

Issue Papers

Team II – Foreign Schools

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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: No

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. 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.

Updated information since 1/11-14 meeting:

The revised draft regulatory language would:

- As with the last draft, waive the financial audit submission requirement for the 289 foreign institutions that received less than \$500,000 in U.S. Title IV program funds during the institution's most recently completed fiscal year, unless an institution is in its initial provisional period of participation;
- Allow that the combined 82 public and non-profit foreign institutions that received at least \$500,000 in U.S. Title IV program funds, but less than \$3,000,000 in U.S. Title IV program funds during the institution's fiscal year preceding the audit period, may submit audited financial statements prepared in accordance with the generally accepted accounting principles (GAAP) of the institution's home country. The draft would eliminate the provision requiring all public institutions controlled by the same government entity to

submit audited financial statements translated to meet the requirements for domestic institutions if there is an unpaid liability due to the Secretary by any public institution controlled by the same government entity;

- Require that the 28 institutions that received \$3,000,000 or more in U.S. Title IV program funds, and all institutions in an initial provisional period of participation must submit annually in English audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country along with a financial statement for the same period that has been converted to U.S. GAAP.

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

18 * * * * *

19 §668.23 Compliance audits and audited financial statements.

20 (a) *General* (1) *Independent auditor.* For purposes of this section,
21 the term "independent auditor" refers to an independent certified

1 public accountant or a government auditor. To conduct an audit under
2 this section, a government auditor must meet the Government Auditing
3 Standards qualification and independence standards, including
4 standards related to organizational independence.

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

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

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

20 (5) *Audit submission requirements*. In general, the Secretary
21 considers the compliance audit and audited financial statement
22 submission requirements of this section to be satisfied by an audit
23 conducted in accordance with the Office of Management and Budget
24 Circular A-133, "Audits of States, Local Governments, Institutions
25 ~~of Higher Education and Other~~ and Non-Profit Organizations"; ~~Office~~
26 ~~of Management and Budget Circular A-128, "Audits of State and Local~~
27 ~~Governments"~~, or the audit guides developed by and available from
28 the Department of Education's Inspector General, whichever is
29 applicable to the entity, and provided that the Federal student aid

1 functions performed by that entity are covered in the submission.

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

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

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

7 (d) *Audited financial statements* (1) *General*. To enable the
8 Secretary to make a determination of financial responsibility, an
9 institution must, to the extent requested by the Secretary, submit
10 to the Secretary a set of financial statements for its latest
11 complete fiscal year, as well as any other documentation the
12 Secretary deems necessary to make that determination. Financial
13 statements submitted to the Secretary must be prepared on an accrual
14 basis in accordance with generally accepted accounting principles,
15 and audited by an independent auditor in accordance with generally
16 accepted government auditing standards issued by the Comptroller
17 General of the United States, and other guidance contained in the
18 Office of Management and Budget Circular A-133, "Audits of States,
19 Local Governments, Institutions of Higher Education and Other Non-
20 Profit Organizations", ~~Office of Management and Budget Circular~~
21 ~~A-128, "Audits of State and Local Governments";~~ or in audit guides
22 developed by, and available from, the Department of Education's
23 Office of Inspector General, whichever is applicable. As part of
24 these financial statements, the institution must include a detailed
25 description of related entities based on the definition of a related
26 entity as set forth in the Statement of Financial Accounting
27 Standards (SFAS) 57. The disclosure requirements under this
28 provision extend beyond those of SFAS 57 to include all related
29 parties and a level of detail that would enable to Secretary to

1 readily identify the related party. Such information may include,
2 but is not limited to, the name, location and a description of the
3 related entity including the nature and amount of any transactions
4 between the related party and the institution, financial or
5 otherwise, regardless of when they occurred.

6 (2) *Submission of additional financial statements.* To the extent
7 requested by the Secretary in determining whether an institution is
8 financially responsible, the Secretary may also require the
9 submission of audited consolidated financial statements, audited
10 full consolidating financial statements, audited combined financial
11 statements or the audited financial statements of one or more
12 related parties that have the ability, either individually or
13 collectively, to significantly influence or control the institution,
14 as determined by the Secretary.

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

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

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

26 (43) *Disclosure of title IV HEA program revenue.* A proprietary
27 institution must disclose in a footnote to its financial statement
28 audit the percentage of its revenues derived from the title IV, HEA
29 program funds that the institution received during the fiscal year

1 covered by that audit. The revenue percentage must be calculated in
2 accordance with §600.5(d).

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

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

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

19 (ii) Require an individual or firm conducting the audit to give the
20 Secretary and the Inspector General access to records, audit work
21 papers, or other documents necessary to review that audit, including
22 the right to obtain copies of those records, work papers, or
23 documents.

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

28 (f) *Determination of liabilities.* (1) Based on the audit finding
29 and the institution's or third-party servicer's response, the

1 Secretary determines the amount of liability, if any, owed by the
2 institution or servicer and instructs the institution or servicer as
3 to the manner of repayment.

4 (2) If the Secretary determines that a third-party servicer owes a
5 liability for its administration of an institution's title IV, HEA
6 programs, the servicer must notify each institution under whose
7 contract the servicer owes a liability of that determination. The
8 servicer must also notify every institution that contracts with the
9 servicer for the same service that the Secretary determined that a
10 liability was owed.

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

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

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

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

19 (i) If an institution or third-party servicer has posted surety or
20 has provided a third-party guarantee and the Secretary questions
21 expenditures or compliance with applicable requirements and
22 identifies liabilities, then the Secretary may determine that
23 deferring recourse to the surety or guarantee is not appropriate
24 because—

25 (A) The need to provide relief to students or borrowers affected by
26 the act or omission giving rise to the liability outweighs the
27 importance of deferring collection action until completion of
28 available appeal proceedings; or

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

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

7 (3) If, under the proceedings in subpart H, liabilities asserted in
8 the Secretary's notification, under paragraph (e)(1) of this
9 section, to the institution or third-party servicer are upheld, the
10 institution or third-party servicer must repay those funds at the
11 direction of the Secretary within 30 days of the final decision
12 under subpart H of this part unless—

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

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

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

21 (h) Audit submission requirements for foreign institutions.

22 (1) Audited financial statements. (i) The Secretary waives for
23 that fiscal year the submission of audited financial statements if
24 the institution is a foreign public or non-profit institution that
25 received less than \$500,000 in U.S. title IV program funds during
26 its most recently completed fiscal year, unless that foreign public
27 or non-profit institution is in its initial provisional period of
28 participation, and received title IV program funds during that year,
29 in which case the institution must submit, in English, audited

1 financial statements prepared in accordance with generally accepted
2 accounting principles of the institution's home country.

3 (ii) Except as provided in paragraph (h)(1)(iii) of this section,
4 a foreign institution that received \$500,000 or more in U.S. title
5 IV program funds during its most recently completed fiscal year ~~and~~
6 ~~any institution in its initial provisional period of participation,~~
7 must submit, in English, for each most recently completed fiscal
8 year in which it received title IV program funds, audited financial
9 statements prepared in accordance with generally accepted accounting
10 principles of the institution's home country along with
11 corresponding audited financial statements that ~~translated to~~ meet
12 the requirements of paragraph (d) of this section.

13 (iii) In lieu of making the submission required by paragraph
14 (h)(1)(ii) of this section, a public or private nonprofit
15 institution that received \$500,000 or more in U.S. title IV program
16 funds, but less than ~~\$1,000,000~~ \$3,000,000 in U.S. title IV program
17 funds during its most recently completed fiscal year, may submit ~~for~~
18 that year, in English, ~~an~~ audited financial statements prepared in
19 accordance with the generally accepted accounting principles of the
20 institution's home country, and is not required to submit the
21 corresponding audited financial statements that meet the
22 requirements of paragraph (d) of this section, ~~so long as there are~~
23 ~~no unpaid liabilities due to the Secretary the institution has been~~
24 ~~notified by the Secretary that from any public institution that is~~
25 ~~controlled by the same government entity.~~

26 ~~(iv) For purposes of this paragraph, the Secretary considers a~~
27 ~~liability to be "unpaid" if it is a final decision of the Department~~
28 ~~pursuant to 34 CFR 668.121 and the liability has not been paid or is~~
29 ~~being repaid pursuant to a repayment agreement within 180 days,~~

1 ~~unless a suit has been filed and is pending to challenge that~~
2 ~~liability by the institution in a federal court of the United~~
3 ~~States.~~

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

5 (3)(i) Exceptions. Notwithstanding the provisions of paragraphs
6 (h)(1)(i) and (h)(1)(iii) of this section, the Secretary may issue a
7 letter to a foreign institution that identifies problems with its
8 financial condition or financial reporting and requires the
9 submission of audited financial statements in the manner specified
10 by the Secretary.

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

12 * * * * *

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: No

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.

Updated information since the 1/11-15 meeting:

The Office of Postsecondary Education will recommend to the Inspector General some changes in the procedures with respect to the audit size for both Tier One and Tier Two alternatives within the Foreign School Audit Guide that will ensure the samples for each year audited are represented of the student files at the institution at the 95% confidence level.

For the Tier One Alternative (impacting 289 foreign schools), we are recommending for each year audited, the auditor use a minimum student sample of 25% of the student files, however in any case, all samples must include 10 students or the total number of students in the universe whichever is less.

For a standard compliance audit under the Tier Two Alternative (impacting 106 foreign schools), we are recommending to the Inspector General an audit sample requirement that would reflect a 95% confidence rate, as our initial proposal did not necessarily guarantee a high confidence rate.

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

1 this section a third-party servicer must follow the procedures
2 contained in the audit guides developed by and available from the
3 Department of Education's Office of Inspector General. A third-party
4 servicer is defined under §668.2 and 34 CFR 682.200.

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

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

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

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

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

3 (i) The general standards and the standards for compliance audits
4 contained in the U.S. General Accounting Office's (GAO's) Government
5 Auditing Standards. (This publication is available from the
6 Superintendent of Documents, U.S. Government Printing Office,
7 Washington, DC 20402); and

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

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

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

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

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

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

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

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

5 (d) [*Audited financial statements*]

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

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

12 (ii) Require an individual or firm conducting the audit to give the
13 Secretary and the Inspector General access to records, audit work
14 papers, or other documents necessary to review that audit, including
15 the right to obtain copies of those records, work papers, or
16 documents.

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

21 (f) *Determination of liabilities.* (1) Based on the audit finding
22 and the institution's or third-party servicer's response, the
23 Secretary determines the amount of liability, if any, owed by the
24 institution or servicer and instructs the institution or servicer as
25 to the manner of repayment.

26 (2) If the Secretary determines that a third-party servicer owes a
27 liability for its administration of an institution's title IV, HEA
28 programs, the servicer must notify each institution under whose
29 contract the servicer owes a liability of that determination. The

1 servicer must also notify every institution that contracts with the
2 servicer for the same service that the Secretary determined that a
3 liability was owed.

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

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

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

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

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

18 (A) The need to provide relief to students or borrowers affected by
19 the act or omission giving rise to the liability outweighs the
20 importance of deferring collection action until completion of
21 available appeal proceedings; or

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

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

28 (3) If, under the proceedings in subpart H, liabilities asserted in
29 the Secretary's notification, under paragraph (e)(1) of this

1 section, to the institution or third-party servicer are upheld, the
2 institution or third-party servicer must repay those funds at the
3 direction of the Secretary within 30 days of the final decision
4 under subpart H of this part unless—

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

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

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

13 (h) Audit submission requirements for foreign institutions.

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

15 (2) Compliance audits. A foreign institution's compliance audit
16 must cover, on a fiscal year basis, all title IV, HEA program
17 transactions, and must cover all of those transactions that have
18 occurred since the period covered by the institution's last
19 compliance audit. A compliance audit that is due under this
20 paragraph must be submitted no later than six months after the last
21 day of the institution's fiscal year, and must meet the following
22 requirements:

23 (i) If the foreign institution received \$500,000 or more in U.S.
24 dollars in title IV, HEA program funds during its most recently
25 completed fiscal year, it must submit a standard compliance audit
26 for that 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, together with an alternative compliance
29 audit or audits prepared in accordance with paragraph (h)(2)(ii) of

1 this section for any preceding fiscal year or years in which the
2 foreign institution received less than \$500,000 in U.S. dollars in
3 title IV, HEA program funds;

4 (ii) If the foreign institution received less than \$500,000 U.S. in
5 title IV, HEA program funds for its most recently completed fiscal
6 year, it must submit an alternative compliance audit for that prior
7 fiscal year that is performed in accordance with audit guides
8 developed by, and available from, the Department of Education's
9 Office of Inspector General, except as noted in paragraph
10 (h)(2)(iii) of this section;

11 (iii) If so notified by the Secretary, a foreign institution may
12 submit an alternative compliance audit performed in accordance with
13 audit guides developed by, and available from, the Department of
14 Education's Office of Inspector General, that covers a period not to
15 exceed three of the institution's consecutive fiscal years if such
16 audit is submitted either no later than six months after the last
17 day of the most recent fiscal year, or contemporaneously with a
18 standard compliance audit timely submitted under paragraph (h)(2)(i)
19 or (h)(3)(ii) of this section for the most recently completed fiscal
20 year, and if the following conditions are met:

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

23 (B) The institution has timely submitted acceptable compliance
24 audits for two successive consecutive fiscal years, and following
25 such submission, has no history of late submission since then;
26 and

27 (C) The institution is fully certified.

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

4 ~~(E) The alternative compliance audit described in this paragraph is~~
5 ~~performed in accordance with audit guides developed by, and~~
6 ~~available from, the Department of Education's Office of Inspector~~
7 ~~General.~~

8 (3)(i) Exceptions. [Audited financial statements—see Issue Paper
9 1].

10 (ii) Notwithstanding the provisions of paragraphs (h)(2)(ii) and
11 (h)(2)(iii) of this section, the Secretary may issue a letter to a
12 foreign institution that identifies problems with its administrative
13 capability or compliance reporting that may require specifies
14 whether the compliance audit to must be performed at a higher level
15 of engagement, and may require whether the compliance audit must to
16 be submitted annually.

17 * * * * *

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: No

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).

Updated information since 1/11-15 meeting:

We added a cross-reference to §668.5 in draft paragraph (1)(iii) of the definition of foreign institution to clarify the meaning of the term "written arrangements." Based on comments received from the non-Federal negotiators at the last round of negotiated rulemaking, we added an exception in draft paragraph (1)(iv) of the definition of foreign institution for independent research done under certain circumstances during the dissertation phase of a doctoral program from the general prohibition on enrolling students in courses offered by a foreign institution in the United States. In draft paragraph (2) of the definition of foreign institution, we added clarity to the paragraph by defining the term educational enterprise. In draft §600.54(c)(1), we clarify that written arrangements do not include affiliation agreements for the provision of clinical training. Lastly, in draft §600.54(e)(2), we removed the reference to first professional degree.

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.

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

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

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

9 (2) The Secretary, through a notice in the Federal Register,
10 identifies specific provisions as inapplicable to foreign
11 institutions schools.

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

17 * * * * *

18

19 §600.52 Definitions.

20 The following definitions apply to this subpart E:

21 * * * * *

22 *Foreign institution* or foreign school:

23 (1) An institution that—

24 (i) Is not located in a State;

25 (ii) Except as provided with respect to Has no U.S. locations,
26 except for clinical training offered under sites of foreign medical
27 schools in accordance with §668.55(e)(1)(ii)(h)(1), foreign
28 veterinary schools in accordance with §668.56(a)(1)(ii)(b), or and
29 foreign nursing schools in accordance with §600.57(a)(2), --

1 (A) Has no U.S. locations;

2 (iiiB) Has no written arrangements, within the meaning of §668.5,
3 with institutions or organizations located in the United States for
4 students enrolling at the foreign institution to take courses from
5 institutions located in the United States; and

6 (ivC) Does not permit students to enroll in any course offered by
7 the foreign institution in the United States, including research,
8 work, internship, externship or special studies from within the
9 United States, except that independent research done by an
10 individual student in the United States for not more than one
11 academic year is permitted, if it is conducted upon completion of
12 required coursework and during the dissertation phase of a doctoral
13 program under the guidance of faculty, and the research can only be
14 performed in a facility in the United States;

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

19 (ivvi) Awards degrees, certificates or other recognized educational
20 credentials in accordance with §600.54(c) that are officially
21 recognized by the country in which the institution is located; and

22 (vii) For each program, including degree programs, designed to
23 prepare the student for gainful employment in a recognized
24 occupation, with or without licensure, provides a credential that—

25 (A) Satisfies the educational requirements in the country in which
26 the institution is located for entry into that occupation, including
27 educational requirements for licensure; and

1 (B) Satisfies the educational requirements, including requirements
2 for licensure, for entry into that occupation in the United States;
3 or

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

15
16 * * * * *

17
18 §600.54 Criteria for determining whether a foreign institution is
19 eligible to apply to participate in the FFEL programs.

20 The Secretary considers a foreign institution to be comparable to an
21 eligible institution of higher education in the United States and
22 eligible to apply to participate in the FFEL programs if the foreign
23 institution ~~is a public or private nonprofit educational institution~~
24 ~~that~~ meets the following requirements:-

25 (a) Except for a freestanding foreign graduate medical school,
26 foreign veterinary school, or foreign nursing school, the foreign
27 institution is a public or private nonprofit educational
28 institution;

1 ~~(ab)~~ The foreign institution admits as regular students only
2 persons who—

3 (1) Have a secondary school completion credential; or
4 (2) Have the recognized equivalent of a secondary school completion
5 credential;

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

9 (c)(1) Notwithstanding §668.5, an eligible foreign institution may
10 not enter into a written arrangement under which with an ineligible
11 institution or organization provides to provide any portion of one
12 or more of thean eligible program offered by the foreign
13 institution’s programs. For the purposes of this paragraph, written
14 arrangements do not include affiliation agreements for the provision
15 of clinical training for foreign medical, veterinary and nursing
16 schools.

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

19 (i) Located outside of the country in which the main campus is
20 located, except as provided in §668.55(h)(1), §668.56(b),
21 §600.57(a)(2), §600.55(h)(4)(ii) and the definition of foreign
22 institution or foreign school found in §600.51; or

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

25 ~~(ed)~~ The foreign institution provides an eligible education
26 program—

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

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

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

8 (ii) [See Issue Paper 8]

9 (e) For a for-profit foreign medical, veterinary or nursing school-
10 =

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

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

16 (f) [See Issue Paper 6]

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}~~

21

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: No

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.

Updated information since 1/11-15 meeting:

We have amended the language to reflect the fact that some countries may have more than one recognized entity for the purpose of making determinations of the nonprofit status of its institutions. Some negotiators suggested that the Department allow a determination of nonprofit status by an entity other than a recognized tax authority of the country. As written, this type of information would be taken into account by the Department; however, it would be done as part of an individual determination of the status of an institution. The Department believes that the only entities it should recognize across the board for making determinations of nonprofit status are those that are responsible for administering the country's tax laws.

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;

7 ~~(2)~~ (ii) Is legally authorized to operate as a nonprofit
8 organization by each State in which it is physically located; and

9 ~~(3)~~ (iii) Is determined by the U.S. Internal Revenue Service to be
10 an organization to which contributions are tax-deductible in
11 accordance with section 501(c)(3) of the Internal Revenue Code (26
12 U.S.C. 501(c)(3)) ~~;~~ or

13 (2) For a foreign institution—

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

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

21 (B) If ~~the~~ no recognized tax authority of the institution's home
22 country is ~~not~~ recognized by the Secretary for purposes of making
23 determinations of an institution's nonprofit status for title IV
24 purposes, the foreign institution demonstrates to the satisfaction
25 of the Secretary that it is a nonprofit educational institution.

26 * * * * *

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: Yes

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.

Updated information since 1/11-15 meeting:

Tentative agreement on this issue was reached by the committee at the January meetings.

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

1 Secretary determines whether an institution is financially
2 responsible based on the institution's ability to—

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

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

7 (3) Meet all of its financial obligations.

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

12 (1) The institution's Equity, Primary Reserve, and Net Income
13 ratios yield a composite score of at least 1.5, as provided under
14 §668.172 and appendices A and B to this subpart;

15 (2) The institution has sufficient cash reserves to make required
16 returns of unearned Title IV HEA program funds, as provided under
17 §668.173;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (ii) Is not in violation of any past performance requirement under
27 §668.174.

28 (d) *Audit opinions and past performance provisions.* Even if an
29 institution satisfies all of the general standards of financial

1 responsibility under paragraph (b) of this section, the Secretary
2 does not consider the institution to be financially responsible if—
3 (1) In the institution's audited financial statements, the opinion
4 expressed by the auditor was an adverse, qualified, or disclaimed
5 opinion, or the auditor expressed doubt about the continued
6 existence of the institution as a going concern, unless the
7 Secretary determines that a qualified or disclaimed opinion does not
8 have a significant bearing on the institution's financial condition;
9 or

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

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

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

24 (2) For an institution that is provisionally certified, take an
25 action against the institution under the procedures established in
26 §668.13(d).

27 * * * * *

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

Origin: ED

Statutory cites:

Regulatory cites: To be determined

Tentative agreement: Yes

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.

Updated information since 1/11-15 meeting:

Tentative agreement on this issue was reached by the committee at the January meetings. Changes have been made to conform the language to the changes to the definition of a foreign school (see Issue Paper 3).

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~~ meets the following requirements--

8 * * *

9 ~~(b) Is legally authorized by an appropriate government entity~~
10 ~~authority to provide an eligible educational program beyond the~~

1 ~~secondary school level in the country in which the institution is~~
2 ~~located; and~~

3 * * * * *

4 (af) Proof that a foreign institution meets the requirements of
5 paragraph (1)(iii)(b) of ~~this section~~ the definition of a foreign
6 institution in §600.52 may be provided to the Secretary by a legal
7 authorization from ~~an the~~ appropriate ~~government entity~~ education
8 ministry, council, or equivalent agency—

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

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

12 (iii) For each separate eligible foreign institution in the
13 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: N/A
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: No

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.

Updated information since 1/11-15 meeting:

Team I did not reach consensus on the two issues which may have a significant impact on the eligibility of these programs: (1) the definition of what it means to “provide gainful employment in a recognized occupation”; and (2) the definition of a credit hour in regulation for Title IV purposes. We have provided information on these issues because the regulations resulting from these issues may ultimately impact the programs in question here. However, they will not affect the translation of credits or other measures of academic work by foreign institutions for purposes of determining program length (a measure of both weeks and credit hours), which is the specific issue being addressed here. As we stated previously, the assignment of credits or other measures of academic work by foreign institutions vary greatly and we do not see a way to address the translation of measures of academic work by a means other than program-by-program determinations of comparability. Therefore, no changes have been made other than changes to conform the language to the changes to the definition of a foreign school (see Issue Paper 3).

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

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 criteria~~—

4 * * *

5 (ed) The foreign institution provides an eligible education
6 program—

7 * * *

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

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

16
17 §668.8 Eligible program.

18 * * * * *

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

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

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

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

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

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

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

16 * * * * *

17

18 §668.9 Relationship between clock hours and semester, trimester,
19 or quarter hours in calculating Title IV, HEA program assistance.

20 (a) In determining the amount of Title IV, HEA program assistance
21 that a student who is enrolled in a program described in §668.8(k)
22 is eligible to receive, the institution shall apply the formula
23 contained in §668.8(1) to determine the number of semester,
24 trimester, or quarter hours in that program, if the institution
25 measures academic progress in that program in semester, trimester,
26 or quarter hours.

27 (b) Notwithstanding paragraph (a) of this section, a public or
28 private nonprofit hospital-based school of nursing that awards a
29 diploma at the completion of the school's program of education is

1 not required to apply the formula contained in §668.8(1) to
2 determine the number of semester, trimester, or quarter hours in
3 that program for purposes of calculating Title IV, HEA program
4 assistance.

5

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: No

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.

Updated information since 1/11-15 meeting:

Clinical training

- *Affiliation agreements*

The requirement that a foreign graduate medical school have formal affiliation agreements has been moved to a paragraph addressing clinical training. To conform to the changes made to Issue 10, the draft regulatory language would 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, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks. Instead of requiring that affiliation agreements state how the site will achieve various objectives, the draft regulatory language would require the agreements to state how those objectives will be addressed. (§600.56(e))

- *Application requirements*

Changes have been made to conform these requirements to the requirements for allowable locations of clinical sites, and affiliation agreements as follows:

The draft regulatory language would require a foreign graduate medical school (i.e., a freestanding foreign medical school or a foreign institution that includes a foreign 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, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks. (§600.20(c)(5))

For initial certification or for recertification, a foreign graduate medical school (i.e., a freestanding foreign medical school or a foreign institution that includes a foreign medical school) would be required to list on the application to participate all educational sites, and where they are located, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more

than a total of eight weeks. In addition, the draft regulatory language has been changed to clarify that, for initial certification or for recertification, a foreign graduate medical school (i.e., a freestanding foreign medical school or a foreign institution that includes a foreign medical school) would be required to indicate whether it offers only post-baccalaureate/equivalent medical programs, other types of programs that lead to employment as a doctor of osteopathic medicine, doctor or medicine, or both. (§600.20(a)(4)(i) and §600.20(b)(3)(i))

A foreign graduate medical school (i.e., a freestanding foreign medical school or a foreign institution that includes a foreign medical school) would be required to provide copies of the affiliation agreements with hospitals and clinics that it is required to have under §600.55(e)(2) as a part of any application for initial certification or recertification to participate in the Title IV programs; (§600.20(a)(4)(iii) and §600.20(b)(3)(iii))

Definitions

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

General

These draft regulations would move (and modify, as described) the following two requirements from the "Other criteria" section to the "General" section of §668.55:

- The requirement that a foreign graduate medical school, regardless of whether it is located outside or inside the United States, provide and require its students to complete a program of clinical and classroom medical instruction of not less than 32 months in length, that is supervised closely by members of the school's faculty and that is: (1) In facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or (2) Through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary.
- The existing requirement that a foreign graduate medical school have graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

The draft regulatory language would make clear that a medical program may include, as part of its clinical training, no more than two electives consisting of no more than eight weeks at a site located in a foreign country other than the country in which the main campus is located or in the United States.

The draft regulatory language would clarify that a foreign medical school must appoint, instead of employ, only faculty whose academic credentials are the equivalent of credentials required of faculty teaching in the United States.

Admission criteria

The draft regulatory language would remove from the admission criteria provisions for both types of medical programs the requirement that students have a specific educational background. (§600.56(c)(1) and §600.56(c)(2))

The draft regulatory language would also remove from the admission criteria provisions for integrated medical programs the requirement that students who are U.S. citizens, nationals or permanent residents take the Medical College Admission Test (MCAT) no later than three years after admission to the program. (§600.56(c)(2))

For a school having a post-baccalaureate equivalent medical program, the draft regulatory language would require an institution to have an admission standard that students who are U.S. citizens, nationals or permanent residents must have not only taken the Medical College Admission Test (MCAT), but also have reported their MCAT score to the institution. (§600.56(c)(1))

Collection and Submission of data

The draft regulatory language would:

- Clarify that a foreign graduate medical school must obtain and submit all data these regulations required it to submit at its own expense; (§600.56(d))
- Require a foreign graduate medical school to make the required submissions of data to its accrediting agency and, in the case of USMLE data, the Department, by September 30 of each year.
- Require a foreign graduate medical school to submit: (1) MCAT scores for all specified students admitted during the preceding award year; (2) the residency placement percentage for all specified students graduating during the preceding award year; and (3) USMLE scores for all specified students earned during the preceding award year.
- Limit the requirements for the submission of USMLE data to Steps 1 and 2 (CS and CK) of the USMLE (note that all foreign medical schools, even those that meet the exceptions to the 75% pass rate, must submit this data).

USMLE pass rate

The draft regulatory language would limit the required 75% pass rate to Step 1 and Step 2 of the USMLE, making clear that a foreign medical school must report separately on both Step 2-Clinical Skills (Step 2-CS), and Step 2-Clinical Knowledge (Step 2-CK). In addition, the draft regulatory language would require a school to count an individual student in the denominator for each time the student takes Step 1, Step 2-CS, and Step 2-CK during the year.

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 freestanding foreign graduate medical school, or a foreign
17 institution that includes a foreign graduate medical school, must
18 include in its application to participate--

19 (i) A list of all educational sites and where they are located,
20 including all sites at which offer all or a portion of a its student
21 receive clinical training, except those clinical sites that are not
22 used regularly, but instead are chosen by individual students who
23 take no more than two electives at the location for no more than a
24 total of eight weeks—program in the country in which the main campus
25 is located, the United States, or another country,; and

26 (ii) Whether the school offers—

1 (A) Only post-baccalaureate/equivalent medical programs, as defined
2 in §600.51;

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

5 (C) Both;

6 ~~programs offered are first professional degree programs, post-~~
7 ~~baccalaureate/equivalent programs, or both; and~~

8 (iii) Copies of the formal affiliation agreements with hospitals or
9 clinics providing all or a portion of a clinical training program

10 ~~that meet the requirements of~~ required under §600.55(e)(1).

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

21 (2) A currently designated eligible institution that participates
22 in the Title IV, HEA programs must apply to the Secretary for a
23 determination that the institution continues to meet the
24 requirements in this part and in 34 CFR part 668 if the institution
25 wishes to—

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

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

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

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

11 (i) A list of all educational sites and where they are located,
12 including all sites at which offer all or a portion of a its student
13 receive clinical training, except those clinical sites that are not
14 used regularly, but instead are chosen by individual students who
15 take no more than two electives at the location for no more than a
16 total of eight weeks program in the country in which the main campus
17 is located, the United States, or another country,; and

18 (ii) Whether the school offers--

19 (A) Only post-baccalaureate/equivalent medical programs, as defined
20 in §600.51;

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

23 (C) Both;

24 ~~programs offered are first professional degree programs, post-~~
25 ~~baccalaureate/equivalent programs, or both; and~~

26 (iii) Copies of the formal affiliation agreements with hospitals or
27 clinics providing all or a portion of a clinical training program
28 ~~that meet the requirements of~~ required under §600.55(e)(1).

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

6 (1) Add a location at which the institution offers or will offer 50
7 percent or more of an educational program if one of the following
8 conditions applies, otherwise it must report to the Secretary under
9 §600.21:

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

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

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

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

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

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

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

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

4 (5) For a freestanding foreign graduate medical school, or a
5 foreign institution that includes a foreign graduate medical school,
6 add a location which offers all or a portion of a clinical training
7 program in a country other than the United States or the country in
8 which the main campus is located, except for those locations that
9 are not used regularly, but instead are chosen by individual
10 students who take no more than two electives at the location for no
11 more than a total of eight weeks; or

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

13 * * * * *

14

15 §600.52 Definitions.

16 The following definitions apply to this subpart E:

17 * * * * *

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

22 * * * * *

23 National Committee on Foreign Medical Education and Accreditation
24 (NCFMEA): The operational committee of medical experts established
25 by the Secretary to determine whether the medical school accrediting
26 standards used in other countries are comparable to those applied to
27 medical schools in the U.S., for purposes of evaluating the
28 eligibility of accredited foreign graduate medical schools to
29 participate in the FFEL Title IV, HEA programs.

1 * * * * *

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

8 * * * * *

9
10 §600.55 Additional criteria for determining whether a foreign
11 graduate medical school is eligible to apply to participate in the
12 FFEL Title IV, HEA programs.

13 (a) General. (1) The Secretary considers a foreign graduate
14 medical school to be eligible to apply to participate in the FFEL
15 Title IV, HEA programs if, in addition to satisfying the criteria ~~in~~
16 ~~§600.54~~ of this part (except the criterion in §600.54 that the
17 institution be public or private nonprofit), the school satisfies
18 ~~all of the following~~ criteria of this section.†

19 (2) ~~The~~ A foreign graduate medical school must ~~provid~~~~s~~, and in the
20 normal course ~~require~~s its students to complete, a program of
21 clinical and classroom medical instruction of not less than 32
22 months in length, that is supervised closely by members of the
23 school's faculty and that ~~is provided either~~

24 (i) ~~Outside the United States, Is p~~rovided in facilities
25 adequately equipped and staffed to afford students comprehensive
26 clinical and classroom medical instruction; ~~or~~

27 (ii) ~~In the United States, through a training program for foreign~~
28 ~~medical students that has been a~~ Is a approved by all medical

1 licensing boards and evaluating bodies whose views are considered
2 relevant by the Secretary ~~;~~ and

3 (iii) Includes, as part of its clinical training, no more than two
4 electives consisting of no more than eight weeks at a site located
5 in a foreign country other than the country in which the main campus
6 is located or in the United States.

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

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

16 (b) Accreditation. (4)(i) ~~The school has been~~ A foreign graduate
17 medical school must-

18 (1) Be approved by an accrediting body-

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

22 (ii) Whose standards of accreditation of graduate medical schools-
23 ~~(1) Have~~ been evaluated by the NCFMEA or its successor committee of
24 medical experts~~advisory panel of medical experts established by the~~
25 ~~Secretary;~~ and ~~(2) Have~~ been determined to be comparable to
26 standards of accreditation applied to medical schools in the United
27 States; or

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

1 (c) Admission criteria. (1) A foreign graduate medical school
2 having a post-baccalaureate equivalent medical program must have
3 admission criteria that include the following:
4 (i) Students accepted for admission must have a baccalaureate
5 degree, or at least 90 semester credit hours or the equivalent, in
6 general education that includes, but is not limited to, coursework
7 in the social sciences, history, and languages
8 (ii) Students accepted for admission must have taken premedical
9 courses deemed essential preparation for completing the medical
10 school curriculum, including, but not limited to, basic science and
11 mathematics, which cover areas such as biology, general chemistry,
12 organic chemistry, and physics; and
13 (3) require sStudents accepted for admission who are U.S. citizens,
14 nationals or permanent residents must to have taken the Medical
15 College Admission Test (MCAT) and to have reported their score to
16 the foreign medical school; and
17 (2) A foreign graduate medical school having an integrated program
18 for a first professional program leading to a Doctor of Medicine
19 (M.D.) degree, or its equivalent, must have entrance criteria that
20 include the following:
21 (i) Students accepted for admission must have a basic general
22 education background, including requisite pre medical studies, as
23 well as a broad general education including, but not limited to,
24 coursework in the social sciences, history, and languages;
25 (ii) Students accepted for admission must have taken premedical
26 courses deemed essential preparation for completing the medical
27 school curriculum, including, but not limited to, basic science and
28 mathematics, which cover areas such as biology, general chemistry,
29 organic chemistry, and physics; and

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

5 (2) A foreign graduate medical school must determine the consent
6 requirements for and require the necessary consents of all students
7 accepted for admission who are U.S. citizens, nationals, or eligible
8 permanent residents to enable the school to comply with the
9 collection and submission requirements of paragraph (d) of this
10 section.

11 (d) Collection and submission of data. A foreign graduate medical
12 school must obtain, at its own expense, and by September 30 of each
13 year, submit-

14 ~~(1) Take all necessary steps to obtain~~ To its accrediting authority
15 ~~and, on request, to the Secretary,~~ the scores on the MCAT or
16 successor examination, of all students admitted during the preceding
17 award year who are U.S. citizens, nationals, or eligible permanent
18 residents, and submit the scores annually to its accrediting
19 authority and, on request, to the Secretary, together with a
20 statement of the number of times each student took the examination;

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

1 (3) To the Secretary, Except upon written notice from the
2 Secretary that the necessary information has been obtained by the
3 Secretary for the year directly from the Educational Commission for
4 Foreign Medical Graduates (ECFMG) or other responsible third
5 parties, the foreign graduate medical school must obtain annually,
6 at its own expense, all scores, disaggregated by step/test--i.e.,
7 Step 1, Step 2-Clinical Skills (Step 2-CS), and Step 2-Clinical
8 Knowledge (Step 2-CK)--and attempt, earned during the preceding
9 award year by the at least each student and graduate who is a U.S.
10 citizen, national or eligible permanent resident during the
11 enrollment and following graduation, on all parts Step 1, Step 2-CS,
12 and Step 2-CK of the U.S. Medical Licensing Examination (USMLE),
13 together with the dates the student has taken each part test,
14 including any failed test examinations; and
15 (ii) Provide such scores annually to its accrediting authority and,
16 on request, to the Secretary.
17 (1) The A foreign graduate medical school must provide, and in the
18 normal course requires its students to complete, a program of
19 clinical and classroom medical instruction of not less than 32
20 months in length, that is supervised closely by members of the
21 school's faculty and that is provided either
22 (i) Outside the United States, in facilities adequately equipped
23 and staffed to afford students comprehensive clinical and classroom
24 medical instruction; or
25 (ii) In the United States, through a training program for foreign
26 medical students that has been approved by all medical licensing
27 boards and evaluating bodies whose views are considered relevant by
28 the Secretary.

1 ~~(ii) The A foreign graduate medical school may employ for the~~
2 ~~program described in paragraph (c)(1)(i) of this section only those~~
3 ~~faculty members whose academic credentials are the equivalent of~~
4 ~~credentials required of faculty members teaching the same or similar~~
5 ~~courses at medical schools in the United States.~~

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

10 (e) Requirements for clinical training. (1)(i) A foreign graduate
11 medical school must have a formal affiliation agreement with any
12 hospital or clinic at which all or a portion of its providing all or
13 a portion of a clinical training program is provided, except for
14 those locations that are not used regularly, but instead are chosen
15 by individual students who take no more than two electives at the
16 location for no more than a total of eight weeks;

17 (ii) The agreements described in paragraph (e)(2)(i) of this
18 section must state how the following will be addressed at each site
19 will-

20 (A) Maintain Maintenance of the school's standards;

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

22 (C) Design of the curriculum;

23 (D) Supervise Supervision of students;

24 (E) Provide Provision of liability insurance; and

25 (F) Evaluate Evaluation of student performance; and

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

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

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

4 (f) Citizenship and USMLE pass rate percentages. (1)(i)(A) During
5 the academic year preceding the year for which any of the school's
6 students seeks an FFEL Title IV, HEA program loan, at least 60
7 percent of those enrolled as full-time regular students in the
8 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 (B) 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;
15 and

16 (ii) For a foreign graduate medical school outside of Canada, for
17 each step Step 1, Step 2-CS, and Step 2-CK of the USMLE administered
18 by the ECFMG, at least 60/75 percent of the school's U.S. citizen,
19 national, or eligible permanent resident students and graduates who
20 took ~~any that~~ step/test of the examinations ~~administered by the~~
21 ~~Educational Commission for Foreign Medical Graduates (ECFMG)~~
22 ~~(including the ECFMG English test)~~ in the year preceding the year
23 for which any of the school's students seeks an FFEL Title IV, HEA
24 program loan must have received a passing scores ~~on the exams that~~
25 step/test; or

26 (2)(i) The school's had a clinical training program ~~was~~ approved by
27 a State as of January 1, 1992, ~~and is currently approved by that~~
28 ~~State.~~; and

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

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

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

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

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

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

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

23 ~~(ii) Notwithstanding the requirement that the program be an~~
24 ~~undergraduate program, m~~Meet the requirements of
25 §668.16(e)(2)(ii)(B), (C) and (D);

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

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

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

6 ~~(ii) The agreements described in paragraph (c)(7)(i) of this~~
7 ~~section must state how the site will~~

8 ~~(A) Maintain the school's standards;~~

9 ~~(B) Appoint faculty to the medical school staff;~~

10 ~~(C) Design the curriculum;~~

11 ~~(D) Supervise students;~~

12 ~~(E) Provide liability insurance; and~~

13 ~~(F) Evaluate student performance; and~~

14 ~~(8) A foreign graduate medical school must notify its accrediting~~
15 ~~body within one year of any changes in~~

16 ~~(i) The educational programs, including changes in clinical~~
17 ~~training programs;~~

18 ~~(ii) The overseeing bodies and in the formal affiliation agreements~~
19 ~~with hospitals and clinics described in paragraph (c)(7)(i) of this~~
20 ~~section.~~

21 (h) 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

(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: No

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.

Updated information since the 1/11-15 meeting:

The draft language would add an exception to the eligibility requirements for clinical training located in a foreign country other than the country in which the main campus is located or in the United States, in order for students attending the site to be eligible to borrow Title IV, HEA program funds (i.e., required to be located in an approved comparable country, required on-site evaluation and specific approval of the site by the institution's medical accrediting agency, and the requirement that instruction must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country). A location would not have to meet these requirements if it is accredited by the Liaison Committee on Medical Education (LCME), or if no individual student takes more than two electives at the location and the combined length of the electives does not exceed eight weeks.

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 Title IV, HEA loan programs.

4 * * * * *

5 (h) Location of a program. (1) Except as provided in paragraph
6 (h)(3)(ii) of this section, all portions of a graduate medical
7 education program offered to U.S. students must be located in a
8 country whose medical school accrediting standards are comparable to
9 standards used in the United States, as determined by the NCFMEA,
10 except for clinical sites located in the United States ~~in accordance~~
11 with ~~§668.55(d)(1)(ii)~~;

12 (2) No portion of the ~~preclinical~~ didactic components of the
13 educational program offered to U.S. students may be located outside
14 of the country in which the main campus of the foreign medical
15 school is located;

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

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

24 (B) The institution's medical accrediting agency must have
25 conducted an on-site evaluation and specifically approved the
26 clinical training sites in order for students attending the site to
27 be eligible to borrow FFEL Title IV, HEA program funds; and

1 ~~(C) If any component of the clinical training program is located in~~
2 ~~an approved comparable foreign country other than the country in~~
3 ~~which the main campus is located or in the United States eClinical~~
4 instruction must be offered in conjunction with medical educational
5 programs offered to students enrolled in accredited medical schools
6 located in that approved foreign country.

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

12 (A) The location is accredited by the Liaison Committee on Medical
13 Education (LCME); or

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

17 * * * * *

18
19 §600.56 Additional criteria for determining whether a foreign
20 veterinary school is eligible to apply to participate in the ~~FFEL~~
21 Title IV, HEA loan programs.

22 * * * * *

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

27 (2) For a veterinary school that is neither public nor private
28 nonprofit, the school's students must complete their clinical

1 training at an approved veterinary school located in the United
2 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: No

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.

Updated information since 11/16-20 meeting:

We have made no substantive changes to the draft regulatory language put forward for the last meeting as it is consistent with USMLE standards.

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 Title IV, HEA loan programs.
4 * * * * *
5 (h) Location of a program. (1) Except as provided in paragraph
6 (h)(3)(ii) of this section, all portions of a graduate medical
7 education program offered to U.S. students must be located in a
8 country whose medical school accrediting standards are comparable to
9 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) No portion of the preclinical didactic components of the
4 educational program offered to U.S. students may be located outside
5 of the country in which the main campus of the foreign medical
6 school is located;

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

8 * * * * *

9 §600.56 Additional criteria for determining whether a foreign
10 veterinary school is eligible to apply to participate in the FFEL
11 Title IV, HEA loan programs.

12 * * * * *

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

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

20
21 §600.57 Additional criteria for determining whether a foreign
22 nursing school is eligible to apply to participate in the FFEL Title
23 IV, HEA loan programs.

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

25 (d) Location of a program. (1) No portion of the foreign nursing
26 program offered to U.S. students may be located outside of the
27 country in which the main campus of the foreign nursing school is
28 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: No

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.

Updated information since 1/11-15 meeting: The draft regulatory language continues to require foreign veterinary schools to be accredited by the American Veterinary Medical Association (AVMA). Proposed additional regulatory language would also allow a foreign veterinary school to qualify if it is provisionally accredited by AVMA. In addition, for schools located in a country where the AVMA does not conduct accreditation site visits the AVMA accreditation requirement would not apply.

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:

1 (1) The school provides, and in the normal course requires its
2 students to complete, a program of clinical and classroom veterinary
3 instruction that is supervised closely by members of the school's
4 faculty, and that is provided ~~either~~
5 ~~(i) Outside the United States,~~ in facilities adequately equipped
6 and staffed to afford students comprehensive clinical and classroom
7 veterinary instruction, ~~;~~ ~~or~~
8 ~~(ii) In the United States,~~ through a training program for foreign
9 veterinary students that has been approved by all veterinary
10 licensing boards and evaluating bodies whose views are considered
11 relevant by the Secretary.

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

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

20 (4) The school is accredited or provisionally accredited by the
21 American Veterinary Medical Association (AVMA).

22 (5) AVMA accreditation is not required if the AVMA does not conduct
23 accreditation reviews of schools located in the country where the
24 foreign school is located.

25
26 ~~(4) For a veterinary school that is neither public nor private non-~~
27 ~~profit, the school's students complete their clinical training at an~~
28 ~~approved veterinary school located in the United States. [moved to~~
29 ~~paragraph (e)(b)]~~

1 ~~(b) [Reserved] The school is accredited by the American Veterinary~~
2 ~~Medical Association.~~

3 ~~(b)(e)~~ 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.

Updated information since 1/11-15 meeting:

The draft has been revised to provide an alternative means of furnishing NCLEX-RN pass rate data to the Secretary. Paragraph (a)(8) has been revised to note that part of the program is provided pursuant to the agreements required by (a)(2) and (a)(3). Paragraph(c) has been revised to specify that after the school reimburses the Department for the cost of a defaulted loan, the loan is assigned to the school. In the case of a FFEL loan, the guaranty agency would assign the loan to the school after the Department pays a claim on the loan to the GA. In the case of a Direct Loan, the Department would assign the loan to the school.

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 postsecondary
5 education in professional nursing leading to a degree equivalent to
6 an associate degree in the United States.

7
8 Collegiate school of nursing: A school which provides primarily or
9 exclusively a minimum of a two-year program of postsecondary
10 education in professional nursing leading to a degree equivalent to
11 a bachelor of arts, bachelor of science, or bachelor of nursing in
12 the United States, or to a degree equivalent to a graduate degree in
13 nursing in the United States, and including advanced training
14 related to the program of education 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 two-year program of postsecondary education in
19 professional nursing leading to the equivalent of a diploma in the

1 United States or to equivalent indicia that the program has been
2 satisfactorily completed.

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

5
6 *Passing score:* The minimum passing score as defined by the
7 Educational Commission for Foreign Medical Graduates (ECFMG), or **by**
8 **on** the National Council Licensure Examination for Registered Nurses
9 **(NCLEX-RN)**, as applicable.

10
11 *Secondary school:* A school that provides secondary education as
12 determined under the laws of the country in which the school is
13 located.

14 * * * * *

15 §600.57 Additional criteria for determining whether a foreign
16 nursing school is eligible to apply to participate in the FFEL
17 programs.

18 (a) The Secretary considers a foreign nursing school to be eligible
19 to apply to participate in the FFEL programs if, in addition to
20 satisfying the criteria in this part (except the criterion in
21 §600.54 that the institution be public or private nonprofit), the
22 nursing school satisfies all of the following criteria:

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

25 (2) The nursing school has an agreement with a hospital located in
26 the United States or an accredited school of nursing located in the
27 United States that requires students of the nursing school to
28 complete the student's clinical training at the hospital or
29 accredited school of nursing.

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

6 (4) The nursing school certifies only Federal Stafford Loan program
7 loans or Federal PLUS program loans, as those terms are defined in
8 §668.2, for students attending the nursing school.

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

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

18 (ii) The nursing school annually either-

19 (A) Obtains, at its own expense, all results achieved scores earned
20 by students and graduates who are U.S. citizens, nationals, or
21 eligible permanent residents on the National Council Licensure
22 Examination for Registered Nurses (NCLEX-RN), together with the
23 dates the student has taken the examination, including any failed
24 examinations, and

25 (B) Provides such results scores to its accrediting authority and,
26 on request, to the Secretary; or

27 (B) obtains a report or reports from the National Council of State
28 Boards of Nursing (NCSB), or an NCSB affiliate or NCSB contractor,
29 reflecting the percentage of the school's students and graduates

1 taking the NCLEX-RN in the preceding year who passed the
2 examination, or the data from which the percentage could be derived,
3 and provides the report to the Secretary.

4 (7) Not less than 75 percent of the school's students and graduates
5 who are either U.S. citizens, nationals, or eligible permanent
6 residents who took the NCLEX-RN ~~ational Council Licensure~~
7 ~~Examination for Registered Nurses~~ in the year preceding the year for
8 which the institution is certifying a Federal Stafford Loan or a
9 Federal Plus Loan, ~~received a passing score on such~~ passed the
10 examination.

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

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

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

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

1 (i) Outstanding principal;
2 (ii) Accrued interest;
3 (iii) Unpaid late fees and collection costs;
4 (iv) Special allowance payments;
5 (v) Reinsurance payments; and
6 (vi) Any related or similar payments the Secretary is obligated to
7 make on the loan.

8 (c) After a school reimburses the Secretary for the amount
9 specified in paragraph (b) of this section, the loan is assigned to
10 the school, and the borrower remains liable to the school for the
11 outstanding balance of the loan, payable to the holder of the loan
12 under the terms and conditions specified in the promissory note.

13 (d) [location of the preclinical portion of a nursing program—see
14 Issue Paper 11]

15
16 §600.57–58 Duration of eligibility determination.

17 * * * * *

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

(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~~ §600.52 and §668.13

Tentative agreement: No

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.

Updated information since 1/11-15 meeting:

The requirement that foreign medical, veterinary, and nursing schools be certified separately has been removed from the proposed regulations. Instead, the Department will track foreign medical, veterinary and nursing schools that are part of a larger foreign school as components of that foreign school. In addition, the draft regulatory language has been revised to limit the proposed three-year certification period to private, for profit foreign schools. The certification period for public and private nonprofit foreign schools would remain six years.

Draft Regulatory Language:

1 §600.52 Definitions.

2 The following definitions apply to this subpart E:

3 * * * * *

4 *Foreign graduate medical school:* A foreign institution ~~that~~
5 ~~qualifies to be listed in, and is listed as a medical school in, the~~
6 ~~most current edition of the World Directory of Medical Schools~~
7 ~~published by the World Health Organization (WHO).~~ (or, for a foreign
8 institution that is a university, a component of that foreign
9 institution) having as its sole mission providing an educational
10 program that leads to a degree of medical doctor, doctor of
11 osteopathic medicine, or the equivalent. A reference in these
12 regulations to a foreign graduate medical school as "freestanding"

1 pertains solely to those schools that qualify in themselves as
2 foreign institutions and not to schools that are components of
3 universities that qualify as foreign institutions.

4 * * * * *

5 Foreign nursing school: A foreign institution (or, for a foreign
6 institution that is a university, a component of that foreign
7 institution) that is an associate degree school of nursing, a
8 collegiate school of nursing, or a diploma school of nursing. A
9 reference in these regulations to a foreign nursing school as
10 "freestanding" pertains solely to those schools that qualify in
11 themselves as foreign institutions and not to schools that are
12 components of universities that qualify as foreign institutions.

13
14 * * * * *

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

24
25
26 §668.13 Certification procedures.

27 (a) *Requirements for certification.* (1) The Secretary certifies an
28 institution to participate in the title IV, HEA programs if the
29 institution qualifies as an eligible institution under 34 CFR part

1 600, meets the standards of this subpart and 34 CFR part 668,
2 subpart L, and satisfies the requirements of paragraph (a)~~(2)~~~~(3)~~
3 of this section.

4 ~~(2) The Secretary certifies a foreign graduate medical school, a~~
5 ~~foreign veterinary school, and a foreign nursing school separately,~~
6 ~~regardless of whether the medical school, veterinary school, or~~
7 ~~nursing school is freestanding or is part of a larger institution.~~

8 ~~(2)(3)~~ Except as provided in paragraph ~~(a)(3)~~ ~~(3)~~ ~~(4)~~ of this
9 section, if an institution wishes to participate for the first time
10 in the title IV, HEA programs or has undergone a change in ownership
11 that results in a change in control as described in 34 CFR 600.31,
12 the institution must require the following individuals to complete
13 title IV, HEA program training provided or approved by the Secretary
14 no later than 12 months after the institution executes its program
15 participation agreement under §668.14:

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

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

20 ~~(3)(4)(i)~~ An institution may request the Secretary to waive the
21 training requirement for any individual described in paragraph

22 (a)~~(2)~~~~(3)~~ of this section.

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

27 (b) *Period of participation.* (1) If the Secretary certifies that
28 an institution meets the standards of this subpart, the Secretary
29 also specifies the period for which the institution may participate

1 in a Title IV, HEA program. An institution's period of participation
2 expires six years after the date that the Secretary certifies that
3 the institution meets the standards of this subpart, except that—

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

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

8 ~~(2)(3)~~ Provided that an institution has submitted an application for
9 a renewal of certification that is materially complete at least 90
10 days prior to the expiration of its current period of participation,
11 the institution's existing certification will be extended on a month
12 to month basis following the expiration of the institution's period
13 of participation until the end of the month in which the Secretary
14 issues a decision on the application for recertification.