



# Federal Register

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**Monday,  
November 1, 2010**

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**Part II**

## **Department of Education**

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**34 CFR Parts 600, 668, 682, et al.  
Foreign Institutions—Federal Student Aid  
Programs; Final Rule**

**DEPARTMENT OF EDUCATION****34 CFR Parts 600, 668, 682 and 685**

[Docket ID ED—2010—OPE—0009]

RIN 1840-AD03

**Foreign Institutions—Federal Student Aid Programs****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations for Institutional Eligibility Under the Higher Education Act of 1965, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, and the William D. Ford Federal Direct Loan (Direct Loan) Program to implement provisions related to the eligibility of foreign institutions for participation in the Federal student aid programs that were added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Opportunity Act of 2008 (Pub. L. 110-315) (HEOA), as well as other provisions related to the eligibility of foreign institutions.

**DATES:** *Effective Date:* These regulations are effective July 1, 2011, except as follows: The amendments to § 600.20, § 600.21, and § 600.55 become effective July 20, 2011; § 600.56(a)(4) becomes effective July 1, 2015. For § 668.23, these final regulations are applicable for compliance audits and audited financial statements due on or after July 1, 2011. However, affected parties do not have to comply with the information collection requirements in §§ 600.20, 600.21, 600.54, 600.55, 600.56, 600.57, 668.13, 668.23, 668.171 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

*Implementation date:* The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions may, at their discretion, choose to implement the new and amended provisions of these regulations on or after November 1, 2010, except § 600.55(f)(1)(i)(B), with respect to a foreign graduate medical school having a clinical training program that was not approved by a State until after January 1, 1992. For further information, see the section entitled Implementation Date of These Regulations in the

**SUPPLEMENTARY INFORMATION** section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For general information or information related to nonprofit status for foreign institutions, public foreign institutions and financial responsibility, eligibility of training programs at foreign institutions, and foreign graduate medical schools, Wendy Macias. Telephone: (202) 502-7526 or via the Internet at: *Wendy.Macias@ed.gov*.

For information related to audited financial statements and compliance audits, Anthony Gargano. Telephone: (202) 502-7519, or via the Internet at: *Anthony.Gargano@ed.gov*.

For information related to the definition of a foreign institution, Gail McLarnon. Telephone: (202) 219-7048, or via the Internet at: *Gail.McLarnon@ed.gov*.

For information related to single legal authorization for groups of foreign institutions, foreign veterinary schools, foreign nursing schools, and certification of foreign institutions, Brian Smith. Telephone: (202) 502-7551, or via the Internet at *Brian.Smith@ed.gov*.

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On July 20, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for issues related to foreign institutions in the **Federal Register** (75 FR 42190).

In the preamble to the NPRM, the Secretary discussed on pages 42191 through 42213 the major changes proposed in that document, including the following:

- Amending § 668.23 to establish submission requirements for compliance audits and audited financial statements specific to foreign institutions;
- Amending §§ 600.51, 600.52, 600.54, 682.200, and 682.611 to clarify and revise the definition of a foreign institution;
- Amending § 600.2 to establish a definition of nonprofit status specific to foreign institutions;
- Amending § 668.171 to establish a financial responsibility standard for foreign public institutions that is comparable to the financial responsibility standard for domestic public institutions;

- Amending § 600.54 to permit a single legal authorization for groups of foreign institutions under the purview of a single government entity;
- Amending § 600.54 to establish eligibility of training programs at foreign institutions;
- Amending §§ 600.52 and 668.13 to establish institutional eligibility criteria specific to foreign graduate medical schools;
- Amending § 600.56 to establish institutional eligibility criteria specific to foreign veterinary schools;
- Amending § 600.57 to establish institutional eligibility criteria specific to foreign nursing schools; and
- Amending §§ 600.52 and 668.13 to revise the maximum certification period for some foreign institutions.

**Implementation Date of These Regulations**

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate a regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the Title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the regulations included in this document as permissible for implementation before July 1, 2011 at the discretion of each institution, except that foreign graduate medical schools having training programs continuously approved by a State or States beginning only after January 1, 1992, may not apply § 600.56(f)(1)(i)(B) until July 20, 2011, as a result of a statutory effective date provision in HEA Section 102(a)(2)(B)(iii)(IV)(bb) that does not leave the Secretary discretion under HEA section 482(c) to designate provisions conferring eligibility on that group of foreign medical schools for implementation before July 20, 2011.

**Analysis of Comments and Changes**

The regulations in this document were developed through the use of negotiated rulemaking. Under section 492 of the HEA, before publishing most proposed regulations to implement programs under Title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. In such cases,

after obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 20, 2010, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus means that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 19, 2010, and 60 parties submitted comments. The Department received many comments from entities that were represented by individuals serving as non-Federal negotiators in the negotiated rulemaking sessions. The negotiated rulemaking protocols, unanimously agreed to by the negotiating committee, provided that if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations, and committee members and the organizations whom they represented would refrain from commenting negatively on the consensus-based regulatory language. Final consensus was reached, and the Department used the consensus-based language in its NPRM; as a result, the obligation of the non-Federal negotiators and the entities they represented to refrain from commenting negatively applies. As a result, the Department will not discuss in this preamble negative comments received from entities represented on the committee. The Department notes that many such comments are duplicative of comments received from individuals or entities not bound by the protocols, and that the comments of those individuals or entities are addressed here. In addition, the Department reviewed and considered all comments received, regardless of their source. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to

operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Until amended effective July 1, 2010, section 102(a)(1)(C) of the HEA provided that foreign institutions may participate in the Title IV, HEA programs "only for purposes of part B of Title IV." Part B of Title IV contains the statutory requirements for the FFEL Program. With the enactment of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (HCERA) on March 30, 2010, as of July 1, 2010, there are no new originations of FFEL Program loans. All new originations with a first disbursement on or after July 1, 2010, are made via the Direct Loan Program, including loans for students attending foreign institutions. At the time the proposed regulations were negotiated, it was unclear whether the proposed legislation that would end the FFEL Program would be enacted. As a result, with a few exceptions, the proposed regulations referenced participation in the FFEL Program. These final regulations correct those references in the proposed regulations to indicate participation in the Direct Loan Program, rather than the FFEL Program. In addition, these final regulations make technical corrections to the Direct Loan Program regulations in response to statutory directives addressed specifically to foreign institutions. These corrections reflect changes made by the Higher Education Reconciliation Act of 2005 (Pub. L. 109-17) which (1) eliminated the option for foreign institutions to make single disbursements of Title IV, HEA program loan funds; and (2) eliminated the exemption for foreign institutions from the "30-day delayed disbursement requirement" which prohibits institutions from disbursing the first installment of a Direct Subsidized or Direct Unsubsidized Loan until a student has completed 30 calendar days of the student's program of study, if the student is in the first year of an undergraduate program and is a first-time FFEL Stafford loan, Direct Subsidized or Direct Unsubsidized borrower. These changes have been made to § 685.301 and § 685.303, respectively.

Substantive and technical changes to the Title IV, HEA program regulations resulting from the HCERA will be addressed through future rulemaking efforts. For more information about the transition of foreign institutions to the Direct Loan Program, contact the Office of Federal Student Aid's Foreign Schools Team at

*fsa.foreign.schools@ed.gov* or (202) 377-3168.

#### **Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended**

*Definition of a Foreign Institution (§§ 600.51, 600.52, 600.54, 682.200 and 682.611)*

*Comments:* Several commenters had concerns with paragraph (1)(ii)(B) of the definition of *foreign institution* in § 600.52, which states that a foreign institution cannot have written arrangements, within the meaning of § 668.5, with institutions or organizations located in the United States under which students enrolling at the foreign institution would take courses from institutions located in the United States. One commenter asked that we add language to paragraph (1)(ii)(B) specifying that this paragraph applies only to U.S. students receiving Title IV, HEA program funds. Another commenter asked the Department to explain what "written arrangements, within the meaning of § 668.5" means. One commenter asked for clarification as to whether study abroad and student exchange agreements would be permitted under paragraph (1)(ii)(B). The commenter also asked if paragraph (1)(ii)(B) would prohibit foreign institutions from stair-casing students under articulation agreements from partial programs in the United States into full degree programs with credit recognition in foreign institutions. Stair-casing is a process that allows a student to earn a degree by completing educational programs and earning credentials with each completed program of study acceptable for full credit toward the next program and each credential earned subsumed into the subsequent credential upon successful completion of each program.

*Discussion:* We do not agree that it is necessary to add language specifying that paragraph (1)(ii)(B) of the definition of *foreign institution* applies only to U.S. students receiving Title IV, HEA program funds is necessary. Lead-in paragraph (1) of the definition, which applies to all of the subsequent paragraphs, already specifies that the definition applies to foreign institutions "for the purposes of students who receive Title IV aid."

For clarification regarding "written arrangements, within the meaning of § 668.5," a "written arrangement" under § 668.5(a) means a consortium or contractual agreement entered into by two or more institutions to allow a student to receive Title IV, HEA program funds even though part of the

student's program is being provided by an institution other than the one at which the student is enrolled. Section 668.5(a) provides that, if an eligible institution enters into a written arrangement with another eligible institution or with a consortium of eligible institutions under which the other eligible institution or consortium provides all or part of the educational program for the former institution, the Secretary considers that educational program to be an eligible program if the program otherwise satisfies the requirements of program eligibility found in § 668.8.

However, these final regulations modify § 668.5(a) for foreign institutions in that, under paragraph (1)(ii)(B) of the definition of *foreign institution* in § 600.52, a foreign institution cannot have written arrangements, within the meaning of § 668.5, with institutions or organizations located in the United States, for students who receive Title IV, HEA program funds who enroll at the foreign institution to take courses from institutions located in the United States. We note that § 668.5(a) may undergo further revisions applicable to all institutions. In an NPRM published on June 18, 2010 in the **Federal Register** (75 FR 34806), the Department proposed to amend § 668.5(a) to specify that if a written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the institution that grants the degree or certificate must provide more than 50 percent of the educational program.

Section 668.5(c) addresses written arrangements between an *eligible* institution (an institution that meets the requirements of participation in the Title IV, HEA programs in 34 CFR 600) and an *ineligible* institution or organization (an institution or organization that does not participate in the Title IV, HEA programs), under which the ineligible institution or organization provides part of the educational program of students enrolled at the eligible institution. Although under § 668.5(c) the Secretary considers such an educational program to be an eligible program in certain circumstances, under these final regulations, § 600.54(c)(1) provides that an eligible foreign institution may not enter into a written arrangement under which an ineligible institution or organization provides any portion of one or more of the eligible foreign institution's programs. Thus, foreign institutions are not permitted to enter into the written arrangements described in § 668.5(c).

Further, with respect to "written arrangements under 668.5," written arrangements do not include affiliation agreements for the provision of clinical training for foreign medical, veterinary, and nursing schools; these affiliation agreements are addressed separately in § 600.55(h)(1), § 600.56(b), § 600.57(a)(2). In addition, and pertinent to all written arrangements under § 668.5, in the NPRM published on June 18, 2010 in the **Federal Register** (75 FR 34806), the Department proposed to add a new paragraph § 668.5(e), which would require an institution that enters into a written arrangement under § 668.5 to provide the consumer information described in § 668.43(a)(12) to enrolled and prospective students.

In response to the request for clarification as to whether study abroad and student exchange agreements would be permitted under paragraph (1)(ii)(B) of the definition of *foreign institution*, these agreements are discussed generally in section 668.5(b), which provides that under a study abroad program, if an eligible institution enters into a written arrangement with a "foreign institution" or an organization acting on behalf of a foreign institution under which a foreign institution provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it meets the limitations in § 668.5(c). The Department notes that the use of "foreign institution" in § 668.5(b) pre-dates these regulations and, in contrast to the meaning of that term as defined in these regulations, refers more generally to an agreement between an eligible institution and an institution or organization in another country. The Department is therefore making a technical change to § 668.5(b) to replace the phrase "foreign institution" with language to reflect the more general meaning that paragraph has always had.

With that clarification made, under paragraph (1)(ii)(B) of the definition of "foreign institution," for the purposes of students who receive Title IV, HEA program aid, a foreign institution may enter into a consortium agreement for study abroad and student exchange purposes, but only with another eligible institution located and offering eligible programs outside the United States. Moreover, the study abroad and student exchange provisions of § 668.5 do not apply to foreign medical, veterinary, and nursing schools, because such schools are generally prohibited under the regulations from offering portions of their programs in third countries, and

from offering the non-clinical portions of their program in the United States.

In response to the comment about whether paragraph (1)(ii)(B) of the definition of *foreign institution* would prohibit foreign institutions from stair-casing students under articulation agreements, because paragraph (1)(ii)(B) prohibits a foreign institution from having written arrangements 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, a foreign institution would not be permitted to stair-case students under articulation agreements that required students taking the beginning of their programs in the United States to complete their programs through credit recognition in foreign institutions. However, a foreign institution would be permitted to accept transfer credits earned by individual students in eligible programs offered by eligible U.S. institutions, and generally to stair-case students under articulation agreements offered by an eligible institution outside the United States into full degree programs with credit recognition in the foreign institution, as long as both eligible foreign institutions each provided all Title IV, HEA program recipients with an eligible program leading to a recognized credential. As stated earlier in this discussion, § 600.54(c)(1) would prohibit an *ineligible institution* from providing any portion of one or more of the eligible foreign institution's programs, and this prohibition would extend to articulation agreements.

*Changes:* We have made a technical amendment to § 668.5(b), to remove the reference to "foreign institution" and replace it with "institution in another country."

*Comments:* One commenter asked why the Department added paragraph (1)(ii)(C) to the definition of *foreign institution* in § 600.52. Under paragraph (1)(ii)(C), a foreign institution cannot permit students who receive Title IV, HEA program funds to enroll in any course offered by the foreign institution in the United States, including research, work, internship, externship, or special studies with 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.

*Discussion:* The general intent of paragraph (1)(ii)(C) in the definition of *foreign institution* is to address abuses

that the Department has seen whereby a U.S. institution sets up an offshore campus to claim foreign institution status and thus avoid domestic requirements even though the institution is, for all intents and purposes, a domestic institution. In addition, the Department does not want a foreign institution to send its U.S. students to a U.S. location of a foreign institution, because the Department wants U.S. students attending a U.S. institution to be eligible for the full range of Title IV, HEA program funds, rather than limited to Direct Loan Program funds, as, by statute, students attending foreign institutions are. The Department was persuaded, however, at the request of several non-Federal negotiators, to carve out a narrow exception for independent research done by an individual student in the United States for not more than one academic year, 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.

*Changes:* None.

*Comments:* One commenter requested clarification of paragraphs (1)(v)(A) and (B) of the definition of *foreign institution* in proposed § 600.52, which, for the purposes of students who receive Title IV, HEA program funds, requires a foreign institution that offers any program designed to prepare a student for employment in a recognized occupation, with or without licensure, to provide a credential or degree that satisfies both the educational requirements, including requirements for licensure, for entry into that occupation in the country in which the institution is located and the United States. The commenter noted that, unless there is a mutual recognition agreement in place among the relevant professional authorities, meeting the requirements for professional licensure in the United States is not guaranteed by the successful completion of many otherwise eligible programs offered by foreign institutions. The commenter requested clarification as to what types of foreign institutions and what types of programs would be covered by both paragraphs (1)(v)(A) and (B) of the definition of *foreign institution*, and if there were any foreign institutions that could offer programs that satisfied either paragraph (A) or (B) and still meet the definition's requirements.

*Discussion:* After further consideration and in light of the comment received, we believe that our original concern, that students attending a foreign institution would not be able to enter a recognized occupation

without further study, is addressed in other areas of the regulations, and we have therefore eliminated paragraphs (1)(v)(A) and (B) of the definition of *foreign institution* in § 600.52 of these final regulations. In particular, the Department's concerns are addressed in paragraph (1)(iv) of the definition of *foreign institution*, which requires a foreign institution to award degrees, certificates, or other recognized educational credentials in accordance with § 600.54(e) that are officially recognized by the country in which the institution is located. Other applicable provisions of the Student Assistance General Provisions (34 CFR part 668) which address our concerns include, but are not limited to, subpart F, which prohibits any substantial misrepresentation made by an institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

*Changes:* We have removed paragraphs (1)(v)(A) and (B) of the definition of *foreign institution* in § 600.52.

*Comment:* None.

*Discussion:* Section 600.51(c)(1), as proposed in the NPRM, specified that foreign institutions must comply with all of the requirements that apply to eligible and participating domestic institutions unless provisions regarding foreign institutions in the HEA or the Department's regulations were inconsistent. In addition, proposed § 600.52(c)(2) provided that a foreign institution would not be required to comply with Title IV, HEA program requirements that the Secretary, through a notice in the **Federal Register**, identifies as inapplicable to foreign institutions.

To more clearly set forth existing law specifically regarding foreign institutions' regulatory responsibilities with regard to their participation in the Title IV, HEA programs, we are making several technical changes. We are consolidating proposed paragraphs § 600.51(c)(1) and (2) to state that foreign institutions must comply with all requirements for eligible and participating institutions except where made inapplicable by the HEA, or when the Secretary, through regulations or a notice in the **Federal Register**, identifies specific provisions as inapplicable to foreign institutions. In addition, because many requirements pertaining to institutions that are participating, or seeking to participate, in the Title IV, HEA programs are framed as requirements applicable to public and non-profit "institutions of higher education," as defined in § 600.4,

or to for-profit "proprietary institutions of higher education," as defined in § 600.5, we are adding new paragraph § 600.51(c)(2), to make clear that, to be considered an "institution of higher education" in order to be eligible to participate in the Title IV, HEA programs, public or nonprofit foreign institutions must meet both the applicable requirements of § 600.4 and the applicable requirements of subpart E, and that, to be considered a "proprietary institution" in order to be eligible to participate in the Title IV, HEA programs, a for-profit foreign institution must meet both the applicable requirements of § 600.5 and the applicable requirements of subpart E. These changes reflect the Department's past and current interpretation of the law.

In addition, we are revising § 600.54(a) to specify which requirements in § 600.4 and § 600.5 foreign institutions must meet and which they need not. The provisions of § 600.4 and § 600.5 that are not applicable to public or private nonprofit foreign institutions, and for-profit foreign institutions, respectively are: (1) The requirement that an institution be in a State (§ 600.4(a)(1), and § 600.5(a)(2)) because, by definition, a foreign institution is an institution that is not located in a State (see paragraph (1) of the definition of *foreign institution* in § 600.52); (2) the requirement that an institution admit as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the State in which the institution is physically located (§ 600.4(a)(2) and § 600.5(a)(3)) because, as reflected by § 600.54(b), most students enrolling in foreign institutions will have a secondary school completion credential or its equivalent, rather than a high school diploma and, as foreign institutions are not located in a State, the provision allowing the admission of students without a high school diploma or its equivalent if the student is beyond the age of compulsory school attendance in the State in which the institution is physically located is inapplicable; (3) the requirement that an institution be legally authorized by the State in which it is located (§ 600.4 (a)(3), and § 600.5(a)(4)) again, because, by definition, a foreign institution is an institution that is not located in a State, and paragraph (1)(iii) of the definition of *foreign institution* in § 600.52 instead requires a foreign institution to be legally authorized by the education ministry, council or equivalent agency

of the country in which the institution is located; (4) the requirement that an institution may provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O (§ 600.4(a)(4)(ii) and § 600.5(a)(5)(ii)), because under the HEA these programs are not available to Direct Loan borrowers, and because foreign institutions are not eligible for programs other than Direct Loans; (5) accreditation requirements (§ 600.4(a)(5), and § 600.5(a)(6)) because the Secretary does not recognize accrediting agencies for the purpose of accrediting foreign institutions; (6) the conditions under which an institution is considered to be located in a State (§ 600.4(b), and § 600.5(c)) again, because, by definition, a foreign institution is an institution that is not located in a State; and (7) the conditions under which the Secretary recognizes an institution's accreditation (§ 600.4(c), and § 600.5(d)) again, because the Secretary does not recognize accrediting agencies for the purpose of accrediting foreign institutions. In addition, for a for-profit foreign institution, § 600.5(a)(5)(i)(B), which allows an institution to meet the definition of a for-profit institution by providing a program leading to a baccalaureate degree in liberal arts, is not applicable because the Secretary does not recognize accrediting agencies for the purpose of accrediting foreign institutions and, in order to meet this provision, an institution must be accredited by a recognized regional accrediting agency or association, and have continuously held such accreditation since October 1, 2007, or earlier.

*Changes:* We have revised § 600.51(c) to more explicitly set forth current law by stating that foreign institutions must comply with all requirements for eligible and participating institutions except where provided for in the HEA, and when the Secretary, through regulations or a notice in the **Federal Register**, identifies specific provisions as inapplicable to foreign institutions, and to make clear that requirements applicable to "institutions of higher education" apply to foreign public and non-profit institutions, and that requirements applicable to "proprietary institutions of higher education" apply to foreign for-profit institutions, for purposes of determining eligibility to participate in the Title IV, HEA programs, as well as for determining applicability of other Title IV requirements not related to institutional eligibility. Finally, in § 600.54, we are

revising paragraph (a) to specify which requirements in § 600.4 and § 600.5 foreign institutions must meet and which they need not.

*Foreign Graduate Medical Schools*  
(§§ 600.20, 600.21, 600.52, and 600.55)

General

*Comments:* One commenter, the Federation of State Medical Boards, applauded the Department's initiative to strengthen the eligibility criteria specific to foreign graduate medical schools, but was concerned about the requirement in § 600.55(a)(2)(ii) that requires that a foreign graduate medical school program offered by a foreign graduate medical school be approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary. The commenter believed that the regulatory provision was unclear. The commenter noted that the Federation of State Medical Boards and its member licensing boards require U.S. medical students attending U.S. and Canadian medical schools to graduate from medical schools accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA). The commenter asserted that, if the intent of the proposed regulations was to extend the approval of foreign graduate medical schools to State medical boards, it may not be administratively feasible. The commenter noted that there are currently no mechanisms or resources available for the majority of State medical boards to approve individual foreign graduate medical school programs and establishing and implementing such a mechanism could be a complex, costly, time consuming, and burdensome process.

*Discussion:* The provision in § 600.55(a)(2)(ii), requiring that a foreign graduate medical school program offered by a foreign graduate medical school be approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary, does not require State medical boards to approve programs from foreign graduate medical schools. Rather, the provision gives the Secretary discretion to take into account the views of relevant medical licensing boards and evaluating bodies if they are available. We note that this provision has been in the regulations for some time and no changes to it were proposed in the NPRM.

*Changes:* None.

Location of a Graduate Medical Education Program, Affiliation Agreements, and Application and Notification Procedures for Foreign Graduate Medical Schools

*Comments:* One commenter believed that an exception to the provisions in the regulations that limit the location of foreign graduate medical school clinical training should be made for locations included in the accreditation of the AOA, as was proposed for locations included in the accreditation of the LCME.

One commenter asked the Department to remove the sections of the proposed regulations that place limitations on the location of graduate medical education programs, as Recommendation 12(a) of the National Committee on Foreign Medical Education and Accreditation's (NCFMEA) 2009 Report to the U.S. Congress by the National Committee on Foreign Medical Education and Accreditation Recommending Institutional Eligibility Criteria for Participation by Certain Foreign Medical Schools in the Federal Family Education Loan Program (NCFMEA report), on which those regulations were based, was outside the scope of the charge provided by Congress to the NCFMEA. (The NCFMEA report is available at <http://www2.ed.gov/about/bdscomm/list/ncfmea-dir/reporttocongress2009.pdf>.) The commenter felt that limitations to pre-clinical coursework are inconsistent with section 484(o) of the HEA, § 668.5(b) of the regulations, and guidance in the *Federal Student Aid Handbook* addressing study abroad, which permit eligible institutions to enter into written arrangements with institutions in other countries to offer part of a program. The commenter believed the proposed limitations to be arbitrary, as they are only applicable to foreign graduate medical schools. The commenter also believed that the limitations prohibit cooperative international medical education efforts without any statutory basis, and are inconsistent with the standard of comparability that the HEA attempts to establish between foreign and U.S. institutions. The commenter also felt the proposed limitations to be discriminatory to foreign graduate medical schools located in small countries, many of which have a long history of multi-lateral and regional cooperation in the areas of health care and education. The commenter felt that the limitations on clinical training would prevent efforts to expand medical services in developing countries and discourage cooperative efforts in

international education. The commenter asked that the Department modify the proposed limitations in the regulations that are applicable only to foreign graduate medical schools to allow students at such schools to take coursework outside of the country in which the school is located as long as the requirements for written agreements between schools to provide educational programs in § 668.5, or comparable standards for foreign graduate medical schools, are met.

One commenter, an organization representing all twenty universities in Australia and New Zealand that confer professional, entry-level medical degrees, stated that the proposed requirements addressing affiliation agreements between foreign graduate medical schools and hospitals or clinics for clinical training would impose a significant administrative burden on their schools, as some of the proposed requirements are not normally included in most affiliation agreements between their schools and health services, particularly agreements covering long-term, general-practice placements. Another commenter, representing a foreign graduate medical school in Australia, felt it was unnecessarily bureaucratic to impose detailed reporting requirements, such as the information that would have to be included in an affiliation agreement, and the requirement that a foreign graduate medical school notify its accrediting body within one year of any material changes in the program. The commenter felt that, despite Australia's stringent accreditation processes, this approach fails to reflect that the commenter's school is a professional institution of high standing, teaching to standards recognized as comparable to U.S. standards.

*Discussion:* We agree that an exception to the provisions in the regulations that limit the location of foreign graduate medical school clinical training should be made for locations included in the accreditation of the AOA. The Department's rationale for making an exception for locations included in the accreditation of the LCME was because LCME is an accrediting agency that accredits U.S. medical schools. As the Federation of State Medical Boards recognizes both the LCME and the AOA for accreditation of domestic medical schools, the Department agrees that locations accredited by the AOA should also be exempt from the provisions in the regulations that limit the location of foreign graduate medical school clinical training.

Although the majority of the regulations addressing the location of medical education programs offered by foreign graduate medical schools are supported by Recommendation 12(a) of the NCFMEA report, the regulations also represent, with some variation, the Department's current policy. The Department continues to believe that many of the reasons for that current policy are sound and support the positions taken in these final regulations. That is, because of the lack of direct authority of an accrediting body over educational sites located outside the country in which the main campus is located, the basic science portion of a medical program offered by a foreign graduate medical school must be located in the same country as the school's main campus to ensure that the majority of classroom instruction will be under the direct authority of the school's accrediting body. Also, it is acceptable for the Department to balance the benefits of closer oversight by the school's accrediting agency of the clinical training parts of the program with the benefits to students of exposure to other medical environments, and to craft its regulations to permit clinical sites to be located in countries other than the country in which the main campus is located in specified circumstances. Whereas foreign institutions other than foreign graduate medical schools (and, by July 1, 2015, foreign veterinary schools) are not required to be accredited to be eligible to participate in the Title IV, HEA programs, foreign graduate medical schools are required to be accredited (section 102(a)(2)(B) of the HEA). Thus, the Secretary believes it is appropriate to place restrictions on foreign graduate medical schools when the authority of the school's accrediting agency to provide oversight is in question.

In accordance with the *Guidelines* of the NCFMEA, the entity that determines whether the medical school accrediting standards used in other countries are comparable to those applied to medical schools in the United States for purposes of evaluating the eligibility of accredited foreign graduate medical schools to participate in the Title IV, HEA programs, a foreign medical school's accrediting body must have standards comparable to LCME standards, including the standard that a medical school must have approved affiliation agreements with each teaching hospital or clinical facility it uses that define the responsibilities of each party. The Department believes that the responsibilities that the regulations require a foreign graduate

medical school to include in affiliation agreements with hospitals or clinics at which all or a portion of the school's clinical training is provided are essential responsibilities that must be addressed in order to ensure the quality of the clinical training portion of the program. NCFMEA *Guidelines* also require foreign medical school accrediting bodies to demonstrate that their accreditation/approval processes require medical schools to notify the appropriate authorities of any substantive changes to the educational program, student body, or resources, and to review the substantive changes to determine if the accredited schools remain in compliance with the standards. The Secretary believes that requiring a foreign graduate medical school to notify its accrediting body within one year of any material changes in educational programs is a reasonable minimum standard. The NCFMEA *Guidelines* can be accessed at <http://www2.ed.gov/about/bdscomm/list/ncfmea.html#review>.

*Changes:* We have revised §§ 600.20(c)(5), 600.21(a)(10), 600.55(a)(2)(iii), and 600.55(h)(3)(ii)(A) to provide an exception to the provisions limiting the location of foreign graduate medical school clinical training sites. The new exception applies to locations included in accreditation granted by the AOA.

#### Admission Criteria and Collection and Submission of Data

*Comments:* A few commenters objected to the proposed regulations addressing admission criteria and the collection and submission of data. One commenter also felt that obtaining information about residency placements when students have left the school and the country would be extremely challenging.

One commenter, representing a school in Australia, believed it was unreasonable to require a foreign graduate medical school to require U.S. students accepted for admission to have taken the Medical College Admission Test (MCAT) and to have reported their scores for each time they took the test. The commenter felt that some form of equivalency should be granted the test it requires for admission, the International Student Admissions Test (ISAT). One commenter, an organization representing all twenty universities in Australia and New Zealand that confer professional, entry-level medical degrees, stated that requiring foreign graduate medical schools to collect and submit data on MCAT scores, United States Medical Licensing Examination (USMLE) pass rates, and U.S. medical

residency placements would be administratively onerous for their institutions. The commenter noted that Australian universities are subject to stringent privacy legislation, which precludes institutions from supplying individual data on students to third parties without the student's written permission. The commenter stated that the economics of compliance as well as the complexity of the proposed regulations would discourage participation of their schools in the Title IV, HEA programs. Another commenter representing an institution in Australia recommended that foreign graduate medical schools with small numbers of Title IV, HEA program recipients be exempt from collecting and submitting data on MCAT scores and U.S. medical residency placements. The commenter stated that the MCAT is not an admission requirement for entry into its medical program and, therefore, the results are not provided to the school.

*Discussion:* The Department continues to believe that analysis of the submitted data is essential for the development of future statutory and regulatory provisions, as well as strengthening of the accreditation process, resulting in a more accurate assessment of the quality of education being provided to students attending foreign graduate medical schools. As such, the Department believes it is beneficial to have data on all foreign graduate medical schools that participate in the Title IV, HEA programs, regardless of the number of Title IV, HEA program fund recipients. Although obtaining information about residency placements will require foreign graduate medical schools that do not already track this information to now do so, we believe the added burden is justified in light of these long-term benefits. In order for the comparison of data on entry tests to be useful, it must be for results on a common test. As the Department's interest in this area is in U.S. students, the test given to U.S. students to determine entry to U.S. medical schools, the MCAT, is the most appropriate test for this purpose. We note that a foreign graduate medical school is required to have U.S. students report only one MCAT score; they are not required to collect scores for each time a student took the MCAT.

To the extent that a foreign country has privacy laws requiring student consent to release the required data, § 600.55(c)(2) requires a foreign graduate medical school to determine those consent requirements and require the necessary consents of all students accepted for admission for whom the school must report to enable the school

to comply with the required collection and submission of data. If a foreign country's privacy laws preclude obtaining the information and materials necessary for establishing compliance, the institutions located in those countries will not qualify for participation in the Title IV, HEA programs.

*Changes:* None.

#### Citizenship and USMLE Pass Rate Percentages

*Comments:* One commenter supported the provisions in the proposed regulations that address institutions with small numbers of USMLE test-takers.

A few commenters asserted that the proposed calculation of the USMLE pass rate was likely to restrict American students' ability to enroll in or complete their education at select, prestigious foreign graduate medical schools because it would make institutions ineligible for participation in the Direct Loan Program. More specifically, some of the commenters felt that an aggregate USMLE pass rate, rather than one that requires a foreign graduate medical school to have a 75-percent pass rate on each step/test, would give the Department a better assessment of the quality of a foreign graduate medical school education. One of these commenters felt that an evaluation of the combined scores would reduce the variance in test scores based on student variability—a concern expressed by the NCFMEA in their report and by the U.S. Government Accountability Office (GAO) in their report entitled, "Foreign Medical Schools: Education Should Improve Monitoring of Schools That Participate in the Federal Student Loan Program" (GAO-10-412) (GAO report), available at <http://www.gao.gov/new.items/d10412.pdf>. One commenter noted that, while USMLE pass rates can be useful for determining the quality of education offered to American students at foreign graduate medical schools, the data must be properly interpreted to ensure that it accounts for the differences in medical education curricula, the sequencing of curricula, and different methods of student assessment in different countries. The commenter, who represented an institution in Ireland, stated that the medical education in Ireland is provided in a different sequence and uses different types of examination and assessment. More specifically, the commenter noted that although Irish medical schools may use multiple choice question (MCQ) examinations, which are similar to the USMLE, other methods of assessment—including

continuous assessment, modified essay questions (MEQs), essays, and Objective Structured Clinical Exams (OSCEs)—are given greater weight, so their students have significantly less experience with a USMLE-type examination and, therefore, are disadvantaged, particularly on Step 1, the pre-clinical exam, which is entirely MCQ. The commenter noted that their school's pass rates on Step 2—Clinical Knowledge (Step 2—CK) and Step 2—Clinical Skills (Step 2—CS) are comparable to U.S. universities. Thus, an aggregate pass rate would better reflect the quality of the education provided. The commenter felt that this position was supported by the GAO report, which states that many factors contribute to a graduate medical education program's USMLE pass rate, including "the extent to which foreign schools may or may not focus on preparing students for the exam." In addition, the commenter pointed out that the report notes the burden these requirements place on schools with a small proportion of the American students who study medicine abroad. The commenter also noted that the GAO report analysis states "that the new pass rate requirement may dissuade or even disqualify many schools from participating in the loan program," thus reducing the foreign graduate medical school options available to U.S. students. The commenter asked the Department to seriously consider the GAO report in the development of these final regulations. One commenter, a member of the Committee that negotiated and came to consensus on the NPRM, supported the proposal to require a foreign graduate medical school to have a 75 percent pass rate on each step/test, and felt it and the other proposed regulations were critical toward ensuring the availability of high-quality international programs of medical education.

A couple of commenters objected to the proposal to include only first-time test takers in the calculation of USMLE pass rates. The commenters stated that, in contrast to the assertions made by non-Federal negotiators that the pass rates of students in subsequent attempts are typically quite low, the commenter's school has had many high-performing students and graduates who have passed the exam only on the second or third attempts. The commenters believed that the non-Federal negotiators' assertion was also in conflict with the National Board of Medical Examiners (NBME) Annual Report on USMLE Performance. The commenter recommended that the Department adopt Recommendation 4(b) of the NCFMEA report—that each



student or graduate who repeats a step in a particular year only be counted once in the denominator for that year for that step, and be counted once in the numerator if he/she passes. The commenter felt that, at a minimum, the Department should examine the validity of using such a method to determine the effectiveness of the testing procedure as a means of defining eligibility for foreign graduate medical schools.

One commenter supported the proposed change to limit the USMLE pass rates calculation to U.S. citizens, nationals, and eligible permanent residents. Two commenters opposed the proposed change to limit the USMLE pass rate calculation to U.S. citizens, nationals, and eligible permanent residents, arguing that it goes beyond the plain language of the statute. These commenters felt that the exclusion of other students creates an administrative burden on foreign graduate medical schools and excludes from the calculation a true representative sample of a school's students and graduates, creating an incomplete picture of a school's level of training. The commenters felt that the calculation of the USMLE pass rate should include all students, with data for U.S. citizens, nationals, and eligible permanent residents treated as supplementary information.

One commenter felt that the USMLE pass rate was not an appropriate measure of the quality of foreign medical schools, and that 75 percent is not an appropriate benchmark for Title IV, HEA program eligibility. A few commenters asked the Department to consider phasing in the 75-percent pass rate requirement through 2014, as was suggested by the NCFMEA report. One of these commenters believed that the Department could enter into informal compliance agreements to allow foreign graduate medical schools that initially do not meet the 75-percent threshold to continue to participate in the Title IV, HEA programs, conditioned upon compliance with a written agreement that the school will make certain changes in its policies designed to boost its USMLE pass rate by 2014.

A few commenters asked the Department to expand the exemption from the USMLE pass rate requirement for foreign graduate medical schools that had a clinical training program that has been continuously approved by a State as of January 1, 1992. A couple of these commenters asked that the exemption be expanded to include public foreign graduate medical schools that had clinical programs in their own countries well before January 1, 1992, and that had graduates practicing in the

United States well before the exempted foreign graduate medical schools were even established. One commenter felt that participation in the Fifth Pathway Program should qualify a school for the exemption.

*Discussion:* The GAO, as a result of the report referenced by the commenter, made four recommendations to the Department. The GAO recommended that the Department:

1. Collect consumer information, such as aggregate student debt level and graduation rates, from foreign medical schools participating in the federal student loan program and make it publically available.

2. Require foreign medical schools to submit aggregate institutional pass rate data to the Department annually.

3. Verify data submitted by schools, for example by entering into a data-sharing agreement with the testing organizations.

4. Evaluate the potential impact of the 75 percent pass rate requirement on school participation in the federal student loan program and advise Congress of any needed revisions to the requirement.

The Department agreed with all four recommendations. The Department is committed to collecting and examining data on the USMLE pass rate to provide Congress with recommendations for change, if necessary. However, as noted in the GAO report, complete data have not been available to all schools to provide to the Department until recently. As such information is now available, in June of this year, the Department sent a letter to foreign graduate medical schools requiring that USMLE pass rate information be supplied annually, starting with exams taken during calendar year 2009. The letter required foreign graduate medical schools to submit the information for 2009 to the Department by September 30, 2010. The Department will study this data, as well as data submitted for 2010, to determine what changes we will recommend to Congress.

The Department does not support using an aggregate USMLE pass rate of 75 percent in lieu of a required pass rate of 75 percent on each step/test. The Department believes that an individual assessment of each step/test is a better measure, precisely because such an approach provides an assessment of the sequential performance on the USMLE. The Department agrees with the NCFMEA's opinion in Recommendation 4(c) of the NCFMEA report, "The USMLE examinations are taken at different stages of the student's progress toward becoming a licensed medical practitioner and reflect the quality of

education delivered by related, but different, sequential processes. As such, the Committee feels that separately reporting performance on each step examination will allow the Department to more adequately judge the performance of each school in preparing students for future clinical performance."

Although the Department believes that Recommendation 4(b) of the NCFMEA report—to include each student or graduate who repeats a step in a particular year once in the denominator for that year, and in the numerator if he/she passes—would be an acceptable approach to calculating the USMLE pass rate, we believe that including only first-time test takers is a better approach. While a couple of commenters believed that recognizing subsequent attempts on steps/tests of the USMLE would more accurately reflect the quality of education at foreign graduate medical schools, data presented in the *2009 Annual Report of the National Board of Medical Examiners* (pages 56–59) indicate that repeat examinees from non-U.S. and Canadian schools pass at lower rates than first-time test takers. For example, the 2008 pass rate on Step 1 for repeat examinations was 37 percent as opposed to 73 percent for first-time test takers, and 36 percent as opposed to 73 percent in 2009. The *2009 Annual Report* is available at <http://www.nbme.org/PDF/2009AnnualReport.pdf>. Thus, the Department is persuaded that, generally, for students attending foreign graduate medical schools, the pass rates in subsequent attempts on steps/tests of the USMLE are low, and therefore redundant and less indicative of the quality of instruction than first-time test scores.

After further consideration of the issue, the Department agrees with the commenters who believed that the USMLE pass rate score should not be limited to U.S. citizens, nationals, and eligible permanent residents. The Department believes that the inclusion of U.S. and non-U.S. students provides a fair evaluation of a foreign graduate medical school's program, while reducing burden on schools by not requiring the separation of pass rates by citizenship. Although the Department heard from non-Federal negotiators that the USMLE pass rates for non-U.S. students at some foreign institutions are lower than those of U.S. students, data provided in the *2009 Annual Report of the Education Commission for Foreign Graduate Medical Graduates (ECFMG)* (available at: <http://www.ecfmg.org/annuals/ECFMG2009.pdf>) indicate that,

generally, that is not the case for two of the three steps/tests for which a pass rate is determined. For Step 1, U.S. citizens who are first-time test takers have a pass rate of 67 percent, compared to a pass rate of 75 percent for foreign citizens who are first-time test takers, while for Step 2–CK, U.S. citizens who are first-time test takers have a pass rate of 76 percent, compared to a pass rate of 85 percent for foreign citizens who are first-time test takers. For Step 2–CS, scores generally are lower. U.S. citizens who are first-time test takers have a pass rate of 82 percent, compared to a pass rate of 70 percent for foreign citizens who are first-time test takers.

As noted in the preamble to the NPRM, the HEA does not currently provide an exemption for any foreign graduate medical schools, even those with small numbers of U.S. students, from the USMLE pass rate requirement, with the exception of those that have a clinical training program that had State approval continuously since January 1, 1992. The Department does not have the authority to expand that statutory exemption to include other schools, delay implementation of the 75-percent threshold, or enter into compliance agreements allowing schools that do not meet the statutory requirement to continue participation. While the NCFMEA report did recommend delaying the implementation of the increased 75-percent threshold until 2014 to allow a stepped approach to the higher threshold, the recommendation recognized that Congress would need to change the law before this recommendation could be implemented.

In addition, participation in the American Medical Association's (AMA) "Fifth Pathway" program does not satisfy the criteria for the pass rate exemption. Individuals participating in the Fifth Pathway program do not complete a foreign graduate medical school's program and do not receive the school's credential, so are not considered to have been attending a Title IV, HEA eligible program. In addition, we note that the AMA has decided that it will not support the Fifth Pathway program as a route to residency for individuals pursuing the Fifth Pathway program after December, 2009. Finally, the Department continues to believe that the methodology established in the proposed regulations allowing for combined step/test pass rate results for foreign graduate medical schools with small numbers of U.S. students sufficiently addresses concerns as to the reliability of pass rates as indicators of quality at such schools.

*Changes:* We have revised § 600.55(d)(1)(iii), (f)(1)(ii), and (f)(3) to

require foreign graduate medical schools to report on USMLE pass rates for all students and graduates, regardless of their citizenship.

*Comments:* None.

*Discussion:* These final regulations require a foreign graduate medical school to submit USMLE pass rate information for a calendar year, rather than an award year, as was proposed. The Department is making this change for consistency with the Department's current request for pass rate information, which requires information for the 2009 calendar year. The change will allow the Department to evaluate data from a consistent period to facilitate its evaluation of the potential impact of the 75-percent pass rate requirement and to advise Congress of any necessary statutory changes to the requirement. As a result, these final regulations require an institution to submit the information to the Department by April 30, rather than the proposed submission date of September 30. The Department has extended the submission date by a month past the end of the reporting period and provided that the Department may change the submission date by notice in the **Federal Register**, to accommodate any changes to the timing of the receipt of test scores by institutions or the timing of the receipt of test scores by the ECFMG (or other responsible third party). For consistency, the reporting period and submission date for MCAT, residency placement, and citizenship data have also been changed.

*Changes:* We have revised § 600.55(d)(1) and (d)(3) to require foreign graduate medical schools to report on USMLE pass rates, MCAT scores, residency placement and citizenship data (unless it is exempt from providing citizenship data) for a calendar year, and to submit that information, to its accrediting authority or the Department, as applicable, no later than April 30 of each year, unless the Secretary specifies a different date through a notice in the **Federal Register**.

*Comments:* None.

*Discussion:* The proposed regulations provided that, instead of submitting USMLE pass rate data directly to the Department, a foreign graduate medical school could choose to allow the ECFMG or other responsible third party to calculate and report the school's USMLE rates directly to the Secretary. The Department has reconsidered this provision, however, in view of the fact that the ECFMG does not provide schools with individual pass rate data, except with written student-by-student consent. In addition, ECFMG does not calculate or report a school pass rate if

fewer than five test results would be included in the rate.

The Department regards the ECFMG as the most reliable source for pass rates and pass rate data. We note that the pertinent HEA provision refers explicitly to pass rates on examinations administered by ECFMG, and the Department cannot identify any more authoritative source for ECFMG data and pass rates than ECFMG. The Department also recognizes that the option of having ECFMG calculate and report a school's rate may be a significant convenience to foreign graduate medical schools participating or seeking to participate in the Direct Loan program, in contrast to obtaining individual consents in a manner consistent with applicable privacy laws, and then submitting those consents to ECFMG so as to obtain all individual test results, and then furnishing those results to the Department. Furthermore, reliance on ECFMG to provide pass rates is consistent with the GAO's recommendation regarding data sharing.

For these reasons, with two limitations, the Department is retaining the option in proposed § 600.55(d)(2) for foreign graduate medical schools to rely on ECFMG pass rate reports in lieu of obtaining individual student and graduate consents and then collecting and submitting reports of all test results to the Department under § 600.55(d)(1)(iii). The first limitation is that foreign graduate medical schools desiring to invoke the option of relying on ECFMG reports of pass rates must annually provide written consent acknowledging that the ECFMG calculation will be conclusive for purposes of Title IV institutional eligibility. This limitation is necessary because the data needed to confirm the accuracy of ECFMG calculations is available only through obtaining individual consents from all students and graduates included in the ECFMG rate, and because the availability of such consents is not within the control of the Department, the ECFMG, or, at that stage, the foreign graduate medical school. As long as the foreign graduate medical school is fully informed of this circumstance, the Department regards the ECFMG option as contributing to effective administration of the Title IV programs.

The second limitation is that the option cannot be used by foreign graduate medical schools that had fewer than eight test results during the year on any of the three USMLE tests for which rates are to be determined. Under § 600.55(f)(4), the Department uses an alternate methodology to compute rates for these schools. ECFMG does not use

this methodology, nor in most cases will its reports contain the data the Department would need to do the calculation itself. This means that schools will need to determine whether the number of test takers will be high enough to invoke the ECFMG option early enough to obtain individual consents if there is any possibility it will not. We note that the previously discussed change to include the USMLE pass rate scores of all students, rather than limiting the calculation to U.S. citizens, nationals, and eligible permanent residents, is likely to result in fewer schools that will be barred by low numbers of test takers from using the ECFMG reported rates option.

Finally, because the language of the HEA makes clear that a loss of eligibility for a failure to meet the USMLE pass rate threshold is nondiscretionary, and to reflect the discussion above, including the new regulatory requirement for written consent from the school to considering an ECFMG report as conclusive regarding the calculation of the school's pass rates, the Department is revising its provision regarding administrative appeals from loss of institutional eligibility to reflect the limited scope remaining for such an appeal. The Department's approach is consistent with treatment of other nondiscretionary eligibility requirements, such as accreditation and state licensure (§ 600.41(e)(1) and (e)(2)).

*Changes:* Sections 600.55(d)(1)(iii) and (d)(2) provide that a foreign graduate medical school may choose to allow the ECFMG or other responsible third party to provide the school's USMLE pass rate directly to the Secretary only if that school has provided by April 30 to the Secretary written consent acceptable to the Secretary (1) allowing the Secretary to rely on the USMLE pass rate information provided to the Department by the ECFMG or other responsible third party; and (2) agreeing that the rate calculated by the ECFMG will be conclusive for purposes of determining the school's compliance with the required 75-percent pass rate thresholds. Section 600.55(d)(2) provides that a foreign graduate medical school that, in accordance with § 600.55(f)(4), must use the alternative means of providing pass rate information to the Department because it does not have a sufficient number of step/test results, may not opt to have its pass rates provided to the Department by the ECFMG. We have added § 600.41(e)(3) to make clear that, in an appeal from a loss of institutional eligibility resulting from a pass rate or

pass rates below 75 percent, the level of the pass rate for the foreign graduate medical school for the preceding calendar year is the sole issue, and that, for a foreign graduate medical school that invoked the ECFMG report option, ECFMG's calculation of the rate or rates is conclusive.

*Comments:* None.

*Discussion:* Under section 102(a)(2)(A)(i)(I)(aa) of the HEA, for a foreign graduate medical school to remain eligible for participation in the Title IV, HEA programs, during the preceding year at least 60 percent of the school's students and graduates must not have been U.S. citizens, nationals, or eligible permanent residents, unless the school has had a State-approved clinical training program since prior to January 1, 2008. Schools must submit their citizenship rates in order for the Department to implement this HEA requirement. The requirement for submission of such data was implicit in, but not explicitly set out in, § 600.55(f)(1)(i)(A) of the proposed regulations. The Department is, therefore, adding to the data-submission provision in § 600.55(d)(1)(iv) new language to clarify that schools that have not had clinical training programs approved by a State since prior to January 1, 2008, must annually supply the Secretary with their citizenship rates, together with the methodology used to determine them, for purposes of enabling the Secretary to ensure compliance with section 102(a)(2)(A)(i)(I)(aa) of the HEA. In connection with this change, and for conformity with the ECFMG data-submission requirements, the Department has also changed the phrase "academic year," in § 600.55(f)(1)(i)(A), relating to citizenship rates, to "calendar year."

*Changes:* The Department is adding new language in § 600.55(d)(1)(iv) to require schools that have not had clinical training programs approved by a State since prior to January 1, 2008, to annually supply the Secretary with their citizenship rates, together with the methodology used to determine them, for purposes of enabling the Secretary to ensure compliance with section 102(a)(2)(A)(i)(I)(aa) of the HEA.

#### *Foreign Veterinary Schools (§ 600.56)*

*Comments:* Seven commenters were concerned that the proposed regulations would prevent students enrolled in public or private nonprofit foreign veterinary schools that receive Title IV, HEA program funds from taking any part of the program in the United States, except for a limited portion of the clinical training program. The

commenters felt that such a limitation was too strict and would be detrimental to the educational experience and future careers of U.S. veterinary students. A few of these commenters noted that their school permits up to nine weeks of clinical placements and six weeks of pre-clinical placements overseas. Some of the commenters noted that allowing their U.S. students to take a greater portion of the program in the United States would be beneficial because it would enable them to build up contacts in the industry and experience veterinary practice in the United States, where they will eventually be practicing. Some of the commenters also noted that, as much of this placement activity takes place during the Christmas, Easter, and summer vacations, students can combine placements in the United States with the opportunity to visit home.

*Discussion:* The commenters have misinterpreted some parts of the proposed regulations. While the proposed regulations prohibit the offering of the non-clinical portion of a veterinary program outside of the home country, and also limit the offering of the clinical training portion of the program outside of the home country and the United States, they do not prohibit or limit the offering of any portion of the clinical training portion of the program in the United States.

As with the location of graduate medical programs offered by foreign schools, the Department believes that a foreign veterinary school seeking to participate in the Title IV, HEA programs should offer the non-clinical portion of its program solely in the country in which the main campus is located, to ensure greater consistency and accountability, as the oversight of a foreign veterinary school generally exists primarily in the country in which the school is established. Pursuant to section 102(a)(2)(A)(ii) of the HEA, clinical training in the United States is permitted, and, for for-profit veterinary schools, required. However, because these final regulations permit foreign graduate medical schools also to provide clinical training in third countries as long as the locations are included in accreditation granted by the LCME and the AOA, the Department has decided to provide a similar exception, applicable to public and private nonprofit foreign veterinary schools, permitting the provision of clinical training in third countries at locations included in accreditation granted by the American Veterinary Medical Association (AVMA). Just as the LCME and AOA are accreditors for U.S.

medical schools, the AVMA is the accreditor for U.S. veterinary schools.

*Changes:* We have revised § 600.56(b)(2)(ii)(C) to provide an exception to the provisions limiting the location of clinical training locations, that applies to locations of a public or private nonprofit foreign veterinary school that are included in accreditation granted by the AVMA.

#### *Foreign Nursing Schools (§ 600.57)*

*Comments:* Two commenters objected to changes made to the HEA by the HEOA that, in their view, effectively preclude foreign nursing schools from participating in the Title IV, HEA programs. One of these commenters requested that the Department grandfather in foreign nursing schools that currently participate in the Title IV, HEA programs, to ensure that existing students at those schools continue to receive Title IV, HEA program funding to complete their programs at these schools.

*Discussion:* We agree that the changes made to the HEA will likely preclude many foreign nursing schools from continuing to participate in the Title IV, HEA programs. However, proposed § 600.57 is consistent with the new statutory requirements that govern eligibility of foreign nursing schools to participate in the Title IV, HEA programs.

The Department does not have the authority to grandfather in indefinitely, through regulations, foreign nursing schools that are currently participating in the Title IV, HEA programs. However, the statute gives foreign nursing schools that were participating in the Title IV, HEA programs on August 13, 2008 until July 1, 2012 to comply with the new requirements. Therefore, the regulations in § 600.57 do not apply to foreign nursing schools that were participating in the Title IV, HEA programs on August 13, 2008 until July 1, 2012.

*Changes:* None.

*Comments:* Two commenters raised concerns over proposed § 600.57(c), which requires a foreign nursing school to reimburse the Department for the cost of a loan default if the borrower defaults during the cohort default rate period. Under the proposed regulations, after the school reimburses the Department for the default, the Department assigns the loan to the foreign nursing school.

The commenters generally were concerned that students obtaining Title IV, HEA program loans to enroll in foreign nursing schools may not be aware of the statutory and regulatory benefits that apply to their loans, and that a foreign nursing school will not have the capacity or expertise to

properly service Title IV, HEA program loans that have been assigned to it. The commenters stated that procedures for the collection of Title IV, HEA program loans that have lost their eligibility are not clearly defined and readily locatable. The commenters believed that the lack of operational guidance in the proposed rules may be problematic in the servicing of these loans.

The commenters recommended that the Department require foreign nursing schools participating in the Direct Loan Program on or after the effective date of the final regulations to alert prospective and currently enrolled students that their Direct Loan Program loans may be assigned to the school for collection if the borrower defaults on the loan. The commenters recommended that the notification identify any potentially adverse consequences of the loan assignment on the borrower's ability to take advantage of Title IV, HEA program loan benefits. The commenters recommended that the Department require the foreign nursing school to provide this notification on its Web site and in its promotional, enrollment, registration, and other materials.

The commenters also recommended that the final regulations include a requirement that prior to assigning the loan to the school the Department advise a defaulted borrower that the borrower's loans will be assigned to the foreign nursing school for further collection. The commenters recommended that the Department's notification provide contact information for the Federal Student Aid (FSA) Ombudsman's Office. In addition, the commenters recommended that the notice advise the borrower that the borrower will still be entitled to take advantage of loan repayment and discharge options available to defaulted Title IV, HEA program loan borrowers after the loan has been assigned to the school.

The commenters expressed concern that there will be a lack of Federal oversight and consumer advocacy assistance to ensure that the schools service these loans in accordance with the terms and conditions of the promissory note. The commenters recommended that the Department review the handling of these loans during the regular compliance audit process, and develop sanctions for schools that do not comply with the terms and conditions of the promissory note.

The commenters noted several areas where they anticipated complications or limitations on the exercise of benefits available to Title IV, HEA program loan

borrowers whose loans have been assigned to a foreign nursing school.

One commenter questioned whether foreign nursing schools would be required to grant discharges due to death, total and permanent disability, or for school-related issues, such as school closure or unpaid refunds.

Another commenter questioned whether foreign nursing schools would be able to make accurate determinations of eligibility for a total and permanent disability discharge, or have access to the necessary resources to determine if a borrower's income exceeded the regulatory limits, or if the borrower received a Title IV, HEA program loan or TEACH Grant, during the three-year post-discharge monitoring period.

The commenters recommended that the Department allow foreign nursing schools to assign these loans back to the Department in the event of a total and permanent disability discharge request. The Department would then make the determination of eligibility for a total and permanent disability discharge on these loans, as it does currently for FFEL and Direct Loans.

One commenter contended that unpaid refund and false certification discharges are based on a dispute between a Title IV, HEA program loan borrower and a school, and argued that a foreign nursing school would have a conflict of interest adjudicating these types of discharge requests. The commenter recommended that unpaid refund and false certification discharge determinations for borrowers whose loans are held by a foreign nursing school be handled by a disinterested party, such as the Department.

The commenters noted that rehabilitation is an option available to defaulted Title IV, HEA loan program borrowers, and asked the Department to confirm that loan rehabilitation will remain an option for defaulted Direct Loan borrowers whose loans have been assigned to a foreign nursing school. The commenters also recommended that the Department allow borrowers to consolidate defaulted Direct Loans that have been assigned to a foreign nursing school.

Commenters recommended that if the Department determines that the loans cannot be consolidated or rehabilitated, that this information be included in the adverse impact disclosures to prospective and actual borrowers. The commenters felt that this would help potential borrowers to make fully informed decisions before borrowing a Direct Loan to attend a foreign nursing school.

One commenter recommended that the Department not proceed with

assigning the loan to the school if the borrower has rehabilitated or consolidated the defaulted loan by the time the Department is prepared to make the assignment.

One commenter recommended that a borrower who is in the process of rehabilitating a loan during the cohort default rate period be allowed to continue making rehabilitation payments to prevent the assignment, even if the stream of monthly payments required to rehabilitate the loan would not be completed until after the cohort default rate period ends.

*Discussion:* We share the commenters concerns regarding the treatment of a Direct Loan that is assigned to a school and becomes an institutional loan. The statutory and regulatory provisions that govern Title IV, HEA program loans would not apply to these loans. The promissory note signed by the borrower would be the contract that the foreign nursing school has with the borrower to collect on the loan. Not all benefits that apply to Title IV, HEA program loans would continue to apply to loans that have been assigned to a foreign nursing school.

The commenters asked if a borrower whose loan has been assigned to a foreign nursing school would be able to rehabilitate the defaulted loan, or to consolidate it into a Direct Consolidation Loan. Loan rehabilitation is not provided for in the Federal Direct Stafford/Federal Direct Unsubsidized Stafford Loan MPN. Therefore, the borrower would no longer be able to rehabilitate the loan.

Loan consolidation is addressed in the MPN, but the MPN specifies that consolidation is only available for "eligible federal education loans." The borrower's loan would no longer be a Federal education loan, and would not be eligible for consolidation.

Loan discharges are provided for in the MPN. However, the granting of such discharges would be at the discretion of the foreign nursing school. Given the numerous Title IV, HEA program benefits that these borrowers could lose, the Department has concluded that it is not in the best interest of borrowers to assign their Direct Loans to a foreign nursing school. We have determined that these loans may remain Direct Loans, and that the Direct Loan terms and conditions and all applicable Title IV, HEA program benefits continue to apply to the loan, as long as the Department makes provisions to avoid "double recovery" of the loan. Double recovery will be avoided if the Department revises the definition of "cost of a loan default" that was proposed in § 600.57(b) of the NPRM to

include only the estimated future collection costs on the loan. The Department annually announces a program-wide average cost of collections for Direct Loans. Estimated future collection costs will be derived from this program-wide average, but may be adjusted based on our experiences with borrowers who obtained Direct Loans to attend foreign nursing schools, or our experiences with the particular borrower whose loan has defaulted. For example, the estimated future collection costs might be higher for a borrower who is living outside of the United States than for a borrower who is living in the United States.

Under the revised definition, the reimbursement by the foreign nursing school to the Department of the cost of a loan default will not include outstanding principal, accrued interest, unpaid late fees or collection charges, or other costs associated with the loan.

Under the final regulations, the Department will continue to hold a Direct Loan that would have been assigned to a foreign nursing school under the proposed regulations, and will collect on the loan as we normally do.

A reimbursement by the school of the cost of a loan default will have no impact on the borrower. The borrower will continue to owe the Direct Loan to the Department, and the Title IV, HEA program benefits will still apply. The borrower will be able to rehabilitate the loan, have access to loan consolidation, choose among Direct Loan repayment plans, and may qualify for a discharge under all of the existing loan discharge regulations and procedures in the Direct Loan Program. Therefore, there will be no need to provide adverse impact disclosures or notifications to borrowers regarding assignment of their Direct Loans to a foreign nursing school. Since the loans will be collected by the Department, there will be no need to develop special audit rules or sanctions around these loans for foreign nursing schools.

*Changes:* We have modified the definition of "cost of a loan default" in § 600.57(b) of the final regulations by removing the references to outstanding principal, accrued interest, and unpaid late fees and collection costs. We've also removed the references to special allowance and reinsurance payments and other similar payments made on the loan. We've replaced these amounts with estimated future cost of collections on the loan.

We have revised § 600.57(c) by removing the requirement that Direct Loans be assigned to the school after the school reimburses the Department for

the cost of a loan default. In its place, we have specified that the Department will continue to collect on the loan until it is paid in full, otherwise satisfied, or the loan account is closed out.

#### **Part 668 Student Assistance General Provisions**

##### *Audited Financial Statements (§ 668.23)*

*Comments:* A majority of the commenters opposed the proposed changes to the financial audit submission requirements for foreign institutions. Specifically, the commenters opposed the proposed requirement for public or nonprofit foreign institutions that annually received at least \$3,000,000 but less than \$5,000,000 in U.S. Title IV, HEA program funds during its most recently completed fiscal year to submit once every three years audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country and U.S. generally accepted accounting principles (U.S. GAAP), and for the two years in between would be allowed to submit, in English, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country in lieu of financial statements prepared in accordance with U.S. GAAP. Other commenters from institutions and associations argued that the requirement to produce a U.S. GAAP financial statement, even once every third year, would be cost prohibitive, yield little value above what would be provided in the home country audit, and would not realistically alter the opinion of the financial security of the institution as originally expressed in audited financial statements prepared in their home country's standards.

Many commenters also opposed the requirement in § 668.23 that public and nonprofit foreign institutions that annually received \$5,000,000 or more in U.S. Title IV, HEA program funds would be required to submit annually, audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country and U.S. GAAP. The commenters asserted that the proposed requirement would create an unjustified administrative burden. These commenters echoed the concerns related to the translated audits for institutions with smaller volumes of Title IV, HEA program funds, noting that the expense of producing U.S. GAAP financial statements would be cost prohibitive, with first year cost estimates to produce the U.S. GAAP

financial statement ranging from \$300,000 for a single year's activity to as much as \$770,000 for institutions that would also be required to provide prior-year figures as a part of their financial statement submission. The commenters claimed that the significant expense of providing a U.S. GAAP restatement of the home country's audited financial statement would be unlikely to alter the opinion of the financial security of the institution as originally expressed in audited financial statements prepared in their home country's standards.

Other commenters claimed that a home country audited financial statement that had been restated to reflect U.S. GAAP would be confusing, incompatible or otherwise offer little additional value to the Department.

Several commenters expressed concern that the increased costs to provide U.S. GAAP financial statements would be passed on to international students through higher educational costs, or could end an institution's continued participation in the U.S. Title IV, HEA programs.

Several commenters were concerned that the additional audit expenses conflict with the U.S. government's goal to provide access for international educational opportunities for U.S. residents (GAO-03-647).

Some commenters suggested that the regulations be modified to allow all public and nonprofit foreign institutions to submit financial statements under the generally accepted accounting principles of the institution's home country in lieu of any required submission of U.S. GAAP financial statements, and suggested that the regulations permit the Department to require U.S. GAAP financial statements if an institution's home country audited financial statement revealed any suspected problems with their financial condition or reporting. Commenters also mentioned that auditing standards for other countries have their own history of consistent and strong governance that already provide sufficient and strict controls. Additionally, when viewed along with strong credit ratings by a nationally recognized statistical rating organization (NRSRO), such as Moody's, Standard and Poor's, or Fitch, the Department's need for a U.S. GAAP prepared financial statement would be obviated.

One commenter indicated that there was not sufficient expertise within its country to perform the restatement of their financial statement prepared under their home country standards to U.S. GAAP.

Two commenters suggested that the Department replace the requirement for

financial statements to be prepared to U.S. GAAP standards with the Department's acceptance of financial statements prepared under home accounting standards supported by a bond to indemnify against possible institutional financial failure.

Lastly, several commenters suggested that the Department raise the threshold amount of U.S. Title IV, HEA program funds from \$3,000,000 to \$10,000,000 before requiring an institution to submit audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country and U.S. GAAP, with one commenter suggesting the threshold be increased to \$15,000,000.

*Discussion:* The Department continues to believe that there is a risk threshold of Title IV, HEA program dollars administered by foreign institutions where the audited financial statements for those institutions should be provided in the same format and at the level of testing required from domestic institutions. Audited financial statements for an institution prepared under the accounting standards of a foreign country do not readily support relative comparisons of financial strength with institutions that are audited under U.S. GAAP standards, and the Department believes that this comparability is important when evaluating the financial condition of domestic and foreign institutions under the standards set out in the statute and regulations.

As stated in the preamble to the NPRM, the Department believes that audited financial statement submissions from foreign institutions with a Title IV, HEA program fund volume at or above this threshold must be reviewed on an equal footing with domestic institutions, and allow the Department to evaluate efficiently and effectively the financial condition of those institutions. The framework that requires audit submissions of home country standards in addition to periodic submissions of U.S. GAAP audits for the foreign institutions will provide some flexibility and permit the Department to evaluate the comparability of the audits for foreign institutions over time. This approach will further the ability to deal with changes in the United States acceptance of international auditing standards that may be implemented during the coming years. Contrary to the suggestion that such submissions would create the potential for confusion, the ability to compare audited financial statements prepared under home country standards and U.S. GAAP will permit the Department to assess over

time whether a greater reliance on audited financial statements prepared under home country standards would be reasonable.

The Department does not agree that submission of U.S. GAAP financial statements will provide little value to the review process. On the contrary, the benefit of receiving U.S. GAAP financial statements from foreign institutions is that the Department will be able to assess the financial strength of these institutions under the same regulatory measures used for domestic institutions. Audits prepared under U.S. GAAP contain detailed footnotes describing significant activities during the fiscal year, and also contain certain required disclosures by the auditors about concerns identified at an institution, and about the general reliability of the financial information maintained by the entity. At the same time, these U.S. GAAP audits can be compared with audits for the same institutions prepared under audit standards for the home countries to determine if the detailed disclosures are comparable, and to assess whether the requirement to provide U.S. GAAP financial statements could be changed in the future.

In response to comments that it is costly for foreign institutions to prepare U.S. GAAP financial statements, the Department acknowledges that the audit expense to have an institution's home country audit translated to U.S. GAAP, particularly for the initial engagement, may be significant, but believes it is justified, particularly in light of the tiered audit submission requirements that reduce audit cost and burden for institutions with smaller Title IV, HEA program fund volumes. Institutions may be able to reduce the costs for having home country audits translated to U.S. GAAP standards for subsequent years, particularly if an institution is continuing to use the same auditing firm. We also note that the routine engagement of auditing firms to translate the home country audited financial statements to U.S. GAAP will tend to increase the availability of accounting firms that can perform this work. The accounting firms that are retained to perform these audits will develop more expertise in this area, and should provide more choices of auditors for institutions over time. The largest costs for providing annual audited financial statements in U.S. GAAP will be for the foreign institutions that have the highest volume of Title IV, HEA program funds, and in that context these are the institutions for whom the audit expense will be relatively low compared to the amount of federal student aid funds they receive.

We note that, under these final regulations, as the International Financial Reporting Standards (IFRS) are phased-in, the Department will be able to accept financial audits prepared under IFRS. U.S. GAAP is a set of standards established by the Financial Accounting Standards Board that are recognized as authoritative by the American Institute of Certified Public Accountants (AICPA).

When IFRS is accepted by the AICPA in an acceptable audit presentation format for a type of entity (for-profit, non-profit, and public), the audits prepared under IFRS in those designated formats for those types of entities in other countries would also meet U.S. GAAP. Thus, when the Department receives an audit for a foreign institution prepared under IFRS that is prepared in the required format for that type of entity, and U.S. GAAP has adopted IFRS for that type of entity, the audit will meet the U.S. GAAP submission requirements. We will notify foreign institutions as audits prepared under IFRS for each type of entity are deemed acceptable under U.S. GAAP.

Lastly, the Department does not accept the suggestion that a public or nonprofit foreign institution that holds either a strong credit rating from a NRSRO, or provides surety such as a performance bond or letter of credit, should be excused from submitting a U.S. GAAP audited financial statement. A credit rating offers little to mitigate the financial risks that might be present but undisclosed at an institution, while such information might be disclosed under U.S. GAAP requirements. Accepting surety from an institution would mitigate some financial risk, but it would make it difficult to evaluate the relative financial strength of the institution and determine how much risk was present. The Department also rejects the approach suggested by some commenters to use the flexibility under proposed § 668.23(h)(3)(i) to base the submission requirements for foreign institutions on whether a particular institution has been identified as having problems with its financial condition or financial reporting. The goal of monitoring the financial health of an institution on an ongoing basis is to track its relative strength over time, and also in comparison to other institutions so that safeguards may be put in place before other problems are experienced. Given that the financial statement audits are the baseline for these determinations, it is problematic to consider waiting until a financial problem is identified to then require U.S. GAAP audit submissions.

In consideration of the concerns expressed about the expense for foreign institutions to submit audited financial statements prepared in accordance with U.S. GAAP, the Department is raising the threshold from \$5,000,000 to \$10,000,000 in annual federal student aid funding amounts to determine when a foreign institution must submit U.S. GAAP audited financial statements annually. We believe that this tiered approach for the audit submission requirements will support the goal of providing international education opportunities for U.S. students.

*Changes:* The thresholds originally proposed in § 668.23 will be revised such that the maximum amount of Title IV, HEA program funds that public and nonprofit foreign institutions may receive annually and submit U.S. GAAP audited financial statements once every three years is increased from \$5,000,000 to \$10,000,000. These foreign institutions will also be required to submit annually audited financial statements that are prepared under their home country standards.

Public and nonprofit foreign institutions that receive more than \$10,000,000 annually in federal student aid funds are required to provide annual U.S. GAAP audited financial statements along with audited financial statements prepared under their home country standards.

#### **Executive Order 12866**

##### *Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether the regulatory action is “significant” and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive Order, it has been determined this proposed regulatory action would not have an annual effect on the economy of more than \$100 million. Therefore, this action is not “economically significant” and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

#### **Need for Federal Regulatory Action**

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to audit requirements for foreign institutions, the USMLE pass rate for foreign graduate medical schools, clinical training programs of foreign graduate medical schools, new eligibility criteria for foreign graduate medical, clinical training programs for foreign veterinary schools, provisions for participation by for-profit foreign nursing schools, and eligibility restrictions applicable to for-profit (and, later, all) foreign nursing schools. A brief description of the proposed regulations, the reasons for adopting them, and an analysis of their effects was presented in the NPRM published July 20, 2010. This updated Regulatory Impact Analysis describes changes considered in response to comments received and the reasons for adopting or rejecting them.

A recent report from the GAO entitled “Foreign Medical Schools: Education Should Improve Monitoring of Schools that Participate in the Federal Student Loan Program” (GAO-10-412) (available at <http://www.gao.gov/new.items/d10412.pdf>) described the need for improved data collection and analysis related to foreign medical schools receiving Title IV, HEA program funds. As the GAO noted, approximately \$1.5 billion was borrowed between 1998 and 2008 by U.S. students to attend foreign medical schools, with almost ninety percent of those funds going to students at three for-profit medical schools in the Caribbean. Federal student loans enable U.S. citizens and eligible noncitizens to attend eligible foreign institutions, and these graduates are an important source of medical providers in the United States. The GAO indicated that almost twenty percent of the approximately 244,000 international medical graduates practicing in the United States were U.S. citizens and that these graduates were more likely to go into primary care (67.9% of international graduates versus

37.2% of U.S.-educated graduates).<sup>1</sup> While these schools provide a valuable option for potential medical students and source of primary care physicians, there is evidence that their graduates have lower pass rates on licensing exams than U.S.-educated medical graduates.<sup>2</sup> Reasons for these results could be the academic background of students who attend foreign institutions, the degree of emphasis the institutions place on preparing students for the U.S. licensing exams, and the percentage of the institution's student body taking the exam.<sup>3</sup> These final regulations are meant to enable enforcement of the licensing exam pass rate requirement, to improve monitoring of foreign institutions receiving Title IV, HEA program funds, and to provide information that will allow students to evaluate their foreign educational options.

### Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the Comments sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, these final regulations reflect statutory amendments included in the HEOA and revisions in response to public comments. In most cases, these revisions were intended to address drafting issues or provide additional clarity. References to the FFEL Program in the NPRM were revised to refer to the Direct Loan Program, as appropriate. In response to comments, the Department clarified that, with some exceptions, public and private nonprofit institutions must meet the definition of § 600.4 and for-profit foreign institutions must meet the definition of proprietary institutions in § 600.5. In addition, in response to comments about programs at foreign institutions designed to prepare a student for gainful employment to satisfy the educational and occupational

entry requirements in the United States and the country in which the institution is located, the Department dropped paragraphs (1)(v)(A) and (B) of § 600.52.

Specific changes made in response to comments related to foreign graduate medical schools include: (i) Exempting locations accredited by the AOA from the provisions limiting the location of foreign graduate medical school clinical training; and (ii) amending §§ 600.55(d)(1)(iii), (f)(1)(ii), and (f)(3) to require foreign graduate medical schools to report on USMLE pass rates for all students and graduates, regardless of citizenship. Other changes related to foreign graduate medical schools were made by the Department for clarification or technical reasons, and not in response to comments, including the following changes. Schools that have not had clinical training programs approved by a State since prior to January 1, 2008 are required to annually supply the Secretary with citizenship rates and the methodology for determining them. The requirement to submit USMLE pass rates has been changed from an award-year basis to a calendar-year basis to be consistent with the data request for 2009 and allow comparison over a consistent period. This will require submission of USMLE pass rate, MCAT scores, and residency placement for a calendar year to the Department or an institution's accrediting authority by no later than April 30 of each year, unless the Secretary specifies a different date through notice in the **Federal Register**. This is a change from the September 30 deadline that was proposed in the NPRM. In addition, most institutions may, in lieu of submitting USMLE pass rate information to the Secretary, provide for calculation of pass rates, and reporting of pass rates for the institution to the Secretary, by the ECFMG or other responsible third party, but only if the school has provided the Secretary by April 30 with written consent agreeing that the calculation of the pass rates to be provided by the ECFMG or other responsible third party to the Secretary will be conclusive for the purposes of determining compliance with the 75-percent pass rate thresholds.

For foreign veterinary schools, these final regulations provide an exception to the provision limiting the location of clinical training locations applicable to locations of a public or private nonprofit foreign veterinary school that are included in accreditation granted by the AVMA.

Comments were received about the provisions related to foreign nursing schools, but, as discussed in the *Analysis of Comments and Changes*, the

Department does not have the authority to undertake some of the changes proposed by the commenters, such as indefinitely, through regulations, grandfathering in foreign nursing schools that currently participate in Title IV, HEA programs. In response to concerns about borrowers' loss of benefits, we have concluded that it is not in the best interest of borrowers to assign their Direct Loans to a foreign nursing school. The loans will remain Direct Loans with all the Direct Loan terms and conditions, and the Department will collect on the loan as we normally do until the loan is paid in full, otherwise satisfied, or the account is closed out. The Department will make provisions to avoid "double recovery" by revising the definition of "cost of a loan" that was proposed in § 600.57(b) of the NPRM to include only the estimated future collection costs on the loan. These collection costs would be estimated as follows: The Department annually announces a program-wide average cost of collections for Direct Loans. Estimated future collection costs will be derived from this program-wide average, but may be adjusted based on our experiences with borrowers who obtained Direct Loans to attend foreign nursing schools, or our experiences with the particular borrower whose loan has defaulted.

Under the revised definition, the reimbursement by the foreign nursing school to the Department of the cost of a loan default will not include outstanding principal, accrued interest, unpaid late fees or collection charges, or other costs associated with the loan. We also removed references to special allowances and reinsurance payments, and, as discussed above, added estimated future collection costs. Because reimbursement by the school will have no effect on the borrower's obligations and the terms and conditions of the Direct Loan, there is no need for adverse impact disclosures or notifications to borrowers regarding assignment of their Direct Loans to a foreign nursing school.

Several comments were submitted that requiring U.S. GAAP audited financial statements would be cost prohibitive and lead some schools to reduce participation in Title IV, HEA programs and would not provide added value to the review process. The Department maintains that U.S. GAAP audits will provide valuable information and allow the comparability of detailed disclosures between foreign and domestic institutions. In response to these comments about the cost of U.S. GAAP audits, however, the Department agreed to raise the threshold for annual

<sup>1</sup> GAO-10-412 p. 39.

<sup>2</sup> GAO-10-412 pp 20-21.

<sup>3</sup> GAO-10-412 pp 30-31.



submission of U.S. GAAP audited financial statements to \$10,000,000 in Title IV, HEA program funds received annually.

The effect of these changes on the cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM is discussed in the Costs section of this Regulatory Impact Analysis.

### Benefits

As discussed in the NPRM, benefits provided in these regulations include submission requirements for compliance audits and audited financial statements specific to foreign institutions; a revised definition of a *foreign institution* and a definition of nonprofit status specific to foreign institutions; the creation of a financial responsibility standard for foreign public institutions that is comparable to the financial responsibility standard for domestic public institutions; permission for a single legal authorization for groups of foreign institutions under the purview of a single government entity; the establishment of program eligibility requirements specific to training programs at foreign institutions; institutional eligibility criteria specific to foreign graduate medical schools, foreign veterinary schools, and foreign nursing schools; and revised maximum certification periods for some foreign institutions. The revised requirements for audited financial statements improve comparability between foreign and domestic institutions and enhance the security of Title IV, HEA program funds while taking into account the burden on foreign institutions of different sizes. The specific eligibility criteria for foreign graduate medical schools allow students to benefit from exposure to other medical environments and cultures while ensuring a comparable education to that available in domestic institutions.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these final regulations result in net savings to the government of \$2.6 million over 2011–2015 from the collections associated with the estimated future cost of collections on defaulted loans at foreign nursing schools.

### Costs

As discussed extensively in the *Regulatory Impact Analysis* in the

NPRM, several of the provisions implemented though these final regulations would require regulated entities to update existing policies and procedures related to financial and compliance audits. Other regulations generally would require discrete changes in specific parameters associated with existing requirements—such as changes to clinical training programs, application procedures, USMLE pass rates, and notification requirements—rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the Title IV, HEA programs have already absorbed many of the administrative costs related to implementing these final regulations. Some foreign institutions may choose to withdraw from participation in the Title IV, HEA programs as a result of these final regulations. The changes to statutory provisions governing foreign nursing schools that are implemented in these regulations will likely result in the transfer of approximately \$286 million in loan volume over 2011 to 2015 from institutions that do not meet the revised criteria to institutions that do meet the revised criteria and enroll the students who would have attended the ineligible foreign nursing schools. The foreign nursing schools that continue to participate would also be expected to pay approximately \$0.4 million in default costs over 2011 to 2015. However, the Department believes the flexibility of the regulations should allow institutions to remain in the Title IV, HEA programs, while enhancing the security of Title IV, HEA program funds and ensuring compliance with statutory requirements.

In assessing the potential impact of these final regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. (This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble.) Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or independent auditors or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on entities participating in the Federal Student Assistance programs by 18,684 hours. Of this increased burden, 18,554 hours are associated with foreign institutions and 320 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required

information. Approximately 95 percent of this burden is associated with the financial and compliance audit requirements in proposed § 668.23. As described in the *Paperwork Reduction Act* section, if the regulatory changes had not been proposed, the burden associated with the financial statement and compliance audit requirements would be significantly higher.

Of these hours, approximately 3,200 hours were related to the requirement to submit U.S. GAAP compliant audited financial statements. Current regulations require all institutions to annually submit financial statements prepared in accordance with U.S. GAAP, with an exception for foreign institutions whose enrolled students received less than \$500,000 (in U.S. dollars) in Title IV, HEA program funds per fiscal year. These institutions are allowed to submit audited financial statements prepared according to the generally accepted accounting principles of the institution's home country. The final regulations described here waive the U.S. GAAP reporting requirement for foreign institutions whose enrolled students received less than \$500,000 (in U.S. dollars) in Title IV, HEA program funds per fiscal year, and establish the \$3,000,000 and \$10,000,000 thresholds described above. Comments received from Universities and Associations representing University Finance Directors provided estimates indicating that preparation of U.S. GAAP audited financial statements would cost approximately \$300,000 to \$400,000 per year in professional accounting expenses. The development of U.S. GAAP reporting could increase costs up to \$770,000 in the first year or two, and tri-annual submission for institutions under the threshold for annual submission could also be more expensive given the need to prepare prior-year data. The comments stated that an additional \$100,000 to \$120,000 would be required for actuarial services and between \$25,000 and \$50,000 in internal costs related to the provision. In response to the comments about the costs of U.S. GAAP audits, the Department increased the threshold for annual submission of U.S. GAAP audits from \$5,000,000 to \$10,000,000 in Title IV, HEA funds received annually. In the Department's data, approximately 9 foreign institutions would be subject to the revised annual submission requirement compared to approximately 14 that would be subject to annual reporting under the \$5,000,000 threshold proposed in the NPRM. Applying the estimated costs provided through the comments and the

Department's research, increasing the threshold to \$10,000,000 results in reducing the estimated costs of U.S. GAAP audits from \$20.5 million to \$18.7 million when all institutions with Title IV receipts over \$3 million have to report and from \$7.2 million to \$4.6 million in years when only annual submitters must provide U.S. GAAP statements. While some institutions will continue to incur costs to comply with the audit regulations as shown above, this regulation reduces the number of institutions subject to the U.S. GAAP reporting requirements.

The monetized cost of the additional paperwork burden outside of the U.S. GAAP audited financial statement submission requirement, using loaded wage data developed by the Bureau of Labor Statistics and used for domestic institutions, is \$466,868 of which \$461,620 is associated with foreign institutions and \$5,248 with individuals. The wage data for foreign institutions was assumed to be comparable to domestic institutions as many are located in developed economies with wages similar to those in the United States. Institutions located in countries with lower wage scales have to compete for employees familiar with the lending programs, and substituting U.S. wage rates for those in lower wage countries results in a conservative estimate. For institutions, an hourly rate of \$26.40 was used to monetize the burden of these provisions. This was a blended rate based on wages of \$16.79 for office and administrative staff and \$38.20 for managers and financial professionals, assuming that office staff would perform 55 percent of the work affected by these regulations. Because data underlying many of these burden estimates was limited, in the NPRM, the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations. Additional data received in the comments about the costs of U.S. GAAP audits were incorporated into this Regulatory Impact Analysis.

#### Net Budget Impacts

The provisions implemented by these final regulations are estimated to have a net budget impact of  $-\$0.4$  million over FY 2011–2015, from savings associated with the estimated future cost of collections on defaulted loans from foreign nursing schools. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the Title IV, HEA programs reflect the

estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. That said, however, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence on the impact of these final regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources*. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Two-year proprietary institutions, two-year public and private institutions, not-for-profit, freshman and sophomore at four-year institutions, junior and senior at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

Estimates indicate that three foreign graduate medical schools may become eligible under these provisions in the next few years but that this would potentially shift volume among schools, but not significantly increase the total volume of loans. The Department

estimates no budgetary impact for most of these final regulations, as there is no data indicating that the provisions will have any impact on the volume or composition of Federal student aid programs. The provision requiring foreign nursing schools to reimburse the Secretary for the estimated future cost of collections on defaulted loans is expected to generate approximately \$0.4 million in savings for the Department between 2011 and 2015. This is based on the expectation that many foreign nursing schools would not be eligible under the statutory criteria implemented in these regulations and the expected loan volume subject to the default provision would drop from approximately \$336 million to \$50 million. This reduced volume is not expected to affect Federal costs as the students would be expected to enroll in eligible programs. Applying the subsidy costs of defaults to the estimated new volume, which are approximately .96% for subsidized loans, .86% for unsubsidized loans, and .62% for graduate plus loans, resulted in the \$0.4 million in default savings over FY 2011–2015.

#### Assumptions, Limitations, and Data Sources

Impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these final regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2008 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Data on administrative burden at participating institutions are extremely limited; accordingly, in the NPRM, the Department expressed interest in receiving comments in this area. The comments received were incorporated in the analysis of costs related to the provisions.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection

requirements. See the heading **Paperwork Reduction Act of 1995.**

*Accounting Statement*

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 2, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these final regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers.

www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf), in Table 2, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed

regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these final regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers.

**TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES**  
[In millions]

Category	Transfers
Annualized Monetized Costs .....	\$3.9. Cost of defaults for foreign nursing schools and cost of compliance with paperwork and audit requirements.
Annualized Monetized Transfers ....	\$58.7. Ineligible Foreign Nursing Programs to Eligible Nursing Programs.
From Whom To Whom? .....	

**Regulatory Flexibility Act Certification**

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These final regulations would affect foreign institutions that participate in Title IV, HEA programs and loan borrowers. The definition of “small entity” in the Regulatory Flexibility Act encompasses “small businesses,” “small organizations,” and “small governmental jurisdictions.” The definition of “small business” comes from the definition of “small business concern” under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration. The SBA defines a “small business concern” as one that is “organized for profit; has a place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor \* \* \*” “Small organizations,” are further defined as any “not-for-profit enterprise that is independently owned and operated and not dominant in its field.” For the purposes of the Regulatory Flexibility Act analysis, the foreign institutions would not fall within the definition of small businesses or small organizations based upon this definition of “small business concern.”

The definition of “small entity” also includes “small governmental jurisdictions,” which includes “school districts with a population less than 50,000.” The definition of “small governmental jurisdictions” is not applicable to this rule. In the NPRM, the Secretary invited comments from small institutions and other affected entities as to whether they believe the proposed changes would have a significant economic impact on them and requested

evidence to support that belief. No comments were received.

**Paperwork Reduction Act of 1995**

Sections 600.20, 600.21, 600.54, 600.55, 600.56, 600.57, 668.13, 668.23, and 668.171 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

*Section 600.20—Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification*

Final § 600.20(a)(3) and § 600.20(b)(3) provide that, for initial certification or for recertification, a foreign graduate medical school (i.e., a freestanding foreign graduate medical school or a foreign institution that includes a foreign graduate medical school) is 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;
- Identify, for each clinical site reported in the certification or recertification application, the type of clinical training (core, required clinical rotation, not required clinical rotation) offered at that site;
- 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;
- Provide copies of the affiliation agreements with hospitals and clinics that it is required to have as a part of any application for initial certification or recertification to participate in the Title IV, HEA programs.

Final § 600.20(c)(5) requires a foreign graduate medical school that adds a location that offers all or a portion of the school’s core clinical training or required clinical rotations, to apply to the Secretary and wait for approval if it wishes to provide Title IV, HEA program funds to the students at that location, except for those locations that are included in the accreditation of a medical program accredited by the LCME and the AOA.

While we recognize that there will be burden assessed under § 600.20(a)(3) and § 600.20(c)(5), we do not anticipate either an initial eligibility application or an application to expand eligibility at this time.

We estimate that 58 public institutions will take .58 hours (35 minutes) per institution to submit a reapplication, which will increase burden by 34 hours. We estimate that 10 private nonprofit institutions will take .58 hours (35 minutes) per institution to submit a reapplication, which will increase burden by 6 hours. We estimate that 3 for-profit institutions will take .58 hours (35 minutes) per institution to submit a reapplication, which will increase burden by 2 hours. There will therefore be a total 42 hours of burden associated with § 600.20(b)(3) in OMB Control Number 1845-0012.

*Section 600.21—Updating Application Information*

Final § 600.21(a)(10) requires, if a foreign graduate medical school adds a location that offers all or a portion of the school’s clinical rotations that are not required, that the school notify the Department no later than 10 days after the location is added, except for those locations that are included in the accreditation of a medical program accredited by the LCME, the AOA, or 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 combined total of eight weeks. This requirement mirrors the requirement in § 600.20(c)(5).

We estimate that 6 public institutions will take .17 hours (10 minutes) per institution to fulfill the reporting requirement, which will increase burden by 1 hour. We estimate that 1 private nonprofit institution will take .17 hours (10 minutes) to fulfill the reporting requirement, which will increase burden by 10 minutes. We estimate that 1 for-profit institution will take .17 hours (10 minutes) to fulfill the reporting requirement, which will increase burden by 10 minutes. Therefore, to account for rounding, the total increase in burden will be 1 hour associated with § 600.21(a)(10) in OMB Control Number 1845–0012.

*Section 600.54—Criteria for Determining Whether a Foreign Institution Is Eligible To Apply To Participate in the Direct Loan Program*

Under final § 600.54(e)(3)(ii), a foreign institution has to demonstrate to the satisfaction of the Secretary (who will make program-by-program determinations of comparability) 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 an academic year as defined in § 668.3.

We estimate that 93 public institutions will take .17 hours (10 minutes) to demonstrate the comparability of the academic work and will increase burden by 16 hours. We estimate that 33 private institutions will take .17 hours (10 minutes) to demonstrate the comparability of the academic work and will increase burden by 6 hours. Therefore, the total increase in burden will be 22 hours associated with § 600.54(e)(3)(ii) in OMB Control Number 1845–NEWA.

*Section 600.55—Additional Criteria for Determining Whether a Foreign Graduate Medical School Is Eligible To Apply To Participate in the Direct Loan Program*

Final § 600.55(c)(2) requires a foreign graduate medical school to determine the consent requirements for, and require the necessary consents of, all students accepted for admission for whom the school must report to enable the school to comply with the collection and submission requirements in § 600.55(d) for Medical College Admission Test (MCAT) scores, residency placement, U.S. Medical Licensing Examination (USMLE) scores, and citizenship rate.

We estimate that 58 public institutions will take .50 hours (30

minutes) to develop this consent form and would increase burden by 29 hours. We estimate that 5 private nonprofit institutions will take .50 hours (30 minutes) to develop this consent form and will increase burden by 3 hours. We estimate that 3 for-profit institutions will take .50 hours (30 minutes) to develop this consent form and will increase burden by 2 hours. We estimate that 2,800 individuals will take .08 hours (5 minutes) to complete this consent form and will increase burden by 224 hours. Therefore, the total burden increase will be 258 hours associated with § 600.55(c)(2) in OMB Control Number 1845–NEWA.

Final § 600.55(d)(1)(i) and (1)(ii) requires that a foreign graduate medical school obtain, at its own expense and no later than April 30 of each year submit to its accrediting authority for all students who are U.S. citizens, nationals, or eligible permanent residents: (1) The MCAT or successor examination scores for students admitted during the preceding calendar year who are U.S. citizens, nationals, or eligible permanent residents and the number of times each student took the exam; and (2) the percentage of students graduating during the preceding calendar year (including at least all graduates who are U.S. citizens, nationals, or eligible permanent residents) who obtain placement in an accredited U.S. medical residency program. Under the regulations, a school will have to submit the data on MCAT scores and placement in a U.S. residency program to the Department only upon request.

Final § 600.55(d)(1)(iii) requires a foreign graduate medical school to obtain, at its own expense and no later than April 30 of each year, unless the Secretary specifies a different date through a notice in the **Federal Register**, submit to the Secretary, USMLE scores earned during the preceding calendar year by each student and graduate and the date each student/graduate took each test, including any failed tests. The USMLE scores submitted must be disaggregated by step/test for Step 1, Step 2—Clinical Skills (Step 2—CS), and Step 2—Clinical Knowledge (Step 2—CK), and by attempt. A school will not be required to submit data on the USMLE Step 3.

Final § 600.55(d)(1)(iv) requires foreign medical schools to submit, no later than April 30 of each year, unless the Secretary specifies a different date through a notice in the **Federal Register**, directly to the Secretary a statement of its citizenship rate for the preceding calendar year with a description of the methodology used to obtain the rate.

Alternatively, new § 600.55(d)(2) allows foreign medical schools, under specific conditions, to provide acceptable written consent to the Secretary, by April 30, in which the school agrees that, in lieu of submission of the USMLE pass rate information required under 600.55(d)(1)(iii), ECFMG, or another responsible third party, will calculate and provide the Secretary with the school's USMLE pass rates required for purposes of determining compliance with § 600.55(f). This written consent must specify that the pass rates provided by the ECFMG or other responsible third party will be conclusive for determining compliance with the pass rate thresholds set in § 600.55(f).

For § 600.55(d)(1), we estimate that 36 public institutions will require 1.41 hours (1 hour 25 minutes) to create this annual report and will increase burden by 51 hours. We estimate that 7 private nonprofit institutions will require 1.41 hours (1 hour 25 minutes) to create this annual report and will increase burden by 10 hours. We estimate that 3 for-profit institutions will require 1.41 hours (1 hour 25 minutes) to create this annual report and will increase burden by 4 hours. The total burden increase for § 600.55(d)(1) will therefore be 65 hours.

Additionally, we estimate that 25 schools with more than eight but fewer than 50 borrowers will use the option in § 600.55(d)(2) to replace the requirements in § 600.55(d)(1)(iii). We estimate that institutions will require .75 hours (45 minutes) to create the report using data under § 600.55(d)(1)(i), (ii), and (iv) and to execute the written consent letter to the Secretary and the request letter to ECFMG or other responsible third party as required in § 600.55(d)(2). We estimate that 22 public institutions will require .75 hours (45 minutes) to fulfill this requirement and will increase burden by 17 hours. We estimate that 3 private institutions will require .75 hours (45 minutes) to fulfill this requirement and will increase burden by 2 hours. The total burden increase for using the option in § 600.55(d)(2) and for completing the requirements of § 600.55(d)(1)(i) and (ii) will be 19 hours. Therefore, the total burden increase will be 84 hours associated with § 600.55(d) in OMB Control Number 1845–NEWA.

Final § 600.55(e)(2) requires a foreign graduate medical school to notify its accrediting body within one year of any material changes in the educational programs, including changes in clinical training programs; and the overseeing bodies and in the formal affiliation

agreements it has with hospitals and clinics.

We estimate that 15 public institutions will require .82 hours (50 minutes) to complete the accrediting agency clinical training notifications and will increase burden by 12 hours. We estimate that 3 private nonprofit institutions will require .82 hours (50 minutes) to complete the accrediting agency clinical training notifications and will increase burden by 3 hours. We estimate that 1 for-profit institution will require .82 hours (50 minutes) to complete the accrediting agency clinical training notifications and will increase burden by 1 hour. Therefore, the total burden increase will be 16 hours associated with § 600.55(e) in OMB Control Number 1845-NEWA.

Final § 600.55(g)(1) requires a foreign graduate medical school to apply the existing satisfactory academic progress regulations in § 668.16(e) for establishing a maximum timeframe in which a student must complete their educational program and require that a student complete their educational program within 150 percent of the published length of the educational program. In addition, final § 600.55(g)(2) requires a foreign graduate medical school to document the educational remediation it provides to assist students in making satisfactory academic progress.

We estimate that 58 public institutions will require 2.5 hours (2 hours 30 minutes) to update the satisfactory academic policy and document remediation provided to student and will increase burden by 145 hours. We estimate that 10 private nonprofit institutions will require 2.5 hours (2 hours 30 minutes) to update the satisfactory academic policy and document remediation provided to student and will increase burden by 25 hours. We estimate that 3 for-profit institutions will require 2.5 hours (2 hours 30 minutes) to update the satisfactory academic policy and document remediation provided to student and will increase burden by 7 hours and 30 minutes. Therefore, to account for rounding, total burden increase will be 178 hours associated with § 600.55(g)(1) and (2) in OMB Control Number 1845-NEW2.

Final § 600.55(g)(3) requires a foreign graduate medical school to publish all the languages in which instruction is offered.

We estimate that 58 public institutions will require .33 hours (20 minutes) to publish the languages in which instruction is provided, increasing burden by 19 hours. We estimate that 10 private nonprofit

institutions will require .33 hours (20 minutes) to publish the languages in which instruction is provided, increasing burden by 3 hours. We estimate that 3 for-profit institutions will require .33 hours (20 minutes) to publish the languages in which instruction is provided, increasing burden by 1 hour. Therefore, the total burden increase will be 23 hours associated with § 600.55(g)(3) in OMB Control Number 1845-NEWA.

In total, we estimate that § 600.55 will increase burden by 381 hours in OMB 1845-NEWA, and 178 hours in OMB 1845-NEW2.

*Section 600.56—Additional Criteria for Determining Whether a Foreign Veterinary School Is Eligible To Apply To Participate in the Direct Loan Program*

Final § 600.56(a)(4) requires a foreign veterinary school to be accredited or provisionally accredited by an organization acceptable to the Secretary. Section 600.56(a)(4) specifies that the requirement for accreditation or provisional accreditation does not take effect until July 1, 2015.

The Department delayed the effective date of the accreditation requirement in § 600.56(a)(4) until July 1, 2015 to allow foreign veterinary schools that are currently in the Title IV, HEA programs additional time after the final regulations are published to obtain accreditation from an acceptable accrediting agency. Therefore, no burden assessment has been made at this time. The issue will be reviewed closer to the effective date of this section of the regulations, to enable the Department to use a more accurate number of participating veterinary schools in its assessment.

*Section 600.57—Additional Criteria for Determining Whether a Foreign Nursing School Is Eligible To Apply To Participate in the Direct Loan Program*

The final regulations add a new § 600.57 that specifies additional Title IV, HEA program eligibility criteria for foreign nursing schools. These criteria include § 600.57(a)(6)(i), which requires the 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 requirements for collection and submission of National Council Licensure Examination for Registered Nurses (NCLEX-RN) results or pass rates.

We estimate that 3 new for-profit nursing institutions will require .50

hours (30 minutes) to develop the consent form, increasing burden by 1 hour and 30 minutes. We estimate that 1,200 individuals will require .08 hours (5 minutes) to respond to this consent form, increasing burden by 96 hours in OMB Control Number 1845-NEWA.

The foreign nursing school eligibility requirements also include § 600.57(a)(6)(ii), which requires an institution to annually, at its own expense, obtain all results on the NCLEX-RN achieved by students and graduates who are U.S. citizens, nationals, or eligible permanent residents, together with the dates the student has taken the examination (including any failed examinations) and provide the results to the Department. As an alternative to obtaining the NCLEX results individually, the school may obtain a report or reports from the National Council of State Boards of Nursing (NCSB), or an NCSB affiliate or NCSB contractor, reflecting the percentage of the school's students and graduates taking the NCLEX-RN in the preceding year who passed the examination, or the data from which the percentage could be derived, and provide the report to the Department.

We estimate that 3 new for profit nursing institutions will require 1.5 hours (1 hour 30 minutes) to compile this annual report submission, increasing burden by 4 hours 30 minutes in OMB Control Number 1845-NEWA. In total, we estimate that there will be 102 hours of burden associated with § 600.57(a)(6) in OMB Control Number 1845-NEWA.

In addition, § 600.57(c) specifies that the Department continues to collect on the Direct Loan after a school reimburses the Secretary for the cost of a loan default, until the loan is paid in full or until the loan account is closed out for any reason.

While burden would normally be associated with the payment of the default to the Department, because there is no history of Federal borrowing for attendance at these new nursing schools, and due to the extended period of time prior to a student borrower defaulting on a Title IV, HEA loan at a newly approved foreign nursing school during the first year after the implementation of the final regulations, we believe that it would be inappropriate to project burden to schools and individuals at this time.

*Section 668.13—Certification Procedures*

Final § 668.13(b)(1)(i) specifies that the period of participation in Title IV, HEA programs for a private, for-profit foreign institution expires three years

after the date the institution is certified by the Department, rather than the current six years.

While the duration of the approval period is reduced from six years to three years and, therefore, submissions for recertification will be required more often, this change in the regulations does not represent a substantive impact on the amount of annual burden to the institutions affected by these regulations. We do not estimate a change in the annual burden as a result of the regulations for OMB Control Number 1845-0022.

#### *Section 668.23—Compliance Audits and Audited Financial Statements*

The final regulations in § 668.23(h)(1) revise financial statement submission requirements for foreign institutions receiving Title IV, HEA program funds in the most recently completed fiscal year.

In § 668.23(h)(1)(i), for a public or nonprofit foreign institution that received less than \$500,000 in U.S. Title IV, HEA program funds during the institution's most recently completed fiscal year, the audited financial statements submission will be waived, unless the institution is in its initial provisional period of participation and received Title IV, HEA program funds during that year, in which case the institution must submit, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country.

In § 668.23(h)(1)(iii)(A), for a public or nonprofit foreign institution that received \$500,000 or more in U.S. Title IV, HEA program funds, but less than \$3,000,000 in U.S. Title IV, HEA program funds during its most recently completed fiscal year, the institution will be allowed to submit for that year, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country in lieu of financial statements prepared in accordance with U.S. GAAP.

In § 668.23(h)(1)(iii)(B), for a public or nonprofit foreign institution that received at least \$3,000,000 but less than \$10,000,000 in U.S. Title IV, HEA program funds during its most recently completed fiscal year, the institution will be required to submit once every three years audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country and U.S. GAAP, but for the two years in between would be allowed to submit, in English, audited financial

statements prepared in accordance with the generally accepted accounting principles of the institution's home country in lieu of financial statements prepared in accordance with U.S. GAAP.

In § 668.23(h)(1)(ii), for a public or nonprofit foreign institution that received \$500,000 or more in U.S. Title IV, HEA program funds during its most recently completed fiscal year, and for any for-profit foreign institution, the institution would be required to submit for that year, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country and U.S. GAAP, except as described above with respect to public and nonprofit institutions.

We estimate that 16 public institutions will require 35 hours for the translation of financial statements to English, increasing burden by 560 hours. We estimate that 20 private institutions will require 35 hours for the translation of financial statements to English increasing burden by 700 hours for a total of 1,260 hours.

We estimate, if the final regulations (allowing for alternate submissions for institutions with funding over \$500,000 in U.S. Title IV, HEA program funds) had not been promulgated, that 123 foreign institutions would have been required to continue to submit annually audited financial statements prepared in accordance with U.S. GAAP at a burden of 12,300 hours (123 institutions × 100 hours = 12,300 hours). Instead only 32 foreign institutions will continue to be required to submit annually audited financial statements prepared in accordance with U.S. GAAP with a burden of 3,200 hours. Therefore the final regulations reduce burden by 9,100 hours (burden of 3,200 hours subtracted from the burden of 12,300 hours required under prior regulations).

Collectively, we estimate that there will be a reduction of 7,840 hours of burden (9,100 hours minus 1,260) associated with § 668.23(h)(1) in OMB Control Number 1845-0038.

Final § 668.23(h)(2) separates foreign institutions into two groups, establishing new compliance audit requirements for foreign institutions based upon whether the institution received less than \$500,000 or \$500,000 or more in U.S. Title IV, HEA program funds during the institution's most recently completed fiscal year.

Under final § 668.23(h)(2)(ii), foreign institutions that receive less than \$500,000 per year in U.S. Title IV, HEA program funds, will be required to submit an alternative compliance audit

performed in accordance with the Foreign School Audit Guide from the Department's Office of Inspector General. An alternative compliance audit is an agreed-upon procedures attestation engagement, which consists of specific procedures performed on a subject matter and is substantially narrower in scope than a standard compliance audit, which is an examination level attestation.

The final regulations in § 668.23(h)(2)(iii) require an annual submission of the compliance audit but allow, under certain conditions as described in the following paragraphs, an institution to submit a compliance audit annually for two consecutive years, and then, if notified by the Department, will be permitted to submit a cumulative compliance audit every three years thereafter as long as the institution continues to receive less than \$500,000 in U.S. Title IV funds each fiscal year being audited.

Under final § 668.23(h)(2)(i), as in the current regulations, foreign institutions that receive \$500,000 or more per year in U.S. Title IV, HEA program funds, will be required to submit annual compliance audits using the standard audit procedures for foreign institutions set out in the audit guide issued by the Department's Office of Inspector General. This compliance audit will be submitted together with an alternative compliance audit or audits prepared in accordance with § 668.23(h)(2)(ii) for any preceding fiscal year or years in which the foreign institution received less than \$500,000 in U.S. Title IV, HEA program funds.

We estimate, if the final regulations (allowing for alternate compliance audit submission for institutions with funding less than \$500,000) had not been promulgated, that 350 foreign institutions would have been required to continue to complete a full compliance audit for 14,000 hours of burden (350 institutions × 40 hours). Instead, these 350 foreign institutions will have their burden reduced to 8,750 hours (350 institutions × 25 hours). The final regulations realize a decrease of 5,250 hours of burden associated with § 668.23(h)(2) in OMB Control Number 1845-0038.

In total, we estimate that there will be a reduction of 13,090 hours of burden related to § 668.23(h) in OMB Control Number 1845-0038.

#### *Section 668.171—General (Subpart L—Financial Responsibility)*

Final § 668.171 considers 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. A foreign public institution will not meet this standard of financial responsibility if it

is in violation of any past performance requirements in § 668.174.

If a foreign public institution does not meet the new requirements, its financial responsibility will be determined under the general requirements of financial responsibility, including the application of the equity, primary reserve, and net income ratios. Although the full faith and credit provision will provide an alternate way of meeting the financial responsibility standards for public foreign institutions, it will not excuse

the institution from required submissions of audited financial statements. In addition, if a government entity provides full faith and credit backing, the entity will be held liable for any Title IV, HEA program liabilities that are not paid by the institution.

We estimate that 13 public institutions will require 16 hours to obtain documentation from the applicable government entity for an increase in burden of 208 hours in OMB Control Number 1845-0022.

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
600.20—Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.	This final regulation change adds information that must be collected to determine the eligibility of foreign graduate medical, veterinary, and nursing schools to participate in Title IV programs.	OMB 1845-0012. The burden will increase by 42 hours.
600.21—Updating application information .....	This final regulation identifies when a foreign graduate medical school must notify the Department of specific changes in locations used by the school.	OMB 1845-0012. The burden increases by 1 hour.
600.54—Criteria for determining whether a foreign institution is eligible to participate in the Direct Loan Program.	This final regulation requires that the foreign school demonstrate that its academic work for each training program of at least one academic-year is equivalent to an academic year as defined for domestic institutions.	OMB 1845-NEWA. This would be a new collection. Separate 60-day and 30-day <b>Federal Register</b> notices were published to solicit comment. The burden increases by 22 hours.
600.55—Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Direct Loan Program.	This final regulation requires the schools to develop and provide a consent form allowing the school to receive a copy of the students' MCAT scores, and requires a medical school to annually produce and provide to its accrediting agency a report with data regarding its students who are U.S. citizens, nationals or eligible permanent residents. Some of the same information will be required to be submitted to the Department on an annual basis. It requires the school to notify the accrediting body within one year of material changes to its educational program, and of formal affiliation agreements. This section also requires a school to identify the languages in which it provides instruction.	OMB 1845-NEWA. This would be a new collection. Separate 60-day and 30-day <b>Federal Register</b> notices were published to solicit comment. The burden increases by 381 hours.
600.55(g)(1)&(2) .....	This final regulation requires that the foreign graduate medical school expands the satisfactory academic progress policy requirements to include foreign schools; requires calculations of maximum timeframes to complete the program; and requires the school to document any student remediation regarding SAP.	OMB 1845-NEW2. This is a new collection. Separate 60-day and 30-day <b>Federal Register</b> notices were published to solicit comment. The burden increases by 178 hours.
600.57—Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the Direct Loan Program.	This final regulation requires the schools to develop and provide a consent form allowing the school to receive a copy of the students' NCLEX-RN results or pass rate; requires a nursing school to annually produce and provide to the Department a report with data regarding the results of the NCLEX-RN exam taken by its students and graduates.	OMB 1845-NEWA. This would be a new collection. Separate 60-day and 30-day <b>Federal Register</b> notices were published to solicit comment. The burden increases by 102 hours.
668.13—Certification procedures .....	This final regulation changes the certification time frame for for-profit schools from 6 to 3 years.	OMB 1845-0022. We do not estimate an increase in burden.
668.23(h)(1)(ii) & 668.23(h)(1)(iii)(B)—Compliance audits and audited financial statements.	This final regulation requires the translation of certain financial statements into English.	OMB 1845-0038. The burden increases by 1,260 hours.
668.23(h)(1)—Compliance audits and audited financial statements.	This final regulation changes the requirements for submission by institutions to the Department of audited financial statements.	OMB 1845-0038. The burden decreases by 9,100 hours.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	Collection
668.23(h)(2)—Compliance audits and audited financial statements.	This final regulation changes the requirements for submission by institutions to the Department of compliance audits.	OMB 1845–0038. The burden decreases by 5,250 hours.
668.171—General (Subpart L—Financial Responsibility).	This final regulation provides an alternate method to show financial responsibility, by showing it is a public institution designated by proper governing authority in the country and providing documentation of the full faith and credit of that country.	OMB 1845–0022. The burden increases by 208 hours.

**Assessment of Educational Impact**

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.033 Federal Work-Study Program; 84.379 TEACH Grant Program; 84.069 LEAP)

**List of Subjects**

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan

programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 19, 2010.

**Arne Duncan,**  
*Secretary of Education.*

■ For the reasons discussed in the preamble, the Secretary amends parts 600, 668, 682 and 685 of title 34 of the Code of Federal Regulations as follows:

**PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED**

■ 1. The authority citation for part 600 continues to read as follows:

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

■ 2. Section 600.2 is amended by revising paragraphs (1) and (2) of the definition of *Nonprofit institution*.

The revision reads as follows:

**§ 600.2 Definitions.**

\* \* \* \* \*

*Nonprofit institution:* An institution that—

(1)(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and  
(iii) 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)); or

(2) For a foreign institution—  
(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)(A) If a 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, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no 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 foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

\* \* \* \* \*

- 3. Section 600.20 is amended by:
  - A. Revising paragraph (a).
  - B. Adding a new paragraph (b)(3).
  - C. In paragraph (c)(4), removing the word “or”.
  - D. Redesignating paragraph (c)(5) as paragraph (c)(6).
  - E. Adding a new paragraph (c)(5).

The revision and additions read as follows:

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

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

(2) If the institution also wishes to be certified to participate in the title IV,



HEA programs, it must indicate that intent on the application, and submit all the documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its application to participate—

(i)(A) A list of all medical school educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites 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; and

(B) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (a)(3)(i)(A) of this section; and

(ii) Whether the school offers—

(A) Only post-baccalaureate/ equivalent medical programs, as defined in § 600.52;

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

(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under § 600.55(e)(1).

(b) \* \* \*

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

(i)(A) A list of all of the foreign graduate medical school's educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites 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; and

(B) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (b)(3)(i)(A) of this section; and

(ii) Whether the school offers—

(A) Only post-baccalaureate/ equivalent medical programs, as defined in § 600.52;

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

(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under § 600.55(e)(1).

\* \* \* \* \*

(c) \* \* \*

(5) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, add a location that offers all or a portion of the foreign graduate medical school's core clinical training or required clinical rotations, except for those locations that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

\* \* \* \* \*

■ 4. Section 600.21 is amended by adding paragraph (a)(10) to read as follows:

**§ 600.21 Updating application information.**

(a) \* \* \*

(10) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, the school adds a location that offers all or a portion of the school's clinical rotations that are not required, except for those that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA), or 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.

\* \* \* \* \*

■ 5. Section 600.41 is amended by adding paragraph (e)(3) to read as follows:

**§ 600.41 Termination and emergency action proceedings.**

\* \* \* \* \*

(e) \* \* \*

(3) If the basis for the loss of eligibility of a foreign graduate medical school is one or more annual pass rates on the U.S. Medical Licensing Examination below the threshold required in § 600.55(f)(1)(ii), the sole issue is whether one or more of the foreign medical school's pass rate or rates for the preceding calendar year fell below

that threshold. For a foreign graduate medical school that opted to have the Educational Commission for Foreign Medical Graduates (ECFMG) calculate and provide the pass rates directly to the Secretary for the preceding calendar year as permitted under § 600.55(d)(2) in lieu of the foreign graduate medical school providing pass rate data to the Secretary under § 600.55(d)(1)(iii), the ECFMG's calculations of the school's rates are conclusive; and the presiding official has no authority to consider challenges to the computation of the rate or rates by the ECFMG.

\* \* \* \* \*

■ 6. Section 600.51 is amended by revising paragraph (c) to read as follows:

**§ 600.51 Purpose and scope.**

\* \* \* \* \*

(c) Applicability of other title IV, HEA program regulations.

(1) A foreign institution must comply with all requirements for eligible and participating institutions except when made inapplicable by the HEA or when the Secretary, through publication in the **Federal Register**, identifies specific provisions as inapplicable to foreign institutions.

(2)(i) A public or nonprofit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this part except as provided in §§ 600.51(c)(1) and 600.54(a), is considered an "institution of higher education" for purposes of the title IV, HEA program regulations; and

(ii) A for-profit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this Part, except as provided in §§ 600.51(c)(1) and 600.54(a), is considered a "proprietary institution" for purposes of title IV, HEA program regulations.

\* \* \* \* \*

■ 7. Section 600.52 is amended by:

■ A. Adding, in alphabetical order, a definition of *Associate degree school of nursing*.

■ B. Adding, in alphabetical order, a definition of *Clinical training*.

■ C. Adding, in alphabetical order, a definition of *Collegiate school of nursing*.

■ D. Adding, in alphabetical order, a definition of *Diploma school of nursing*.

■ E. Revising the definition of *Foreign graduate medical school*.

■ F. Revising the definition of *Foreign institution*.

■ G. Adding, in alphabetical order, a definition of *Foreign nursing school*.

■ H. Adding, in alphabetical order, a definition of *Foreign veterinary school*.

- I. Adding, in alphabetical order, a definition of *National Committee on Foreign Medical Education and Accreditation (NCFMEA)*.
- J. Revising the definition of *Passing score*.
- K. Adding, in alphabetical order, a definition of *Post-baccalaureate/ equivalent medical program*.

The additions and revisions read as follows:

**§ 600.52 Definitions.**

\* \* \* \* \*

*Associate degree school of nursing:* A school that provides primarily or exclusively a two-year program of postsecondary education in professional nursing leading to a degree equivalent to an associate degree in the United States.

*Clinical training:* The portion of a graduate medical education program that counts as a clinical clerkship for purposes of medical licensure comprising core, required clinical rotation, and not required clinical rotation.

*Collegiate school of nursing:* A school that provides primarily or exclusively a minimum of a two-year program of postsecondary education in professional nursing leading to a degree equivalent to a bachelor of arts, bachelor of science, or bachelor of nursing in the United States, or to a degree equivalent to a graduate degree in nursing in the United States, and including advanced training related to the program of education provided by the school.

*Diploma school of nursing:* A school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a two-year program of postsecondary education in professional nursing leading to the equivalent of a diploma in the United States or to equivalent indicia that the program has been satisfactorily completed.

*Foreign graduate medical school:* A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to a degree of medical doctor, doctor of osteopathic medicine, or the equivalent. A reference in these regulations to a foreign graduate medical school as “freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

*Foreign institution:*

- (1) For the purposes of students who receive title IV aid, an institution that—
- (i) Is not located in a State;

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

- (A) Has no U.S. location;

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

- (C) 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;

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

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

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

*Foreign nursing school:* A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) that is an associate degree school of nursing, a collegiate school of nursing, or a diploma school of nursing. A reference in these regulations to a foreign nursing school as “freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

*Foreign veterinary school:* A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to the degree of doctor of veterinary medicine, or the equivalent. A reference in these regulations to a foreign veterinary school as “freestanding” pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

*National Committee on Foreign Medical Education and Accreditation (NCFMEA):* The operational committee of medical experts established by the Secretary to determine whether the medical school accrediting standards used in other countries are comparable to those applied to medical schools in the United States, for purposes of evaluating the eligibility of accredited foreign graduate medical schools to participate in the title IV, HEA programs.

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

*Post-baccalaureate/ equivalent medical program:* 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.

\* \* \* \* \*

- 8. Section 600.54 is revised to read as follows:

**§ 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the Direct Loan Program.**

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the Direct Loan Program if the foreign institution meets the following requirements:

- (a)(1) Except for a freestanding foreign graduate medical school, foreign veterinary school, or foreign nursing school, the foreign institution is a public or private nonprofit educational institution.

- (2) For a public or private nonprofit foreign institution, the institution meets the requirements of § 600.4, except § 600.4(a)(1), (a)(2), (a)(3), (a)(4)(ii),

(a)(5), (b), (c), and any requirements the HEA or the Secretary has designated as inapplicable in accordance with § 600.51(c)(1).

(3) For a for-profit foreign medical, veterinary, or nursing school, the school meets the requirements of § 600.5, except § 600.5(a)(2), (a)(3), (a)(4), (a)(5)(i)(B), (a)(5)(ii), (a)(6), (c), (d), (e) and any requirements the HEA or the Secretary has designated as inapplicable in accordance with § 600.51(c)(1).

(b) The foreign institution admits as regular students only persons who—

(1) Have a secondary school completion credential; or

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

(c) Notwithstanding § 668.5, an eligible foreign institution may not enter into a written arrangement under which an ineligible institution or organization provides any portion of one or more of the eligible foreign institution's programs. For the purposes of this paragraph, written arrangements do not include affiliation agreements for the provision of clinical training for foreign medical, veterinary, and nursing schools.

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

(1) Located outside of the country in which the main campus is located, except as provided in § 600.55(h)(1), § 600.56(b), § 600.57(a)(2), § 600.55(h)(3), and the definition of foreign institution found in § 600.52; or

(2) Located within the same country as the main campus, but is not covered by the legal authorization of the main campus.

(e) The foreign institution provides an eligible education program—

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

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

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

(ii) An institution must demonstrate to the satisfaction of the Secretary that the amount of academic work required by a program in paragraph (e)(3)(i) of

this section is equivalent to at least the definition of an academic year in § 668.3.

(f) For a for-profit foreign medical, veterinary, or nursing school—

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

(2) The title IV, HEA program eligibility does not extend to any joint degree program.

(g) Proof that a foreign institution meets the requirements of paragraph (1)(iii) of the definition of a foreign institution in § 600.52 may be provided to the Secretary by a legal authorization from the appropriate education ministry, council, or equivalent agency—

(1) For all eligible foreign institutions in the country;

(2) For all eligible foreign institutions in a jurisdiction within the country; or

(3) For each separate eligible foreign institution in the country.

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

■ 9. Section 600.55 is revised to read as follows:

**§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Direct Loan Program.**

(a) *General.* (1) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the title IV, HEA programs if, in addition to satisfying the criteria of this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the school satisfies the criteria of this section.

(2) A foreign graduate medical school must provide, and in the normal course require its students to complete, a program of clinical training 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—

(i) Is provided in facilities adequately equipped and staffed to afford students comprehensive clinical training and classroom medical instruction;

(ii) Is approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary; and

(iii) As part of its clinical training, does not offer more than two electives consisting of no more than eight weeks per student at a site located in a foreign country other than the country in which the main campus is located or in the United States, unless that location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical

Education (LCME) or the American Osteopathic Association (AOA).

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

(4) A foreign graduate medical school must 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.

(b) *Accreditation.* A foreign graduate medical school must—

(1) Be approved by an accrediting body—

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

(ii) Whose standards of accreditation of graduate medical schools have been evaluated by the NCFMFA or its successor committee of medical experts and have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(2) Be a public or private nonprofit educational institution that satisfies the requirements in § 600.4(a)(5)(i).

(c) *Admission criteria.* (1) A foreign graduate medical school having a post-baccalaureate/equivalent medical program must require students accepted for admission who are U.S. citizens, nationals, or permanent residents to have taken the Medical College Admission Test (MCAT) and to have reported their scores to the foreign graduate medical school; and

(2) A foreign graduate medical school must determine the consent requirements for, and require the necessary consents of, all students accepted for admission for whom the school must report to enable the school to comply with the collection and submission requirements of paragraph (d) of this section.

(d) *Collection and submission of data.* (1) A foreign graduate medical school must obtain, at its own expense, and submit, by the date required by paragraph (d)(3) of this section—

(i) To its accrediting authority and, on request, to the Secretary, the scores on the MCAT or successor examination, of all students admitted during the preceding calendar year who are U.S. citizens, nationals, or eligible permanent residents, together with a statement of the number of times each student took the examination;

(ii) To its accrediting authority and, on request, to the Secretary, the percentage of students graduating during the preceding calendar year (including at least all graduates who are U.S. citizens, nationals, or eligible permanent residents) who obtain placement in an accredited U.S. medical residency program;

(iii) To the Secretary, except as provided for in paragraph (d)(2) of this section, all scores, disaggregated by step/test—i.e., Step 1, Step 2—Clinical Skills (Step 2—CS), and Step 2—Clinical Knowledge (Step 2—CK), or the successor examinations—and attempt, earned during the preceding calendar year by each student and graduate, on Step 1, Step 2—CS, and Step 2—CK, or the successor examinations, of the U.S. Medical Licensing Examination (USMLE), together with the dates the student has taken each test, including any failed tests;

(iv) To the Secretary, a statement of its citizenship rate for the preceding calendar year for a school that is subject to paragraph (f)(1)(i)(A) of this section, together with a description of the methodology used in deriving the rate that is acceptable to the Secretary.

(2) In lieu of submitting the information required in paragraph (d)(1)(iii) of this section to the Secretary, a foreign graduate medical school that is not subject to paragraph (f)(4) of this section may agree to allow the Educational Commission for Foreign Medical Graduates (ECFMG) or other responsible third party to calculate the rate described in paragraph (f)(1)(ii) and (f)(3) of this section for the preceding calendar year and provide the rate directly to the Secretary on the school's behalf with a copy to the foreign graduate medical school, provided—

(i) The foreign graduate medical school has provided by April 30 to the Secretary written consent acceptable to the Secretary to reliance by the Secretary on the pass rate as calculated by the ECFMG or other responsible third party for purposes of determining compliance with paragraph (f)(1)(ii) and (f)(3) of this section for the preceding calendar year; and

(ii) The foreign graduate medical school agrees in its written consent that for the preceding calendar year the rate as calculated by the ECFMG or other designated third party will be conclusive for purposes of determining compliance with paragraph (f)(1)(ii) and (f)(3) of this section.

(3) A foreign graduate medical school must submit the data it collects in accordance with paragraph (d)(1) of this section no later than April 30 of each year, unless the Secretary specifies a

different date through a notice in the **Federal Register**.

(e) *Requirements for clinical training.* (1)(i) A foreign graduate medical school must have—

(A) A formal affiliation agreement with any hospital or clinic at which all or a portion of the school's core clinical training or required clinical rotations are provided; and

(B) Either a formal affiliation agreement or other written arrangements with any hospital or clinic at which all or a portion of its clinical rotations that are not required are provided, 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.

(ii) The agreements described in paragraph (e)(1)(i) of this section must state how the following will be addressed at each site—

(A) Maintenance of the school's standards;

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

(C) Design of the curriculum;

(D) Supervision of students;

(E) Evaluation of student performance; and

(F) Provision of liability insurance.

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

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

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

(f) *Citizenship and USMLE pass rate percentages.* (1)(i)(A) During the calendar year preceding the year for which any of the school's students seeks an title IV, HEA program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class must have been persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); or

(B) The school must have had a clinical training program approved by a State prior to January 1, 2008, and must continue to operate a clinical training program in at least one State that approves the program; and

(ii) Except as provided in paragraph (f)(4) of this section, for a foreign graduate medical school outside of Canada, for Step 1, Step 2—CS, and Step 2—CK, or the successor examinations, of the USMLE administered by the ECFMG, at least 75 percent of the

school's students and graduates who took that step/test of the examination in the year preceding the year for which any of the school's students seeks a title IV, HEA program loan must have received a passing score on that step/test and are taking the step/test for the first time; or

(2)(i) The school must have had a clinical training program approved by a State as of January 1, 1992; and

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

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

(i) Include as a graduate each student who graduated from the school during the three years preceding the year for which the calculation is performed and who took that step/test for the first time in that year; and

(ii) Include students and graduates who take more than one step/test of the USMLE examination for the first time in the same year in the denominator for each of those steps/tests;

(4)(i) If the calculation described in paragraph (f)(1)(ii) of this section would result in any step/test pass rate based on fewer than eight students, a single pass rate for the school is determined instead based on the performance of the school's students and graduates on Step 1, Step 2—CS, and Step 2—CK combined;

(ii) If combining the results on all three step/tests as permitted in paragraph (f)(4)(i) of this section would result in a pass rate based on fewer than eight step/test results, the school is deemed to have no pass rate for that year and the results for the year are combined with each subsequent year until a pass rate based on at least eight step/test results is derived.

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

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

(ii) Meet the requirements of § 668.16(e)(2)(ii)(B), (C) and (D).

(2) A foreign graduate medical school must document the educational remediation it provides to assist

students in making satisfactory academic progress.

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

(h) *Location of a program.* (1) Except as provided in paragraph (h)(3)(ii) of this section, all portions of a 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, except for clinical training sites located in the United States.

(2) No portion of the graduate medical educational program offered to U.S. students, other than the clinical training portion of the program, may be located outside of the country in which the main campus of the foreign graduate medical school is located.

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, for any part of the clinical training portion of the educational program 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—

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

(B) The institution's medical accrediting agency must have conducted an on-site evaluation and specifically approved the clinical training site; and

(C) Clinical instruction must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country.

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

(A) The location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

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

■ 10. Section 600.56 is revised as follows:

**§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the Direct Loan Program.**

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

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

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

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

(4) Effective July 1, 2015, the school is accredited or provisionally accredited by an organization acceptable to the Secretary for the purpose of evaluating veterinary programs.

(b)(1) No portion of the foreign veterinary educational program offered to U.S. students, other than the clinical training portion of the program as provided for in paragraph (b)(2) of this section, may be located outside of the country in which the main campus of the foreign veterinary school is located;

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

(ii) For a veterinary school that is public or private nonprofit, the school's students may complete their clinical training at an approved veterinary school located—

(A) In the United States;

(B) In the home country; or

(C) Outside of the United States or the home country, if—

(1) The location is included in the accreditation of a veterinary program accredited by the American Veterinary Medical Association (AVMA); or

(2) No individual student takes more than two electives at the location and the combined length of the elective does not exceed eight weeks.

(Authority: 20 U.S.C. 1002 and 1092.)

■ 11. Section 600.57 is redesignated as § 600.58 and a new § 600.57 is added to read as follows:

**§ 600.57 Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the Direct Loan Program.**

(a) Effective July 1, 2012 for a foreign nursing school that was participating in any title IV, HEA program on August 13, 2008, and effective July 1, 2011 for all other foreign nursing schools, the Secretary considers the foreign nursing school to be eligible to apply to participate in the Direct Loan Program if, in addition to satisfying the criteria in this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the nursing school satisfies all of the following criteria:

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

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

(3) The nursing school has an agreement with an accredited school of nursing located in the United States providing that 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.

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

(5) 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.

(6)(i) The nursing school determines the consent requirements for and requires 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 of paragraph (a)(6)(ii) of this section.

(ii) The nursing school annually either—

(A) Obtains, at its own expense, all results achieved by students and graduates who are U.S. citizens, nationals, or eligible permanent residents on the National Council Licensure Examination for Registered Nurses (NCLEX–RN), together with the dates the student has taken the examination, including any failed examinations, and provides such results to the Secretary; or

(B) Obtains a report or reports from the National Council of State Boards of Nursing (NCSB), or an NCSB affiliate or NCSB contractor, reflecting the percentage of the school’s students and graduates taking the NCLEX–RN in the preceding year who passed the examination, or the data from which the percentage could be derived, and provides the report to the Secretary.

(7) Not less than 75 percent of the school’s students and graduates who are U.S. citizens, nationals, or eligible permanent residents who took the NCLEX–RN in the year preceding the year for which the institution is certifying a Federal Stafford Loan or a Federal Plus Loan, passed the examination.

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

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

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

(b) For purposes of paragraph (a)(5) of this section, the cost of a loan default is the estimated future cost of collections on the defaulted loan.

(c) The Department continues to collect on the Direct Loan after a school reimburses the Secretary for the amount

specified in paragraph (b) of this section until the loan is paid in full or otherwise satisfied, or the loan account is closed out.

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

**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

■ 12. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

**§ 668.2 [Amended]**

■ 13. Section 668.2 is amended by adding the words “Foreign institution” immediately after “Federal Family Education Loan (FFEL) programs” in the list of definitions in paragraph (a).

■ 14. Section 668.5 is amended by revising paragraph (b) to read as follows:

**§ 668.5 Written arrangements to provide educational programs.**

\* \* \* \* \*

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

■ 15. Section 668.13 is amended by revising paragraph (b) to read as follows:

**§ 668.13 Certification procedures.**

\* \* \* \* \*

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

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

(ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal

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

\* \* \* \* \*

■ 16. Section 668.15 is amended by revising paragraph (h) to read as follows:

**§ 668.15 Factors of financial responsibility.**

\* \* \* \* \*

(h) *Foreign institutions.* The Secretary makes a determination of the financial responsibility for a foreign institution on the basis of financial statements submitted under § 668.23(h).

\* \* \* \* \*

■ 17. Section 668.23 is amended by:

■ A. In paragraph (a)(5), removing the words “Audits of Institutions of Higher Education and Other Non-profit Organizations”; Office of Management and Budget Circular A–128, “Audits of State and Local Governments” and adding, in their place, the words “Audits of States, Local Governments, and Non-Profit Organizations”.

■ B. In paragraph (d)(1), adding the words “issued by the Comptroller General of the United States” after “with generally accepted government auditing standards” and removing the words “Audits of Institutions of Higher Education and Other Non-profit Organizations”; Office of Management and Budget Circular A–128, “Audits of State and Local Governments”; and adding, in their place, “Audits of States, Local Governments, and Non-Profit Organizations”.

■ C. Removing paragraph (d)(3).

■ D. Redesignating paragraph (d)(4) as paragraph (d)(3).

■ E. Redesignating paragraph (d)(5) as paragraph (d)(4).

■ F. Adding paragraph (h).

The addition reads as follows:

**§ 668.23 Compliance audits and audited financial statements.**

\* \* \* \* \*

(h) *Audit submission requirements for foreign institutions.* (1) *Audited financial statements.* (i) The Secretary waives for that fiscal year the submission of audited financial statements if the institution is a foreign public or nonprofit institution that received less than \$500,000 in U.S. title IV program funds during its most recently completed fiscal year, unless that foreign public or nonprofit

institution is in its initial provisional period of participation, and received title IV program funds during that fiscal year, in which case the institution must submit, in English, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country.

(ii) Except as provided in paragraph (h)(1)(iii) of this section, a foreign institution that received \$500,000 or more in U.S. title IV program funds during its most recently completed fiscal year must submit, in English, for each most recently completed fiscal year in which it received title IV program funds, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section.

(iii) In lieu of making the submission required by paragraph (h)(1)(ii) of this section, a public or private nonprofit institution that received—

(A) \$500,000 or more in U.S. title IV program funds, but less than \$3,000,000 in U.S. title IV program funds during its most recently completed fiscal year, may submit for that year, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, and is not required to submit the corresponding audited financial statements that meet the requirements of paragraph (d) of this section;

(B) At least \$3,000,000, but less than \$10,000,000 in U.S. title IV, program funds during its most recently completed fiscal year, must submit in English, for each most recently completed fiscal year, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section, except that an institution that continues to receive at least \$3,000,000 but less than \$10,000,000, in U.S. title IV funds during its most recently completed fiscal year may omit the audited financial statements that meet the requirements of paragraph (d) of this section for up to two consecutive years following the submission of audited financial statements that meet the requirements of paragraph (d) of this section.

(2) *Compliance audits.* A foreign institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must

cover all of those transactions that have occurred since the period covered by the institution's last compliance audit. A compliance audit that is due under this paragraph must be submitted no later than six months after the last day of the institution's fiscal year, and must meet the following requirements:

(i) If the foreign institution received \$500,000 or more in U.S. dollars in title IV, HEA program funds during its most recently completed fiscal year, it must submit a standard compliance audit for that prior fiscal year that is performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, together with an alternative compliance audit or audits prepared in accordance with paragraph (h)(2)(ii) of this section for any preceding fiscal year or years in which the foreign institution received less than \$500,000 in U.S. dollars in title IV, HEA program funds and for which a compliance audit has not already been submitted;

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

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

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

(B) The institution has timely submitted acceptable compliance audits for two consecutive fiscal years, and following such submission, has no history of late submission since then.

(C) The institution is fully certified.

(3)(i) *Exceptions.* Notwithstanding the provisions of paragraphs (h)(1)(i) and (h)(1)(iii) of this section, the Secretary may issue a letter to a foreign institution

that identifies problems with its financial condition or financial reporting and requires the submission of audited financial statements in the manner specified by the Secretary.

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

\* \* \* \* \*

■ 18. Section 668.171 is amended by revising paragraph (c) to read as follows:

**§ 668.171 General.**

\* \* \* \* \*

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

(i)(A) 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

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

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

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

(i)(A) 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

(B) 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; and

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

\* \* \* \* \*

**PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM**

■ 19. The authority citation for part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071–1087–2, unless otherwise noted.

**§ 682.200 [Amended]**

■ 20. Section 682.200 is amended by:

- A. Adding the words “Foreign institution” immediately after “Federal Family Education Loan Program (formerly known as the Guaranteed Student Loan (GSL) Program” in the list of definitions in paragraph (a)(2).
- B. Removing the definition of *Foreign school* in paragraph (b).

**§ 682.611 [Removed and Reserved]**

- 21. Section 682.611 is removed and reserved.

**PART 685—WILLIAM D. FORD  
FEDERAL DIRECT LOAN PROGRAM**

- 22. The authority citation for part 685 continues to read as follows:

**Authority:** 20 U.S.C. 1070g, 1087a, *et seq.* unless otherwise noted.

**§ 685.102 [Amended]**

- 23. Section 685.102 is amended by:
  - A. Adding the words “Foreign institution” immediately after “Federal Family Education Loan (FFEL) Program” in the list of definitions in paragraph (a)(2).
  - B. Removing the words “Foreign school” immediately after “Federal Stafford Loan Program” in the list of definitions in paragraph (a)(3).

**§ 682.301 [Amended]**

- 24. Section 685.301 is amended by:

- A. In paragraph (b)(6)(i)(B), removing “; or” at the end of the sentence and adding, in its place, a period.
- B. Removing paragraph (b)(6)(i)(C).

**§ 685.303 [Amended]**

- 25. Section 685.303 is amended by:
  - A. In paragraph (b)(4)(i)(B), removing “; or” at the end of the sentence and adding, in its place, a period.
  - B. Removing paragraph (b)(4)(i)(C).

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