
34 CFR 600 and 601

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TITLE 34—EDUCATION
CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION
PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

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

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

PART 601--INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

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Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a) and (h).

TITLE 34—EDUCATION
DEPARTMENT OF EDUCATION
PART 600—INSTITUTIONAL
ELIGIBILITY UNDER THE HIGHER
EDUCATION ACT OF 1965, AS
AMENDED

Subpart A—General

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

§ 600.1 Scope.

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

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

§ 600.2 Definitions.

The following definitions apply to terms used in this part:

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

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

Branch Campus: A 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.

Clock hour: A period of time consisting of—

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or
- (3) Sixty minutes of preparation in a correspondence course.

Correspondence course: (1) A "home study" course provided by an institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution. When students complete a portion of the

instructional materials, the students take the examinations that relate to that portion of the materials, and return the examinations to the institution for grading.

(2) A home study course that provides instruction in whole or in part through the use of video cassettes or video discs in an award year is a correspondence course unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at the institution during the same award year.

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

Direct assessment program: A program as described in 34 CFR 668.10.

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

- (i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential; and
 - (ii) May, in lieu of credit hours or clock hours as a measure of student learning, utilize direct assessment of student learning, or recognize the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment and with the provisions of § 668.10.
- (2) The Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: Instruction provided by other institutions or schools; examinations or direct assessments provided by agencies or organizations; or other accomplishments such as "life experience."

Eligible institution: An institution that—

- (1) Qualifies as—
 - (i) An institution of higher education, as defined in § 600.4;
 - (ii) A proprietary institution of higher education, as defined in § 600.5; or
 - (iii) A postsecondary vocational institution, as defined in § 600.6; and
- (2) Meets all the other applicable provisions of this part.

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

Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in 34 CFR part 668.

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

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

Nonprofit institution: An institution that—

- (1) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;
- (2) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
- (3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

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

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

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

- (1) A General Education Development Certificate (GED);
- (2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;
- (3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

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

Recognized occupation: An occupation that is—

- (1) Listed in an “occupational division” of the latest edition of the *Dictionary of Occupational Titles*, published by the U.S. Department of Labor; or
- (2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

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

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

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

Telecommunications course: A course offered principally through the use of one or a combination of technologies including television, audio, or computer transmission through open broadcast, closed circuit, cable, microwave, or satellite; audio conferencing; computer conferencing; or video cassettes or discs to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between these students and the instructor, either synchronously or asynchronously. The term does not include a course that is delivered using video cassettes or disc recordings unless that course is delivered to students physically attending classes at the institution providing the course during the same award year. If the course does not qualify as a telecommunications course, it is considered to be a correspondence course.

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

(Authority: 20 U.S.C. 1071 et seq., 1078–2, 1088, 1099b, 1099c, and 1141 and 26 U.S.C. 501(c).)

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998; 64 FR 58615, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006]

§ 600.3 [Reserved]

§ 600.4 Institution of higher education.

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

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

(2) Admits as regular students only persons who—

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

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

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

(4) Provides an educational program—

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

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

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

(5) Is—

(i) Accredited or preaccredited; or

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

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58615, Oct. 29, 1999]

§ 600.5 Proprietary institution of higher education.

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

(1) Is not a public or private nonprofit

educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

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

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

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

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

(6) Is accredited;

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

(8) Has no more than 90 percent of its revenues derived from title IV, HEA program funds, as determined under paragraph (d) of this section.

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

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

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

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

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

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

(i) Counts any period during which the

applicant institution has been certified as a branch campus; and

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

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

(d)(1) An institution satisfies the requirement contained in paragraph (a)(8) of this section by examining its revenues under the following formula for its latest complete fiscal year:

Title IV, HEA program funds the institution used to satisfy its students' tuition, fees, and other institutional charges to students

The sum of revenues including title IV, HEA program funds generated by the institution from: tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in 34 CFR 668.8; and activities conducted by the institution, to the extent not included in tuition, fees, and other institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs.

(2) An institution must use the cash basis of accounting when calculating the amount of title IV, HEA program funds in the numerator and the total amount of revenue generated by the institution in the denominator of the fraction contained in paragraph (d)(1) of this section.

(3) Under the cash basis of accounting—

(i) In calculating the amount of revenue generated by the institution from institutional loans, the institution must include only the amount of loan repayments received by the institution during the fiscal year; and

(ii) In calculating the amount of revenue generated by the institution from institutional scholarships, the institution must include only the amount of funds it disbursed during the fiscal year from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(e) With regard to the formula contained in paragraph (d)(1) of this section—

(1) The institution may not include as title IV, HEA program funds in the numerator nor as revenue generated by the institution in the denominator—

(i) The amount of funds it received under the Federal Work-Study (FWS) Program, unless the institution used those funds to pay a student's institutional charges in which case the FWS program funds used to pay those charges would be included in the numerator and denominator.

(ii) The amount of funds it received under the Leveraging Educational Assistance Partnership (LEAP) Program. (The LEAP

Program was formerly called the State Student Incentive Grant or SSIG Program.);

(iii) The amount of institutional funds it used to match title IV, HEA program funds;

(iv) The amount of title IV, HEA program funds that must be refunded or returned under § 668.22; or

(v) The amount charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) In determining the amount of title IV, HEA program funds received by the institution under the cash basis of accounting, except as provided in paragraph (e)(3) of this section, the institution must presume that any title IV, HEA program funds disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, and therefore must include those funds in the numerator and denominator.

(3) In paragraph (e)(2) of this section, the institution may not presume that title IV, HEA program funds were used to pay tuition, fees, and other institutional charges to the extent that those charges were satisfied by—

(i) Grant funds provided by non-Federal public agencies, or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement described in § 600.7(d), or

(iii) Funds provided by State prepaid tuition plans.

(4) With regard to the denominator, revenue generated by the institution from activities it conducts, that are necessary for its students' education or training, includes only revenue from those activities that—

(i) Are conducted on campus or at a facility under the control of the institution;

(ii) Are performed under the supervision of a member of the institution's faculty; and

(iii) Are required to be performed by all students in a specific educational program at the institution.

(f) An institution must notify the Secretary within 90 days following the end of the fiscal year used in paragraph (d)(1) of this section if it fails to satisfy the requirement contained in paragraph (a)(8) of this section.

(g) If an institution loses its eligibility because it failed to satisfy the requirement contained in paragraph (a)(8) of this section, to regain its eligibility it must demonstrate compliance with all eligibility requirements for at least the fiscal year following the fiscal year used in paragraph (d)(1) of this section.

(h) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute

involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

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

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

[59 FR 22336, Apr. 29, 1994; 59 FR 32082, June 22, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 59 FR 61177, Nov. 29, 1994; 61 FR 29901, June 12, 1996; 61 FR 60569, Nov. 29, 1996; 64 FR 58615, Oct. 29, 1999]

§ 600.6 Postsecondary vocational institution.

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

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

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

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

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

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

(5) Is—

(i) Accredited or preaccredited; or

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

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

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

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

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

(2)(i) The Secretary considers an institution to have provided a continuous education or training program during the 24 months preceding the date of its eligibility application

even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that affected the institution or the institution's students.

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

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

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

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

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

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

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58616, Oct. 29, 1999]

§ 600.7 Conditions of institutional ineligibility.

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

(1) For its latest complete award year—

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

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

(iii) More than twenty-five percent of the

institution's regular enrolled students were incarcerated;

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

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

(A) Files for relief in bankruptcy, or

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

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

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

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

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

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

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

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

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

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor's-degree program if the students enrolled in the institution's correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students

at that institution.

(c) *Special provisions regarding incarcerated students*—(1) *Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma.

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

(3) *Other waivers.* If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—

(i) For the four-year and two-year programs for which it awards a bachelor's degree, an associate degree or a postsecondary diploma; and

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

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

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

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

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

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

(3) *Contracts with Federal, State, or local government agencies.* For purposes of granting a waiver under paragraph (d)(1) of this section, the contracts referred to must be with Federal, State, or local government agencies for the purpose of providing job

training to low-income individuals who are in need of that training. An example of such a contract is a job training contract under the Job Training Partnership Act (JPTA).

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

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

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

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

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

(B) Excluding from the number of students in paragraph (e)(1)(iii)(A) of this section, the number of regular students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees less any administrative fee that the institution is permitted to keep under its fair and equitable refund policy.

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

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

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

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

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

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

(f)(1) If the Secretary grants a waiver to an institution under this section, the waiver

extends indefinitely provided that the institution satisfies the waiver requirements in each award year.

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

(g)(1) For purposes of paragraph (a)(1) of this section, and any applicable waiver or exception under this section, the institution shall substantiate the required calculations by having the certified public accountant who prepares its audited financial statement under 34 CFR 668.15 or its title IV, HEA program compliance audit under 34 CFR 668.23 report on the accuracy of those determinations.

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

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

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

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

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

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

(i) Compliance with all eligibility requirements;

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

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

(2) If an institution loses its eligibility because of one of the prohibitions contained in paragraphs (a)(2) and (a)(3) of this section, this loss is permanent. The institution's eligibility cannot be reinstated.

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

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

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

§ 600.8 Treatment of a branch campus.

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

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

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

§ 600.9 [Reserved]

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

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

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

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

(2) [Reserved]

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

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

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

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

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

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

(c) Subsequent additions of educational programs. **(1)** Except as provided in paragraph (c)(2) of this section, if an eligible institution adds an educational program after it has been designated as an eligible institution by the Secretary, the institution must apply to the Secretary to have that additional program designated as an eligible program of that institution.

(2) An eligible institution that adds an educational program after it has been designated as an eligible institution by the Secretary does not have to apply to the Secretary to have that additional program designated as an eligible program of that institution except as provided in 34 CFR 668.10 if the additional program—

(i) Leads to an associate, baccalaureate, professional, or graduate degree; or

(ii)(A) Prepares students for gainful employment in the same or related recognized occupation as an educational program that has previously been designated as an eligible program at that institution by the Secretary; and

(B) Is at least 8 semester hours, 12 quarter hours, or 600 clock hours.

(3) If an institution incorrectly determines under paragraph (c)(2) of this section that an educational program satisfies the applicable statutory and regulatory eligibility provisions without applying to the Secretary for approval, the institution is liable to repay to the Secretary all HEA program funds received by the institution for that educational program, and all the title IV, HEA program funds received by or on behalf of students who were enrolled in that educational program.

(d) Duration of eligibility. **(1)** If an institution participates in the title IV, HEA programs, the Secretary's designation of the institution as an eligible institution under the title IV, HEA programs expires when the institution's program participation agreement, as described in 34 CFR part 668, subpart B, expires.

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

(e) Consequence of eligibility. **(1)** If, as a part of its institutional eligibility application, an institution indicates that it wishes to participate in a title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the Secretary will determine whether the institution satisfies

the standards of administrative capability and financial responsibility contained in 34 CFR part 668, subpart B.

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

(Approved by the Office of Management and Budget under control number 1845-0098)

(Authority: 20 U.S.C. 1088 and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 65 FR 65671, Nov. 1, 2000; 71 FR 45692, Aug. 9, 2006]

§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

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

(1) All materials related to its prior accreditation or preaccreditation; and

(2) Materials demonstrating reasonable cause for changing its accrediting agency.

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

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

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

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

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

(2) An institution may not be considered eligible for 24 months after it has withdrawn

voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

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

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

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

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

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

Subpart B—Procedures for Establishing Eligibility

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

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

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

(b) Reapplication. **(1)** A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply. If the institution 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) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution's current eligibility and certification designation;

(ii) 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

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

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

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

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

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

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

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

(v) The Secretary previously notified the institution that it must apply for approval of an additional location.

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

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

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

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

(d) *Application format.* To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must apply in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary

to make a determination of its eligibility and certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (f)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this

section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

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

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

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

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

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

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

(g) *Application for provisional extension of certification.* (1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control

as described in 34 CFR 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a "materially complete application" that is received by the Secretary no later than 10 business days after the day the change occurs.

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

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

(ii) A copy of the document from the institution's accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of any non-degree programs it offers;

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

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

(h) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

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

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

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

(i) A "same day" balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with Generally Accepted Accounting Principles (GAAP) published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) published by the U.S. General Accounting Office;

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that State;

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

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

(Approved by the Office of Management and Budget under control number 1845-0098)

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

[65 FR 65671, Nov. 1, 2000]

§ 600.21 Updating application information.

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

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

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

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

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

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

(6) A person's ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—

(i) Holds alone or together with another member or members of his or her family, at least a 25 percent "ownership interest" in the institution as defined in § 600.31(b);

(ii) Represents or holds, either alone or together with other persons, under a voting

trust, power of attorney, proxy, or similar agreement at least a 25 percent "ownership interest" in the institution, as defined in § 600.31(b); or

(iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.

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

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

(9) The governance of a public institution.

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

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

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

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

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

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

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

(3) Child's spouse; and

(4) Sibling's spouse.

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

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

[65 FR 65673, Nov. 1, 2000, as amended at 67 FR 67070, Nov. 1, 2002; 71 FR 45692, Aug. 9, 2006]

Subpart C—Maintaining Eligibility

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

otherwise noted.

§ 600.30 [Reserved]

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

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change 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.

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

(i) No later than 10 business days after the change occurs; or

(ii) For an institution owned by a publicly-traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

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

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

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

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

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

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

(2) If the State of incorporation 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.

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

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a-6(b)(7);

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

(iv) An Employee Stock Ownership Plan (ESOP).

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

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

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

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

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

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

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

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

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

(ii)(A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in 17 CFR 240.15a-6(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

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

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

(3) *Other corporations.* A change in ownership and control of a corporation 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;

(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 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.* An institution that is a wholly-owned subsidiary changes ownership and control when the parent corporation changes ownership and control

as described in this section.

(6) Nonprofit institution. A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

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

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

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

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

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the liabilities of an institution to its parent corporation;

(6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or

(7) A change in status as a for-profit, nonprofit, or public institution.

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

(1) From an owner to a "family member" of that owner as defined in § 600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer.

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 33430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 65 FR 65673,

Nov. 1, 2000; 67 FR 67070, Nov. 1, 2002]

§ 600.32 Eligibility of additional locations.

(a) Except as provided in paragraphs (b) and (c) 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 agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received 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; 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) For purposes of this section, an "additional location" is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under § 600.21.

(Authority: 20 U.S.C. 1088 and 1141)

Subpart D—Loss of Eligibility

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

§ 600.40 Loss of eligibility.

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

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

(ii) The institution or location permanently closes;

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

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

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

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

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

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

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

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

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

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

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

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

(Authority: 20 U.S.C. 1088, 1099a–3, and 1141)
[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998]

§ 600.41 Termination and emergency action proceedings.

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

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

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.87, 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 applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

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

(2) After satisfaction of any additional

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

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

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

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

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

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

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

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

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

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40623, July 29, 1998]

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

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

§ 600.51 Purpose and scope.

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

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

(c) This subpart E does not include the procedures and criteria by which a foreign institution that is deemed eligible to apply to participate in the FFEL programs actually applies for that participation. Those procedures and criteria are contained in the regulations for the FFEL programs, 34 CFR part 682, subpart F.

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

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

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

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

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

[59 FR 22063, Apr. 28, 1994, as amended at 71 FR 45692, Aug. 9, 2006]

§ 600.52 Definitions.

The following definitions apply to this subpart E:

Foreign graduate medical school: A foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the World Directory of Medical Schools published by the World Health Organization (WHO).

Foreign institution: An institution that is not located in a State. *Passing score:* The minimum passing score as defined by the Educational Commission for Foreign Medical Graduates (ECFMG).

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

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

§ 600.53 Requesting an eligibility determination.

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

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

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

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

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

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

§ 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the FFEL programs if the foreign institution is a public or private nonprofit educational institution that—

(a) Admits as regular students only persons who—

(1) Have a secondary school completion credential; or

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

(b) Is legally authorized by an appropriate authority to provide an eligible educational program beyond the secondary school level in the country in which the institution is located; and

(c) Provides an eligible education program—

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

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

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

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

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

(a) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in § 600.54 (except the criterion that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom medical instruction of not less than 32 months in length, that is supervised closely by members of the school's faculty and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or

(ii) In the United States, through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views

are considered relevant by the Secretary.

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

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

(4)(i) The school has been approved by an accrediting body—

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

(B) Whose standards of accreditation of graduate medical schools—

(1) Have been evaluated by the advisory panel of medical experts established by the Secretary; and

(2) Have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(ii) The school is a public or private nonprofit educational institution that satisfies the requirements in § 600.4(a)(5)(i).

(5)(i)(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and

(B) For a foreign graduate medical school outside of Canada, at least 60 percent of the school's students and graduates who took any step of the examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG) (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks an FFEL program loan received passing scores on the exams; or

(ii) The school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State.

(b) In performing the calculation required in paragraph (a)(5)(i)(B) of this section, a foreign graduate medical school shall count as a graduate each person who graduated from the school during the three years preceding the year for which the calculation is performed.

(Authority: 20 U.S.C. 1002, 1082)

[59 FR 22063, Apr. 28, 1994; 59 FR 33681, June 30, 1994, as amended at 63 FR 40623, July 29, 1998; 64 FR 58616, Oct. 29, 1999; 69 FR 12275,

Mar. 16, 2004]

§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs.

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

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction; or

(ii) In the United States, through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

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

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

(4) For a veterinary school that is neither public nor private non-profit, the school's students complete their clinical training at an approved veterinary school located in the United States.

(b) [Reserved]

(Authority: 20 U.S.C. 1002 and 1082)

[64 FR 58616, Oct. 29, 1999, as amended at 69 FR 12275, Mar. 16, 2004]

§ 600.57 Duration of eligibility determination.

(a) The eligibility of a foreign institution under this subpart expires six years after the date of the Secretary's determination that the institution is eligible to apply for participation, except that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under § 600.55(a)(5)(i), subject to the terms described in § 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any

of the criteria in this subpart E.

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

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

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

PART 601--INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

(Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a) and (h).)

Subpart A--General

§601.1 Scope.

This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

(Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a)(25) and (e))

§601.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Federal Family Education Loan (FFEL) Program

Secretary

Title IV, HEA program

(b) The following definitions also apply to this part:

Agent: An officer or employee of a covered institution or an institution-affiliated organization.

Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any Federal funding or assistance.

Education loan: Except when used as part of the term "private education loan",

(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;

(2) Any loan made under the William D. Ford Federal Direct Loan Program; or

(3) A private education loan.

Institution-affiliated organization: (1) Any organization that--

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization--

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

Lender: (1) An eligible lender in the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR 682.200(b);

(2) The Department in the Direct Loan program;

(3) In the case of a private educational loan, a private education lender as defined in section 140 of the Truth in Lending Act; and

(4) Any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

Preferred lender arrangement: (1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution--

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include--

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

(3) For purpose of this definition, an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution or by an institution-affiliated organization of the covered institution, and the private education loan is--

- (i) Funded by the covered institution's or institution-affiliated organization's own funds;
- (ii) Funded by donor-directed contributions;
- (iii) Made under title VII or title VIII of the Public Service Health Act; or
- (iv) Made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

Private education loan: As the term is defined in 12 CFR 226.46(b)(5), a loan provided by a private educational lender that is not a title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. A private education loan does not include--

(1) An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or

(2) An extension of credit in which the educational institution is the lender if--

- (i) The term of the extension of credit is 90 days or less; or
- (ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(Authority: 20 U.S.C. 1019)

Subpart B--Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

§601.10 Preferred lender arrangement disclosures.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must disclose--

(1) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans--

- (i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;
- (ii) The information identified on a model

disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and

(iii) A statement that such institution is required to process the documents required to obtain a loan under the Federal Family Education Loan (FFEL) Program from any eligible lender the student selects; and

(2) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss private education loans--

(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that--

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(c)(1) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a)(1)(ii) of this section, and the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively, for each type of education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c)(1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.

(d) If a covered institution compiles, maintains, and makes available a preferred lender list as required under §668.14(b)(28), the institution must--

(1) Clearly and fully disclose on such preferred lender list--

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that--

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph (d) of this section--

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including--

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph (d) of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under

title IV of the HEA for those borrowers who choose a lender that is not included on the preferred lender list.

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

(Authority: 20 U.S.C. 1019a(a)(1)(A) and 1019b(c))

§601.11 Private education loan disclosures and self-certification form.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower, regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement.

(b) The private education loan disclosures must—

(1) Provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(2) Inform the prospective borrower that—

(i) The prospective borrower may qualify for loans or other assistance under title IV of the HEA; and

(ii) The terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

(c) The covered institution or institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

(d) Upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form—

(1) The self-certification form for private education loans developed by the Secretary in consultation with the Board of Governors of the Federal Reserve System, to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)); and

(2) The information required to complete the form, to the extent the institution possesses such information as specified in 34 CFR 668.14(b)(29).

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(Authority: 20 U.S.C. 1019a(a)(1)(B) and 1019d)

§601.12 Use of institution and lender name.

A covered institution, or an institution-

affiliated organization of such covered institution, that participates in a preferred lender arrangement with a lender regarding private education loans must—

(a) Not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; and

(b) Ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

(Authority: 20 U.S.C. 1019a(a)(2)-(a)(3))

Subpart C--Responsibilities of Covered Institutions and Institution-Affiliated Organizations

§601.20 Annual report.

Each covered institution, and each institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement, must—

(a) Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that participates in a preferred lender arrangement with such covered institution or organization—

(1) The information described in §601.10(c); and

(2) A detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(b) Ensure that the report required under this section is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

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

(Authority: 20 U.S.C. 1019b(c)(2))

§601.21 Code of conduct.

(a)(1) A covered institution that participates in a preferred lender arrangement must comply with the code of conduct requirements described in this section.

(2) The covered institution must—

(i) Develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply. The code of conduct

must—

(A) Prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans; and

(B) At a minimum, include the provisions specified in paragraph (c) of this section;

(ii) Publish such code of conduct prominently on the institution's Web site; and

(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

(b) Any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement must—

(1) Comply with the code of conduct developed and published by such covered institution under paragraph (a)(1) of this section;

(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and

(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of such code of conduct.

(c) A covered institution's code of conduct must prohibit—

(1) Revenue-sharing arrangements with any lender. The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term *revenue-sharing arrangement* means an arrangement between a covered institution and a lender under which—

(i) A lender provides or issues a FFEL Program loan or private education loan to students attending the institution or to the families of such students; and

(ii) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an agent;

(2)(i) Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer. Agents who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to FFEL Program loans or private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of FFEL Program loans or private education loans;

(ii) For purposes of paragraph (c) of this section, the term *gift* means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The

term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred;

(iii) The term *gift* does not include any of the following:

(A) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(B) Food, refreshments, training, or informational material furnished to an agent as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of FFEL Program loans or private education loans to the institution, if such training contributes to the professional development of the agent.

(C) Favorable terms, conditions, and borrower benefits on a FFEL Program loan or private education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(D) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by §§ 682.604(f) and 682.604(g), as long as the institution's staff are in control of the counseling (whether in person or via electronic capabilities) and such counseling does not promote the products or services of any specific lender.

(E) Philanthropic contributions to an institution from a lender, servicer, or guarantor of FFEL Program loans or private education loans that are unrelated to FFEL Program loans or private education loans or any contribution from any lender, servicer, or guarantor, that is not made in exchange for any advantage related to FFEL Program loans or private education loans.

(F) State education grants, scholarships, or financial aid funds administered by or on behalf of a State; and

(iv) For purposes of paragraph (c) of this section, a gift to a family member of an agent, or to any other individual based on that individual's relationship with the agent, is considered a gift to the agent if—

(A) The gift is given with the knowledge and acquiescence of the agent; and

(B) The agent has reason to believe the gift was given because of the official position of the agent;

(3) Consulting or other contracting arrangements. An agent who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to FFEL Program loans or private education loans must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including

the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to FFEL Program loans or private education loans. Nothing in paragraph (c)(3) of this section will be construed as prohibiting—

(i) An agent who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) An agent who is not employed in the institution's financial aid office but who has responsibility with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of FFEL Program loans or private education loans, if the institution has a written conflict of interest policy that clearly sets forth that agents must recuse themselves from participating in any decision of the board regarding FFEL Program loans or private education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of FFEL Program loans or private education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding FFEL Program loans or private education loans at the institution;

(4) Directing borrowers to particular lenders or delaying loan certifications. The institution must not—

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency;

(5)(i) Offers of funds for private loans. The institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(A) A specified number of FFEL Program loans or private education loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term *opportunity pool loan* means a private education loan made by a lender to a student attending the institution

or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution must not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or Federally declared natural disasters, Federally declared national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) Advisory board compensation. Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to FFEL Program loans or private education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, as that term is defined in §668.16(d)(2)(ii), incurred in serving on such advisory board, commission, or group.

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

(Authority: 20 U.S.C. 1019b(c)(2), 1094(a)(25) and (e))

Subpart D--Loan Information to be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program **§601.30 Duties of institutions.**

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA must—

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information

regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

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

(Authority: 20 U.S.C. 1019c(b)).

Subpart E--Lender Responsibilities

§601.40 Disclosure and reporting requirements for lenders.

(a) Disclosures to borrowers. (1) A lender must, at or prior to disbursement of a FFEL loan, provide the borrower, in writing (including through electronic means), in clear and understandable terms, the disclosures required in §682.205(a) and (b).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(b) Reports to the Secretary. Each FFEL lender must report annually to the Secretary—

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include—

(i) The amount of expenses paid or provided for each specific instance in which the lender provided expenses;

(ii) The name of any agent described in paragraph (b)(1) of this section to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expenses were paid or provided.

(c) Lender certification of compliance. (1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the Secretary its compliance with the Higher Education Act of 1965, as amended; and

(2) If the lender is required to submit an audit under 34 CFR 682.305(c), the lender's compliance with the requirements under this section must be reported on and attested to annually by the lender's auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 CFR 682.305(c).

(4) A lender who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) Annual lender report to covered institutions. A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, on a date prescribed by the Secretary, provide to the covered institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangement for the next award year.

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(Authority: 20 USC 1019a(b) and 1019b(b))