



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

October 25, 2011

DCL: GEN-11-18

Subject: Written Arrangements Between U.S. and Foreign Institutions

Summary: This letter provides guidance on the Title IV, HEA program eligibility of educational programs offered through written arrangements between U.S. and foreign institutions.

Dear Colleague:

On November 1, 2010, the Department published in the Federal Register final regulations making changes to the requirements for foreign institutions that participate in the William D. Ford Direct Loan (Direct Loan) Program (75 FR 67170). The final regulations are available at <http://www.ifap.ed.gov/fregisters/FR110110ForeignInstitutionsFinal.html>. These regulations were generally effective July 1, 2011, except for regulations specific to foreign graduate medical schools, which were effective July 20, 2011.

In addition, on October 29, 2010, the Department published in the Federal Register final regulations on program integrity issues (75 FR 66832). The final regulations are available at <http://www.ifap.ed.gov/eannouncements/110110PubFinalRulesforTitlveIVStudentAidPrgms.html>. These final regulations made a number of changes to the regulations governing the programs authorized by the Higher Education Act of 1965, as amended (HEA), including provisions addressing written arrangements between two or more institutions, or organizations acting on behalf of a foreign institution, to have each of those parties provide part of an educational program. These regulations were generally effective July 1, 2011, except for revisions to Subpart E of part 668 of the Student Assistance General Provision regulations, Verification and Updating of Student Aid Application Information, which are effective July 1, 2012.

This letter provides additional guidance on the effects both regulations have on the Title IV, HEA eligibility of educational programs offered through written arrangements between U.S. and foreign institutions. This guidance is provided to assist institutions with understanding the changes to the regulations in this area and does not make any changes to the regulations. Affected parties are responsible for taking the steps necessary to comply by the effective dates established by the final regulations.

We encourage you to review the pertinent parts of the preambles to the notices of proposed rulemaking (NPRMs) and final regulations that address this issue, as well as the final regulations themselves:

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	NPRM preamble	Final regulations preamble	Final regulations
Foreign Institution Regulations	75 FR 42192-42195 July 20, 2010	75 FR 67171-67173 Nov. 1, 2010	75 FR 67194 Nov. 1, 2010
Program Integrity Regulations	75 FR 34814-34816 June 18, 2010	75 FR 66869-66872 Oct. 29, 2010	75 FR 66948 & 66954 Oct. 29, 2010

The final regulations are codified in 34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691.

Please note that although these preambles and regulations, as well as this letter, contain references to the “Title IV, HEA programs,” the only Title IV, HEA program in which foreign institutions have been authorized to provide financial assistance since July 1, 2010, is the Direct Loan Program. In addition, please note that although the Department’s regulations on foreign institutions as codified in the Code of Federal Regulations at 34 CFR Part 600, Subpart E, continue to contain a number of references to the Federal Family Education Loan Program, those references are obsolete.

If you have questions regarding the information provided in this letter, you may contact the Office of Federal Student Aid’s Research and Customer Care Center staff. Staff is available Monday through Friday between the hours of 9 a.m. and 5 p.m. (Eastern Time) at 1-800-433-7327. After hours, calls will be accepted by an automated voice response system. Alternatively, you may e-mail the Care Center at fsa.customer.support@ed.gov. Foreign institutions may also contact the Office of Federal Student Aid’s Foreign Schools Team at FSA.Foreign.Schools.Team@ed.gov or (202) 377-3168.

We thank you for your continued cooperation as we work to implement these regulations.

Sincerely,



Eduardo M. Ochoa

Enclosure

Question 1: What changes did the November 1, 2010, final regulations addressing requirements for foreign institutions make regarding arrangements between U.S. and foreign institutions?

Answer 1: The November 1, 2010, final regulations make clear that, with a limited exception, programs offered in whole or in part in the U.S. by a foreign institution—either at a U.S. location of the foreign institution, through an arrangement with a U.S. institution, or otherwise—are not eligible for participation in the Title IV, HEA programs (i.e., the Title IV Federal student financial aid programs). Specifically, paragraph (1)(ii) of the definition of a foreign institution in §600.52 provides that, for the purposes of students who receive Title IV, HEA program funds, a foreign institution is an institution that, except with respect to clinical training that is part of a medical, veterinary, or nursing program offered by the institution:

- Has no U.S. location;
- Has no written arrangements, within the meaning of §668.5, with institutions or organizations located in the United States for students enrolling at the foreign institution to take courses from institutions located in the United States; and
- Does not permit students to enroll in any course offered by the foreign institution in the United States, including research, work, internship, externship, or special studies within the United States, except that independent research done by an individual student in the United States for not more than one academic year is permitted if it is conducted during the dissertation phase of a doctoral program under the guidance of faculty, and the research can only be performed in a facility in the United States.

Question 2: Do the November 1, 2010, foreign institutions regulations prohibit foreign institutions that participate in the Title IV, HEA programs from offering a program in whole or in part in the U.S.?

Answer 2: No. A foreign institution may offer programs in whole or in part in the U.S., but the regulations provide that such a program is not recognized for Title IV, HEA program purposes. As a result, students attending that program may not receive Title IV, HEA program funds for any part of the program.

Question 3: May a U.S. institution still have written arrangements with a foreign institution or organization acting on behalf of a foreign institution for a foreign institution to offer a part of a program that is Title IV eligible?

Answer 3: Yes. A Title IV eligible U.S. institution may have written arrangements with a foreign institution or organization acting on behalf of a foreign institution whereby the foreign institution provides part of an educational program so that the students enrolled in that program may receive Title IV, HEA program funds. However, as explained in Answer 2, a program offered by a foreign institution in whole or in part in the United States is not a Title IV eligible program. For that reason, any arrangement between a U.S. institution and a foreign institution or organization acting on behalf of a foreign institution is always considered to be one between an eligible U.S. institution where the student enrolls, and an ineligible foreign institution, even if the foreign institution is an otherwise Title IV eligible institution.

As a result, in this situation the provisions of §668.5 regarding written arrangements between an eligible institution and an ineligible institution or organization are applicable.

Question 4: What are the requirements of §668.5 regarding written arrangements between an eligible institution and an ineligible institution or organization and how do they apply to arrangements between U.S. and foreign institutions?

Answer 4: For Title IV, HEA program purposes, for a program offered through a written arrangement between an eligible institution and an ineligible institution or organization (commonly referred to as a contractual agreement), the eligible institution is always the “home” institution. This means that a student must be continuously enrolled at the eligible institution, in this case, the U.S. institution, as a regular student—i.e., enrolled for purposes of obtaining a degree, certificate, or other recognized educational credential offered by the eligible U.S. institution—and the U.S. institution must perform all the functions related to the delivery of Title IV, HEA program funds. For example, the U.S. institution must determine the student’s eligibility for Title IV, HEA program funds, and must calculate and disburse the funds to the student, taking into account all the hours in which the student enrolls at each institution or organization that apply to the student’s degree or certificate when determining the student’s enrollment status and cost of attendance. The U.S. institution is also responsible for maintaining all records necessary to document student eligibility and receipt of Title IV, HEA program funds. Upon completion of the program, the student must receive a degree from the U.S. institution, although he or she may receive a degree from the foreign institution as well.

In addition, there is a limit on the portion of the program that can be offered by the ineligible institution or organization through a contractual agreement. If both the eligible and the ineligible institution are owned or controlled by the same individual, partnership, or corporation, the ineligible institution or organization may provide no more than 25 percent of the program. If there is no common ownership or control, the ineligible institution or organization must provide less than 50 percent of the program (the October 29, 2010, program integrity regulations changed the limit from not more than 50 percent to less than 50 percent). However, in the case of separately owned or controlled institutions, if the ineligible institution or organization provides more than 25 percent of the program, the eligible institution’s accrediting agency or state agency (in the case of a public postsecondary vocational institution) must specifically determine that the institution’s arrangement meets the agency’s standards for the contracting out of educational services. Of course, the program must be otherwise Title IV, HEA program eligible (i.e., satisfy the requirements of §668.8 for an eligible program).

The October 29, 2010, program integrity regulations also require an institution to make information about written arrangements available to students. An institution must provide to enrolled and prospective students a description of the written arrangements the institution has entered into, including, but not limited to, information on:

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

- The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and
- Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

Please note that other factors may also prevent a foreign institution from providing a portion of a program under a written arrangement with a U.S. institution. A program offered through a contractual agreement is not Title IV eligible if the ineligible institution or organization (1) has had its eligibility to participate in the Title IV, HEA programs terminated by the Department; or (2) has voluntarily withdrawn from participation in the Title IV, HEA programs under a termination, show-cause, suspension, or similar proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Department. In addition, the October 29, 2010, program integrity regulations clarified that a program offered through a contractual agreement is not Title IV eligible if the ineligible institution or organization has had its certification to participate in the Title IV, HEA programs revoked by the Department, or had its application for certification or recertification to participate in the Title IV, HEA programs denied by the Department.