disclosure may be different for this population.

**Alternatives Considered**

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

**Paperwork Reduction Act of 1995**

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

Sections 600.9 and 668.50 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections, and an Information Collection Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information

unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

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

**Background**

The following data will be used throughout this section: For the year 2014, there were 2,301 institutions that reported to IPEDS that they had enrollment of 2,834,045 students attending 23,434 programs offered through distance education as follows:

1,172 public institutions reported 1,382,900 students attending 11,288 programs through distance education;

761 private, not-for-profit institutions reported 608,038 students attending 6,598 programs through distance education;

368 private, for-profit institutions reported 843,107 students attending 5,548 programs through distance education.

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

#### *Section 600.9 State Authorization*

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

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

*Burden Calculation:* There will be burden on each domestic institution reporting the establishment or continued operation of a foreign additional location or branch campus to the State in which the main campus of the domestic institution is located. We estimate that each institution will require 2 hours annually to draft and submit the required notice. We estimate that 35 public institutions will require a total of 70 hours to draft and submit the required State notice (35 institutions  $\times$  2 hours). We estimate that 42 private, not-for-profit institutions will require a total of 84 hours to draft and submit the required State notice (42 institutions  $\times$  2 hours). We estimate that 3 private, for-profit institutions will require a total of 6 hours to draft and submit the required State notice (3 institutions  $\times$  2 hours).

The total estimated burden for 34 CFR 600.9 will be 160 hours under OMB Control Number 1845-0144.

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

*Requirements:* The Department added new § 668.50(b) and (c), which requires disclosures to enrolled and prospective

students in the institution's distance education programs or correspondence courses. Seven disclosures will be made publicly available, and up to three disclosures will require direct communication with enrolled and prospective students when certain conditions have been met. These disclosures will not change any other required disclosures of the Student Assistance General Provisions regulations.

#### *Public Disclosures*

Under § 668.50(b)(1), an institution will be required to disclose whether or not the program offered through distance education or correspondence courses is authorized by each State in which enrolled students reside. If an institution is authorized through a State authorization reciprocity agreement, the institution will be required to disclose its authorization status under such an agreement. An institution will also be required to explain to students the consequences of relocating to a State where the institution does not meet State authorization requirements, or, in the case of a GE program, where the program does not meet licensure or certification requirements in the State.

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

Under § 668.50(b)(2)(ii), an institution authorized by a State authorization reciprocity agreement will be required to disclose the complaint process established by the reciprocity agreement, if the agreement established such a process. An institution will be required to provide contact information for receipt of such complaints, as set out in the State authorization reciprocity agreement.

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

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

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

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

Under § 668.50(b)(7), an institution will be required to disclose the applicable educational prerequisites for professional licensure or certification which the program offered through distance education or correspondence course prepares the student to enter for each State in which students reside. The institution must also make this disclosure for any other State which the institution has made a determination regarding such prerequisites as well as if the institution's program meets those requirements. For any State for which an institution has not made a determination with respect to the licensure or certification requirement, an institution will be required to disclose a statement to that effect.

*Burden Calculation:* We anticipate that most institutions will provide this information electronically to enrolled and prospective students regarding their distance education or correspondence courses. We estimate that the six of the seven public disclosure requirements would take institutions an average of 15 hours to research, develop, and post on a Web site. We estimate that 1,172 public institutions will require 17,580 hours to research, develop, and post on a Web site the required public disclosures (1,172 institutions  $\times$  15 hours). We estimate that 761 private, not-for-profit institutions will require 11,415 hours to research, develop, and post on a Web site the required public disclosures (761 institutions  $\times$  15 hours). We estimate that 368 private, for-profit institutions will require 5,520 hours to research, develop, and post on a Web site the required public disclosures (368 institutions  $\times$  15 hours).

The estimated burden for § 668.50(b)(1) through (6) is 34,515 hours under OMB Control Number 1845–0145.

After reviewing the comments that were received we are adding 100 hours of burden per program specifically pertaining to the disclosure requirements for the prerequisites for professional licensure or certification. We estimate that 1,172 programs or five percent of the 23,434 distance education or correspondence programs at the affected institutions will require the professional licensure or certification disclosure information. We estimate that there will be 564 programs at public institutions which will require 56,400 hours (564 × 100 hours = 56,400) for the research and development of this required public disclosure. We estimate that there will be 330 programs at private, not-for-profit institutions which will require 33,000 hours (330 × 100 hours = 33,000) for the research and development of this required public disclosure. We estimate that there will be 278 programs at private, for-profit institutions which will require 27,800 hours (278 × 100 hours = 27,800) for the research and development of this required public disclosure.

The estimated burden for § 668.50(b)(7) is 117,200 hours under OMB Control Number 1845–0145.

**Individualized Disclosures**

Under § 668.50(c)(1)(i), an institution will be required to provide an individualized disclosure to prospective students when it determines a program offered solely through distance education or correspondence courses

does not meet licensure or certification prerequisites in the State of the student’s residence.

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

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

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

disclosures. We estimate that 59 public institutions will require 354 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (59 institutions × 6 hours). We estimate that 38 private, not-for-profit institutions will require 228 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (38 institutions × 6 hours). We estimate that 18 private, for-profit institutions will require 108 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (18 institutions × 6 hours).

The total estimated burden for § 668.50(c) is 690 hours under OMB Control Number 1845–0145.

The combined total estimated burden for § 668.50 is 152,405 (34,515 + 117,200 + 690) hours under OMB Control Number 1845–0145.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using BLS wage data, available at [www.bls.gov/ncs/ect/sp/ecsuphst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf), is \$5,576,251 as shown in the chart below. This cost was based on an hourly rate of \$36.55 for institutions.

**COLLECTION OF INFORMATION**

Regulatory section	Information collection	OMB control number and estimated burden [change in burden]	Estimated costs
§ 600.9 .....	The regulations specify that, for any foreign additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus, an institution would be required to report the establishment or operation of the foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State.	1845–0144—This is a new collection. We estimate that the burden would increase by 160 hours.	\$5,848
§ 668.50(b) .....	The regulations require institutions to produce disclosures to enrolled and prospective students in the institution’s distance education programs or correspondence courses. Seven disclosures must be made publicly available. These disclosures include:  (1) Whether the distance education programs are authorized by the State where the student resides, if the institution participate in a state authorization reciprocity agreement and explain consequences of moving to a State where the institution does not meet State authorization requirements; (2) The process for submitting a complaint to the appropriate State agency in the State where the main campus of the institution is located; (3) The process for submitting a complaint if the institution is covered by a State authorization reciprocity agreement and it has such a process;	1845–0145—This is a new collection. We estimate that the burden would increase by 151,715 hours.	5,545,183

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control number and estimated burden [change in burden]	Estimated costs
§ 668.50(c) .....	<p>(4) The disclosure of any adverse action initiated by the institution's State entity related to the distance education program;</p> <p>(5) The disclosure of any adverse action initiated by the institution's accrediting agency related to the distance education program;</p> <p>(6) The disclosure of any refund policy required by any State in which the institution enrolls students;</p> <p>(7) The disclosure of any determination made regarding whether or not the distance education program meets applicable prerequisites for professional licensure or certification in the State where the student resides, if such a determination has been made. If such a determination has not been made, a statement to that effect would be required.</p> <p>The regulations require institutions to produce disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Three disclosures must be made available to individuals. These disclosures include:</p> <p>(1) Notice of an adverse action by the State or accrediting agency related to the distance education program. This disclosure must be provided within 30 days of when the institution becomes aware of the action;</p> <p>(2) Notice of the institution's determination that the distance education program no longer meets the prerequisites for licensure or certification of a State. This disclosure must be provided within 7 days of when the institution makes such a determination.</p>	1845-0145—This is a new collection. We estimate that the burden would increase by 690 hours..	25,220

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

Control No.	Total burden hours	Change in burden hours
1845-0144	160	+160
1845-0145	152,405	+152,405
Total ...	152,565	+152,565

**Assessment of Educational Impact**

In the NPRM we requested comments on whether the regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

**Federalism**

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

In the NPRM we identified specific sections that may have federalism implications and encouraged State and local elected officials to review and provide comments on the regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

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

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documents published by the Department.

(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.033 Federal Work Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program)

**List of Subjects**

34 CFR Part 600

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

34 CFR Part 668

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

Dated: December 5, 2016.

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

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends 34 CFR parts 600 and 668 as follows:

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

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

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

■ 2. Section 600.2 is amended by adding, in alphabetical order, a definition of “State authorization reciprocity agreement” to read as follows:

**§ 600.2 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 600.9 State authorization.**

\* \* \* \* \*

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

(ii) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance

education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

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

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

(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 §§ 602.24(a) and 602.22(a)(2)(viii), as applicable;

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

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

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

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

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

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

**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

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

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

**§ 668.2 [Amended]**

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

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

**§ 668.50 Institutional disclosures for distance or correspondence programs.**

(a) *General.* In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9(a)(1) or (b) that offers an

educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) *Public disclosures.* An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(i) Whether the institution is authorized by each State in which enrolled students reside to provide the program;

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

(iii) An explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;

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

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR

600.9(c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

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

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

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

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

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

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

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

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

educational prerequisites for professional licensure or certification in that State; and

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

(c) *Individualized disclosures.* (1) An institution described under 34 CFR 600.9(a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—

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

(ii) To each enrolled and prospective student—

(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

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

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