

Issue Papers

Team II - Foreign Schools - Session Two

Issue #1: United States Generally Accepted Accounting Principles (U.S. GAAP) financial statements.....	2
Issue #2: Compliance audits.....	13
Issue #3: Definition of a foreign school.....	23
Issue #4: Non-profit status for foreign schools.....	30
Issue #5: Public foreign schools and financial responsibility....	32
Issue #6: Consolidation of select Title IV requirements on a countrywide basis.....	36
Issue #7: Deferments for eligible non-citizens.....	38
Issue #8: Non-degree programs.....	39
Issue #9: New eligibility criteria for foreign medical schools...	45
Issue #10: Clinical sites of foreign medical schools and foreign veterinary schools in other countries.....	62
Issue #11: Basic science locations of foreign medical schools, foreign nursing schools, and foreign veterinary schools in other countries.....	64
Issue #12: Eligibility requirements for foreign veterinary schools	66
Issue #13: Eligibility requirements for foreign nursing schools..	68
Issue #14: Foreign medical, veterinary, and nursing schools certified separately from larger school.....	76

Issue #1: United States Generally Accepted Accounting Principles (U.S. GAAP) financial statements

Origin: HEOA/Public/ED

Statutory cites: Section 487(c)(1)(A)(i) of the HEA

Regulatory cites: §668.23

Tentative agreement:

Summary of issue: Under §668.23(a)(2), an annual submission of both a compliance audit and an audited financial statement is required of all institutions participating in the student financial assistance programs authorized by Title IV of the HEA. Section 668.23(d)(1) requires that an institution's financial statements must be prepared on an accrual basis in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and audited by an independent auditor in accordance with U.S. generally accepted government auditing standards (U.S. GAGAS), and other guidance contained in the Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations"; Office of Management and Budget Circular A-128, "Audits of State and Local Governments"; or in audit guides developed by, and available from, the Department of Education's Office of Inspector General, whichever is applicable.

Regulations in place permit a foreign school whose enrolled students received less than \$500,000 (in U.S. dollars) in FFEL Program funds per fiscal year to have its required audited financial statements prepared according to the generally accepted accounting principles and auditing standards of the school's home country.

The HEOA gives the Secretary the authority to modify the financial and compliance audit requirements for foreign schools and the authority to waive the audit requirements for foreign schools that receive less than \$500,000 in FFEL Program funds in the preceding year.

On May 15, 2009, the Department published a Dear Colleague Letter (GEN-09-06) announcing that the Secretary was waiving the annual financial statement audit requirement for foreign schools whose enrolled students received less than \$500,000 in FFEL Program funds during the award year preceding the audit period. The waiver applies to any financial statement audit for such a foreign school due on or after August 14, 2008, the effective date of the amendment to this provision by the HEOA, and renders unnecessary the regulation providing for submission of audits prepared under home country standards.

Should the Department modify the financial audit requirements for foreign schools whose enrolled students received \$500,000 or more in FFEL Program funds and, if so, how?

Updated information since 11/16-20 meeting:

The draft regulatory language would:

- Waive the financial audit submission requirement for a foreign institution that received less than \$500,000 in U.S. Title IV program funds during its most recently completed fiscal year,

unless an institution is in its initial provisional period of participation;

- For public foreign institutions, if an institution received at least \$500,000 in U.S. Title IV program funds, but less than \$1,000,000 in U.S. Title IV program funds during the institution's fiscal year preceding the audit period, the institution would be required to submit audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, unless there is an unpaid liability due to the Secretary by any public institution controlled by the same government entity. If there is an unpaid liability due to the Secretary by any public institution controlled by the same government entity, all public institutions controlled by that government entity would be required to submit audited financial statements translated to meet the requirements for domestic institutions;
- Require audited financial statements translated to meet the requirements for domestic institutions for: (1) public institutions that received \$1,000,000 or more in U.S. Title IV program funds or failed to qualify for the provision described in bullet two; (2) private foreign institutions that received \$500,000 or more in U.S. Title IV program funds; and any institution in its initial provisional period of participation.
- Provide that the Secretary may specify the manner in which an institution must submit audited financial statements if there are problems with the institution's financial condition or financial reporting.

In addition, the draft regulatory language would: (1) remove the superseded language in §668.15 addressing submission of financial audits for foreign institutions; (2) make technical corrections to reflect OMB's 2003 rescission of Circular A-128 and expansion of Circular A-133 to include State and local governments and (3) add the phrase "issued by the Comptroller General of the United States" to §668.23(d) (1) to make clear that United States auditing standards must be used for all submitted financial statements, including those from foreign institutions.

Draft Regulatory Language:

1 §668.15 Factors of financial responsibility.
2 ~~(h) Foreign institutions. The Secretary makes a determination of~~
3 ~~financial responsibility for a foreign institution on the basis of~~
4 ~~financial statements submitted under the following requirements-~~
5 ~~(1) If the institution received less than \$500,000 U.S. in title IV,~~
6 ~~HEA program funds during its most recently completed fiscal year,~~
7 ~~the institution must submit its audited financial statement for that~~

~~year. For purposes of this paragraph, the audited financial statements may be prepared under the auditing standards and accounting principles used in the institution's home country; or (2) If the institution received \$500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement in accordance with the requirements of §668.23, and satisfy the general standards of financial responsibility contained in this section, or qualify under an alternate standard of financial responsibility contained in this section.~~

* * * * *

§668.23 Compliance audits and audited financial statements.

(a) *General* (1) *Independent auditor.* For purposes of this section, the term "independent auditor" refers to an independent certified public accountant or a government auditor. To conduct an audit under this section, a government auditor must meet the Government Auditing Standards qualification and independence standards, including standards related to organizational independence.

(2) *Institutions.* An institution that participates in any Title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution's general purpose financial statements.

(3) *Third-party servicers.* Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education's Office of Inspector General. A third-party servicer is defined under §668.2 and 34 CFR 682.200.

1 (4) *Submission deadline.* Except as provided by the Single Audit
2 Act, Chapter 75 of title 31, United States Code, an institution must
3 submit annually to the Secretary its compliance audit and its
4 audited financial statements no later than six months after the last
5 day of the institution's fiscal year.

6 (5) *Audit submission requirements.* In general, the Secretary
7 considers the compliance audit and audited financial statement
8 submission requirements of this section to be satisfied by an audit
9 conducted in accordance with the Office of Management and Budget
10 Circular A-133, "Audits of States, Local Governments, Institutions
11 ~~of Higher Education and Other~~ and Non-Profit Organizations"; ~~Office~~
12 ~~of Management and Budget Circular A-128, "Audits of State and Local~~
13 ~~Governments"~~, or the audit guides developed by and available from
14 the Department of Education's Inspector General, whichever is
15 applicable to the entity, and provided that the Federal student aid
16 functions performed by that entity are covered in the submission.

17 (Both OMB circulars are available by calling OMB's Publication
18 Office at (202) 395-7332, or they can be obtained in electronic form
19 on the OMB Home Page (<http://www.whitehouse.gov>).

20 (b) [*Compliance audits for institutions.*]

21 (c) [*Compliance audits for third-party servicers.*]

22 (d) *Audited financial statements* –(1) *General.* To enable the
23 Secretary to make a determination of financial responsibility, an
24 institution must, to the extent requested by the Secretary, submit
25 to the Secretary a set of financial statements for its latest
26 complete fiscal year, as well as any other documentation the
27 Secretary deems necessary to make that determination. Financial
28 statements submitted to the Secretary must be prepared on an accrual
29 basis in accordance with generally accepted accounting principles,

1 and audited by an independent auditor in accordance with generally
2 accepted government auditing standards issued by the Comptroller
3 General of the United States, and other guidance contained in the
4 Office of Management and Budget Circular A-133, "Audits of States,
5 Local Governments, ~~Institutions of Higher Education and Other Non-~~
6 ~~Profit Organizations"~~, ~~;~~ ~~Office of Management and Budget Circular~~
7 ~~A-128, "Audits of State and Local Governments";~~ or in audit guides
8 developed by, and available from, the Department of Education's
9 Office of Inspector General , whichever is applicable. As part of
10 these financial statements, the institution must include a detailed
11 description of related entities based on the definition of a related
12 entity as set forth in the Statement of Financial Accounting
13 Standards (SFAS) 57. The disclosure requirements under this
14 provision extend beyond those of SFAS 57 to include all related
15 parties and a level of detail that would enable to Secretary to
16 readily identify the related party. Such information may include,
17 but is not limited to, the name, location and a description of the
18 related entity including the nature and amount of any transactions
19 between the related party and the institution, financial or
20 otherwise, regardless of when they occurred.

21 (2) *Submission of additional financial statements.* To the extent
22 requested by the Secretary in determining whether an institution is
23 financially responsible, the Secretary may also require the
24 submission of audited consolidated financial statements, audited
25 full consolidating financial statements, audited combined financial
26 statements or the audited financial statements of one or more
27 related parties that have the ability, either individually or
28 collectively, to significantly influence or control the institution,
29 as determined by the Secretary.

~~(3) Audited financial statements for foreign institutions. A foreign institution must submit~~

~~(i) Audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, if the institution received less than \$500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year; or~~

~~(ii) Audited financial statements translated to meet the requirements of paragraph (d) of this section, if the institution received \$500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year.~~

(43) *Disclosure of title IV HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with §600.5(d).

(54) *Audited financial statements for third-party servicers.* A third-party servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs, as provided under 34 CFR part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education's Office of Inspector General.

1 (e) *Access to records.* (1) An institution or a third-party
2 servicer that has a compliance or financial statement audit
3 conducted under this section must—

4 (i) Give the Secretary and the Inspector General access to records
5 or other documents necessary to review that audit, including the
6 right to obtain copies of those records or documents; and

7 (ii) Require an individual or firm conducting the audit to give the
8 Secretary and the Inspector General access to records, audit work
9 papers, or other documents necessary to review that audit, including
10 the right to obtain copies of those records, work papers, or
11 documents.

12 (2) An institution must give the Secretary and the Inspector
13 General access to records or other documents necessary to review a
14 third-party servicer's compliance or financial statement audit,
15 including the right to obtain copies of those records or documents.

16 (f) *Determination of liabilities.* (1) Based on the audit finding
17 and the institution's or third-party servicer's response, the
18 Secretary determines the amount of liability, if any, owed by the
19 institution or servicer and instructs the institution or servicer as
20 to the manner of repayment.

21 (2) If the Secretary determines that a third-party servicer owes a
22 liability for its administration of an institution's title IV, HEA
23 programs, the servicer must notify each institution under whose
24 contract the servicer owes a liability of that determination. The
25 servicer must also notify every institution that contracts with the
26 servicer for the same service that the Secretary determined that a
27 liability was owed.

28 (g) *Repayments.* (1) An institution or third-party servicer that
29 must repay funds under the procedures in this section shall repay

1 those funds at the direction of the Secretary within 45 days of the
2 date of the Secretary's notification, unless—

3 (i) The institution or servicer files an appeal under the
4 procedures established in subpart H of this part; or

5 (ii) The Secretary permits a longer repayment period.

6 (2) Notwithstanding paragraphs (f) and (g)(1) of this section—

7 (i) If an institution or third-party servicer has posted surety or
8 has provided a third-party guarantee and the Secretary questions
9 expenditures or compliance with applicable requirements and
10 identifies liabilities, then the Secretary may determine that
11 deferring recourse to the surety or guarantee is not appropriate
12 because—

13 (A) The need to provide relief to students or borrowers affected by
14 the act or omission giving rise to the liability outweighs the
15 importance of deferring collection action until completion of
16 available appeal proceedings; or

17 (B) The terms of the surety or guarantee do not provide complete
18 assurance that recourse to that protection will be fully available
19 through the completion of available appeal proceedings; or

20 (ii) The Secretary may use administrative offset pursuant to 34 CFR
21 part 30 to collect the funds owed under the procedures of this
22 section.

23 (3) If, under the proceedings in subpart H, liabilities asserted in
24 the Secretary's notification, under paragraph (e)(1) of this
25 section, to the institution or third-party servicer are upheld, the
26 institution or third-party servicer must repay those funds at the
27 direction of the Secretary within 30 days of the final decision
28 under subpart H of this part unless—

29 (i) The Secretary permits a longer repayment period; or

1 (ii) The Secretary determines that earlier collection action is
2 appropriate pursuant to paragraph (g)(2) of this section.

3 (4) An institution is held responsible for any liability owed by
4 the institution's third-party servicer for a violation incurred in
5 servicing any aspect of that institution's participation in the
6 title IV, HEA programs and remains responsible for that amount until
7 that amount is repaid in full.

8 (h) Audit submission requirements for foreign institutions.

9 (1) Audited financial statements. (i) The Secretary waives the
10 submission of audited financial statements if the institution is a
11 foreign institution that received less than \$500,000 in U.S. title
12 IV program funds during its most recently completed fiscal year,
13 unless a foreign institution is in its initial provisional period of
14 participation.

15 (ii) Except as provided in paragraph (h)(iii) of this section, a
16 foreign institution that received \$500,000 or more in U.S. title IV
17 program funds during its most recently completed fiscal year, and
18 any institution in its initial provisional period of participation,
19 must submit in English, audited financial statements translated to
20 meet the requirements of paragraph (d) of this section.

21 (iii) In lieu of making the submission required by paragraph (ii)
22 of this section a public institution that received \$500,000 or more
23 in U.S. title IV program funds, but less than \$1,000,000 in U.S.
24 title IV program funds during its most recently completed fiscal
25 year, may submit in English an audited financial statement prepared
26 in accordance with the generally accepted accounting principles of
27 the institution's home country, so long as the institution has been
28 notified by the Secretary that there are no unpaid liabilities due

1 to the Secretary from any public institution that is controlled by
2 the same government entity.

3 (iv) For purposes of this paragraph, the Secretary considers a
4 liability to be "unpaid" if it is a final decision of the Department
5 pursuant to 34 CFR 668.121 and the liability has not been paid or is
6 being repaid pursuant to a repayment agreement within 180 days,
7 unless a suit has been filed and is pending to challenge that
8 liability by the institution in a federal court of the United
9 States.

10 (2) Compliance audits. [see Issue Paper 2]

11 (3) (i) Exceptions. Notwithstanding the provisions of paragraphs
12 (h) (1) (i) and (h) (1) (iii) of this section, the Secretary may issue a
13 letter to a foreign institution that identifies problems with its
14 financial condition or financial reporting and requires the
15 submission of audited financial statements in the manner specified
16 by the Secretary.

17 (ii) [Compliance audits—see Issue Paper 2] .

18 * * * * *

Statutory Language with changes from the HEOA:

SEC. 487. [20 U.S.C. 1094] PROGRAM PARTICIPATION AGREEMENTS.

* * * * *

(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A) (i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to

cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part H, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receives less than \$500,000 in loans under this title during the award year preceding the audit period;

(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

(iii) at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 102(a)(1)(C)) that has obtained less than \$200,000 in funds under this title during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than 1/2 of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 498(g);

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

Issue #2: Compliance audits

Origin: HEOA/Public/ED

Statutory cites: Section 487(c)(1)(A)(i) of the HEA

Regulatory cites: §668.23

Tentative agreement:

Summary of issue: Under §668.23(a)(2), an annual submission of both a compliance audit and an audited financial statement is required of all institutions participating in the student financial assistance programs authorized by Title IV of the HEA.

The HEOA gives the Secretary the authority to modify the financial and compliance audit requirements for foreign schools and the authority to waive the audit requirements for foreign schools that receive less than \$500,000 in FFEL Program funds in the preceding year.

The current Inspector General's Audit Guide concerning compliance audits for foreign schools includes an Alternative Compliance Engagement which may be used by foreign schools whose enrolled students received less than the \$500,000 threshold in FFEL Program funds.

Should the Department modify or waive the compliance audit requirements for foreign schools and, if so, how?

Updated information since 11/16-20 meeting:

The draft regulations would separate foreign institutions into two cohorts; Tier One--foreign institutions that received less than \$500,000 in U.S. Title IV program funds during the institution's most recently completed fiscal year; and Tier Two--foreign institutions that received \$500,000 or more in U.S. Title IV program funds during the institution's most recently completed fiscal year.

Tier One Alternative: Foreign institutions that disburse less than \$500,000 per year. The draft regulations would require an annual submission for the first two years, then every three years thereafter (under certain conditions), in both cases under an alternative compliance audit. To qualify for submission every three years, a foreign institution in this tier must: (1) be fully certified; (2) have timely submitted and had accepted compliance audits for two successive fiscal years and have no history of late submissions since then.

Under an alternative compliance audit, the draft regulations would require a compliance audit performed in accordance with U.S. government auditing standards and AICPA attestation standards (which is consistent with the current audit guides developed by the Department's Office of Inspector General). Under an alternative compliance audit, the auditor performs prescribed procedures and reports the results of performing such procedures. Based upon the auditor's report, the Department evaluates the institution's compliance. The auditor does not express an opinion of the reliability of the institution's assertions concerning the institution's compliance with the requirements. An alternative compliance audit is the lowest level compliance audit.

The Office of Postsecondary Education would recommend to the Inspector General that current audit guides be revised to require, with respect to the alternative compliance audit:

- For each year audited, the use of a student sample of 25%, with a minimum of 10 students or all students, whichever is less;
- A check for student eligibility--Presence of a valid ISIR EFC, documenting the student's cost of attendance for the program enrolled, proof of student need, proof of enrollment of the student's stated eligible program of study, satisfactory academic progress, proof of enrollment status at the time of loan delivery, and if applicable, documentation that a correct R2T4 calculation was performed, loan amounts, and SSCR reporting;
- A check for institutional eligibility--recipients of funds were enrolled in an eligible program, and, if prior year findings were resolved to a program determination letter issued by the Department.

The Department could require more frequent submissions, a larger sample size, or a standard compliance audit should problems with the institution's administrative capability or compliance reporting be identified.

Tier Two Alternative: Foreign institutions that disburse \$500,000 or more per year: The draft regulations would require an annual submission under a standard compliance audit. That is, a full examination-level compliance audit performed on an annual basis of the foreign institution's compliance with regulations per the audit guides developed by the Department's Office of Inspector General. Under a standard compliance audit, the auditor expresses an opinion about the reliability of assertions made by the institution's management concerning the institution's compliance with requirements. An examination-level compliance audit is the highest level of compliance audit. However, it is not a full audit of the foreign institution's compliance with regulations.

The Office of Postsecondary Education would recommend to the Inspector General that current audit guides be revised to require:

- The use of a student sample of 25%, with a minimum of 25 students and a maximum of 50 students, whichever is less;
- A review of the institution's internal controls over compliance, and that the institution has followed up on any prior audits.
- That the auditor test management assertions regarding:
 - Approved locations
 - Legal authority
 - No Title IV funds to programs offered in whole or in part through telecommunications, correspondence, or direct assessment
 - SAP
 - Accreditation
 - Length of programs
 - Clinical training
 - SSCR reporting

- o Student eligibility (e.g., SARs, ISIRs, enrollment, loan amounts, eligible programs...)
- o Processing loan proceeds
- o Refunds and Return to Title IV
- o Administrative capability
- o Other material items identified by the auditor during the compliance audit.

Draft Regulatory Language:

1 §668.23 Compliance audits and audited financial statements.

2 (a) *General* (1) *Independent auditor.* For purposes of this section,
3 the term "independent auditor" refers to an independent certified
4 public accountant or a government auditor. To conduct an audit under
5 this section, a government auditor must meet the Government Auditing
6 Standards qualification and independence standards, including
7 standards related to organizational independence.

8 (2) *Institutions.* An institution that participates in any Title IV,
9 HEA program must at least annually have an independent auditor
10 conduct a compliance audit of its administration of that program and
11 an audit of the institution's general purpose financial statements.

12 (3) *Third-party servicers.* Except as provided under this part or 34
13 CFR part 682, with regard to complying with the provisions under
14 this section a third-party servicer must follow the procedures
15 contained in the audit guides developed by and available from the
16 Department of Education's Office of Inspector General. A third-party
17 servicer is defined under §668.2 and 34 CFR 682.200.

18 (4) *Submission deadline.* Except as provided by the Single Audit
19 Act, Chapter 75 of title 31, United States Code, an institution must
20 submit annually to the Secretary its compliance audit and its
21 audited financial statements no later than six months after the last
22 day of the institution's fiscal year.

1 (5) *Audit submission requirements.* In general, the Secretary
2 considers the compliance audit and audited financial statement
3 submission requirements of this section to be satisfied by an audit
4 conducted in accordance with the Office of Management and Budget
5 Circular A-133, "Audits of States, Local Governments, Institutions
6 ~~of Higher Education and Other~~ and Non-Profit Organizations"; ~~Office~~
7 ~~of Management and Budget Circular A-128, "Audits of State and Local~~
8 ~~Governments"~~, or the audit guides developed by and available from
9 the Department of Education's Inspector General, whichever is
10 applicable to the entity, and provided that the Federal student aid
11 functions performed by that entity are covered in the submission.

12 (Both OMB circulars are available by calling OMB's Publication
13 Office at (202) 395-7332, or they can be obtained in electronic form
14 on the OMB Home Page (<http://www.whitehouse.gov>).

15 (b) *Compliance audits for institutions.* (1) An institution's
16 compliance audit must cover, on a fiscal year basis, all Title IV,
17 HEA program transactions, and must cover all of those transactions
18 that have occurred since the period covered by the institution's
19 last compliance audit.

20 (2) The compliance audit required under this section must be
21 conducted in accordance with—

22 (i) The general standards and the standards for compliance audits
23 contained in the U.S. General Accounting Office's (GAO's) Government
24 Auditing Standards. (This publication is available from the
25 Superintendent of Documents, U.S. Government Printing Office,
26 Washington, DC 20402); and

27 (ii) Procedures for audits contained in audit guides developed by,
28 and available from, the Department of Education's Office of
29 Inspector General.

1 (3) The Secretary may require an institution to provide a copy of
2 its compliance audit report to guaranty agencies or eligible lenders
3 under the FFEL programs, State agencies, the Secretary of Veterans
4 Affairs, or nationally recognized accrediting agencies.

5 (c) *Compliance audits for third-party servicers.* (1) A third-party
6 servicer that administers title IV, HEA programs for institutions
7 does not have to have a compliance audit performed if—

8 (i) The servicer contracts with only one institution; and

9 (ii) The audit of that institution's administration of the title
10 IV, HEA programs involves every aspect of the servicer's
11 administration of that program for that institution.

12 (2) A third-party servicer that contracts with more than one
13 participating institution may submit a compliance audit report that
14 covers the servicer's administration of the title IV, HEA programs
15 for all institutions with which the servicer contracts.

16 (3) A third-party servicer must submit annually to the Secretary
17 its compliance audit no later than six months after the last day of
18 the servicer's fiscal year.

19 (4) The Secretary may require a third-party servicer to provide a
20 copy of its compliance audit report to guaranty agencies or eligible
21 lenders under the FFEL programs, State agencies, the Secretary of
22 Veterans Affairs, or nationally recognized accrediting agencies.

23 (d) *[Audited financial statements]*

24 (e) *Access to records.* (1) An institution or a third-party
25 servicer that has a compliance or financial statement audit
26 conducted under this section must—

27 (i) Give the Secretary and the Inspector General access to records
28 or other documents necessary to review that audit, including the
29 right to obtain copies of those records or documents; and

1 (ii) Require an individual or firm conducting the audit to give the
2 Secretary and the Inspector General access to records, audit work
3 papers, or other documents necessary to review that audit, including
4 the right to obtain copies of those records, work papers, or
5 documents.

6 (2) An institution must give the Secretary and the Inspector
7 General access to records or other documents necessary to review a
8 third-party servicer's compliance or financial statement audit,
9 including the right to obtain copies of those records or documents.

10 (f) *Determination of liabilities.* (1) Based on the audit finding
11 and the institution's or third-party servicer's response, the
12 Secretary determines the amount of liability, if any, owed by the
13 institution or servicer and instructs the institution or servicer as
14 to the manner of repayment.

15 (2) If the Secretary determines that a third-party servicer owes a
16 liability for its administration of an institution's title IV, HEA
17 programs, the servicer must notify each institution under whose
18 contract the servicer owes a liability of that determination. The
19 servicer must also notify every institution that contracts with the
20 servicer for the same service that the Secretary determined that a
21 liability was owed.

22 (g) *Repayments.* (1) An institution or third-party servicer that
23 must repay funds under the procedures in this section shall repay
24 those funds at the direction of the Secretary within 45 days of the
25 date of the Secretary's notification, unless—

26 (i) The institution or servicer files an appeal under the
27 procedures established in subpart H of this part; or

28 (ii) The Secretary permits a longer repayment period.

29 (2) Notwithstanding paragraphs (f) and (g)(1) of this section—

1 (i) If an institution or third-party servicer has posted surety or
2 has provided a third-party guarantee and the Secretary questions
3 expenditures or compliance with applicable requirements and
4 identifies liabilities, then the Secretary may determine that
5 deferring recourse to the surety or guarantee is not appropriate
6 because—

7 (A) The need to provide relief to students or borrowers affected by
8 the act or omission giving rise to the liability outweighs the
9 importance of deferring collection action until completion of
10 available appeal proceedings; or

11 (B) The terms of the surety or guarantee do not provide complete
12 assurance that recourse to that protection will be fully available
13 through the completion of available appeal proceedings; or

14 (ii) The Secretary may use administrative offset pursuant to 34 CFR
15 part 30 to collect the funds owed under the procedures of this
16 section.

17 (3) If, under the proceedings in subpart H, liabilities asserted in
18 the Secretary's notification, under paragraph (e) (1) of this
19 section, to the institution or third-party servicer are upheld, the
20 institution or third-party servicer must repay those funds at the
21 direction of the Secretary within 30 days of the final decision
22 under subpart H of this part unless—

23 (i) The Secretary permits a longer repayment period; or

24 (ii) The Secretary determines that earlier collection action is
25 appropriate pursuant to paragraph (g) (2) of this section.

26 (4) An institution is held responsible for any liability owed by
27 the institution's third-party servicer for a violation incurred in
28 servicing any aspect of that institution's participation in the

1 title IV, HEA programs and remains responsible for that amount until
2 that amount is repaid in full.

3 (h) Audit submission requirements for foreign institutions.

4 (1) Audited financial statements. [see Issue Paper 1]

5 (2) Compliance audits. A foreign institution's compliance audit
6 must cover, on a fiscal year basis, all title IV, HEA program
7 transactions, and must cover all of those transactions that have
8 occurred since the period covered by the institution's last
9 compliance audit. A compliance audit that is due under this
10 paragraph must be submitted no later than six months after the last
11 day of the institution's fiscal year, and must meet the following
12 requirements:

13 (i) If the foreign institution received \$500,000 or more in U.S.
14 dollars in title IV, HEA program funds during its most recently
15 completed fiscal year, it must submit a standard compliance audit
16 for that year that is performed in accordance with audit guides
17 developed by, and available from, the Department of Education's
18 Office of Inspector General, together with an alternative compliance
19 audit or audits prepared in accordance with paragraph (h) (2) (ii) of
20 this section for any preceding fiscal year or years in which the
21 foreign institution received less than \$500,000 in U.S. dollars in
22 title IV, HEA program funds;

23 (ii) If the foreign institution received less than \$500,000 U.S. in
24 title IV, HEA program funds for its most recently completed fiscal
25 year, it must submit an alternative compliance audit for that prior
26 fiscal year that is performed in accordance with audit guides
27 developed by, and available from, the Department of Education's
28 Office of Inspector General, except as noted in paragraph

29 (h) (2) (iii) of this section;

1 (iii) If so notified by the Secretary, a foreign institution may
2 submit an alternative compliance audit that covers a period not to
3 exceed three of the institution's consecutive fiscal years if the
4 following conditions are met:

5 (A) The institution received less than \$500,000 in title IV, HEA
6 program funds for its most recently completed fiscal year;

7 (B) The institution has timely submitted acceptable compliance
8 audits for two successive fiscal years, and following such
9 submission has no history of late submission since then;

10 (C) The institution is fully certified;

11 (D) The alternative compliance audit described in this paragraph is
12 submitted no later than six months after the last day of the last
13 fiscal year included in such audit; and

14 (E) The alternative compliance audit described in this paragraph is
15 performed in accordance with audit guides developed by, and
16 available from, the Department of Education's Office of Inspector
17 General.

18 (3) (i) *Exceptions.* [Audited financial statements—see Issue Paper
19 1].

20 (ii) Notwithstanding the provisions of paragraphs (h) (2) (ii) and
21 (h) (2) (iii) of this section, the Secretary may issue a letter to a
22 foreign institution that identifies problems with its administrative
23 capability or compliance reporting that specifies whether the
24 compliance audit must be performed at a higher level of engagement,
25 and whether the compliance audit must be submitted annually.

26 * * * * *

Statutory Language with changes from the HEOA:

SEC. 487. [20 U.S.C. 1094] PROGRAM PARTICIPATION AGREEMENTS.
* * * * *

(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A) (i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part H, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receives less than \$500,000 in loans under this title during the award year preceding the audit period;

(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

(iii) at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 102(a)(1)(C)) that has obtained less than \$200,000 in funds under this title during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than 1/2 of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 498(g);

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

Issue #3: Definition of a foreign school

Origin: ED

Statutory cites: Section 102(a)(1)(C) of the HEA

Regulatory cites: §600.52, §600.54, §682.200

Tentative agreement:

Summary of issue: A foreign institution is defined as an institution that is not located in a State. A State is defined in §600.2 as 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. A foreign institution is eligible to apply to participate in the FFEL program if it is comparable to an eligible institution of higher education located in the United States. An eligible foreign institution is considered to be comparable, in part, if it is legally authorized by an appropriate authority to provide an educational program beyond secondary education in the country where the institution is physically located. The Department has not explicitly regulated to say what makes a foreign institution "foreign" except that the institution may not be located in a State. We would like to further define what makes a foreign institution "foreign" and consider whether additional requirements are necessary to ensure comparability.

Updated information since 11/16-20 meeting:

Under the draft regulatory language, a "foreign institution or school" would be defined in §600.52 as an institution that:

- Is not located in a State and does not have U.S. locations (other than clinical locations of foreign medical, veterinary, or nursing schools) and does not have written arrangements with institutions located in the United States.
- Does not permit students to engage in any combination of courses, research, work, internship, externship or special studies from with the United States;
- Holds legal authorization by the education ministry, council, or equivalent agency of the country in which the institution is located;
- Has official recognition of its degrees, certificates and other educational credentials from the country in which the institution is located;
- For programs designed to prepare students for entry into gainful employment in a recognized occupation, to prepare its students to meet all educational requirements, including educational eligibility to take licensing exams, for entering into that occupation in that country.

If an educational enterprise enrolls students both within a State and outside a State, and the number of students who would be eligible to receive title IV, HEA program funds attending locations outside a State is at least twice the number of students enrolled within a State, the locations outside a State must be approved to participate as one or more foreign institutions and must meet all

requirements of paragraph (1) of the definition of a foreign institution and school, and the other requirements of this part.

Under the draft regulatory language, each additional location of a foreign institution would be required to separately meet the definition of a foreign institution if it is:

(1) located outside of the country in which the main campus is located; or (2) not covered by the legal authorization of the main campus. In addition, an eligible foreign institution would not be permitted to enter into a written arrangement with an ineligible institution or organization to provide any portion of an eligible program offered by the foreign institution. Finally, the draft regulatory language would make clear that a foreign institution must comply with all laws and regulations applicable to domestic institutions that participate in the Title IV programs, except where (1) those provisions are inconsistent with any requirements of the HEA specific to foreign institutions; or (2) the Secretary has identified specific provisions as inapplicable to foreign schools through a notice published in the *Federal Register*.

Note that the proposed regulations would also reduce the certification period of all foreign institutions to three years (see Issue Paper 14).

Draft Regulatory Language:

1 §600.51 Purpose and scope.

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

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

10 (c) A foreign institution must comply with all requirements for
11 eligible and participating institutions except--

12 (1) To the extent those provisions are inconsistent with this
13 subpart or other provisions of these regulations or the HEA specific
14 to foreign institutions; or

15 (2) The Secretary, through a notice in the Federal Register,
16 identifies specific provisions as inapplicable to foreign schools.

~~(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.~~

* * * * *

§600.52 Definitions.

The following definitions apply to this subpart E:

* * * * *

Foreign institution or foreign school:

(1) An institution that—

(i) Is not located in a State;

(ii) Has no U.S. locations, except for clinical sites of foreign medical schools in accordance with §668.55(e)(1)(ii), foreign veterinary schools in accordance with §668.56(a)(1)(ii), and foreign nursing schools in accordance with §600.57(a)(2);

(iii) Has no written arrangements with institutions located in the United States for students enrolling at the foreign institution to take courses from institutions located in the United States; and

(iv) Does not permit students to enroll in any course offered by the foreign institution in the United States, including research, work, internship, externship or special studies from within the United States;

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

1 (vi) Awards degrees, certificates or other recognized educational
2 credentials in accordance with §600.54(c) that are officially
3 recognized by the country in which the institution is located; and
4 (vii) For each program, including degree programs, designed to
5 prepare the student for gainful employment in a recognized
6 occupation, with or without licensure, provides a credential that-
7 (A) Satisfies the educational requirements in the country in which
8 the institution is located for entry into that occupation, including
9 educational requirements for licensure; and
10 (B) Satisfies the educational requirements, including requirements
11 for licensure, for entry into that occupation in the United States;
12 or
13 (2) If an educational enterprise enrolls students both within
14 a State and outside a State, and the number of students who
15 would be eligible to receive title IV, HEA program funds
16 attending locations outside a State is at least twice the
17 number of students enrolled within a State, the locations
18 outside a State must be approved to participate as one or more
19 foreign institutions and must meet all requirements of
20 paragraph (1) of this definition, and the other requirements
21 of this part.

22
23 * * * * *

24
25 §600.54 Criteria for determining whether a foreign institution is
26 eligible to apply to participate in the FFEL programs.

27 The Secretary considers a foreign institution to be comparable to an
28 eligible institution of higher education in the United States and

1 eligible to apply to participate in the FFEL programs if the foreign
2 institution ~~is a public or private nonprofit educational institution~~
3 ~~that~~ meets the following requirements:-

4 (a) Except for a foreign graduate medical school, foreign
5 veterinary school, or foreign nursing school, the foreign
6 institution is a public or private nonprofit educational
7 institution;

8 (ab) The foreign institution admits as regular students only
9 persons who-

10 (1) Have a secondary school completion credential; or

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

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

16 (c) (1) Notwithstanding §668.5, an eligible foreign institution may
17 not enter into a written arrangement with an ineligible institution
18 or organization to provide any portion of an eligible program
19 offered by the foreign institution.

20 (2) An additional location of a foreign institution must separately
21 meet the definition of a *foreign institution* in §600.52 if it is-

22 (i) Located outside of the country in which the main campus is
23 located; or

24 (ii) Located within the same country as the main campus, but is not
25 covered by the legal authorization of the main campus;

26 (ed) The foreign institution provides an eligible education
27 program-

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

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

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

11 (e) For a for-profit foreign medical, veterinary or nursing school-
12 -

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

15 (2) The title IV, HEA program eligibility does not extend to any
16 first professional degree or joint degree program.

17
18 §668.2 Definitions.

19 * * * * *

20 (a) * * *

21 (2) The following definitions are set forth in the regulations for
22 Institutional Eligibility under the Higher Education Act of 1965, as
23 amended, 34 CFR part 600:

24 * * *

25 Foreign institution or school

26 * * * * *

27
28
29 §682.200 Definitions.

1 * * * * *

2 (a) * * *

3 (2) The following definitions are set forth in the regulations for
4 Institutional Eligibility under the Higher Education Act of 1965, as
5 amended, 34 CFR part 600:

6 * * *

7 Foreign institution or school

8 * * * * *

9 (b) (1) The following definitions also apply to this part:

10 * * *

11 ~~Foreign school. A school not located in a State.~~

12 * * * * *

13 ~~§682.611 Foreign schools.~~

14 ~~A foreign school is required to comply with the provisions of this~~
15 ~~part, except to the extent that the Secretary states in this part or~~
16 ~~in other official publications or documents that those schools need~~
17 ~~not comply with those provisions.~~

18 ~~(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082,~~
19 ~~1088, and 1094)~~

20 ~~[60 FR 61816, Dec. 1, 1995]~~

Issue #4: Non-profit status for foreign schools

Origin: ED

Statutory cites: Section 102(a)(2)(A) of the HEA

Regulatory cites: §600.2, §600.54

Tentative agreement:

Summary of issue: Except for a foreign medical, veterinary or nursing school, to participate in the FFEL/Direct Loan program, a foreign institution must be a public or private nonprofit educational institution. Section 668.2 defines a nonprofit institution as an institution that-

- is owned and operated by one or more nonprofit corporations or associations, no parts of the net earnings of which benefits any private shareholder or individual;
- is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
- 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)).

The Department would like to develop a comparable definition specifically for foreign schools.

Updated information since 11/16-20 meeting:

Under the draft regulatory language, if the recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for Title IV purposes, the Secretary would automatically accept that tax authority's determination of nonprofit educational status for any institution located in that country. If the recognized tax authority of the institution's home country is not recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for Title IV purposes, a foreign institution must demonstrate to the satisfaction of the Secretary that it is a nonprofit educational institution. The draft regulations would also make clear that a nonprofit foreign institution may not be owned by a for profit entity. A foreign institution that is not determined to be a nonprofit entity would not be eligible to participate in the Title IV programs unless it is a medical, veterinary, or nursing school.

Draft Regulatory Language:

1 §600.2 Definitions.

2 * * * * *

3 *Nonprofit institution:* An institution that-

4 (1) (i) Is owned and operated by one or more nonprofit corporations

5 or associations, no part of the net earnings of which benefits any

6 private shareholder or individual;

1 ~~(2)~~ (ii) Is legally authorized to operate as a nonprofit
2 organization by each State in which it is physically located; and
3 ~~(3)~~ (iii) Is determined by the U.S. Internal Revenue Service to be
4 an organization to which contributions are tax-deductible in
5 accordance with section 501(c) (3) of the Internal Revenue Code (26
6 U.S.C. 501(c) (3)) ~~;~~ or

7 (2) For a foreign institution-

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

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

15 (B) If the recognized tax authority of the institution's home
16 country is not recognized by the Secretary for purposes of making
17 determinations of an institution's nonprofit status for title IV
18 purposes, the foreign institution demonstrates to the satisfaction
19 of the Secretary that it is a nonprofit educational institution.

20 * * * * *

Issue #5: Public foreign schools and financial responsibility

Origin: ED

Statutory cites: Section 498(c)(3)(B) of the HEA

Regulatory cites: §668.171(c)

Tentative agreement:

Summary of issue: Section 668.171(c) provides that an institution is financially responsible if the institution—

- Notifies the Secretary that it is designated as a public institution by the State, local or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and
- Provides a letter from an official of that State or other government entity confirming that the institution is a public institution.

In addition, the institution may not be in violation of any past performance requirement.

Should the Department develop a financial responsibility provision specifically for public foreign schools?

Updated information since 11/16-20 meeting:

The draft regulatory language would permit a foreign public institution to meet the financial responsibility regulations in a manner similar to domestic public institutions. That is, the Secretary would consider a public foreign institution to be financially responsible if the institution: (1) notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and (2) provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity. As with domestic public institutions, a foreign public institution could not be in violation of any past performance requirement. If a foreign public institution did not meet this provision, its financial responsibility would be determined under the general requirements of financial responsibility, including the application of the equity, primary reserve, and net income ratios.

Draft Regulatory Language:

- 1 §668.171 General.
- 2 (a) *Purpose.* To begin and to continue to participate in any Title
- 3 IV, HEA program, an institution must demonstrate to the Secretary
- 4 that it is financially responsible under the standards established
- 5 in this subpart. As provided under section 498(c)(1) of the HEA, the
- 6 Secretary determines whether an institution is financially
- 7 responsible based on the institution's ability to—

1 (1) Provide the services described in its official publications and
2 statements;

3 (2) Administer properly the Title IV, HEA programs in which it
4 participates; and

5 (3) Meet all of its financial obligations.

6 (b) *General standards of financial responsibility.* Except as
7 provided under paragraphs (c) and (d) of this section, the Secretary
8 considers an institution to be financially responsible if the
9 Secretary determines that—

10 (1) The institution's Equity, Primary Reserve, and Net Income
11 ratios yield a composite score of at least 1.5, as provided under
12 §668.172 and appendices A and B to this subpart;

13 (2) The institution has sufficient cash reserves to make required
14 returns of unearned Title IV HEA program funds, as provided under
15 §668.173;

16 (3) The institution is current in its debt payments. An institution
17 is not current in its debt payments if—

18 (i) It is in violation of any existing loan agreement at its fiscal
19 year end, as disclosed in a note to its audited financial statements
20 or audit opinion; or

21 (ii) It fails to make a payment in accordance with existing debt
22 obligations for more than 120 days, and at least one creditor has
23 filed suit to recover funds under those obligations; and

24 (4) The institution is meeting all of its financial obligations,
25 including but not limited to—

26 (i) Refunds that it is required to make under its refund policy,
27 including the return of Title IV, HEA program funds for which it is
28 responsible under §668.22; and

1 (ii) Repayments to the Secretary for debts and liabilities arising
2 from the institution's participation in the Title IV, HEA programs.

3 (c) *Public institutions.* (1) The Secretary considers a domestic
4 public institution to be financially responsible if the institution--

5 ~~(1)(i)~~ (i) (A) Notifies the Secretary that it is designated as a
6 public institution by the State, local or municipal government
7 entity, tribal authority, or other government entity that has the
8 legal authority to make that designation; and

9 ~~(ii)~~ (B) Provides a letter from an official of that State or other
10 government entity confirming that the institution is a public
11 institution; and

12 ~~(2)~~ (ii) Is not in violation of any past performance requirement
13 under §668.174.

14 (2) The Secretary considers a foreign public institution to be
15 financially responsible if the institution--

16 (i) (A) Notifies the Secretary that it is designated as a public
17 institution by the country or other government entity that has the
18 legal authority to make that designation; and

19 (B) Provides documentation from an official of that country or
20 other government entity confirming that the institution is a public
21 institution and is backed by the full faith and credit of the
22 country or other government entity; and

23 (ii) Is not in violation of any past performance requirement under
24 §668.174.

25 (d) *Audit opinions and past performance provisions.* Even if an
26 institution satisfies all of the general standards of financial
27 responsibility under paragraph (b) of this section, the Secretary
28 does not consider the institution to be financially responsible if--

1 (1) In the institution's audited financial statements, the opinion
2 expressed by the auditor was an adverse, qualified, or disclaimed
3 opinion, or the auditor expressed doubt about the continued
4 existence of the institution as a going concern, unless the
5 Secretary determines that a qualified or disclaimed opinion does not
6 have a significant bearing on the institution's financial condition;
7 or

8 (2) As provided under the past performance provisions in §668.174
9 (a) and (b) (1), the institution violated a Title IV, HEA program
10 requirement, or the persons or entities affiliated with the
11 institution owe a liability for a violation of a Title IV, HEA
12 program requirement.

13 (e) *Administrative actions.* If the Secretary determines that an
14 institution is not financially responsible under the standards and
15 provisions of this section or under an alternative standard in
16 §668.175, or the institution does not submit its financial and
17 compliance audits by the date permitted and in the manner required
18 under §668.23, the Secretary may—

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

22 (2) For an institution that is provisionally certified, take an
23 action against the institution under the procedures established in
24 §668.13(d).

25 * * * * *

Issue #6: Consolidation of select Title IV requirements on a nationwide basis

Origin: ED

Statutory cites:

Regulatory cites: To be determined

Tentative agreement:

Summary of issue: To ease administrative burden, are there any Title IV requirements that can be met by a country or other government entity for several foreign schools at once? For example, should the regulations allow proof of legal authorization of all public institutions in a country at once? Should this provision also be written to conform to suggested changes that would allow a country to meet the financial responsibility requirements for an institution?

Updated information since 11/16-20 meeting: The draft regulatory language would allow a country to provide to the Secretary a single legal authorization for all institutions in the country that provide eligible educational programs beyond the secondary school level. The draft regulatory language would also provide for a single legal authorization for all eligible institutions within a governmental jurisdiction of the country, such as a province. Under the draft regulatory language, the Secretary would continue to accept individual legal authorizations for each separate eligible foreign institution in the country, as well.

Draft Regulatory Language:

1 §600.54 Criteria for determining whether a foreign institution is
2 eligible to apply to participate in the FFEL programs.

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

8 * * *

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

13 (c) Provides an eligible education program--

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

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

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

11 (d) Proof that a foreign institution meets the requirements of
12 paragraph (b) of this section may be provided to the Secretary by a
13 legal authorization from an appropriate government entity—

14 (i) For all eligible foreign institutions in the country;

15 (ii) For all eligible foreign institutions in a jurisdiction within
16 the country; or

17 (iii) For each separate eligible foreign institution in the
18 country.

Issue #7: Deferments for eligible non-citizens

Origin: ED
Statutory cites: Section 484(a)(5) of the HEA
Regulatory cites: §668.33(a) and §682.210(b)(1)(i)
Tentative agreement:
Summary of issue:

This issue is more limited in scope than originally thought. The Department will recommend removing it from the agenda.

Updated information since 11/16-20 meeting: The committee agreed to remove this issue from the agenda.

Current Regulatory Language:

§668.33 Citizenship and residency requirements.

(a) Except as provided in paragraph (b) of this section, to be eligible to receive Title IV, HEA program assistance, a student must—

- (1) Be a citizen or national of the United States; or
- (2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—
 - (i) Is a permanent resident of the United States; or
 - (ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

* * * * *

§682.210 Deferment.

* * * * *

- (b) *Authorized deferments.* (1) Deferment is authorized for a FFEL borrower during any period when the borrower is—
- (i) Except as provided in paragraph (c)(5) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;
 - (ii) Engaged in a course of study under an eligible graduate fellowship program;
 - (iii) Engaged in a rehabilitation training program for disabled individuals;

Issue #8: Non-degree programs

Origin: ED

Statutory cites:

Regulatory cites: §600.54(c), §668.8(k) and (l), §668.9

Tentative agreement:

Summary of issue: Section 600.54 provides that, in order to be eligible, a foreign institution must provide an eligible educational program that leads to a degree that is equivalent to a U.S. degree, or be at least a two-academic year program acceptable for full credit toward the equivalent of a U.S. baccalaureate degree, or be equivalent to at least a one academic year training program that leads to a certificate or diploma and prepares students for gainful employment in a recognized occupation.

Section 668.8(l), part of the "clock hour/credit hour conversion" regulations, provides that an undergraduate non-degree program must be reported to the Department in clock-hours and, if appropriate, semester, trimester, and quarter credit hours to determine eligibility and program length for a clock-credit hour conversion. A program where each course within the program is acceptable for full credit toward one of the institution's degree programs, and the degree requires at least two years of study, is exempt from using the conversion formula. If a school applies the appropriate formula and finds that a program is eligible, the converted credit hours are used to determine the amount of Title IV funds that a student who is enrolled in the program is eligible to receive (except that a public and private nonprofit hospital-based diploma schools of nursing is exempt from using the clock-to-credit hour conversion formula to calculate Title IV awards).

Many foreign schools use educational measurements other than conventional American semester, trimester, quarter credits and clock-hours. How should non-degree programs at foreign schools be treated for purposes of Title IV eligibility?

Updated information since 11/16-20 meeting:

Two of the issues under negotiation by Team I (Program Integrity Issues) may have a significant impact on the eligibility of these programs. First, Team I is exploring the definition of what it means to "provide gainful employment in a recognized occupation." The draft regulatory language put forward for discussion in the last session defined "recognized occupation" as one that is identified by a Standard Occupational Classification (SOC) code established by the U.S. Department of Labor, or determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation. In addition, the Department indicated that the relationship of debt levels of recent graduates of an institution or program to expected earnings could be a consideration in determining a program's eligibility. Alternatively, a reasonable relationship between tuition costs incurred by students and expected earnings could be considered. Second, Team I is considering defining a credit hour in regulation for Title IV purposes. The draft regulatory language provided for discussion defined a credit hour as a Carnegie unit or academic work comparable to a Carnegie unit. For courses or programs for which the Carnegie unit is not meaningful, the institution would be responsible for establishing equivalencies in credit hours for the amount of academic work, as represented in

intended learning outcomes and verified by evidence of their achievement, and for ensuring the equivalencies are in accordance with accrediting agency standards and State agency requirements.

Our preliminary research indicates that the assignment of credits or other measures of academic work by foreign institutions vary greatly. As a result, the draft regulatory language would require a foreign institution to demonstrate that the amount of academic work required by a program it seeks to qualify as eligible as at least a one-academic-year training program is equivalent to—

- For a program offered in credit hours, a minimum of 30 weeks of instructional time and, for an undergraduate program, an amount of instructional time whereby a full-time student is expected to complete at least 24 semester or trimester credit hours or 36 quarter credit hours; or
- For a program offered in clock hours, a minimum of 26 weeks of instructional time and, for an undergraduate program, an amount of instructional time whereby a full-time student is expected to complete at least 900 clock hours for a program measured in clock hours.

The Secretary would need to make program-by-program determinations of comparability. The definition of an academic year is included at the end of this issue paper for your reference.

Draft Regulatory Language:

1 §600.54 Criteria for determining whether a foreign institution is
2 eligible to apply to participate in the FFEL programs.

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

8 * * *

9 (c) Provides an eligible education program—

10 * * *

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

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

5
6 §668.8 Eligible program.

7 * * * * *

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

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

18 (2) Each course within the program is acceptable for full credit
19 toward that institution's associate degree, bachelor's degree,
20 professional degree, or equivalent degree as determined by the
21 Secretary, provided that the institution's degree requires at least
22 two academic years of study.

23 (1) *Formula.* For purposes of determining whether a program
24 described in paragraph (k) of this section satisfies the
25 requirements contained in paragraph (c) (3) or (d) of this section,
26 and the number of credit hours in that educational program with
27 regard to the Title IV, HEA programs—

28 (1) A semester hour must include at least 30 clock hours of
29 instruction;

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

3 (3) A quarter hour must include at least 20 hours of instruction.

4 * * * * *

5

6 §668.9 Relationship between clock hours and semester, trimester,
7 or quarter hours in calculating Title IV, HEA program assistance.

8 (a) In determining the amount of Title IV, HEA program assistance
9 that a student who is enrolled in a program described in §668.8(k)
10 is eligible to receive, the institution shall apply the formula
11 contained in §668.8(1) to determine the number of semester,
12 trimester, or quarter hours in that program, if the institution
13 measures academic progress in that program in semester, trimester,
14 or quarter hours.

15 (b) Notwithstanding paragraph (a) of this section, a public or
16 private nonprofit hospital-based school of nursing that awards a
17 diploma at the completion of the school's program of education is
18 not required to apply the formula contained in §668.8(1) to
19 determine the number of semester, trimester, or quarter hours in
20 that program for purposes of calculating Title IV, HEA program
21 assistance.

22

1 §668.3 Academic year.

2 (a) General. Except as provided in paragraph (c) of this section,
3 an academic year for a program of study must include—

4 (1) (i) For a program offered in credit hours, a minimum of 30 weeks
5 of instructional time; or

6 (ii) For a program offered in clock hours, a minimum of 26 weeks of
7 instructional time; and

8 (2) For an undergraduate educational program, an amount of
9 instructional time whereby a full-time student is expected to
10 complete at least—

11 (i) Twenty-four semester or trimester credit hours or 36 quarter
12 credit hours for a program measured in credit hours; or

13 (ii) 900 clock hours for a program measured in clock hours.

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

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

16 (2) A week of instructional time is any week in which at least one
17 day of regularly scheduled instruction or examinations occurs or,
18 after the last scheduled day of classes for a term or payment
19 period, at least one day of study for final examinations occurs; and

20 (3) Instructional time does not include any vacation periods,
21 homework, or periods of orientation or counseling.

22 (c) Reduction in the length of an academic year. (1) Upon the
23 written request of an institution, the Secretary may approve, for
24 good cause, an academic year of 26 through 29 weeks of instructional
25 time for educational programs offered by the institution if the
26 institution offers a two-year program leading to an associate degree
27 or a four-year program leading to a baccalaureate degree.

28 (2) An institution's written request must—

1 (i) Identify each educational program for which the institution
2 requests a reduction, and the requested number of weeks of
3 instructional time for that program;

4 (ii) Demonstrate good cause for the requested reductions; and

5 (iii) Include any other information that the Secretary may require
6 to determine whether to grant the request.

7 (3) (i) The Secretary approves the request of an eligible institution
8 for a reduction in the length of its academic year if the
9 institution has demonstrated good cause for granting the request and
10 the institution's accrediting agency and State licensing agency have
11 approved the request.

12 (ii) If the Secretary approves the request, the approval terminates
13 when the institution's program participation agreement expires. The
14 institution may request an extension of that approval as part of the
15 recertification process.

Issue #9: New eligibility criteria for foreign medical schools

Origin: HEOA

Statutory cites: Section 102(a)(2)(A) and (B) of the HEA

Regulatory cites: §600.55

Tentative agreement:

Summary of issue: Effective July 1, 2010, the HEOA

- increases the Educational Commission for Foreign Medical Graduates (ECFMG) exams pass rate threshold from 60 percent to 75 percent;
- allows a foreign graduate medical school that was eligible based on having a clinical training program approved by a State as of July 1, 1992, to continue to be eligible as long as it has continuously operated a clinical training program in at least one State that approves the program; and
- allows for the promulgation through regulation of new eligibility criteria for foreign graduate medical schools that have a clinical training program approved by a State prior to January 1, 2008. Such regulations must be based on the recommendations of the National Committee on Foreign Medical Education and Accreditation (NCFMEA) report (the report can be viewed at <http://tinyurl.com/ncfmeaforeignschools>). The NCFMEA is a panel of medical experts which evaluates the medical school accrediting agency standards used in the country where medical education is provided to determine comparability to the standards of accreditation applied to medical schools in the U.S. The Department may issue a Notice of Proposed Rulemaking (NPRM) no earlier than 180 days after the submission of the report (which is due no later than August 14, 2009), and may issue final regulations no earlier than one year after the issuance of the NPRM. Thus, any new eligibility criteria for foreign graduate medical schools will become effective when implementing regulations do. However, the regulations must, at a minimum, require an ECFMG pass rate of at least 75 percent. The NCFMEA's recommendations concern, among other things, admission requirements (Recommendation 1); success in obtaining placement in a U.S. medical residence program accredited by the Accreditation Council for Graduate Medical Education (Recommendation 3); calculation and collection of ECFMG exam pass rates (Recommendation 4); publication of the language of instruction (Recommendation 10); and publication of cost of attendance (Recommendation 14).

Updated information since 11/16-20 meeting:

The draft regulatory language would:

- Add the changes made by the HEOA to: (1) increase the ECFMG exams pass rate threshold from 60 percent to 75 percent; and (2) allow a foreign graduate medical school that was eligible based on having a clinical training program approved by a State as of July 1, 1992, to continue to be eligible as long as it has continuously operated a clinical training program in at least one State that approves the program; (§600.55(e)(4)(i)(B) and §600.55(e)(4)(ii)(B))
- Remove the definition of a foreign graduate medical school as 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).

- Reference the advisory panel of medical experts established by the Secretary (the National Committee on Foreign Medical Education and Accreditation) by name. (§600.52)
- When a foreign graduate medical school applies for initial certification or for recertification to participate in the Title IV programs, require the school to list on its application all educational sites, including sites which offer all or a portion of a clinical training program in the country in which the main campus is located, the United States, or another country [*NCFMEA Recommendation 12(a)*] (§600.20(a)(4)(i) and §600.20(b)(3)(i))
- Require a foreign graduate medical school to state on its application for initial certification or for recertification to participate in the Title IV programs whether the program offered is an integrated first professional degree program or a post-baccalaureate/equivalent program [*NCFMEA Recommendation 14(a)*]; (§600.20(a)(4)(ii) and §600.20(b)(3)(ii))
- Require a foreign graduate medical school to provide copies of its affiliation agreements with hospitals and clinics as a part of any application for initial certification or recertification to participate in the Title IV programs; [*NCFMEA Recommendation 12(b)*] (§600.20(a)(4)(iii) and §600.20(b)(3)(iii))
- Require a foreign graduate medical school that adds a location which offers all or a portion of a clinical training program in a country other than the United States or the country in which the main campus is located to apply to the Department and wait for approval if it wishes to provide Title IV funds to the students at that location. (§600.20(c)(5))
- Require a foreign medical school to have the following admission criteria:
 - For a school having a post-baccalaureate equivalent medical program: (1) Students must have a baccalaureate degree, or at least 90 semester credit hours or the equivalent, in general education that includes, but is not limited to, coursework in the social sciences, history, and languages; and (2) Students must have taken premedical courses deemed essential preparation for completing the medical school curriculum, including, but not limited to, basic science and mathematics, which cover areas such as biology, general chemistry, organic chemistry, and physics; and (3) Students who are U.S. citizens, nationals or permanent residents must have taken the Medical College Admission Test (MCAT) [*NCFMEA Recommendation 1(a), bullets 2 and 5*]; (§600.56(c)(1))
 - For a school having an integrated program for a first professional program leading to a Doctor of Medicine (M.D.) degree, or its equivalent: (1) Students must have a basic general education background, including requisite pre-medical studies, as well as a broad general education including, but not limited to, coursework in the social sciences, history, and languages; and (2) Students must have taken premedical courses deemed essential preparation for completing the

- medical school curriculum, including, but not limited to, basic science and mathematics, which cover areas such as biology, general chemistry, organic chemistry, and physics; and (3) Must require students who are U.S. citizens, nationals or permanent residents to take the Medical College Admission Test (MCAT) no later than three years after admission to the program; [NCFMEA Recommendation 1(b), bullets 1 and 2]; (§600.56(c)(2))
- o Require a foreign graduate medical school to determine the consent requirements for and require the necessary consents of all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements for MCAT scores, residency placement, and USMLE examination scores [NCFMEA Recommendations 9, 3 and 4(a), but limited to U.S. citizens, nationals, or eligible permanent residents]; (§600.56(c)(4))
 - Require a foreign graduate medical school to collect and submit data on (1) MCAT scores [NCFMEA Recommendation 9(a)]; (2) placement in an U.S. medical residency [NCFMEA Recommendation 3]; and (3) the USMLE examination [NCFMEA Recommendation 4(a)]; (§600.56(d))
 - Require a 75% pass rate on each step of the USMLE, rather than a combined pass rate for all steps, but limited to U.S. citizens, nationals, or eligible permanent residents [NCFMEA Recommendation 4(b), but limited to U.S. citizens, nationals, or eligible permanent residents]; (§600.56(e)(4))
 - Require a foreign graduate medical school to (1) include in its satisfactory academic progress standards a requirement that a student complete his or her educational program within 150 percent of the published length of the educational program; and (2) document the educational remediation it provides to assist students in making satisfactory academic progress [NCFMEA Recommendation 9(b), but requires schools to document, rather than submit to the Department, educational remediation provided]; (§600.56(e)(5))
 - Require a foreign graduate medical school to publish all the languages in which instruction is offered [NCFMEA Recommendation 10]; (§600.56(e)(6))
 - Require a foreign graduate medical school to have a formal affiliation agreement with any hospital or clinic providing all or a portion of a clinical training program, and require that agreement to state how the site will (1) maintain the school's standards; (2) appoint faculty to the medical school staff; (3) design the curriculum; (4) supervise students; (5) provide liability insurance; and (6) evaluate student performance. [NCFMEA Recommendation 12(b)]; (§600.56(e)(7))
 - Require a foreign graduate medical school to notify their accrediting body within one year of any changes in (1) the educational programs, including clinical sites; (2) the overseeing bodies and in the formal affiliation agreements with hospitals and clinics [NCFMEA Recommendation 12(b)]; (§600.56(e)(8))

NCFMEA Recommendation 14(d) called for the development of requirements for foreign medical schools that are comparable to the "Transparency in College Tuition for Consumers" provisions added at section 132 of the HEA by the HEOA. These provisions of the HEA are already applicable to foreign institutions, and the Secretary is specifically prohibited from regulating on this section of the HEA. However, because foreign institutions cannot submit the information through the Integrated Postsecondary Education Data System (IPEDS) as domestic institutions are required to, the Secretary will instead collect the information from foreign institutions as a part of the application to participate in the Title IV programs when the institution is next required to submit such an application.

Draft Regulatory Language:

1 §600.20 Application procedures for establishing, reestablishing,
2 maintaining, or expanding institutional eligibility and
3 certification.

4 (a) *Initial eligibility application.* (1) An institution that
5 wishes to establish its eligibility to participate in any HEA
6 program must submit an application to the Secretary for a
7 determination that it qualifies as an eligible institution under
8 this part.

9 (2) If the institution also wishes to be certified to participate
10 in the Title IV, HEA programs, it must indicate that intent on the
11 application, and submit all the documentation indicated on the
12 application to enable the Secretary to determine that it satisfies
13 the relevant certification requirements contained in 34 CFR part
14 668, subparts B and L.

15 (3) [separate certification—see Issue Paper 14].

16 (4) A foreign graduate medical school must include in its
17 application to participate--

18 (i) A list of all educational sites, including sites which offer
19 all or a portion of a clinical training program in the country in
20 which the main campus is located, the United States, or another
21 country;

1 (ii) Whether the programs offered are first professional degree
2 programs, post-baccalaureate/equivalent programs, or both; and
3 (iii) Copies of the formal affiliation agreements with hospitals or
4 clinics providing all or a portion of a clinical training program
5 that meet the requirements of §600.55.

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

16 (2) A currently designated eligible institution that participates
17 in the Title IV, HEA programs must apply to the Secretary for a
18 determination that the institution continues to meet the
19 requirements in this part and in 34 CFR part 668 if the institution
20 wishes to—

21 (i) Continue to participate in the Title IV, HEA programs beyond
22 the scheduled expiration of the institution's current eligibility
23 and certification designation;

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

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

4 (3) A foreign graduate medical school must include in its
5 reapplication to participate--

6 (i) A list of all educational sites, including sites which offer
7 all or a portion of a clinical training program in the country in
8 which the main campus is located, the United States, or another
9 country;

10 (ii) Whether the program offered is a first professional degree
11 program or a post-baccalaureate/equivalent program; and

12 (ii) Copies of the formal affiliation agreements with hospitals or
13 clinics providing all or a portion of a clinical training program
14 required under §600.55(d) (7).

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

20 (1) Add a location at which the institution offers or will offer 50
21 percent or more of an educational program if one of the following
22 conditions applies, otherwise it must report to the Secretary under
23 §600.21:

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

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

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

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

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

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

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

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

17 (5) For a foreign graduate medical school, add a location which
18 offers all or a portion of a clinical training program in a country
19 other than the United States of the country in which the main campus
20 is located; or

21 ~~(56)~~ Convert an eligible location to a branch campus.

22 * * * * *

23
24 §600.52 Definitions.

25 The following definitions apply to this subpart E:

26 * * * * *

27 ~~Foreign graduate medical school: A foreign institution that~~
28 ~~qualifies to be listed in, and is listed as a medical school in, the~~

1 ~~most current edition of the World Directory of Medical Schools~~
2 ~~published by the World Health Organization (WHO).~~

3 * * * * *

4 National Committee on Foreign Medical Education and Accreditation
5 (NCFMEA): The operational committee of medical experts established
6 by the Secretary to determine whether the medical school accrediting
7 standards used in other countries are comparable to those applied to
8 medical schools in the U.S., for purposes of evaluating the
9 eligibility of accredited foreign graduate medical schools to
10 participate in the FFEL programs.

11 * * * * *

12
13 §600.55 Additional criteria for determining whether a foreign
14 graduate medical school is eligible to apply to participate in the
15 FFEL programs.

16 (a) General. The Secretary considers a foreign graduate medical
17 school to be eligible to apply to participate in the FFEL programs
18 if, in addition to satisfying the criteria ~~in §600.54 of this part~~
19 (except the criterion in §600.54 that the institution be public or
20 private nonprofit), the school satisfies ~~all of the following~~
21 criteria of this section.

22 (b) Accreditation. ~~(4)(i) The school has been~~ A foreign graduate
23 medical school must—

24 (1) Be approved by an accrediting body—

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

28 (ii) (B) Whose standards of accreditation of graduate medical
29 schools ~~(1) have~~ been evaluated by the NCFMEA or its successor

1 ~~committee of medical experts~~~~advisory panel of medical experts~~
2 ~~established by the Secretary;~~ and ~~(2) H~~h have been determined to be
3 comparable to standards of accreditation applied to medical schools
4 in the United States; or

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

7 (c) Admission criteria. (1) A foreign graduate medical school
8 having a post-baccalaureate equivalent medical program must have
9 admission criteria that include the following:

10 (i) Students accepted for admission must have a baccalaureate
11 degree, or at least 90 semester credit hours or the equivalent, in
12 general education that includes, but is not limited to, coursework
13 in the social sciences, history, and languages

14 (ii) Students accepted for admission must have taken premedical
15 courses deemed essential preparation for completing the medical
16 school curriculum, including, but not limited to, basic science and
17 mathematics, which cover areas such as biology, general chemistry,
18 organic chemistry, and physics; and

19 (3) Students accepted for admission who are U.S. citizens,
20 nationals or permanent residents must have taken the Medical College
21 Admission Test (MCAT); and

22 (2) A foreign graduate medical school having an integrated program
23 for a first professional program leading to a Doctor of Medicine
24 (M.D.) degree, or its equivalent, must have entrance criteria that
25 include the following:

26 (i) Students accepted for admission must have a basic general
27 education background, including requisite pre-medical studies, as
28 well as a broad general education including, but not limited to,
29 coursework in the social sciences, history, and languages;

1 (ii) Students accepted for admission must have taken premedical
2 courses deemed essential preparation for completing the medical
3 school curriculum, including, but not limited to, basic science and
4 mathematics, which cover areas such as biology, general chemistry,
5 organic chemistry, and physics; and

6 (iii) Must require students accepted for admission who are U.S.
7 citizens, nationals or permanent residents to take the Medical
8 College Admission Test (MCAT) no later than three years after
9 admission to the program; and

10 (3) A foreign graduate medical school must determine the consent
11 requirements for and require the necessary consents of all students
12 accepted for admission who are U.S. citizens, nationals, or eligible
13 permanent residents to enable the school to comply with the
14 collection and submission requirements of paragraph (d) of this
15 section.

16 (d) Collection and submission of data. A foreign graduate medical
17 school must—

18 (1) (i) Take all necessary steps to obtain the scores on the MCAT or
19 successor examination, of students who are U.S. citizens, nationals,
20 or eligible permanent residents, and submit the scores annually to
21 its accrediting authority and, on request, to the Secretary,
22 together with a statement of the number of times each student took
23 the examination;

24 (2) Annually collect and submit to its accrediting authority and,
25 on request, to the Secretary, the percentage of its graduates
26 (including at least all graduates who are U.S. citizens, nationals
27 or eligible permanent residents) who obtain placement in an
28 accredited U.S. medical residency program, and pay such fees as are
29 necessary to determine this percentage;

1 (3) (i) Except upon written notice from the Secretary that the
2 necessary information has been obtained by the Secretary for the
3 year directly from the Educational Commission for Foreign Medical
4 Graduates (ECFMG) or other responsible third parties, the foreign
5 graduate medical school must obtain annually, at its own expense,
6 all scores, disaggregated by step and attempt, earned by the student
7 during the enrollment and following graduation, on all parts of the
8 USMLE, together with the dates the student has taken each part,
9 including any failed examinations; and

10 (ii) Provide such scores annually to its accrediting authority and,
11 on request, to the Secretary.

12 (e) Other criteria. (1) ~~The~~ A foreign graduate medical school must
13 provide~~s~~, and in the normal course require~~s~~ its students to
14 complete, a program of clinical and classroom medical instruction of
15 not less than 32 months in length, that is supervised closely by
16 members of the school's faculty and that is provided either—

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

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

24 (2) ~~(3) The~~ A foreign graduate medical school may employ~~s~~ for the
25 program described in paragraph (a) (1) of this section only those
26 faculty members whose academic credentials are the equivalent of
27 credentials required of faculty members teaching the same or similar
28 courses at medical schools in the United States.

1 ~~(3)(2)~~ The A foreign graduate medical school ~~has~~ must have graduated
2 classes during each of the two twelve-month periods immediately
3 preceding the date the Secretary receives the school's request for
4 an eligibility determination; and

5 ~~(4)(5)~~ (i) (A) (1) During the academic year preceding the year for
6 which any of the school's students seeks an FFEL program loan, at
7 least 60 percent of those enrolled as full-time regular students in
8 the school and at least 60 percent of the school's most recent
9 graduating class were persons who did not meet the citizenship and
10 residency criteria contained in section 484(a)(5) of the HEA, 20
11 U.S.C. 1091(a)(5); or

12 (2) The school had a clinical training program approved by a State
13 prior to January 1, 2008, and continues to operate a clinical
14 training program in at least one State that approves the program; and

15 (B) For a foreign graduate medical school outside of Canada, for
16 each step of the USMLE administered by the ECFMG, at least ~~60~~ 75
17 percent of the school's U.S. citizen, national, or eligible
18 permanent resident students and graduates who took ~~any that~~ step of
19 the examinations ~~administered by the Educational Commission for~~
20 ~~Foreign Medical Graduates (ECFMG) (including the ECFMG English test)~~
21 in the year preceding the year for which any of the school's
22 students seeks an FFEL program loan must have received a passing
23 scores on ~~the exams~~ that step; or

24 (ii) (A) The school ~~is had a~~ clinical training program ~~was~~ approved
25 by a State as of January 1, 1992, ~~and is currently approved by that~~
26 ~~State;~~ and

27 (B) The school continues to operate a clinical training program in
28 at least one State that approves the program.

1 ~~(iii)(b)~~ In performing the calculation required in paragraph
2 ~~(ae)~~ (54) (i) (B) of this section, a foreign graduate medical school
3 shall—

4 (A) Count as a graduate each U.S. citizen, national, or eligible
5 permanent resident person who graduated from the school during the
6 three years preceding the year for which the calculation is
7 performed-;

8 (B) Count each U.S. citizen, national, or eligible permanent
9 resident who takes more than one step of the USMLE examination in a
10 year in the denominator for each of those steps; and

11 (C) Count each U.S. citizen, national, or eligible permanent
12 resident who repeats a step of the USMLE examination in a year only
13 once in the denominator for that step;

14 (5) (i) As part of establishing, publishing, and applying reasonable
15 satisfactory academic progress standards, a foreign graduate medical
16 school must include as a quantitative component a maximum timeframe
17 in which a student must complete his or her educational program that
18 must—

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

22 (B) Notwithstanding the requirement that the program be an
23 undergraduate program, meet the requirements of §668.16(e) (2) (ii);

24 (ii) A foreign graduate medical school must document the
25 educational remediation it provides to assist students in making
26 satisfactory academic progress;

27 (6) A foreign graduate medical school must publish all the
28 languages in which instruction is offered;

1 (7) (i) A foreign graduate medical school must have a formal
2 affiliation agreement with any hospital or clinic providing all or a
3 portion of a clinical training program;

4 (ii) The agreements described in paragraph (e) (7) (i) of this
5 section must state how the site will-

6 (A) Maintain the school's standards;

7 (B) Appoint faculty to the medical school staff;

8 (C) Design the curriculum;

9 (D) Supervise students;

10 (E) Provide liability insurance; and

11 (F) Evaluate student performance; and

12 (8) A foreign graduate medical school must notify its accrediting
13 body within one year of any changes in-

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

16 (ii) The overseeing bodies and in the formal affiliation agreements
17 with hospitals and clinics described in paragraph (e) (7) (i) of this
18 section.

19 (f) Location of a program. [see Issue Papers 10 and 11]

Statutory Language with Changes from the HEOA:

SEC. 102. [20 U.S.C. 1002] DEFINITION OF INSTITUTION OF HIGHER
EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF
TITLE IV PROGRAMS.—

* * *

(2) INSTITUTIONS OUTSIDE THE UNITED STATES.—

(A) IN GENERAL.—For the purpose of qualifying as an institution
under paragraph (1) (C), the Secretary shall establish criteria by
regulation for the approval of institutions outside the United
States and for the determination that such institutions are
comparable to an institution of higher education as defined in
section 101 (except that a graduate medical school, nursing school,
or a veterinary school, located outside the United States shall not

be required to meet the requirements of section 101(a)(4)). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of Title IV unless—

(i) except as provided in subparagraph (B)(iii)(IV), in the case of a graduate medical school located outside the United States--

(I)(aa) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 484(a)(5) in the year preceding the year for which a student is seeking a loan under part B of title IV; and

(bb) at least ~~60~~75 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of Title IV; or

~~(II) the institution has a clinical training program that was approved by a State as of January 1, 1992; or~~

(II) the institution—

(aa) has or had a clinical training program that was approved by a State as of January 1, 1992; and

(bb) continues to operate a clinical training program in at least one State that is approved by that State;

(ii) the institution has a clinical training program that was approved by a State as of January 1, 1992, or the institution's students complete their clinical training at an approved veterinary school located in the United States; ~~or~~ or

(iii) [foreign nursing school provisions]

(B) ADVISORY PANEL.—

(i) IN GENERAL.—For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) SPECIAL RULE.—If the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 101.

(iii) REPORT.—

(I) IN GENERAL.—Not later than 1 year after the date of enactment of the Higher Education Opportunity Act, the advisory panel described in clause (i) shall submit a report to the Secretary and to the authorizing committees recommending eligibility criteria for participation in the loan programs under part B of Title IV for graduate medical schools that—

(aa) are located outside of the United States;

(bb) do not meet the requirements of subparagraph (A) (i); and

(cc) have a clinical training program approved by a State prior to January 1, 2008.

(II) RECOMMENDATIONS.—In the report described in subclause (I), the advisory panel's eligibility criteria shall include recommendations regarding the appropriate levels of performance for graduate medical schools described in such subclause in the following areas:

(aa) Entrance requirements.

(bb) Retention and graduation rates.

(cc) Successful placement of students in United States medical residency programs.

(dd) Passage rate of students on the United States Medical Licensing Examination.

(ee) The extent to which State medical boards have assessed the quality of such school's program of instruction, including through on-site reviews.

(ff) The extent to which graduates of such schools would be unable to practice medicine in 1 or more States, based on the judgment of a State medical board.

(gg) Any areas recommended by the Comptroller General of the United States under section 1101 of the Higher Education Opportunity Act.

(hh) Any additional areas the Secretary may require.

(III) MINIMUM ELIGIBILITY REQUIREMENT.—In the recommendations described in subclause (II), the criteria described in subparagraph (A) (i) (I) (bb), as amended by section 102(b) of the Higher Education Opportunity Act, shall be a minimum eligibility requirement for a graduate medical school described in subclause (I) to participate in the loan programs under part B of Title IV.

(IV) AUTHORITY.—The Secretary may—

(aa) not earlier than 180 days after the submission of the report described in subclause (I), issue proposed regulations establishing

criteria for the eligibility of graduate medical schools described in such subclause to participate in the loan programs under part B of Title IV based on the recommendations of such report; and

(bb) not earlier than one year after the issuance of proposed regulations under item (aa), issue final regulations establishing such criteria for eligibility.

* * * * *

Issue #10: Clinical sites of foreign medical schools and foreign veterinary schools in other countries

Origin: ED
Statutory cites: Section of the HEA
Regulatory cites: §600.55 and §600.56
Tentative agreement:

Summary of issue: Clarify whether locations of clinical sites of foreign graduate medical schools and foreign veterinary schools (other than those located in the U.S., which is permitted by statute) must be located in the same country as the home school.

Current Department guidance is as follows: All portions of the graduate medical education program offered to U.S. students must be located in a country whose medical school accrediting standards are comparable to standards used in the United States, as determined by the NCFMEA. In addition, if any component of the clinical training program is located in an approved comparable foreign country other than the country in which the main campus is located, the institution's medical accrediting agency must have conducted an on-site evaluation and specifically approved the clinical training sites in order for students attending the site to be eligible to borrow Title IV, HEA program funds. Furthermore, clinical instruction offered at a site in a foreign NCFMEA-approved country must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country.

Updated information since 11/16-20 meeting:
The draft regulatory language reflects current Department policy for foreign graduate medical schools (described above). For a foreign veterinary school, the clinical training program would have to be located in the country in which the main campus of the school is located, or the United States, except for for-profit veterinary schools, which must have their clinical training program located in the United States.

Draft Regulatory Language:

1 §600.55 Additional criteria for determining whether a foreign
2 graduate medical school is eligible to apply to participate in the
3 FFEL programs.
4 * * * * *
5 (f) Location of a program. (1) All portions of a graduate medical
6 education program offered to U.S. students must be located in a
7 country whose medical school accrediting standards are comparable to
8 standards used in the United States, as determined by the NCFMEA,

1 except for clinical sites located in the United States in accordance
2 with §668.55(d) (1) (ii);

3 (2) [location of basic science—see Issue Paper 11]

4 (3) The institution's medical accrediting agency must have
5 conducted an on-site evaluation and specifically approved the
6 clinical training sites in order for students attending the site to
7 be eligible to borrow FFEL program funds; and

8 (4) If any component of the clinical training program is located in
9 an approved comparable foreign country other than the country in
10 which the main campus is located or in the United States clinical
11 instruction must be offered in conjunction with medical educational
12 programs offered to students enrolled in accredited medical schools
13 located in that approved foreign country.

14 * * * * *

15
16 §600.56 Additional criteria for determining whether a foreign
17 veterinary school is eligible to apply to participate in the FFEL
18 programs.

19 * * * * *

20 (c) Location of a program. No portion of the foreign veterinary
21 educational program may be located outside of the country in which
22 the main campus of the foreign veterinary school is located, except
23 for clinical sites located in the United States;

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

Issue #11: Basic science locations of foreign medical schools, foreign nursing schools, and foreign veterinary schools in other countries

Origin: ED

Statutory cites: Section of the HEA

Regulatory cites: §600.55 and §600.56

Tentative agreement:

Summary of issue: Clarify whether locations of basic sciences classroom medical instruction of foreign graduate medical schools, foreign nursing schools, and foreign veterinary schools must be located in the same country as the home school. Clarify whether all or part of a foreign medical, foreign nursing, or veterinary school program can be contracted out, and if so, under what conditions.

Current Department guidance requires that all portions of the graduate medical education program offered to U.S. students must be located in a country whose medical school accrediting standards are comparable to standards used in the United States, as determined by the NCFMEA. No component of the basic sciences classroom medical instruction can occur outside of the foreign home country.

Updated information since 11/16-20 meeting:

The draft regulatory language reflects current policy and, for foreign graduate medical schools, NCFMEA Recommendation 12. It would require that all portions of the basic science portion of a foreign graduate medical, foreign veterinary, and foreign nursing program must be offered to U.S. students in the country in which the main campus of the school is located.

Draft Regulatory Language:

1 §600.55 Additional criteria for determining whether a foreign
2 graduate medical school is eligible to apply to participate in the
3 FFEL programs.

4 * * * * *

5 (e) Location of a program. (1) All portions of a graduate medical
6 education program offered to U.S. students must be located in a
7 country whose medical school accrediting standards are comparable to
8 standards used in the United States, as determined by the NCFMEA,
9 except for clinical sites located in the United States in accordance
10 with §668.55(d) (1) (ii);

1 (2) No portion of the preclinical educational program offered to
2 U.S. students may be located outside of the country in which the
3 main campus of the foreign medical school is located;

4 (3) [location of clinical sites—see Issue Paper 10]

5 * * * * *

6 §600.56 Additional criteria for determining whether a foreign
7 veterinary school is eligible to apply to participate in the FFEL
8 programs.

9 * * * * *

10 (c) Location of a program. (1) No portion of the foreign
11 veterinary educational program offered to U.S. students may be
12 located outside of the country in which the main campus of the
13 foreign medical school is located, except for clinical sites located
14 in the United States;

15 (2) [location of clinical sites for for-profit schools—see Issue
16 Paper 10]

17
18 §600.57 Additional criteria for determining whether a foreign
19 nursing school is eligible to apply to participate in the FFEL
20 programs.

21 [for paragraphs (a)-(c) see Issue Paper 13]

22 (d) Location of a program. (1) No portion of the foreign nursing
23 program offered to U.S. students may be located outside of the
24 country in which the main campus of the foreign nursing school is
25 located, except for clinical sites located in the United States;

Issue #12: Eligibility requirements for foreign veterinary schools

Origin: ED

Statutory cites: Section 102(a)(2)(A) of the HEA

Regulatory cites: §600.56

Tentative agreement:

Summary of issue: Section 600.56(a)(3) provides that a foreign veterinary school is considered eligible to participate in the FFEL programs if, in addition to other requirements, it:

- provides a program of clinical and classroom veterinary instruction that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction;
- employs 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.

Should the regulations provide guidance on determining what constitutes "adequately equipped and staffed" facilities or indicators of the equivalency of faculty members' credentials in teaching veterinary courses, or include different standards to ensure academic quality?

Updated information since 11/16-20 meeting: The draft regulatory language would require foreign veterinary schools to be accredited by the American Veterinary Medical Association (AVMA) in order to be eligible to participate in the Title IV programs.

Draft Regulatory Language:

1 §600.56 Additional criteria for determining whether a foreign
2 veterinary school is eligible to apply to participate in the FFEL
3 programs.

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

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

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

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

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

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

16 ~~(4) For a veterinary school that is neither public nor private non-~~
17 ~~profit, the school's students complete their clinical training at an~~
18 ~~approved veterinary school located in the United States. [moved to~~
19 ~~paragraph (c)]~~

20 (b) ~~{Reserved}~~ The school is accredited by the American Veterinary
21 Medical Association.

22 (c) Location of a program. [see Issue Papers 10 and 11]

Issue #13: Eligibility requirements for foreign nursing schools

Origin: HEOA

Statutory cites: Section 102(a)(2)(A) of the HEA

Regulatory cites: None

Tentative agreement:

Summary of issue: The HEOA provides specific standards for foreign nursing schools. The provision is effective beginning July 1, 2010, except that, for nursing schools that were eligible to participate on August 13, 2008 (the day before enactment of the HEOA) they are effective July 1, 2012.

The HEOA provides that a foreign nursing school, including a for-profit nursing school, may not participate in the FFEL Program unless:

- the school has an agreement with a hospital, or accredited school of nursing (as those terms are defined in section 801 of the Public Health Service Act (42 United States Code [U.S.C.] 296)), located in the United States that requires the students of the nursing school to complete the students' clinical training at such hospital or accredited school of nursing;
- the school has an agreement with an accredited school of nursing located in the United States providing that the students graduating from the foreign nursing school also receive a degree from the accredited U.S. school of nursing;
- the school certifies only Federal Stafford Loans under section 428 of the HEA, unsubsidized Federal Stafford Loans under section 428H of the HEA, or Federal PLUS loans under section 428B of the HEA for students attending the institution;
- the school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution's cohort default rate during the previous fiscal year; and
- not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying a Federal Stafford Loan, an unsubsidized Federal Stafford Loan, or a Federal PLUS loan, received a passing score on such examination.

Updated information since 11/16-20 meeting: The draft regulatory language would implement the HEOA provisions related to nursing schools by adding a new section to the regulations, entitled "Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the FFEL programs." The new section is modeled on similar sections in the regulations for medical schools and veterinary schools.

For purposes of reimbursing the Secretary for the cost of loan defaults, the draft regulatory language would specify the different types of costs included in determining the cost of a loan default. Under the draft regulatory language, after the school reimburses the Secretary, the defaulted borrower remains liable for the outstanding balance of the loan payable to the holder of the loan.

In addition, several new definitions would be added to the definitions in 600.52. The new definitions are derived from definitions relating to nursing schools in the Public Health Service Act.

Draft Regulatory Language:

1 §600.52 Definitions.

2 The following definitions apply to this subpart E:

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

7

8 Collegiate school of nursing: A school which provides primarily or
9 exclusively a program of education in professional nursing leading
10 to a degree equivalent to a bachelor of arts, bachelor of science,
11 or bachelor of nursing in the United States, or to a degree
12 equivalent to a graduate degree in nursing in the United States, and
13 including advanced training related to the program of education
14 provided by the school.

15

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

21

22 *Foreign institution or school:* [see Issue Paper 3]

23

24 *Passing score:* The minimum passing score as defined by the
25 Educational Commission for Foreign Medical Graduates (ECFMG), or by

1 the National Council Licensure Examination for Registered Nurses, as
2 applicable.

3

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

7 * * * * *

8 §600.57 Additional criteria for determining whether a foreign
9 nursing school is eligible to apply to participate in the FFEL
10 programs.

11 (a) The Secretary considers a foreign nursing school to be eligible
12 to apply to participate in the FFEL programs if, in addition to
13 satisfying the criteria in this part (except the criterion in
14 §600.54 that the institution be public or private nonprofit), the
15 nursing school satisfies all of the following criteria:

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

18 (2) The nursing school has an agreement with a hospital located in
19 the United States or an accredited school of nursing located in the
20 United States that requires students of the nursing school to
21 complete the student's clinical training at the hospital or
22 accredited school of nursing.

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

1 (4) The nursing school certifies only Federal Stafford Loan program
2 loans or Federal PLUS program loans, as those terms are defined in
3 §668.2, for students attending the nursing school.

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

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

13 (ii) The nursing school annually-

14 (A) Obtains, at its own expense, all scores earned by students and
15 graduates who are U.S. citizens, nationals, or eligible permanent
16 residents on the National Council Licensure Examination for
17 Registered Nurses, together with the dates the student has taken the
18 examination, including any failed examinations; and

19 (B) Provides such scores to its accrediting authority and, on
20 request, to the Secretary.

21 (7) Not less than 75 percent of the school's students and graduates
22 who are either U.S. citizens, nationals, or eligible permanent
23 residents who took the National Council Licensure Examination for
24 Registered Nurses in the year preceding the year for which the
25 institution is certifying a Federal Stafford Loan or a Federal Plus
26 Loan, received a passing score on such examination.

27 (8) The school provides, and in the normal course requires its
28 students to complete a program of clinical and classroom nursing
29 instruction that is supervised closely by members of the school's

1 faculty that is provided in facilities adequately equipped and
2 staffed to afford students comprehensive clinical and classroom
3 nursing instruction, through a training program for foreign nursing
4 students that has been approved by all nurse licensing boards and
5 evaluating bodies whose views are considered relevant by the
6 Secretary.

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

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

14 (b) For purposes of paragraph (a) (5) of this section, the cost of a
15 loan default is the sum of the defaulted loan's-

16 (i) Outstanding principal;

17 (ii) Accrued interest;

18 (iii) Unpaid late fees and collection costs;

19 (iv) Special allowance payments;

20 (v) Reinsurance payments; and

21 (vi) Any related or similar payments the Secretary is obligated to
22 make on the loan.

23 (c) After a school reimburses the Secretary for the amount
24 specified in paragraph (b) of this section, the borrower remains
25 liable for the outstanding balance of the loan, payable to the
26 holder of the loan under the terms and conditions specified in the
27 promissory note.

28 (d) [location of the preclinical portion of a nursing program-see
29 Issue Paper 11]

1

2

§600.57-58 Duration of eligibility determination.

3

* * * * *

Statutory Language with Changes from the HEOA:

SEC. 102. [20 U.S.C. 1002] DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.—

* * *

(2) INSTITUTIONS OUTSIDE THE UNITED STATES.—

(A) IN GENERAL.—For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 101 (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 101(a)(4)). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of Title IV unless—

(i) except as provided in subparagraph (B)(iii)(IV), in the case of a graduate medical school located outside the United States--

(I)(aa) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 484(a)(5) in the year preceding the year for which a student is seeking a loan under part B of title IV; and

(bb) at least ~~60~~75 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of Title IV; or

~~(II) the institution has a clinical training program that was approved by a State as of January 1, 1992; or~~

(II) the institution—

(aa) has or had a clinical training program that was approved by a State as of January 1, 1992; and

(bb) continues to operate a clinical training program in at least one State that is approved by that State;

(ii) the institution has a clinical training program that was approved by a State as of January 1, 1992, or the institution's students complete their clinical training at an approved veterinary school located in the United States; ~~or~~; or

(iii) in the case of a nursing school located outside of the United States-

(I) the nursing school has an agreement with a hospital, or accredited school of nursing (as such terms are defined in section 801 of the Public Health Service Act (42 U.S.C. 296)), located in the United States that requires the students of the nursing school to complete the students' clinical training at such hospital or accredited school of nursing;

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

(III) the nursing school certifies only Federal Stafford Loans under section 428, unsubsidized Federal Stafford Loans under section 428H, or Federal PLUS loans under section 428B for students attending the institution;

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

(V) Not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying a Federal Stafford Loan under section 428, an unsubsidized Federal Stafford Loan under section 428H, or a Federal PLUS loan under section 428B, received a passing score on such examination.

42 U.S.C. § 296. Definitions.

As used in this title:

* * *

(2) School of nursing. The term "school of nursing" means a collegiate, associate degree, or diploma school of nursing in a State.

(3) Collegiate school of nursing. The term "collegiate school of nursing" means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and related subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate

degree in nursing, or to an equivalent degree, and including advanced training related to such program of education provided by such school, but only if such program, or such unit, college or university is accredited.

(4) Associate degree school of nursing. The term "associate degree school of nursing" means a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively a two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree, but only if such program, or such unit, college, or university is accredited.

(5) Diploma school of nursing. The term "diploma school of nursing" means a school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to a diploma or to equivalent indicia that such program has been satisfactorily completed, but only if such program, or such affiliated school or such hospital or university or such independent school is accredited.

(6) Accredited.

(A) In general. Except as provided in subparagraph (B), the term "accredited" when applied to any program of nurse education means a program accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a hospital, school, college, or university (or a unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education. For the purpose of this paragraph, the Secretary of Education shall publish a list of recognized accrediting bodies, and of State agencies, which the Secretary of Education determines to be reliable authority as to the quality of education offered.

(B) New programs. A new program of nursing that, by reason of an insufficient period of operation, is not, at the time of the submission of an application for a grant or contract under this title, eligible for accreditation by such a recognized body or bodies or State agency, shall be deemed accredited for purposes of this title if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students of the first entering class in such a program.

Issue #14: Foreign medical, veterinary, and nursing schools certified separately from larger school

Origin: ED

Statutory cites:

Regulatory cites: §600.20

Tentative agreement:

Summary of issue: Should the regulations require that all foreign medical, nursing and veterinary schools be certified separately from any larger school, as recommended by NCFMEA (Recommendation 14(a))? Should the certification period for foreign medical schools be shortened to three years, as recommended by NCFMEA (Recommendation 14(b))?

Updated information since 11/16-20 meeting: The draft regulatory language would implement NCFMEA recommendations 14(a) and 14(b) by requiring foreign graduate medical schools, foreign veterinary schools, and foreign nursing schools to be certified separately from any larger school. The draft regulatory language would also reduce the certification period of all foreign institutions to three years.

Draft Regulatory Language:

1 §600.20 Application procedures for establishing, reestablishing,
2 maintaining, or expanding institutional eligibility and
3 certification.

4 (a) *Initial eligibility application.* (1) An institution that
5 wishes to establish its eligibility to participate in any HEA
6 program must submit an application to the Secretary for a
7 determination that it qualifies as an eligible institution under
8 this part.

9 (2) If the institution also wishes to be certified to participate
10 in the Title IV, HEA programs, it must indicate that intent on the
11 application, and submit all the documentation indicated on the
12 application to enable the Secretary to determine that it satisfies
13 the relevant certification requirements contained in 34 CFR part
14 668, subparts B and L.

15 (3) If a foreign graduate medical school, a foreign veterinary
16 school, or a foreign nursing school is part of a larger institution,
17 that foreign graduate medical school, foreign veterinary school, or
18 foreign nursing school must submit a separate application to the

1 Secretary for a determination that it qualifies as an eligible
2 institution and, if it wishes to be certified to participate in the
3 Title IV programs, must indicate on that separate application that
4 intent as described in paragraph (a)(2) of this section.

5 (4) [foreign graduate medical school application—see Issue Paper 9]

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

16 (2) A currently designated eligible institution that participates
17 in the Title IV, HEA programs must apply to the Secretary for a
18 determination that the institution continues to meet the
19 requirements in this part and in 34 CFR part 668 if the institution
20 wishes to—

21 (i) Continue to participate in the Title IV, HEA programs beyond
22 the scheduled expiration of the institution's current eligibility
23 and certification designation;

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

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

4 [\(3\) \[foreign graduate medical school application see Issue Paper 9\]](#)

5 * * * * *

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

11 (1) Add a location at which the institution offers or will offer 50
12 percent or more of an educational program if one of the following
13 conditions applies, otherwise it must report to the Secretary under
14 §600.21:

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

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

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

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

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

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

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

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

9 (5) [foreign graduate medical school—additional clinical location
10 outside U.S. or home country—see Issue Paper 9]; or

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

12
13 §668.13 Certification procedures.

14 (a) *Requirements for certification.* (1) The Secretary certifies an
15 institution to participate in the title IV, HEA programs if the
16 institution qualifies as an eligible institution under 34 CFR part
17 600, meets the standards of this subpart and 34 CFR part 668,
18 subpart L, and satisfies the requirements of paragraph (a) ~~(2)~~—(3)
19 of this section.

20 (2) The Secretary certifies a foreign graduate medical school, a
21 foreign veterinary school, and a foreign nursing school separately,
22 regardless of whether the medical school, veterinary school, or
23 nursing school is freestanding or is part of a larger institution.

24 ~~(2)~~ (3) Except as provided in paragraph (a) ~~(3)~~—(4) of this section,
25 if an institution wishes to participate for the first time in the
26 title IV, HEA programs or has undergone a change in ownership that
27 results in a change in control as described in 34 CFR 600.31, the
28 institution must require the following individuals to complete title
29 IV, HEA program training provided or approved by the Secretary no

1 later than 12 months after the institution executes its program
2 participation agreement under §668.14:

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

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

7 ~~(3)~~ (4) (i) An institution may request the Secretary to waive the
8 training requirement for any individual described in paragraph
9 (a) ~~(2)~~ (3) of this section.

10 (ii) When the Secretary receives a waiver request under paragraph
11 (a) ~~(3)~~ (4) (i) of this section, the Secretary may grant or deny the
12 waiver, require another institutional official to take the training,
13 or require alternative training.

14 (b) *Period of participation.* (1) If the Secretary certifies that
15 an institution meets the standards of this subpart, the Secretary
16 also specifies the period for which the institution may participate
17 in a Title IV, HEA program. An institution's period of participation
18 expires six years after the date that the Secretary certifies that
19 the institution meets the standards of this subpart, except that—

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

22 (ii) The Secretary may specify a shorter period.

23 ~~(2)~~ (3) Provided that an institution has submitted an application for
24 a renewal of certification that is materially complete at least 90
25 days prior to the expiration of its current period of participation,
26 the institution's existing certification will be extended on a month
27 to month basis following the expiration of the institution's period
28 of participation until the end of the month in which the Secretary
29 issues a decision on the application for recertification.