

Subcommittee Agenda

Monday, March 11

- 1) Welcome, ground rules, and schedule (Greg Martin)
- 2) Outside speaker: Dr. David Poole [9:30am]
- 3) Definition of “academic engagement” (Dave Musser)
- 4) Definitions of “additional location” and “branch campus” (Greg Martin)
- 5) Definition of “credit hour” (Greg Martin)
- 6) Definitions of “distance education” and “correspondence course” (Dave Musser)
- 7) Definition of “eligible institution” (Greg Martin)
- 8) Outside speaker: Dr. Deb Adair [1:15pm]
- 9) State authorization of distance education and related disclosures (Dave Musser)
- 10) Definitions of “institution of higher education,” “proprietary institution of higher education,” and “postsecondary vocational institution” (Greg Martin)
- 11) Requirement for prompt action by the Secretary on approval actions (Greg Martin)
- 12) Types of entities that are subject to change in ownership and past performance provisions (Greg Martin)
- 13) Acquisitions of locations of closing institutions (Greg Martin)
- 14) Termination and emergency action proceedings (Greg Martin)
- 15) Foreign schools and classes in the United States (Greg Martin)

Tuesday, March 12

- 1) Accreditation definitions in Part 600 and Part 602 (Beth Daggett) [Separate document to be provided on Monday]
- 2) Teach-outs (Beth Daggett) [Separate document to be provided on Monday]
- 3) Definition of a week of instructional time for asynchronous distance education or correspondence courses (Dave Musser)
- 4) Written arrangements for ineligible institutions or organizations to provide educational programs (Greg Martin)
- 5) Limitations on the length of gainful employment programs based on State licensure requirements (Greg Martin)
- 6) Clock-to-credit conversion (Greg Martin)
- 7) Direct assessment programs (Dave Musser)
- 8) Subscription period disbursement (Dave Musser)
- 9) Certification procedures (Greg Martin)
- 10) Return of Title IV funds (Dave Musser)
- 11) Satisfactory academic progress (Greg Martin)
- 12) Disclosures for prior learning assessment and transfer of credit (Dave Musser)
- 13) Use of Accrediting Agency Definitions for Audit or Program Review Appeals (Dave Musser)
- 14) Financial responsibility (Greg Martin)

Definition of “academic engagement”

Issues: During the first session of the Distance Learning and Innovation subcommittee, the Department proposed to make a number of changes to the Return of Title IV provisions and the definition of a week of instructional time, both of which would use the concept of academic engagement. During that session, one subcommittee member recommended making “academic engagement” a definition of its own in order to maintain consistency throughout the regulations. The Department incorporated that definition into the definitions in Part 600.

Regarding that definition, one subcommittee member indicated a preference to limit the concept of “computer-assisted instruction,” and in response the Department added the word “interactive” before “computer-assisted instruction.” The Department has incorporated that suggestion into regulatory language and seeks additional discussion on this definition with the subcommittee.

§600.2 Definitions.

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

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

(2) Includes, but is not limited to—

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

(ii) Submitting an academic assignment;

(iii) Taking an exam;

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

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

(vi) Interacting with an instructor or a member of an instructional team about academic matters.

(3) Does not include—

(i) Living in institutional housing;

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3

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

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

(iv) Participating in academic counseling or advisement.

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Definitions of “additional location” and “branch campus”

Issues: During the first session of the Distance Learning and Innovation subcommittee, the Department proposed to add a definition of “additional location” for clarity and to more clearly connect the concept with the definition of a “branch campus.” Subcommittee members did not provide substantive comments regarding these provisions during that session; therefore, the Department plans to move forward with its original proposal unless it receives other information from subcommittee members regarding a need for changes.

§600.2 Definitions.

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Additional location: A campus that is geographically apart and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.

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

Branch Campus: An additional location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

- (1) Is permanent in nature;
- (2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- (3) Has its own faculty and administrative or supervisory organization; and
- (4) Has its own budgetary and hiring authority.

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Definition of “credit hour”

Issues: During the first session of the Distance Learning and Innovation subcommittee, the Department presented its proposal to revise the federal definition of a credit hour to eliminate time-based requirements and allow institutions to develop their own definitions as long as they met accrediting agency requirements. Several subcommittee members indicated concern with this proposal, noting that there was no evidence that institutions were having difficulties complying with the requirements and that the definition created some consistency across higher education with regard to the establishment of credit hours. Another member indicated that the Department’s Dear Colleague Letter, published March 18, 2011, had resolved many of the concerns originally raised by institutions. However, one subcommittee member expressed that the current definition was still burdensome and limiting for some institutions and encouraged a more flexible definition.

In the interest of accommodating the various views of the subcommittee members, the Department proposes the following revised definition of a credit hour that relies upon guidance in Dear Colleague Letter GEN-11-16. We believe this definition, which emphasizes the importance of “commonly accepted practice in postsecondary education,” is highly flexible and accommodating of a variety of different types of programs while still ensuring consistency among higher education institutions in how credit hours are defined. The Department seeks additional discussion on this issue with the subcommittee.

§600.2 Definitions.

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Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is ~~an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than~~ a reasonable approximation of an amount of student work defined by an institution that, in the judgment of the institution’s accrediting agency, is consistent with commonly accepted practice in postsecondary education. In determining the amount of student work associated with a credit hour, an institution may take into account alternative delivery methods, measurements of student work, academic calendars, disciplines, and degree levels. ~~and approved by the institution’s accreditor and is based upon an amount of work, a unit of time spent engaged in learning activities, and/or a set of clearly defined learning objectives or competencies.~~

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

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6

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

Definitions of “distance education” and “correspondence course”

Issues: During the first session of the Distance Learning and Innovation subcommittee, the Department proposed to revise the regulatory definition of “distance education” to include clarifications of the phrase “regular and substantive interaction between students and the instructor,” which is a required component of the statutory definition. The Department proposed defining that phrase to include interactions between students and members of an instructional team. The Department indicated that its intent was to provide greater clarity to institutions regarding requirements for distance education and to accommodate innovative instructional models other than traditional synchronous instructional courses.

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

Which entity defines the terms?

The Department originally proposed having accrediting agencies define the term “distance education” and “correspondence course” and define their own requirements for fulfillment of the definition. The subcommittee generally opposed that idea, and following the first subcommittee meeting the Department sent new language that would once again have the Department define the term. The Department does not propose changing this language unless the subcommittee or full committee provide a compelling reason to do so.

Definition of “correspondence course”

The Department originally proposed several changes to the definition of “correspondence course” one of which would have eliminated the part of the definition indicating that interaction in a correspondence course is primarily initiated by students. During the first subcommittee session, several members requested that this language be added back, and the Department did so prior to the second session. The Department does not propose changing this language unless the subcommittee or full committee provide a compelling reason to do so.

Definitions of “instructor” and “instructional team”

During the first subcommittee session, a number of subcommittee members indicated support for the concept of an instructional team, but indicated a preference for a greater role for subject-matter experts on such teams. Following the first subcommittee session, the

Department composed language incorporating the subcommittee's discussion regarding the importance of subject-matter experts to instructional teams.

During the second subcommittee session, some members expressed the view that because the statutory definition of distance education requires regular and substantive interaction with the "instructor," any instructional team must include one or more subject-matter expert(s) that would be required to have regular and substantive interactions with students. Some members indicated that an instructional team should include a subject-matter expert who had the "primary responsibility" for interacting with students, where other members of the instructional team would identify problem areas and refer students to subject-matter experts when needed. Other members indicated that requiring staff to refer students to subject-matter experts does not reflect the current or future state of distance education, which is increasingly using analytics to identify struggling learners in order to refer them to subject-matter experts for assistance.

In order to continue the conversation on this topic, the Department has proposed revised definitions of "instructor" and "instructional team" as they relate to the definition of "distance education."

Definition of "regular"

During the first subcommittee session, several members indicated a preference for a clear and simple definition of the term "regular" as it applies to the concept of "regular and substantive interaction." In the second subcommittee session, the Department offered language that reflected those views, but other subcommittee members indicated a preference for broader, less specific language that had been used in training presentations prior to these negotiations.

In order to continue the conversation on this topic, the Department has proposed a revised definition of "regular" that is simple and meaningful, expressing that it is once per week of instructional time prior to a student's completion of a course or competency.

Definition of "substantive"

During the second subcommittee session, several members indicated that the Department's language for a definition of "substantive" "related to course material under discussion" was too loose. One of those members expressed concern that it did not focus on an academic process involving student learning, and could lead to educational models that de-emphasized learning in favor of administrative check-ins with students.

The Department seeks to continue the conversation on this topic.

Waiver process

In the second subcommittee session, the Department offered an idea for a waiver process in which, following promulgation of regulations defining distance education, institutions could apply to their accrediting agency and the Department to use an educational model that was not explicitly covered by that definition, but met the statutory definition of the term “distance education.” In this process, institutions would be required to supply a reasoned basis for its adoption of the new model, and would be required to evaluate the model and report to the accrediting agency and the Department. If approved by both the accrediting agency and the Department, the Department would publish a Federal Register notice that established the institution and the model it was using as meeting the statutory definition of distance education. There were mixed reactions to this idea at the second subcommittee meeting.

In order to continue the conversation on this topic, the Department has included revised language below for regulatory requirements governing such a “waiver” process.

Eligibility requirements for institutions offering correspondence courses

In the first subcommittee session, the Department proposed adding a definition of a “correspondence student” to the institutional eligibility requirements under 34 CFR 600.7. Those regulations establish limitations on the number of correspondence courses and students an institution may have while remaining eligible to participate in the Title IV, HEA programs. At present, a “correspondence student” is not defined, resulting in substantial ambiguity relating to a very important factor in determining institutional eligibility.

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

§600.2 Definitions.

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

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~~Distance education means education:~~ Education that uses one or more of the technologies listed in paragraphs (1)(i) through (1)(iv) of this definition to deliver instruction to students who are separated from the instructor ~~or members of an instructional team,~~ and to support regular and substantive interaction between the students and ~~the instructors~~ ~~or members of an instructional team,~~ either synchronously or asynchronously. ~~The technologies may include~~ ~~The institution's accrediting agency determines who qualifies as an instructor or a member of an instructional team and what qualifies as regular and substantive interaction in accordance with parts (2) and (3) of this definition.~~

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

(i) The internet;

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

(iii) Audio conferencing; or

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

Instructors and instructional teams

Summary: Define instructors as content experts and require an instructional team to refer students to instructors when students need academic support.

(2)(i) An instructional team includes an instructor and one or more staff members that perform an instructional function, as defined by the institution's accrediting agency. ~~Instructional functions include,~~ but are not limited to, sharing information ~~about a course or competency,~~ answering questions, providing direct instruction, providing assessment or feedback, monitoring a student's academic progress, or providing student support related the student's success in a particular course or competency.

(ii) For purposes of this definition, an instructor is a ~~content~~ expert, by virtue of academic credentials or a combination of academic credentials and work experience, as defined by the institution's accrediting agency;

(iii) For purposes of this definition, an instructional team must ensure that—

(A) ~~One or more instructors have the primary responsibility for approving the content of the course, assessing a student's learning and mastery of course content, assigning the final grade, and being reasonably available to students upon request;~~ and

(B) The instructional team monitors each student's academic engagement and success and ensures that an instructor is responsible for promptly and proactively providing academic

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assistance, when needed, on the basis of such monitoring, or upon request by the student. An effective system of monitoring must include no less than one evaluation of a student's engagement and progress per week by an instructor.

(iv) General academic advisors or counselors that do not perform an instructional function are not considered to be members of an instructional team.

Definition of "regular"

Summary: Define "regular" as once per week of instructional time.

(3) For purposes of this definition *regular* means initiated by an instructor or a member of an instructional team at least once per week of instructional time until a student completes a course or competency.

Definition of "substantive"

Summary: Define "substantive" as related to the course content.

(4) For purposes of this definition, *substantive* means related to the subject matter under discussion for the course.

Waiver process

Summary: Create a "waiver" process where an institution could, with accrediting agency approval, define an instructional model as "distance education" even if that model is not specifically covered by the regulatory definition, as long as the model could fulfill the statutory definition. The Department would annually identify instructional models with this treatment in the Federal Register.

(5) *Waiver authority*. Under procedures established by the Secretary, the Secretary may, through publication in the Federal Register, permit an institution or group of institutions to define the courses in one or more educational programs as "distance education" rather than "correspondence courses" using an instructional model that does not meet one or more of the requirements under paragraphs (1) through (4) of this definition if the institution or institutions demonstrate that—

(i) The instructional model ensures that each course in the program or programs meets the statutory definition of "distance education" under 20 USC 1003; and

(ii) Each institution's accrediting agency has specifically reviewed and approved the educational program for which the institution seeks the waiver and the agency has determined that the program has a sufficient number of qualified instructional staff, is designed to ensure an appropriate level of instructional support for students, and meets all of the agency's other applicable requirements.

§600.7 Conditions of institutional ineligibility.

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

(1) For its latest complete award year—

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

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

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

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

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

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

(2) *Calculating the number of correspondence students.* For purposes of paragraph (a)(1)(ii) of this section, a correspondence student is a student whose enrollment in correspondence courses constituted more than 50 percent of the student's total enrollment during an award year ~~was entirely in correspondence courses.~~

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

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor's-degree program if the

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13

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students enrolled in the institution's correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

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Definition of “eligible institution”

Issues: During the first session of the Distance Learning and Innovation subcommittee, the Department proposed to revise the definition of “eligible institution” in order to clearly exempt institutions that do not participate in the Title IV, HEA programs from requirements in 34 CFR 600.4, 600.5, or 600.6 that apply only to participating institutions. Subcommittee members did not provide substantive comments regarding these provisions during that session; therefore, the Department plans to move forward with its original proposal unless it receives other information from subcommittee members regarding a need for changes.

§600.2 Definitions.

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Eligible institution: An institution that—

(1) Qualifies as—

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

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

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

(2) Meets all the other applicable provisions of this part- **provided that an accredited institution that does not participate in Title IV, HEA programs is not required to meet the requirements of 600.4, 600.5 or 600.6 and cannot be denied accreditation as a result of failure to meet accreditation standards and criteria responsive to sections 600.4, 600.5 or 600.6.**

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State authorization of distance education and related disclosures

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

"Location" versus "residence"

One subcommittee member asked that the Department eliminate references to "residence" in a State, since that concept could be conflated with legal residence requirements. That member asked that the Department use the term "located" in order to reflect the most common term used by States in policies related to distance education. The Department presented language implementing this change to the members during the second subcommittee session. The subcommittee did not strongly object to this change, and the Department therefore plans to move forward with its original proposal at the full committee unless it receives other information from subcommittee members regarding a need to change this provision.

Verifying a student's location

As part of language provided during the second subcommittee session, the Department incorporated a suggestion by a subcommittee member that an institution should only be required to verify a student's location once. At the second session, another subcommittee member indicated that an annual verification would be preferable, and another member indicated that an institution should be required to update a student's location only if the student provides information about such a change. The Department is not willing to support an annual requirement for verification of a student's location, but will support either a single verification or a requirement for an institution to update its records when it learns a student's location has changed (see below).

Reciprocity for State authorization

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

During the second subcommittee session, the Department introduced language that would prohibit a reciprocity agreement from creating a conflict with State laws or regulations. Some subcommittee members supported that concept, but others indicated that it did not resolve concerns about reciprocity agreements reducing consumer protection requirements imposed by some States, including those directed specifically at educational institutions. The Department is interested in additional discussion on these provisions, but is not willing to consider requirements affecting a reciprocity agreement's board or structure.

State-based complaint process

During the second subcommittee session, the subcommittee discussed requirements for a State-based complaint process. Some subcommittee members indicated support for such requirements, but others expressed concern that some States still do not have such a process.

Since the last subcommittee meeting, one subcommittee member submitted comments indicating support for a requirement that institutions document a State-based complaint process in each State where its enrolled students are located, except that institutions should default to their home State complaint process when none exists in the State where students are located. The Department has incorporated this suggestion into regulatory language for discussion purposes.

Disclosures related to distance education and professional licensure

The majority of the subcommittee supported the inclusion of disclosure requirements regarding whether programs that were intended to lead to professional licensure would meet educational requirements for licensure in a State, particularly a State in which a student was located, although at least one member expressed concern about the regulatory burden these requirements have imposed on institutions. Following the first subcommittee session, the Department attempted to incorporate the ideas expressed in that discussion by drafting a general requirement – for all institutions, not just those using distance education – to disclose whether the program would meet State educational requirements for professional licensure if the institution had made such a determination for a given State.

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

Since the second meeting, one subcommittee member indicated support for a requirement that the institution document a student's written acknowledgement of receipt and understanding of the student-specific disclosure about whether the program would fulfill licensure requirements, noting that this requirement was present in the 2016 regulations. However, the Department is unwilling to consider adding such a requirement because we

believe it would add substantial administrative burden without a corresponding benefit for students. The same subcommittee member indicated support for a disclosure of which States authorize the institution to provide postsecondary education; however, the Department declines to consider this proposal as part of this negotiated rulemaking because it is already required for all institutions under 34 CFR 668.43(a)(6), including for States in which the institution provides distance education.

The same subcommittee member indicated that language for disclosures related to professional licensure should be strengthened to require an institution to make a determination in order to ensure that institutions do not shirk the work of determining whether their programs fulfill State requirements for professional licensure. The Department is interested in additional discussion of this issue.

Finally, one subcommittee member and one full committee member provided a suggestion following the end of the second subcommittee session that would require institutions to report whether its students are enrolled exclusively online, as a brick-and-mortar student, or as a hybrid student in both online and brick-and-mortar instruction. The Department is interested in additional discussion of this proposal and has incorporated two options for the subcommittee's review below.

Reciprocity agreements for State authorization

§600.2 Definitions.

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[Starting point is the regulations as promulgated in December 2016.]

~~State authorization reciprocity agreement~~ *Reciprocity agreement for State authorization*: 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—

Summary: Require a reciprocity agreement to avoid preventing States from enforcing their own statutes or regulations of general applicability and ensure that the agreements do not result in conflicts between the agreements and State laws and regulations.

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

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

§600.9 State authorization.

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[Starting point is the regulations as promulgated in December 2016.]

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

(ii) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a ~~State authorization reciprocity agreement~~**reciprocity agreement for State authorization**, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

Determining a student's location

Summary: Require an institution to determine a student's location at the time of admission or when the institution receives information that the student has moved.

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

State-based complaint process

Summary: Require an institution to document and disclose the State-based complaint process in each State where it enroll students. In cases where no such process exists, the institution must refer the students to the process in the State where the institution is physically located.

(2) The institution shall **document and disclose under 34 CFR 668.43(b) the process established by each State in which the institution's enrolled students are located for review and appropriate action on complaints from students concerning the institution. If no such complaint process exists for a State in which one or more enrolled students are located, the institution**

shall refer students located in that State to the complaint process in the State in which the institution's main campus is located under paragraph (a)(1) of this section.

Requirement to report enrollment in distance education coursework for Title IV-eligible students

OPTION 1:

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

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

OPTION 2:

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

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

Disclosures related to professional licensure

§668.43 Institutional information.

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

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

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

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

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

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

Summary: Require an institution to disclose the States in which a program would fulfill professional licensure requirements, those States in which the program would not, and those States for which the institution had not made a determination.

(v) If an educational program is designed to lead to employment in a specific occupation, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

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

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

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

Definitions of “institution of higher education,” “proprietary institution of higher education,” and “postsecondary vocational institution”

Issues: The Department proposed to adjust the definitions of “institution of higher education,” “proprietary institution of higher education,” and “postsecondary vocational institution” to include additional types of adverse actions that would require arbitration between the institution and the accrediting agency. The Department also made changes to the definition of a “program leading to a baccalaureate degree in liberal arts” to exclude aspects of that definition that are not present in the statute. During the first subcommittee session, the members did not have substantive comments about these changes, and the Department therefore proposes to move forward with these proposals unless it receives other information from the subcommittee regarding a need for changes.

§600.4 Institution of higher education.

* * * * *

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

§600.5 Proprietary institution of higher education.

* * * * *

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

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

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

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

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

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

§600.6 Postsecondary vocational institution.

* * * * *

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

Requirement for prompt action by the Secretary on approval actions

Issues: The Department proposed adding language to the regulations governing procedures for Department approval of institutional eligibility expansions (e.g. additional locations, programs, etc.). The Department also proposed to remove language under 34 CFR 600.20(d)(1)(ii)(B) that currently requires prompt notification by the Department of a requirement for its approval because other proposed language would require prompt action to complete the review. The Department presented these changes during the first subcommittee session but did not receive substantial comments. We therefore propose to move forward with the original proposal unless we receive other information from subcommittee members regarding a need for changes.

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

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

* * * * *

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

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

(i) Such an application must be submitted if the institution wishes to—

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

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

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

(ii) The Secretary shall ensure prompt action is taken by the Department on any application required under 600.20 (a)(2).

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

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

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

* * * * *

Types of entities that are subject to change in ownership and past performance provisions

Issues: The Department proposed making adjustments to the regulations for changes in ownership to ensure that entities other than corporations or persons are subject to the requirements. These were largely technical changes designed to ensure the Department has appropriate means of enforcement for changes in ownership. During the first session, the subcommittee members did not object to the changes; the Department therefore proposes moving forward with the proposal unless other information is presented by the subcommittee regarding a need for changes.

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

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

* * * * *

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

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

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

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

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

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

* * * * *

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

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

* * * * *

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

* * * * *

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

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

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

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

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

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

* * * * *

§668.174 Past performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the

institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

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

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

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

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

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

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

(ii) A partnership; and

(iii) An interest in a trust.

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

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

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

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

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

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

(A) The institution or servicer; or

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

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

Acquisitions of locations of closing institutions

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

During the first session, the subcommittee members did not provide substantive comments on these provisions, but several indicated that they would like to revisit the issue after they had time to study it. Additionally, since the first session several subcommittee members have submitted recommendations for requirements for teach-outs and teach-out agreements. Because these issues are closely related with teach-outs, the Department therefore seeks additional discussion on these issues before moving forward with the proposal to the full committee.

§600.32 Eligibility of additional locations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Termination and emergency action proceedings

Issues: The Department proposed changing the requirements for certain termination actions to eliminate an old provision relating to an institutional eligibility alternative that expired in 1992 and to permit an institution that is implementing a teach-out to receive Title IV aid for an additional 120 days.

During the first subcommittee session, several members asked questions about the teach-out provisions and expressed concern about permitting an institution whose participation in the Title IV programs was terminated to continue awarding and disbursing Title IV aid. Since that time, several subcommittee members have submitted recommendations for requirements for teach-outs and teach-out agreements. Because the issue regarding requirements for final disbursements of Title IV aid is closely related with teach-outs, the Department seeks additional discussion on these issues before moving forward with the proposal to the full committee.

§600.41 Termination and emergency action proceedings.

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

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

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (a)(4), and (c) through (f), and 668.91; or

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

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

(B) Its ~~previously qualifying as an eligible institution, notwithstanding its unaccredited status, under the transfer of credit alternative to accreditation (as that alternative existed in 20 U.S.C. 1085, 1088, and 1141(a)(5)(B) and §600.8 until July 23, 1992);~~

~~(C) Its loss of accreditation or preaccreditation;~~

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

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

~~(F) Its permanently closing; or~~

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

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

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

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

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

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

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs with respect to students enrolled in that educational program.(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Implementation of up to the first 120 days of the institution's teach-out plan, as approved by the institution's accrediting agency, which may include adherence to other requirements in this section.

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

* * * * *

Foreign schools and classes in the United States

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

During the first subcommittee session, members did not provide substantive comments about this section, though one member indicated that she had concerns regarding the use of limited clinical spaces by foreign medical schools, an issue that the Department does not intend to address in this rulemaking. Therefore, the Department proposes to move forward with the proposal unless other information is presented by the subcommittee regarding a need for changes.

§600.52 Definitions.

The following definitions apply to this subpart E:

* * * * *

Foreign institution:

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

(i) Is not located in a State;

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

(A) Has no U.S. location;

(B) Has no written arrangements, within the meaning of §668.5, with institutions or organizations located in the United States for students enrolling at the foreign institution to take ~~courses from~~ more than 25 percent of the courses required by the program from institutions located in the United States, offered by Title IV participating institutions located in the United States;

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

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

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

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

* * * * *

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

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

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

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

The Department seeks additional discussion on these issues during the third subcommittee meeting.

§668.3 Academic year.

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

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

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

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

(ii)(A) In a ~~direct assessment program or a~~ program offered using asynchronous coursework through distance education or correspondence, the institution makes available the instructional materials, other resources, and faculty support necessary for academic engagement and completion of course objectives ~~and expects enrolled students to perform educational activities in fulfillment of program requirements;~~ and

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

(3) Instructional time does not include any vacation periods, homework ~~(for a program offered on campus)~~, or periods of orientation or counseling.

* * * * *

Written arrangements for ineligible institutions or organizations to provide educational programs

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

During the first session, the subcommittee generally opposed changes that would permit an ineligible institution or organization to provide 100 percent of a program at an eligible institution, and the Department sought feedback regarding other options that would ensure that students graduate with skills necessary for employment. The subcommittee requested additional information regarding the intent behind the Department's proposal.

Prior to the second subcommittee session, the Department produced a summary of its proposal (see below) providing greater detail regarding its intent behind the proposed changes to the written arrangement requirements, as well as new proposals that limited the amount of a program that could be provided by an ineligible institution or organization to 75 percent of an eligible program.

The Department seeks additional discussion on this issue and regarding the new language it provided prior to the beginning of the second subcommittee session.

Summary of issues related to § 668.5 Written arrangements to provide educational programs.

Background

Educational innovations, especially those that require large investments in state-of-the-art tools and technologies, can be beyond the reach of some institutions due to high start-up costs or the inability to commit multi-year funds to seeing such a project through to full implementation. It can also be challenging to evaluate the effectiveness of a given innovation if tested on a single campus since limited sample sizes or certain selection bias may mask or confound results. Therefore, there may be economies of scale that enable an outside educational provider to develop and test technologies, and provide instruction using those technologies, for a number of institutions.

For example, simulation technologies and 3-D immersion experiences can change the way that students are taught and learn, and can enable students to practice certain techniques and procedures (landing a plane, performing a medical procedure, etc.) without the risks associated with live actions. However, high quality simulators are costly to build and maintain and it may be more efficient for a single vendor to develop them and to provide instruction using them to students at a large number of institutions through written arrangements with those

institutions. For some career and technical programs, simulator-based instruction could constitute a significant portion of the program and require written arrangements that exceed the current 25 percent (or 50 percent with accreditor approval) limits.

In other situations, an institution may be unable to replicate the workplace setting or costly tools or equipment for use in preparing students for specific occupations. In such cases, it may be better for students to learn in the work environment under the instruction of expert operators, yet still earn credit toward their program. Written arrangements would promote such partnerships. Similarly, a student engaged in apprenticeship learning may not receive regular academic credit for the knowledge and skills gained on the job unless the institution has a written arrangement with the employer.

Written arrangements would also allow institutions to partner with organizations like building and trades unions to allow students to earn direct academic credit for the learning they do at non-accredited, state-of-the-art teaching facilities that are operated by such organizations. In such a case, a written arrangement will guarantee academic credit for learning that otherwise may or may not be recognized through prior learning assessment. Written arrangements with museums, theaters, and hospitals could also provide students with additional expanded learning opportunities. Although institutions may award credit for the learning activities described above through prior learning assessment, there is less certainty regarding how much credit will be awarded through PLA. Also, if a student transfers to another institution, PLA credits may not be accepted by the receiving institution. However, written arrangements allow students to earn direct college credit for learning that takes place through the non-accredited provider, which benefits students and may reduce the cost of postsecondary education to students and institutions.

Proposal

Allow a greater percentage of an accredited institution's program to be delivered through a written arrangement with an outside provider. Today, an institution can partner to deliver up to 25 percent of any program, or up to 50 percent of any program with accreditor permission. The Department proposes giving accreditors the authority to review and approve partnerships that go beyond 50 percent of a program. The Department seeks recommendations from negotiators regarding whether or not institutions should be authorized to enter into written arrangements for up to 50 percent of a program without accreditor approval, and whether or not institutions should be able to enter into written arrangements for greater than 50 percent with accreditor approval.

Questions for Negotiators and Subcommittee Members

- If institutions are permitted to go above the current limits, should the written arrangement be limited to some portion of the program that is less than 100 percent (perhaps at 75 percent since many accrediting agencies require students to complete at least 25 percent of a program at the institution that issues a credential)?

- What other protections can be enacted to ensure institutions, accreditors, and third parties are providing high-quality programs with strong student outcomes including, but not limited to employment?

As always, the Department is eager to hear from negotiators as to how the Department can ensure greater innovation and workforce responsiveness in higher education without putting students or taxpayers at risk.

§600.21 Updating application information.¹

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

* * * * *

- (11) For any gainful employment program under 34 CFR part 668, subpart Q—
- (i) Establishing the eligibility or reestablishing the eligibility of the program;
 - (ii) Discontinuing the program's eligibility under 34 CFR 668.410;
 - (iii) Ceasing to provide the program for at least 12 consecutive months;
 - (iv) Losing program eligibility under §600.40;
 - (v) Changing the program's name, CIP code, as defined in 34 CFR 668.402, or credential level; or
 - (vi) Updating the certification pursuant to §668.414(b).

(12) *Its addition of a direct assessment program.*

(13) *Its establishment of a written arrangement for an ineligible institution or organization to provide more than 25 percent of a program pursuant to §668.5(c) or a partnership with an ineligible institution or organization for that organization to provide coursework leading to a recognized postsecondary credential.*

§668.5 Written arrangements to provide educational programs.

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

¹ The Department proposed to revise the paragraph (a)(11) introductory text in section 600.21 to read “For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—” in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

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

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

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

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

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

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

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

~~(ii) has not:~~

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

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

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

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

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

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

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

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

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

(ii)(A) The ineligible institution or organization provides more than 50 percent, but less than 75 percent of the educational program;

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

(C) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in Federal Register in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.

~~(B(3) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and~~

~~(C(4) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, is notified of the change; and the ineligible institution or organization provides 25 percent or less of an educational program leading to a degree, certificate or other recognized educational credential.~~

~~(5) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the FEDERAL REGISTER FEDERAL REGISTER in accordance with 34 CFR part 603, has specifically determined that affirmatively approves the institution's arrangement meets change; and the agency's standards for the contracting out ineligible institution or organization provides more than 25~~

~~percent of an educational services program leading to a degree, certificate or other recognized educational credential.~~

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section ~~or provides coursework as provided in paragraphs (h)(2) or (h)(3)~~, except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

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

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

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

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

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

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

(g) *Calculation of percentage of a program.* When determining the percentage of the program that is provided by an ineligible institution or organization under paragraph (c) of this section, the institution shall divide the number of semester, trimester, or quarter credit hours, clock hours, or the equivalent that are provided by the ineligible organization or organizations by the total number of semester, trimester, or quarter credit hours, clock hours, or the equivalent required for completion of the program. A course is provided by an ineligible

institution or organization if the contracted organization has authority over the design, administration, or instruction in the course, including, but not limited to—

- (1) Establishing the requirements for successful completion of the course;
- (2) Delivering instruction in the course; or
- (3) Assessing student learning.

(h) *Non-applicability to other interactions with outside entities.* Written arrangements are not necessary for, and the limitations in this section do not apply to an institution's acceptance of transfer credits or use of prior learning assessment or other non-traditional methods of providing academic credit.

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

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

During the second subcommittee session, members expressed concern about changing these requirements, noting potential problems that could arise if institutions included more hours than were necessary for students to become employed. Other members noted that the current 150% threshold seemed reasonable, and sufficient to accommodate most cases where nearby States had higher requirements. One member indicated that if there were limited instances where institutions needed more hours than 150% of State requirements, an accrediting agency could be the arbiter of whether such additional hours were necessary. The Department considered these responses and indicated that it would provide a summary regarding its reasoning and position on this matter (included below).

The Department seeks additional discussion on this provision with the subcommittee.

Summary of Department's concerns related to limitations on length of programs

Clock hour programs must be of "reasonable" length to ensure that students are not being required to complete programs significantly longer than necessary, at additional cost to students and taxpayers. The current regulations define a "reasonable relationship" between entry level requirements for the recognized occupation for which a program prepares students as no more than 50 percent longer than the number of hours required for licensure in the state in which the program is offered². For years the Department was inconsistent in its application of this requirement, sometimes relying on accreditors and state approvals of the programs as a proxy for reasonableness of program length, and sometimes using other methodology to evaluate the length of programs when a program's length exceeded the 50 percent threshold. However, several years ago the Department began enforcing the provision more strictly, considering any clock hour program with hours exceeding the 50 percent threshold to be

² Under 34 CFR 668.14(b)(26).

ineligible for Title IV aid. The Department began enforcing those provisions when it performed program reviews or when it reviewed an institution's application for recertification.

Since that time, the Department has revised its interpretation of the provision to treat the regulations as establishing a safe harbor, rather than an upper limit on the number of hours that a program may contain. An institution must still demonstrate a "reasonable relationship" between the number of hours in a program and entry level requirements for the recognized occupation for which a program prepares students, but institutions may be assured that they are compliant with this provision if the program has less than 150 of the hours required by a state.

Since that time, the Department has revised its interpretation of the provision to treat the regulations as establishing a safe harbor, rather than an upper limit on the number of hours that a program may contain. An institution must still demonstrate a "reasonable relationship" between the number of hours in a program and entry level requirements for the recognized occupation for which a program prepares students, but institutions may be assured that they are compliant with this provision if the program has less than 150 percent of the hours required by a state.

Problem

The Department's change in enforcement procedures created a number of challenges for institutions. Programs that had been in existence for years – including those that had been approved during prior certifications or program reviews – were no longer being approved by the Department and had to be discontinued. Suddenly some institutions in a given community were being held to the new standard, while other institutions were allowed to continue operating longer programs that had been approved in the past and were not yet subject to program review or recertification under the new interpretation. This created unfair market conditions and made it hard for students to understand which program best served their needs. In addition, the new interpretation created hardships for students who travel across state lines either to attend the program of their choice, or to seek employment where demand and wages may be higher. This is particularly problematic when states have significantly different licensure requirements. Unfortunately, these varying requirements for professional licensure in different states may make it difficult and expensive for individuals to find employment if they must move, such as because they are a military spouse or because housing prices or employment opportunities change markedly in their current community.

There are a number of occupations that are subject to varying licensure requirements from one state to another, including massage therapy programs and cosmetology programs – both of which are "bright outlook" occupations according to the Department of Labor, meaning that these occupations employ large numbers of people and are projected to experience fast growth over the next decade. In the case of massage therapy, Nebraska and New York have created program length requirements (1000 hours) that are more than 150% longer than the requirements of the other states (most states require 500 or 600 hours for licensure or

certification). This is particularly problematic for the many individuals who work in New York, but chose to live and go to school in New Jersey, where prices may be considerably lower than in New York City. And since New York requires 1000 hours of education at an approved institution and does not permit transfers of hours for licensure purposes, individuals who move to New York and wish to continue working as a massage therapist cannot simply complete another 500 hours, but must start over and complete a full 100 hour program.

For cosmetologists, New York licensure requirements create the opposite challenge since New York's standards are considerably lower than in other states (1000 hours in New York versus 1600 to 1800 hours in most other states).

Proposed Solution

In order to reduce barriers to employment that state licensure requirements create, the Department seeks to clarify that a program meets the reasonable length requirement if it does not exceed the requirements of the state in which it is located by more than 50 percent of the program length, or it does not exceed the requirements of an adjacent state by more than 100 percent.

This will help ensure that institutions can offer programs that meet professional licensure requirements in multiple nearby states, even when one or more of the nearby states maintain entry-level requirements that are greater than 150 percent of the entry-level requirements in the state where the institution is located. This common-sense change will improve worker mobility and help institutions avoid a complicated approval process by the Department that relies upon inconsistent criteria.

The Department would provide two years following the date of implementation of this regulation for all programs to come into compliance with the requirement. The two year time frame recognizes that in order for an institution to modify its current programs or create new ones will require state, accreditor and Department approval, a process which can take up to two years to complete.

§668.8 Eligible program.³

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

* * * * *

³ The Department proposed to amend section 668.8 by revising paragraphs (d)(2)(iii) and (d)(3)(iii) in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

institution's students) preceding the date on which the institution applied for eligibility for that program.

§668.14 Program participation agreement.

* * * * *

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

* * * * *

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

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not ~~exceed the greater of—~~

(A) ~~exceed by more than~~ 50 percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; or

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

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

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

* * * * *

Clock to credit conversion

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

Most subcommittee members were supportive of the Department's position. A few members, while not outwardly supportive, indicated that they can accept the change. No members of the subcommittee expressed opposition to the change. Therefore, the Department proposes to move forward with this proposal unless other information is received from the subcommittee members regarding a need for changes.

§668.8 Eligible program.

* * * * *

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

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

(2) Each course within the program is acceptable for full credit toward completion of an eligible program offered by the institution that institution provides an associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that—

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

(ii) ~~The the institution demonstrates~~ can demonstrate that ~~students enroll in, and graduate at least one student graduated from,~~ the degree program during the current or most recently completed award year.

(l) *Formula.* ~~(1) Except as provided in paragraph (l)(2) of this section, for~~ For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements

contained in paragraph (c)(3) or (d) of this section, and ~~determining~~ the number of credit hours in that educational program ~~with regard to~~ ~~for purposes of~~ the title IV, HEA programs—

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

~~(ii) A or trimester hour must include at least 37.5 clock hours of instruction; and (iii) A quarter hour must include at least 25 clock hours of instruction.~~

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

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

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

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

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

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

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

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

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

Direct assessment programs

Issues: The Department proposed to revise the regulations related to direct assessment programs to simply and clarify those requirements and streamline the application process for such programs. The proposed changes would also permit institutions to use direct assessment to offer preparatory coursework and remedial coursework, as well as permit institutions to offer programs offered only partially using direct assessment.

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

The Department seeks additional discussion with the subcommittee on these provisions.

§600.10 Date, extent, duration, and consequence of eligibility⁴.

* * * * *

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

(i) For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under §600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.414;

(ii) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval; and

(iii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval of the structure, methods for measuring student progress, and other title IV-related requirements.

§600.21 Updating application information.⁵

⁴ The Department proposed to amend 34 CFR 600.10(c)(1) and (2) in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

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

* * * * *

(11) For any gainful employment program under 34 CFR part 668, subpart Q—

- (i) Establishing the eligibility or reestablishing the eligibility of the program;
- (ii) Discontinuing the program's eligibility under 34 CFR 668.410;
- (iii) Ceasing to provide the program for at least 12 consecutive months;
- (iv) Losing program eligibility under §600.40;
- (v) Changing the program's name, CIP code, as defined in 34 CFR 668.402, or credential level; or

(vi) Updating the certification pursuant to §668.414(b).

(12) Its addition of a direct assessment program.

(13) Its establishment of a written arrangement for an ineligible institution or organization to provide more than 25 percent of a program pursuant to §668.5(c) or a partnership with an ineligible institution or organization for that organization to provide coursework leading to a recognized postsecondary credential.

§668.10 Direct assessment programs.

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

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

(3) An institution must establish a methodology to reasonably equate each module in the direct assessment program to either credit hours or clock hours. This methodology must be consistent with the ~~subject matter of the program. Examples of direct measures include~~

⁵ The Department proposed to revise the paragraph (a)(11) introductory text in section 600.21 to read "For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—" in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

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~~projects, papers, examinations, presentations, performances, and portfolios~~ requirements of the institution's accrediting agency or State approval agency.

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

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

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

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

~~(iv) A full-time student in a direct assessment program is an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in the program. However, for an undergraduate student, the~~

~~institution's minimum standard must equal or exceed the minimum full-time requirements specified in the definition of *full-time student* in §668.2 based on the credit or clock hour equivalency established by the institution for the direct assessment program.~~

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

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

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

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

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

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

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

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

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

(8) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of direct assessment

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

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

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

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

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

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

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

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

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

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

(2) Remedial coursework described in §668.20, if offered by using direct assessment.
~~However, remedial instruction that is offered~~

(f) Student progress in ~~credit or clock hours in conjunction with~~ a direct assessment program ~~is eligible for title IV, HEA program funds.~~ may be measured using a combination of--

~~(h) The Secretary's approval of a direct assessment program expires on the date that the institution changes one or more aspects of the program described in the institution's application submitted under paragraph (b) of this section. To maintain program eligibility, the institution must obtain prior approval from the Secretary through reapplication under paragraph (b) of this section that sets forth the revisions proposed.~~

(1) Credit hours and credit hour equivalencies; or

(2) Clock hours and clock hour equivalencies.

Subscription period disbursement

Issues: During the second session of the Distance Learning and Innovation subcommittee, the Department presented its proposal to create a new method of disbursing Title IV aid to programs using subscription periods. Several subcommittee members indicated that there were two significant drawbacks to the Department's proposed approach:

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

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

However, the Department acknowledges subcommittee members' concern that its original framework could lead to adverse consequences for students who fall only a small amount behind what they intended to complete. The Department also acknowledges that there is administrative burden associated with tracking completion both for disbursement and satisfactory academic progress purposes. We propose several options below to address these concerns. The Department seeks additional discussion on these provisions.

§668.2 Definitions.

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

Subscription-based program: A standard term or nonstandard term direct assessment program in which the institution charges a student for each term on a subscription basis with the expectation that the student completes a specified number of credit hours during that term. Coursework in a subscription-based program is not required to begin or end within a specific timeframe in each term. Students in subscription-based programs must complete a cumulative number of credit hours (or the equivalent) during or following the end of each term before receiving subsequent disbursements of Title IV, HEA program funds.

OPTION 1:

Summary: Only require students to complete a percentage of the credits they attempt, rather than every credit they attempt, in order to continue receiving Title IV aid.

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

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

(2)(i) Adding together the number of credit hours (or the equivalent) determined under paragraph (1) for each term in which the student was enrolled in and attended that program, including the current term; and

(ii) Multiplying the sum determined under subparagraph (2)(i) by 67 percent.

[Under this option, no changes would be made to the proposed satisfactory academic progress requirements.]

OPTION 2:

Summary: Require subscription period programs to use a single enrollment status that applies to a student throughout his/her enrollment and give the student an extra subscription period of Title IV eligibility if he/she falls behind. This option would also allow waive the satisfactory academic progress pace calculation for such programs, alleviating some administrative burden.

[...] An institution establishes an enrollment status (e.g. full-time or half-time) that will apply to a student throughout the student's enrollment in the program, except that a student may change his or her enrollment status no more often than once per academic year. The number of credit hours (or the equivalent) a student must complete before receiving subsequent disbursements is calculated by—

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

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

[Under this option, an institution would *not* be required to evaluate a student's pace for satisfactory academic progress purposes for a program using subscription periods.]

* * * * *

§668.164 Disbursing funds.

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

(2) An institution may not—

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

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

* * * * *

Certification procedures

Issues: During the second session of the Distance Learning and Innovation subcommittee, the Department presented its proposals to change the certification procedures to clarify the procedures for certifying branch campuses and sets a time limit on the amount of time that the Secretary may review an application for recertification before action is taken. The Department also presented technical changes allowing for electronic submission of supporting documentation for certification. The Department received few substantive comments on these changes, and therefore proposes to move forward with the current proposals.

§668.13 Certification procedures.

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

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

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

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

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

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

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

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

than six years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that—

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

(ii) The Secretary may specify a shorter period.

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

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

* * * * *

(d) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

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

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

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

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

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

- (A) Hand-delivered;
- (B) Mailed; or
- (C) Sent by ~~facsimile~~electronic transmission.

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

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

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

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

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

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

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

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

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

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

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67

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

Return of Title IV Funds

Issues: During the second session of the Distance Learning and Innovation subcommittee, the Department presented its proposals to alter the requirements for Return of Title IV funds (R2T4) to accommodate non-traditional programs, especially those using modules, and eliminate unnecessary administrative burden associated with the current R2T4 requirements. One subcommittee member indicated that there appeared to be several unintended errors in the proposed regulatory text and that the proposed requirements did not address the proposed disbursement process for programs using subscription periods. The Department has made a number of changes to its proposed language in order to address these concerns.

Since the second subcommittee session, one member provided a number of additional suggestions regarding the Return of Title IV provisions. The Department could not accept some of those proposed changes, but has included others in the language below for additional discussion. The Department seeks additional discussion of the revised provisions below.

§668.22 Treatment of title IV funds when a student withdraws.

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

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

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

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

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

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

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

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

(2) A student who completes the coursework in a module or modules that include a number of days equal to or greater than fifty percent of the number of days in the payment period or completes coursework in a module or modules that is equal to or greater than the coursework required for half-time enrollment status is considered to have completed the period and is not considered to have withdrawn;

NOTE: The Department is interested in additional discussion regarding the appropriate percentage of a payment period that would permit an institution to consider a student who has completed a module to have completed the period rather than being considered withdrawn.

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

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

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

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

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

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

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

(3) ~~For non-term and subscription-based programs, the later module that he or she will attend begins no later than 60 calendar days after the student ceased attendance.~~

* * * * *

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

* * * * *

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

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

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

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

(2) Loan funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1), (d)(2), and (d)(3)~~ only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(6)(iii) of this section.

...

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

* * * * *

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

* * * * *

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

(i) Unsubsidized Federal **Direct** Stafford loans.

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

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

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

~~(v) Federal Perkins loans.~~

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

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

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

(i) Federal Pell Grants.

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

(iii) ~~National SMART Grants.~~

~~(iv)~~ FSEOG Program aid.

~~(iv)~~ TEACH Grants.

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Satisfactory academic progress

Issues: The Department proposed to simplify the satisfactory academic progress (SAP) rules related to calculating pace for clock-hour programs, provide an additional option for establishing maximum timeframe, and clarify the application of SAP for subscription-based programs. The Department also proposed to remove the requirement to measure pace for non-term credit-hour programs and clock-hour programs. Since for these programs a student may not receive a subsequent disbursement of Title IV funds until successfully completing both the hours and weeks in a payment period, SAP rules related to pace are unnecessary.

Institutions would be permitted to measure maximum timeframe for credit-hour programs in calendar time as well as in credit hours. Programs using measuring maximum timeframe in calendar time would be required to measure pace by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within maximum timeframe. Subscription-based programs would be required to measure maximum timeframe in calendar time and measure pace by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe.

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

The Department proposes to move forward with this proposal unless additional information is provided by the subcommittee regarding the need for changes.

§668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

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

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

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

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

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

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

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

~~(5)(i) The policy specifies—~~

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

(ii) for a credit hour program using standard or nonstandard terms, the pace, measured at each evaluation, at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, ~~as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and~~ calculated by--:

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

(B) In a subscription-based program, by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe.~~(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;~~

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Maximum timeframe. Maximum timeframe means—

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

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

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

Disclosures for prior learning assessment and transfer of credit

Issues: The Department proposed to add several new requirements for disclosures relating to prior learning assessment and transfer of credit. The Department's original proposal would have required disclosures of criteria used to evaluate prior learning experience and would also have required disclosures of credits requested for transfer and the number of credits that actually transferred.

During the second subcommittee session, members expressed concern about the complexity of disclosing numbers of credits transferred and noted that there was not yet a clear system for how the institution was to calculate the number it disclosed (e.g. using an average or a total). The Department considered the subcommittee's feedback and has removed provisions relating to disclosure of a number of transfer credits.

The Department seeks additional discussion regarding these provisions.

§668.43 Institutional information.

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

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

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

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

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

~~(12) The number of credits requested for transfer by students who transfer into the institution, and—~~

~~(i) The percentage of those credits requested that are granted by the institution to meet degree requirements.~~

~~(ii) The percentage of those credits requested that are granted by the institution, but fulfill elective requirements.~~

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

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

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

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

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

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

(i) Are male;

(ii) Are female;

(iii) Receive a Federal Pell Grant; and

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

(14) The placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled;

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

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

(18) Institutional policies regarding vaccinations.

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Use of Accrediting Agency Definitions for Audit or Program Review Appeals

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

§668.113 Request for review.

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

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

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

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

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

(d)(1) If the final audit determination or final program review determination in paragraph (a) of this section results from the institution's application of the definitions of "credit hour," "direct assessment," or "distance education," ~~(including (with respect to an accrediting agency's requirements for an instructor or a member of an instructional team) or "correspondence course" under 34 CFR §600.2,~~ the Secretary relies upon the requirements or definitions established by the institution's accrediting agency for those terms.

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

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

Financial responsibility

Issues: The Department proposed to change the requirements administrative actions under the financial responsibility provisions in order to increase the types of enforcement methods available to the Department. The Department did not receive substantive comments on these provisions in the second subcommittee session, and therefore proposes to move forward with these provisions unless other information is received from the subcommittee regarding a need for changes.

§668.171 General.

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

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

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

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

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