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# Part II

# Department of Education

## 34 CFR Parts 600, 668, and 682

## Foreign Institutions—Federal Student Aid Programs; Proposed Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 600, 668, and 682

**RIN 1840–AD03**

**[Docket ID ED–2010–OPE–0009]**

## Foreign Institutions—Federal Student Aid Programs

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes 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 (HEOA), as well as other provisions related to the eligibility of a foreign institution by amending the regulations for Institutional Eligibility Under the Higher Education Act of 1965, the Student Assistance General Provisions, and the Federal Family Education Loan (FFEL) Program.

**DATES:** We must receive your comments on or before August 19, 2010.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for finding a regulation, submitting a comment, finding a comment, and signing up for e-mail alerts, is available on the site under "How To Use Regulations.gov" in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006–8502.

**Privacy Note:** The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet

**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, 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:**

### Invitation To Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking,* significant public participation, through three public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, we invite you to submit comments regarding these proposed regulations on or before August 19, 2010. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

### Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing certain proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary in many cases must subject the proposed regulations to a negotiated rulemaking process. Proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On May 26, 2009, the Department published a notice in the **Federal Register** (74 FR 24728) announcing our intent to establish two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to

program integrity (Team I—Program Integrity Issues). A second committee would focus on issues related to the eligibility of foreign institutions for participation in the Title IV, HEA programs (Team II—Foreign School Issues). On September 9, 2009, the Department published a second notice in the **Federal Register** (74 FR 46399) listing the topics the committees were likely to address and requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

Team II—Foreign School Issues (Team II) met to develop proposed regulations during the months of November 2009, January 2010, and February 2010.

The Department developed a list of proposed regulatory provisions based on the provisions contained in the HEOA and from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of three public hearings held on—

- June 15–16, 2009, at the Community College of Denver in Denver, Colorado;
- June 18–19, 2009, at the University of Arkansas in Little Rock, Arkansas;
- June 22–23, 2009, at the Community College of Philadelphia in Pennsylvania.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, Team II reached agreement on its protocols. The agenda included the issues identified for the Committee's consideration.

Team II included the following members:

- Harrison Wadsworth, representing the International Education Council.
- Yvonne Oberhollenzer and John Hayton (alternate), Australian Education International North America, representing the Embassy of Australia, the Embassy of New Zealand, the British Council and the German Academic Exchange Service.
- Judy Stymest, McGill University, and Alexander Leipziger (alternate), Canadian Embassy, representing the Canadian Association of Student Financial Aid Administrators.
- Warren Ross and Jerry Thornton (alternate), representing the International University of Nursing and the University of Medicine and Health Sciences.
- Cynthia Holden, American University of the Caribbean, and James McIntyre (alternate), McIntyre Law Firm, PLLC, representing American University of the Caribbean.
- Nancy Perri, Ross University School of Medicine, and William Clohan (alternate), DeVry Inc., representing Ross University School of Medicine.
- Steven Rodger, and Patrick Donnellan (alternate) representing R3 Education Inc.
- Ronald Blumenthal and Rebecca Campoverde (alternate) representing Kaplan, Inc.
- Charles Modica, representing St. George's University.
- Betsy Mayotte, American Student Assistance, and Jacqueline Fairbairn (alternate), Great Lakes Higher Education Guaranty Corporation, representing guaranty agencies.
- David Bergeron and Gail McLarnon (alternate), U.S. Department of Education, representing the Federal Government.

The Committee's protocols provided that the Committee would operate by consensus, meaning there must be no dissent by any member. Under the protocols, if the Committee reaches consensus on all issues, the Department will use the consensus-based language in the proposed regulations and Committee members and the organizations whom they represent will refrain from commenting negatively on the package, except as provided for in the agreed upon protocols.

During the meetings, Team II reviewed and discussed drafts of proposed regulations. At the final meeting in February 2010, Team II reached consensus on the proposed regulations in this document.

More information on the work of Team II can be found at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html.*

**Summary of Proposed Changes**

These proposed regulations would implement provisions related to the eligibility of foreign institutions to participate in the Title IV, HEA programs including—

- Establishing submission requirements for compliance audits and audited financial statements specific to foreign institutions;
- Clarifying and revising the definition of a foreign institution;
- Establishing a definition of nonprofit status specific to foreign institutions;
- Establishing a financial responsibility standard for foreign public institutions that is comparable to the financial responsibility standard for domestic public institutions;
- Permitting a single legal authorization for groups of foreign institutions under the purview of a single government entity;
- Establishing eligibility of training programs at foreign institutions;
- Establishing institutional eligibility criteria specific to foreign graduate medical schools, foreign veterinary schools, and foreign nursing schools; and
- Revising the maximum certification period for some foreign institutions.

**Significant Proposed Regulations**

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

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 will be no new originations of FFEL Program loans. All new originations with a first disbursement on or after July 1, 2010, will be made via the William D. Ford Federal Direct Loan (Direct Loan) Program, including loans for students attending foreign institutions. At the time these proposed regulations were negotiated, it was unclear whether the proposed legislation that would end the FFEL Program would be enacted. As a result, these proposed regulations reference participation in the FFEL Program, except as noted. When the Department publishes final regulations to implement these proposed regulations, it will correct those references in the regulations resulting from these proposed regulations to indicate participation in the Direct Loan Program, rather than the FFEL Program. Any substantive or 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.*

**Nonprofit Status for Foreign Institutions (§ 600.2)**

*Statute:* Section 102(a)(2)(A) of the HEA directs the Secretary to establish criteria by regulation for the determination that foreign institutions are comparable to an institution of higher education as defined in section 101 of the HEA—which specifies that an institution of higher education must be a public or other nonprofit institution—except that foreign graduate medical schools, foreign veterinary schools, and foreign nursing schools may be for-profit. Sections 101(a)(4) and 101(b)(2) of the HEA identify nonprofit institutions as one type of institution that may be an institution of higher education and, therefore, may be eligible to apply to participate in the Title IV, HEA programs.

*Current Regulations:* Section 600.54 provides that, to participate in the Title IV, HEA programs, a foreign institution must be a public or private nonprofit educational institution. Foreign graduate medical schools, foreign veterinary schools, and foreign nursing schools are excepted from this requirement by section 102(a)(2)(A) of the HEA. Section 600.2 defines a nonprofit institution as an institution that—

- 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;
- Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and
- Is determined by the U.S. Internal Revenue Service (IRS) 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)).

*Proposed Regulations:* Under proposed § 600.2, a new paragraph (2) of the definition of a nonprofit institution would provide that if a recognized tax authority of a foreign institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for Title IV, HEA purposes, the Secretary would automatically accept that tax authority's determination of nonprofit educational status for any institution located in that country. If a recognized tax authority of the institution's home country is not recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for Title IV, HEA program purposes, a foreign institution would have to demonstrate to the satisfaction of the Secretary that it is a nonprofit educational institution. The proposed regulations would also make clear that a nonprofit foreign institution may not be owned by a for profit entity, directly or indirectly. A foreign institution that did not meet this definition of a nonprofit foreign institution would not be eligible to participate in the Title IV, HEA programs unless it was a medical, veterinary, or nursing school.

*Reasons:* As foreign institutions must be nonprofit institutions to participate in the Title IV, HEA programs, unless they are medical, veterinary, or nursing schools, the Department believes it is necessary to delineate in regulations the requirements for demonstrating nonprofit status for foreign institutions. Some non-Federal negotiators originally suggested that the Department should always defer to any determination by a foreign country that an institution is nonprofit. The Department pointed out that a domestic institution must be determined by the U.S. IRS to be a nonprofit organization in order to be eligible as a nonprofit institution for participation in the Title IV, HEA programs. The Department also noted that certain countries may not have standards for the determination of nonprofit status that are comparable to those used in the United States, and may not ensure that the institution's net earnings do not benefit any private shareholder or individual. Therefore, to make the proposed regulations as comparable as possible to those applicable to domestic institutions, the Department proposed, and the Committee agreed, that a determination that an institution is nonprofit by an entity in the institution's foreign country would qualify an institution as nonprofit only if the determination is made by a recognized tax authority of the country, and the Secretary has recognized that tax authority as one that can make a determination using criteria that are similar to those used by the IRS. In response to non-Federal negotiators pointing out that some countries may have more than one recognized entity for the purpose of making determinations of the nonprofit status of its institutions, the Department made clear during the negotiations that under the language proposed, the Secretary may recognize more than one tax authority in a country. Some non-Federal negotiators suggested that the Department allow a determination of nonprofit status to be made by an entity other than a recognized tax authority of the country. The Department noted that, as the proposed language was written, information submitted by such entities would be taken into account by the Department; however, this would be done as part of an individual determination of the eligibility of an institution. The Department believes that the only entities it should recognize across the board for making determinations of nonprofit status are those that are responsible for administering the country's tax laws.

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

*Statute:* Section 102(a)(1)(C) of the HEA provides that an "institution of higher education," only for the purposes of part B of Title IV, includes an institution outside the United States that is comparable to an institution of higher education as that term is defined in section 101 of the HEA and is an institution that has been approved by the Secretary. Section 102(a)(2)(A) of the HEA requires the Secretary to establish regulatory criteria for the approval of such institutions and for the determination that they are comparable.

*Current Regulations:* Subpart E of 34 CFR part 600 (§§ 600.51 through 600.57) contains the eligibility requirements that a foreign institution must meet to participate in the FFEL Program. Current § 600.51 explains the purpose and scope of subpart E and provides that a foreign institution is eligible to participate in the FFEL Program if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary. Implementing a statutory provision in section 481(b)(4) of the HEA, current § 600.51 also provides that a program offered by a foreign school through any use of a telecommunications or correspondence course or through a direct assessment program is not an eligible program.

Current § 600.52 contains the definitions associated with subpart E and defines *foreign institution* as an institution that is not located in a State. *State* is defined in § 600.2 as a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the

Northern Mariana Islands, the Republic of the Marshall Islands, the Federal States of Micronesia, and the Republic of Palau.

Current § 600.54 contains the criteria the Secretary uses to determine whether a foreign institution is eligible to apply to participate in the FFEL Program. A public or private nonprofit foreign institution may apply to participate in the FFEL Program if the institution—

- Admits as regular students only those students with a secondary school completion credential or its recognized equivalent;
- Is legally authorized by an appropriate authority to provide an eligible program beyond the secondary school level in the country in which the institution is located; and
- Provides eligible programs for which the institution is legally authorized to award the equivalent of an associate, baccalaureate, graduate, or professional degree awarded in the United States; provides an eligible program 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, provides an eligible program 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.

Currently, §§ 668.2 and 682.200 do not contain a reference to the definition of *foreign institution* in the list of definitions set forth in 34 CFR part 600.

Lastly, current § 682.611 provides that a foreign school is required to comply with the provisions of part 682 unless the regulations or other official Department of Education publications or documents state otherwise.

*Proposed Regulations:* The proposed regulations would remove and reserve § 682.611, remove the definition of *foreign school* from § 682.200(b)(1), and add references to §§ 668.2(a)(2) and 682.200(a)(2) specifying that the definition of *foreign institution* is contained in regulations for Institutional Eligibility under the HEA, as amended, 34 CFR part 600. These proposed revisions would consolidate the requirements and definitions related to the eligibility of foreign institutions to apply for Title IV, HEA program participation in subpart E of 34 CFR part 600. The proposed regulations would revise § 600.51(c) to incorporate the provisions of removed § 682.611, *i.e.,* that a foreign institution must comply with all requirements for eligible and participating institutions except to the extent those provisions are inconsistent with the HEA, 34 CFR part 600, or other regulatory provisions specific to foreign institutions. Proposed § 600.51(c) would also exempt foreign institutions from requirements that the Secretary identifies through a notice in the **Federal Register**.

The proposed regulations would amend § 600.52 to include a detailed definition of *foreign institution.* Under the definition proposed, *foreign institution* would mean, for the purposes of students who receive Title IV, HEA program aid, an institution that—

- Is not located in a State;
- Except with respect to clinical training offered at foreign graduate medical, veterinary, and nursing schools, has no U.S. locations;
- Has no written arrangements, within the meaning of § 668.5, with institutions or organizations located in the U.S. for students at foreign institutions to take a portion of the program from institutions located in the U.S.;
- Does not permit students to enroll in any course offered by the foreign institution in the U.S. except for independent research under very limited circumstances;
- Is legally authorized by the education ministry, council, or equivalent agency of its home country to provide an education program beyond the secondary level;
- Awards degrees, certificates, or other recognized educational credentials in accordance with § 600.54(d) that are officially recognized by the institution's home country; and
- For any program designed to prepare the student for employment in a recognized occupation, provides a credential that satisfies the educational requirements in the institution's home country for entry into that occupation, including licensure; and satisfies the educational requirements for entry into that occupation in the U.S., including licensure.

The proposed definition of *foreign institution* would also require that if an educational enterprise enrolls students both within a State and outside a State, and the number of students who would be eligible to receive Title IV, HEA program funds attending locations outside a State is at least twice the number of students enrolled within a State, the locations outside a State must apply to participate as one or more foreign institutions and must meet all requirements of the definition of *foreign institution* and other requirements of 34 CFR part 600. Under the proposed regulations, *educational enterprise* would mean an enterprise consisting of two or more locations offering all or part of an educational program that are directly or indirectly under common control.

The proposed regulations would amend the threshold criteria in § 600.54 for determining whether a foreign institution is comparable to a domestic "institution of higher education" as that term is defined in the HEA, and eligible for Title IV, HEA program participation. Proposed § 600.54(a) states that to be eligible, a foreign institution that is not a freestanding foreign graduate medical, veterinary, or nursing school must be a public or private nonprofit educational institution (*i.e.,* a for-profit foreign institution may participate only if it is a freestanding foreign graduate medical, veterinary, or nursing school). Proposed § 600.54(c)(1) would prohibit an eligible foreign institution from entering 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. Written arrangements would not include affiliation agreements for the provision of clinical training for foreign graduate medical, veterinary, and nursing schools under this proposed change. Proposed § 600.54(c)(2) would require that an additional location of a foreign institution must separately meet the proposed definition of *foreign institution* in § 600.52 if it is located outside of the country in which the main campus is located, except for clinical locations of foreign graduate medical, veterinary, and nursing schools, as provided for in § 600.55(h)(1), § 600.56(b), § 600.57(a)(2), § 600.55(h)(3), and except for locations at which independent research is conducted as part of a doctoral program as provided for in the definition of *foreign institution* in § 600.52. Under proposed § 600.52(c)(2), an additional location of a foreign institution would also have to meet separately the definition of *foreign institution,* even if that location is within the same country as the main campus, if it is not covered by the legal authorization of the main campus. Lastly, proposed § 600.54(e) would prohibit any portion of an eligible for-profit foreign graduate medical or veterinary program from being offered at what would be an undergraduate level in the U.S. and would deny Title IV, HEA program eligibility to any joint degree programs offered at for-profit foreign graduate medical, veterinary, or nursing schools.

*Reasons:* Proposed §§ 600.52 and 600.54, revising and adding detail to the

definition of *foreign institution,* are necessary to ensure that a foreign institution is comparable to institutions in the United States, in accordance with section 102(a)(1)(C) of the HEA, before the foreign institution is allowed to apply for Title IV, HEA program participation. The Department is concerned that a foreign institution that is not comparable to a domestic institution, especially in terms of the quality of its educational programs, may misuse Federal funds to the detriment of its students who may have to borrow heavily in order to attend the foreign institution. The proposed regulations also more fully implement the scheme of the HEA, which distinguishes between foreign and domestic institutions and includes provisions unique to each. For example, these regulations would prevent a domestic institution from claiming to be a foreign institution by virtue of the fact that it has established an offshore location, thereby avoiding the requirements applied to domestic institutions such as recognized accreditation, but that sends its students to the United States for the majority of the required coursework.

During the first round of negotiated rulemaking, the Federal negotiator explained the need for a more detailed definition of *foreign institution* and sought comments and feedback from the non-Federal negotiators. Several negotiators urged the Department to define *foreign institution* in a way that ensures quality control through high academic standards and avoids abuse of the Title IV, HEA programs. The non-Federal negotiators suggested requiring that foreign institutions be subject to accreditation by accreditors recognized by the Department as a means of ensuring comparability with domestic institutions. The Federal negotiator explained that the Department does not recognize U.S. accreditors for accreditation of institutions outside the United States. In light of this fact, the non-Federal negotiators suggested a requirement that foreign institutions be "legally authorized" by an appropriate authority in the country in which the institution is located, such as a Ministry of Education or other governmental agency. Other non-Federal negotiators also urged the Department to be flexible in this area because such authority could reside in different branches of government depending on the country. Recognizing that there might be pressure on some foreign governments to set minimal standards because educational institutions are an important part of their economy, several non-Federal negotiators suggested that the Department require foreign countries to recognize the degrees and licenses offered by a foreign institution.

In the second round of negotiations, the Department responded with draft language that addressed many of the non-Federal negotiators' suggestions from the first round of discussion. However, the Department's inclusion of provisions prohibiting foreign institutions from entering into written arrangements with institutions located in the United States and preventing foreign institution students from engaging in courses, research, work, and other pursuits within the United States drew objections from the non-Federal negotiators. The Federal negotiator explained that these provisions addressed abuses witnessed by the Department whereby an institution sets up an offshore campus to claim foreign institution status and thus avoids domestic requirements even though the institution is, for all intents and purposes, a domestic institution. The non-Federal negotiators felt the language prohibiting students from engaging in pursuits within the U.S. was too broad and urged the Department to make exceptions for research conducted in the United States by PhD students. The non-Federal negotiators also requested that the Department clarify what it meant by "written arrangements" in the provision that would prohibit foreign institutions from having written arrangements with U.S. institutions or organizations, noting that many foreign institutions have multiple types of written arrangements with institutions in the U.S.

Based on comments received from the non-Federal negotiators at the second round of negotiated rulemaking, the Department returned to the last round with language that added a cross-reference to § 668.5 in draft paragraph (1)(iii) of the definition of *foreign institution* to clarify the meaning of *written arrangements.* The proposed language also added an exception in draft paragraph (1)(iv) of the definition of *foreign institution* for independent research done under certain circumstances during the dissertation phase of a doctoral program from the general prohibition on enrolling students in courses offered by a foreign institution in the United States. In draft paragraph (2) of the definition of *foreign institution,* the Department sought to further distinguish between foreign and domestic institutions by prohibiting foreign locations of an educational enterprise from being considered additional locations of a domestic location of the educational enterprise if the enterprise has at least twice as many students enrolled in foreign locations as those enrolled in domestic locations. This provision would prevent a predominantly foreign educational enterprise from establishing a minor presence within the United States for the purpose of circumventing the statutory provision limiting foreign institution participation to the Direct Loan program (or, before July 1, 2010, to the FFEL program), so as to provide other Title IV grant, loan, and work-study funds to students at what are really foreign institutions. In addition, in response to requests by non-Federal negotiators, the Department added clarity to the paragraph by describing an "educational enterprise" as an entity that consists of two or more locations offering all or part of an educational program that are directly or indirectly under common ownership. Locations are considered to be "indirectly" under common ownership if, at any level, the locations are owned and controlled by the same parties, or related parties, within the meaning of § 600.31. In draft § 600.54(c)(1), the Department clarified that written arrangements do not include affiliation agreements for the provision of clinical training.

The non-Federal negotiators were comfortable with the majority of the Department's proposed language but several non-Federal negotiators continued to raise concerns about the proposed language prohibiting U.S. locations of foreign institutions and written arrangements with institutions located in the United States. The Federal negotiator stated that foreign institutions are free to establish U.S. locations and have written arrangements with institutions located in the United States, but that such locations and institutions would need to be separately certified and meet the requirements applicable to domestic institutions in order for U.S. students attending them to receive Title IV, HEA program funds. In this regard, the Department does not want a foreign institution to send its U.S. students to a U.S. location of a foreign institution, or to a U.S. institution with which it has an agreement for their training, because students enrolled in a foreign institution are only eligible for Direct Loan program (or, before July 1, 2010, FFEL program) loans. Instead the Department wants U.S. students attending postsecondary institutions in the United States to be eligible for the full range of Title IV, HEA program funds available to domestic institutions. The Federal negotiator noted that it would be acceptable for a U.S. student to transfer officially from a foreign institution to an

institution in the U.S. that would be separately certified as a domestic institution. The non-Federal negotiators asked the Department to clarify that the proposed definition of *foreign institution* would apply only for the purposes of students who receive Title IV, HEA program funds. For example, a foreign institution would not be prohibited from having U.S. locations, but the locations would not be recognized as part of the institution for Title IV purposes, so no student attending the location, or enrolled in a program designed to be offered there in whole or in part, would be eligible to receive Title IV, HEA program funds. Similarly, a foreign institution may also maintain agreements with a U.S. institution or organization so that students of the foreign institution may continue to engage in exchange opportunities offered by U.S. institutions, but the agreement would not be recognized for Title IV, HEA purposes, so no student attending the U.S. institution, or enrolled in a program designed to be offered there in whole or in part, would be eligible to receive Title IV, HEA program funds. The Department noted that the Title IV, HEA program regulations are always applicable for Title IV, HEA program purposes only, but agreed to add the clarification.

**Certification of Foreign Institutions (§§ 600.52 and 668.13)**

*Statute:* Section 102(a)(5) of the HEA requires the Secretary to certify an institution's qualifications as an institution of higher education in accordance with subpart 3, part H of Title IV. Under section 498(g)(1) of the HEA, the Secretary is authorized to certify an institution's eligibility for purposes of participating in the Title IV, HEA programs for a period of up to six years.

*Current Regulations:* Section 600.52 of the Institutional Eligibility regulations defines *foreign graduate medical school* as a foreign institution that is listed in the most current edition of the World Directory of Medical Schools. *Foreign nursing school* and *foreign veterinary school* are not currently defined in § 600.52.

Section 668.13(b)(1) of the General Provisions regulations specifies that an institution's period of participation expires six years after the date of certification, except that the Secretary may specify a shorter period.

*Proposed Regulations:* The proposed regulations would modify the definition of *foreign graduate medical school* and add definitions for the terms *foreign nursing school* and *foreign veterinary school* in § 600.52. In addition, the proposed regulations would modify the regulations governing certification procedures in § 668.13.

The proposed definition of *foreign graduate medical school* in § 600.52 would be modified by removing the reference to the World Directory of Medical Schools (see the discussion under *Foreign Graduate Medical Schools* below) and replacing it with language specifying that a *foreign graduate medical school* is a foreign institution or component of a foreign institution that has, as its sole mission, providing an educational program that leads to a degree of medical doctor, doctor of osteopathy, or its equivalent. The proposed definition would clarify that references to a foreign graduate medical school as "freestanding" pertain solely to a school that qualifies by itself as a foreign institution, and not to a school that is a component of a larger university that qualifies as a foreign institution. Similar language is included in the proposed definitions for the terms *foreign nursing school* and *foreign veterinary school.*

The proposed regulations would amend § 668.13(b)(1) to specify that the period of participation for a private, for-profit foreign institution expires three years after the date the institution is certified by the Secretary, rather than the current six years.

*Reasons:* The National Committee on Foreign Medical Education and Accreditation (NCFMEA) recommended that a foreign graduate medical school that is a component of a larger foreign institution be certified as a separate institution of higher education from the larger institution (Recommendation 14(a)). The Department initially proposed implementing this recommendation and applying it to foreign nursing and veterinary schools as well. Under that proposal, a graduate medical, nursing, or veterinary school that is part of a larger institution would be given its own OPEID number. Cohort default rates for the graduate medical, nursing, or veterinary school would be calculated independently of the cohort default rate for the larger foreign institution.

After discussions with the non-Federal negotiators regarding the administrative burdens that separate certification of non-freestanding graduate medical, veterinary, and nursing schools would entail, the Department decided to withdraw this proposal. Instead, the Department will track such graduate medical, veterinary, and nursing schools separately from the larger institution. To facilitate this, the Department proposed regulations that clarify the distinction between "freestanding" graduate medical, veterinary, and nursing schools and graduate medical, veterinary, and nursing schools that are components of a larger foreign institution.

The NCFMEA also recommended that all foreign graduate medical schools be certified for a period of no more than three years (Recommendation 14(b)). The Department initially proposed reducing the certification period for all foreign institutions from six years to three years to provide the Department with more oversight over foreign institutions. Non-Federal negotiators noted that the Department's proposal to decrease the certification period would be administratively burdensome for institutions. Some non-Federal negotiators felt that the increased administrative burden might lead foreign institutions that enroll small numbers of Title IV borrowers to reconsider participating in the Title IV, HEA programs. Non-Federal negotiators also noted that for-profit foreign institutions might have difficulty raising capital based on three-year certifications rather than six-year certifications.

Non-Federal negotiators also contended that the reduction in the certification period would not provide much benefit to the Department. They felt that the relevant information for an institution would not be likely to change significantly in three years. The non-Federal negotiators also pointed out that this change would increase the workload for the Department staff who review and approve institutional eligibility applications for foreign institutions.

The Department continues to believe that reducing the certification period will give the Department better oversight over foreign institutions, particularly over institutions that enroll large numbers of Title IV borrowers. However, the Department acknowledges that decreasing the certification period from six to three years would be unnecessary for certain types of institutions. Therefore, the Department revised its proposal by limiting the three-year certification period to private, for-profit medical, veterinary, and nursing schools. These institutions, among all participating foreign institutions, continue to receive by far the largest amounts of Title IV, HEA program funds. Under the revised proposal, public and nonprofit institutions would continue to be recertified every six years.

**Single Legal Authorization for Groups of Foreign Institutions (§ 600.54)**

*Statute:* Section 101(a)(2) of the HEA requires a domestic institution of higher education to be legally authorized by the State in which it is located to provide a program of postsecondary education. Section 102(a)(2)(A) of the HEA requires the Secretary, through regulation, to develop eligibility criteria for foreign institutions of higher education that are comparable to the eligibility criteria for U.S. institutions of higher education. Section 498(a) and (b) of the HEA require the Secretary to determine whether an institution is legally authorized and to prepare and prescribe an application form for purposes of determining that the requirements of eligibility, accreditation, financial responsibility, and administrative capability are met.

*Current Regulations:* Section 600.54(b) of the current regulations requires a foreign institution to be legally authorized by an appropriate authority to provide postsecondary education in the country where the institution is located.

*Proposed Regulations:* Proposed § 600.54(f) would provide three different methods for a foreign institution to prove that it is legally authorized to provide postsecondary education in the country where the institution is located. The documentation from a foreign country's education ministry, council, or equivalent agency may either be—

- A single legal authorization that covers all eligible foreign institutions in the country;
- A single legal authorization that covers all eligible foreign institutions in a jurisdiction within the country; or
- Separate legal authorizations for each eligible foreign institution in the country.

*Reasons:* To ease administrative burden for foreign institutions, the Department sought to determine if compliance with any of the foreign institution eligibility criteria could be demonstrated at a nationwide level, for all eligible institutions within a country, rather than at the individual institution level. After discussions with the non-Federal negotiators and our own internal review of the Title IV institutional eligibility criteria, the Department determined that the requirement for proof of legal authorization to provide postsecondary education could be provided this way.

Non-Federal negotiators were generally supportive of the Department's proposal. However, they did raise some concerns. Some non-Federal negotiators felt that institutions should not have to rely on a national government to develop a nationwide list of institutions legally authorized to provide postsecondary education in the country. They contended that some national governments might not have the resources to develop and maintain such a list. The non-Federal negotiators argued that for institutions in some countries, it might be cumbersome and time-consuming to obtain such a list from the national government. This would have the effect of slowing down the eligibility certification processes for some foreign institutions. These non-Federal negotiators recommended that institutions retain the option of providing the Department with their own individual legal authorizations, rather than relying on a nationwide list.

Other non-Federal negotiators believed that it was too constricting to limit the authority for developing the list of institutions to an agency of the national government. They noted that in some countries, such as Canada, legal authorization to provide postsecondary education is provided by the provincial governments, not by the national government. These non-Federal negotiators requested that the Department make provision for legal authorizations from government entities at a provincial level, not at the national level.

The Department agreed with these recommendations. In addition to allowing proof of legal authorization to be provided on a nationwide basis, the proposed regulations allow for proof of legal authorization to be provided for all eligible institutions in a jurisdiction within the country, and continue to allow proof of legal authorization to be provided separately for each eligible institution in a country.

**Eligibility of Training Programs at Foreign Institutions (§ 600.54)**

*Statute:* Section 101(b)(1) of the HEA provides, in part, that one type of educational program that a Title IV "institution of higher education" may provide to be eligible to apply to participate in the Title IV, HEA programs is a training program of at least one year that prepares students for gainful employment in a recognized occupation. Section 102(a)(2)(A) provides for participation in the Title IV, HEA programs by entities that are comparable to such institutions under regulations prescribed by the Secretary.

*Current Regulations:* Section 600.54 provides that, in order to be eligible to apply to participate in the Title IV, HEA programs, a foreign institution must provide an eligible educational program that leads to a degree that is equivalent to a U.S. degree, or be at least a two-academic-year program acceptable for full credit toward the equivalent of a U.S. baccalaureate degree, *or be equivalent to at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation.*

Section 668.3 defines an academic year as—

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

*Proposed Regulations:* Under the proposed regulations, a foreign institution would have to demonstrate to the satisfaction of the Secretary (who would make program-by-program determinations of comparability) that the amount of academic work required by a program it seeks to qualify as eligible is at least a one-academic-year training program that is equivalent to—

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

*Reasons:* The Department believes the proposed regulations are necessary because many foreign institutions use educational measurements other than conventional U.S. semester, trimester, quarter credits and clock-hours. As the definition of an academic year—the program length measurement used here—specifically references these U.S. measurements, it is necessary to make some sort of comparability determination in order to determine the eligibility of these programs at foreign institutions, and the eligibility of those foreign institutions that do not offer any other type of Title IV, HEA eligible program. The non-Federal negotiators

provided the Department with information regarding the definition of non-degree programs by different countries, units of measurement for programs in other countries, and evaluation and comparability determinations made by private entities. The information provided consistently indicates that the assignment of credits or other measures of academic work by foreign institutions vary greatly. As a result, under the proposed regulations, the Secretary would make determinations of comparability on a program-by-program basis, based on information provided by a foreign institution to demonstrate that the amount of academic work required by a program it seeks to qualify as eligible is comparable to at least a one-academic-year training program that is equivalent to the academic work required for eligibility of these programs at domestic institutions.

Two of the issues under negotiation by the Team I negotiating committee (Program Integrity Issues)—the definition of what it means to "provide gainful employment in a recognized occupation" and the definition of a credit hour for Title IV, HEA program purposes—could impact the eligibility of all programs, offered at foreign and domestic institutions, that are eligible because they are at least one academic year in length and prepare students for gainful employment in a recognized occupation. These Team I issues are distinct from the issue negotiated here by Team II—*i.e.,* the translation of credits or other measures of academic work by foreign institutions for purposes of determining program length (a measure of both weeks and credit hours).

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

*Statute:* Section 102(a)(2)(A) of the HEA provides that the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an "institution of higher education" as defined in section 101 of the HEA, except that a foreign graduate medical, veterinary or nursing school may be for-profit. That section also provides that, except for foreign graduate medical schools that had a clinical training program that was approved by a State as of January 1, 1992, at least 60 percent of students and graduates must not be persons described in section 484(a)(5) of the HEA in the year preceding the year for which students are seeking Title IV, HEA program loans, and that at least 60 percent of students and graduates taking the United States Medical Licensing Examination (USMLE) administered by the Educational Commission for Foreign Medical Graduates (ECFMG) must have received a passing score in that preceding year.

Effective July 1, 2010, the HEOA amended sections 102(a)(2)(A) and (B) of the HEA to (1) increase the pass rate threshold for the USMLE from 60 percent to 75 percent; (2) allow a foreign graduate medical school that was eligible based on having a clinical training program approved by a State as of July 1, 1992, to continue to be eligible as long as it has continuously operated a clinical training program in at least one State that approves the program; and (3) allow for the promulgation, through regulations, of new eligibility criteria for foreign graduate medical schools that have a clinical training program approved by a State prior to January 1, 2008, but that would not meet the otherwise—applicable requirement that at least 60 percent of their students and graduates not be persons described in section 484(a)(5) of the HEA in the year preceding the year for which students are seeking Title IV, HEA program loans. Section 102(a)(2)(B)(iii)(IV)(aa) of the HEA provides that such new eligibility criteria must be based on the recommendations contained in a report to be prepared by August 14, 2009, by the NCFMEA. The NCFMEA is a panel of medical experts that evaluates the medical school accrediting agency standards used in the foreign country where medical education is provided to determine comparability to the standards of accreditation applied to medical schools in the United States. The statute required the NCFMEA's report to address: entrance requirements; retention and graduation rates; successful placement of students in U.S. medical residency programs; passage rate of students on the USMLE; the assessment of program quality by State medical boards; the extent to which graduates would be unable to practice medicine in one or more States, based on the judgment of a State medical board; any areas recommended by the Comptroller General (*i.e.,* head of the Government Accountability Office (GAO)) under section 1101 of the HEOA; and any additional areas the Secretary may require. The statute provides that the regulations must, at a minimum, require a USMLE pass rate of at least 75 percent.

The HEOA also provides that the Department may issue an NPRM addressing the new eligibility criteria for foreign graduate medical schools no earlier than 180 days after the submission of the report, and may issue final regulations no earlier than one year after the issuance of the NPRM.

*Current Regulations:* Neither § 600.20, which addresses the application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification, nor § 600.21, which addresses when and how an institution must update application information, currently include any provisions specific to *foreign graduate medical schools.* Section 600.52 defines a foreign graduate medical school as a foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the World Directory of Medical Schools published by the World Health Organization (WHO). The regulations do not currently include a definition of clinical training, the NCFMEA, or a post-baccalaureate/equivalent medical program. Section 600.55(a)(5) contains the additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Title IV, HEA programs. Currently, a foreign graduate medical school generally must, in addition to satisfying the criteria in § 600.54 for determining a foreign institution's eligibility (except the criterion that the institution be public or private nonprofit), satisfy all of the following criteria:

- Provide, and require its students to complete a program of clinical and classroom medical instruction of not less than 32 months that is supervised closely by members of the school's faculty and that is provided either (1) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or (2) In the United States, through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary.
- 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.
- Employ 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;
- Be approved by an accrediting body (1) 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 (2) whose standards of accreditation

of graduate medical schools have been evaluated by the advisory panel of medical experts established by the Secretary and have been determined to be comparable to standards of accreditation applied to medical schools in the United States.

In addition, current regulations provide that foreign graduate medical schools that do not have a clinical training program that has been continuously approved by a State since January 1, 1992, must—

- During the academic year preceding the year for which any of the school's students seeks a FFEL program loan, have 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 be persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and
- For a foreign graduate medical school outside of Canada, have at least 60 percent of the school's students and graduates who took any step of the USMLE administered by the ECFMG (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks a FFEL program loan to have received passing scores on the exams. In performing the calculation, a foreign graduate medical school must count as a graduate each person who graduated from the school during the three years preceding the year for which the calculation is performed.

*Proposed Regulations: Location of a graduate medical education program, affiliation agreements, and application and notification procedures for foreign graduate medical schools*

Section 600.55(h)(2) of the proposed regulations would provide that no portion of the medical education program offered to U.S. students by a foreign graduate medical school, other than the clinical training portion of the program, would be allowed to be located outside of the country in which the main campus of the school is located.

For clinical training sites located outside the United States, proposed § 600.55(h)(1) would require that, with two exceptions, all portions of the 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. Under proposed § 600.55(h)(3), with the same two exceptions, if any portion of the clinical training portion of the educational program is located in an approved comparable foreign country other than the country in which the main campus is located, the institution's medical accrediting agency must have conducted an on-site evaluation and specifically approved the clinical training sites in order for students attending the site to be eligible to borrow Title IV, HEA program funds. Furthermore, clinical instruction offered at a site in a foreign NCFMEA-approved country must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country. The two exceptions are that these criteria would not have to be met if the clinical training location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME), or if no individual student takes more than two electives at the clinical training location and the combined length of the electives does not exceed eight weeks.

Proposed § 600.55(e)(1) would require a foreign graduate medical school to have: (1) 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 (2) 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 combined total of eight weeks.

The proposed regulations would require these affiliation agreements or other written arrangements to state how the following will be addressed at each site: (1) Maintenance of the school's standards; (2) appointment of faculty to the medical school staff; (3) design of the curriculum; (4) supervision of students; (5) provision of liability insurance; and (6) evaluation of student performance.

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

Proposed § 600.20(a)(3)(i)(A) and § 600.20(b)(3)(i)(A) would 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) would be required to list on the application to participate all educational sites and where they are located, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a combined total of eight weeks.

In § 600.52, the proposed regulations would add a definition of *clinical training.* Clinical training would be defined as the portion of a graduate medical education program that counts as a clinical clerkship for purposes of medical licensure. Proposed §§ 600.20(a)(3)(i)(B) and (b)(3)(i)(B) would require freestanding foreign graduate medical schools, and foreign institutions that include a foreign graduate medical school, to identify, for each clinical site reported in the certification or recertification application as required under §§ 600.20(a)(3)(i)(A) and (b)(3)(i)(A), the type of clinical training (core, required clinical rotation, not required clinical rotation) offered at that site.

Proposed § 600.20(c)(5) would require a foreign graduate medical school (*i.e.,* a freestanding foreign graduate medical school or a foreign institution that includes 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. If a foreign graduate medical school (*i.e.,* a freestanding foreign graduate medical school or a foreign institution that includes a foreign graduate medical school) adds a location that offers all or a portion of the school's clinical rotations that are not required, proposed § 600.21(a)(10) would require the school to notify the Secretary 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, 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 combined total of eight weeks.

In addition, proposed § 600.20(a)(3)(ii) and § 600.20(b)(3)(ii) would require 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) indicate whether it offers (1) only post-baccalaureate/equivalent medical programs; (2) other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine; or (3) both. Proposed § 600.52 would define a *post-baccalaureate/equivalent medical program* as a program that consists solely of courses and training leading to employment as a doctor of medicine or doctor of osteopathic medicine, and is 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.

**General**

Proposed § 600.52 would replace the definition of a *foreign graduate medical school* and clarify that a *foreign graduate medical school* can be free-standing or a component of an eligible foreign institution.

Proposed § 600.55(a)(1) would continue to provide that, in addition to satisfying the general criteria for determining a foreign institution's eligibility (except the criterion that the institution be public or private nonprofit), a foreign graduate medical school would have to satisfy all applicable criteria in this section, except that the proposed regulations would clarify that the general criteria that must be satisfied are all applicable criteria in part 600, rather than just § 600.55.

Proposed § 600.55(a)(2) would require a foreign graduate medical school to provide, and require its students to complete, a program of clinical training and classroom medical instruction of not less than 32 months, that is supervised closely by members of the school's faculty, and that is both (1) provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; and (2) approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary, regardless of whether it is located outside or inside the United States.

In addition, the proposed regulations would make clear that a foreign graduate medical school may offer, as part of its clinical training, no more than two electives consisting of a combined total 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 that is accredited by the LCME.

Proposed § 600.55(a)(3) would require that a foreign graduate medical school appoint, rather than employ, 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.

Finally, proposed § 600.55(a)(4) would continue to require that a foreign graduate medical school have graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

**Accreditation**

The proposed regulations would make no substantive changes to the accreditation requirements for foreign graduate medical schools.

**Admission Criteria and Collection and Submission of Data**

Section 668.55(c) would require a foreign graduate medical school with a post-baccalaureate/equivalent medical program to 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 school. In addition, § 600.55(c) would require a foreign graduate medical school to determine the consent requirements for and require the necessary consents of all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements in proposed § 600.55(d) for MCAT scores, residency placement, and USMLE scores.

Proposed § 600.55(d) would require a foreign graduate medical school to obtain, at its own expense, and by September 30 of each year submit to its accrediting authority: (1) MCAT scores for all students who are U.S. citizens, nationals, or eligible permanent residents admitted during the preceding award year and the number of times each student took the exam; and (2) the percentage of students who are U.S. citizens, nationals, or eligible permanent residents graduating during the preceding award year who are placed in an accredited U.S. medical residency. A school would have to submit the data on MCAT scores and placement in a U.S. residency program to the Secretary only upon request. In addition, proposed § 600.55(d) would require a foreign graduate medical school to obtain, at its own expense and by September 30 of each year submit to the Secretary, unless the Secretary notifies schools that it will receive the information directly from the ECFMG, or other responsible third parties, USMLE scores earned during the preceding award year by at least each student who is a U.S. citizen, national, or eligible permanent resident, and each graduate who is a U.S. citizen, national, or eligible permanent resident who graduated during the three preceding years, and the date each student took each test, including any failed tests. The USMLE scores submitted would have to be disaggregated by step/test for Step 1, which assesses knowledge and application of basic science concepts; Step 2–Clinical Skills (Step 2–CS), which assesses knowledge of clinical science principles; and Step 2–Clinical Knowledge (Step 2–CK), which tests a student's ability to examine and interact with patients and colleagues, and by attempt. A school would not be required to submit data on the USMLE Step 3, which provides a final assessment of a physician's ability to assume independent delivery of general medical care. All foreign graduate medical schools would be required to submit these data, even those that are not required to meet the 60 percent/75 percent USMLE pass rate requirement.

**Notification to Accrediting Body**

Proposed § 600.55(e)(2) would require a foreign graduate medical school to notify its accrediting body within one year of any material changes in (1) the educational programs, including changes in clinical training programs; and (2) the overseeing bodies in the formal affiliation agreements with hospitals and clinics.

**Citizenship and USMLE Pass Rate Percentages**

Proposed § 600.55(f)(1)(i)(B) would allow a foreign graduate medical school to be exempt from the existing citizenship requirement (in proposed § 600.55(f)(1)(i)(A)) that at least 60 percent of the school's students and recent graduates not be U.S. citizens, nationals, or eligible permanent residents if it had a clinical training program approved by a State as of January 1, 2008, and continues to operate a clinical training program in at least one State that approves the program. In addition, proposed § 600.55(f)(2)(ii) would allow a foreign

graduate medical school that was eligible to participate in the Title IV, HEA programs and exempt from the USMLE pass rate requirement based on having a clinical training program approved by a State as of January 1, 1992, to continue to be eligible and exempt from the USMLE pass rate requirement as long as it continues to operate a clinical training program in at least one State that approves the program. Proposed § 600.55(f)(1)(ii) would make the following changes to the USMLE pass rate requirement:

- Increase the USMLE pass rate threshold from 60 percent to 75 percent (§ 600.55(f)(1)(ii)).
- Limit the pass rate requirement to Step 1, Step 2–CS, and Step 2–CK, excluding Step 3.
- Require a foreign graduate medical school to have at least a 75 percent pass rate on each step/test of the USMLE (limited to Step 1, Step 2–CS, and Step 2–CK), rather than a combined pass rate for all steps/tests.
- Require foreign graduate medical schools to include in the calculation only U.S. citizens, nationals, or eligible permanent residents, rather than all students taking the USMLE.
- Require foreign graduate medical schools to include only first time test takers in the calculation.

For example, the award year 2011–2012 pass rate for the USMLE–Step 1 would be calculated as follows:

*Those from the denominator who passed Step 1.*

All U.S. citizens, nationals, and eligible permanent residents who are students during award year 2010–2011, or who graduated in award year 2008–2009, 2009–2010, or 2010–2011, and took Step 1 of the exam for the first time in award year 2010–2011.

Under proposed § 600.55(f)(4), if the result of any step/test pass rate would be based on fewer than eight students, a single pass rate would be determined for the school based on the performance of U.S. citizens, nationals, and eligible permanent residents on Step 1, Step 2–CS and Step 2–CK combined. If that combined pass rate would be based on fewer than eight step/test results, the school would be deemed to have no pass rate for that year, and the results for the year would be combined with each subsequent year until a pass rate based on at least eight step/test results could be derived.

**Other Criteria**

Proposed § 600.55(g)(1) would require a foreign graduate medical school to apply existing § 668.16(e)(2)(ii)(B), (C), and (D) for establishing a quantitative satisfactory academic progress policy and require that a student complete his or her educational program within 150 percent of the published length of the educational program. In addition, proposed § 600.55(g)(2) would require a foreign graduate medical school to document the educational remediation it provides to assist students in making satisfactory academic progress. Finally, proposed § 600.55(g)(3) would require a foreign graduate medical school to publish all the languages in which instruction is offered.

*Reasons:* As required by statute, the recommendations of the 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) that could be implemented through regulations were taken into consideration in the development of these proposed regulations. The report is available at *http://www2.ed.gov/about/bdscomm/list/ncfmea-dir/reporttocongress2009.pdf.* The Department determined that the following recommendations made by the NCFMEA could be addressed through regulatory change: 1(a), 1(b), 3, 4(a), 4(b), 4(c), 9(a), 9(b), 10, 12(a), 12(b), 14(a) and 14(b). The Committee's consideration of these recommendations is discussed below in relation to the areas of the proposed regulations to which they pertain, except for Recommendations 14(a) and 14(b), which are discussed under *Certification of Foreign Institutions (§§ 600.52, and 668.13)* above.

Although the HEOA specified that the NCFMEA was to take into account in the development of their recommendations the results of the GAO report related to foreign graduate medical schools, the HEOA specified a later deadline for the issuance of the GAO report than for the NCFMEA recommendations. As a result, the GAO report was not completed in time for the NCFMEA to take it into account. The GAO report was published June 2010. The Department will take the GAO report into consideration as the rulemaking process continues. Although the statute directed the NCFMEA to make recommendations for a specific group of schools, the NCFMEA stated on page seven of its report, "It also suggests the recommendations contained within the report be applied to all foreign graduate medical schools participating in the FFEL program. The NCFMEA does not believe that two sets of criteria should be applied, given the millions of dollars in Federal student loans disbursed annually to foreign graduate medical schools that are already participating in the FFEL program. If performance levels are set to ensure quality, they should apply to all." The Department in general agrees with this recommendation; thus, these proposed regulations for foreign graduate medical schools would apply to all foreign graduate medical schools, except where noted. Some non-Federal negotiators believed the NCFMEA report contains a contradictory statement indicating the NCFMEA's desire to limit its recommendations for change to a specific group of schools ("The foreign medical schools that are subject to the recommendations contained within this report are identified as * * * having American citizens/permanent residents constitute more than 40 percent of its fulltime enrollment and/or graduates from the preceding year." page five). These non-Federal negotiators were concerned about the large overall administrative burden that the proposed regulations as a whole would have on foreign graduate medical schools with small numbers of U.S. students with Title IV, HEA program loans. The Department made clear during the negotiations that it believes the statement identified by the non-Federal negotiators is merely a restating of the statute. Regardless, the Department believes that these proposed regulations are important to the integrity of the Title IV, HEA programs and should apply to all foreign graduate medical schools, except where noted.

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

Under section 102(a)(2)(B) of the HEA, a foreign graduate medical school must be accredited or preaccredited by an accrediting agency recognized by the Secretary, or approved under foreign accrediting standards found comparable by the NCFMEA to standards applied in the United States. In order for this provision to have effect, and as the Department's implementing regulations have always provided, an accrediting body approved by NCFMEA must be legally authorized to evaluate the quality of the medical school educational programs and facilities in the country in which those schools are located. The Department generally construes this requirement for comparable accreditation to mean that (except for clinical training locations in the U.S. that are provided for in the statute) the graduate medical program

must be located in the country in which the main campus of the school is located. Although a medical accrediting body may accredit locations of institutions in other countries, the Department believes this is the best interpretation of the statute because, with limited exceptions, an accrediting body's actual authority does not extend beyond the country in which it is established. The Department currently does not approve for participation in the Title IV, HEA programs any educational program in which a portion of what is commonly referred to as the basic science part of the program is located outside of the country in which the main campus is located. However, the Department has allowed for the clinical training part of the program to be located in an approved comparable foreign country other than the country in which the main campus is located, if the site is located in an NCFMEA approved country, the institution's medical accrediting agency has conducted an on-site evaluation and specifically approved the site, and the clinical instruction is offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that foreign country. The Department's initial proposal reflected this policy, which is also the approach recommended by NCFMEA Recommendation 12(a).

Several non-Federal negotiators felt this initial proposal was too limiting. The Committee discussed at length the different parts of a graduate medical program and the characteristics of each part that might justify different treatment. In addition to distinguishing between the basic science and the clinical training parts of the program, the Committee discussions distinguished between the different parts of clinical training referred to in these proposed regulations as the core rotations, the required clinical rotations (the electives that students are required to take), and the not required clinical rotations (the electives that students can choose).

In general, some non-Federal negotiators felt that matriculating in different countries as part of a graduate medical program would benefit students by exposing them to medical education and practice in different environments and cultures. One non-Federal negotiator argued that allowing a portion of the basic science part of the program to be located in the United States would assist in providing a smooth transition to clinical training in the United States. The negotiator also proposed a way of achieving what some non-Federal negotiators felt was sufficient oversight to permit a portion of the basic science part of the program to be located in a non-NCFMEA approved foreign country other than the country in which the main campus is located: Limiting a school to the establishment of one such site, limiting the amount of the program that could be offered there, requiring a visit and approval by the school's accrediting body, setting cohort default rate and USMLE pass rate thresholds, requiring specific evaluations by the school's accrediting body, requiring a formal agreement/recognition of the accrediting body's authority by the country in which the site was located, and requiring an NCFMEA determination that the accrediting body has demonstrated its capacity to conduct off-site and on-site reviews of the site that are comparable to the reviews conducted of the main campus and additional locations within the country in which the main campus is located. Others suggested that a portion of the basic science part of the program be allowed to be located in a country other than the country in which the main campus is located if the location is accredited by a comparable accrediting agency.

Non-Federal negotiators also argued for more leniency regarding the offering of the clinical training part of the program in countries other than the country in which the main campus is located. While some felt that all clinical training should be permitted to be located in another country without as much oversight as the Department proposed, others felt that leniency was appropriate only for the clinical rotation part because exposure to different medical environments and cultures was most important during the hospital-based part of the clinical training where the students are in direct contact with patients and medical residents. Other non-Federal negotiators felt that leniency was appropriate only for the not-required-clinical-rotation part, because that is when a student will most benefit from the exposure without the program losing coherence. The Committee discussed how the not-required-clinical-rotation part of the program may be very individualized, with numerous sites, sometimes suggested by students, at which students study for short periods of time. They pointed out that, as a result, some sites are only used for a short period of time. They noted that an accrediting body would not have the time or resources to visit and approve these short-term sites. Non-Federal negotiators suggested various ways of achieving what they felt was sufficient oversight of these locations: e.g., limiting the amount of the program that could be offered there, limiting the amount of the program an individual student could take at the location, and limiting the number of students who could attend the location. The non-Federal negotiators pointed to language in the September 2009 *NCFMEA Guidelines for Requesting a Comparability Determination* (page 17) that omits any mention of non-core portions of a clinical training program in its discussion of the site visits that the school's accrediting body is required to make (the document is available at *http://www2.ed.gov/about/bdscomm/list/ncfmea-dir/ncfmea-guidelines.pdf*).

In addition, some non-Federal negotiators felt that locations that are included in the accreditation of a medical program accredited by the LCME, such as locations of some Canadian schools, should be exempt because the LCME accrediting standards are those that are applied to medical schools in the United States. The Department agreed.

Because of the lack of direct authority of accrediting bodies from different countries, the Department held firm on limiting the location of the basic science portion of the program to the institution's home country. The Department reiterated its belief that the basic sciences part of a graduate medical program should be located in the same country as the main campus so that the majority of the classroom instruction part of the program will be under the direct authority of the school's accrediting body. In one draft of the proposed regulations, the Department referred to this part of the program as the "didactic components." A non-Federal negotiator pointed out that this term could be construed to include lectures and other instruction that take place during the clinical training portion of the program. The non-Federal negotiator argued that blurring the line between the "basic science" and the "clinical training" portions of the programs could lead to an interpretation of the regulations whereby a foreign graduate medical school would offer parts of what is really the basic science portion of the program in the United States. As a result, the Committee agreed to add a definition of *clinical training* to the proposed regulations to make clear that only parts of the program that meet that definition may be located in the United States. The definition was also added to clarify the terminology that the proposed regulations are using for the

components of clinical training, as provisions both here and elsewhere in the proposed regulations differentiate among these components.

The Department agreed that it was acceptable to balance less oversight of a short-term location at which individual students were taking a small portion of the not-required-clinical-rotation part of the program, with the benefits of exposure to other medical environments and cultures. The Department believes this is warranted because of the individualized nature of the not-required-clinical-rotation part of the program, when individual sites are often used for short periods of time. The Department also agreed that locations in countries other than the country in which the main campus is located that are included in the accreditation of a medical program accredited by the LCME should also be exempt from meeting the three criteria (*i.e.,* required to be located in an approved comparable country, required on-site evaluation and specific approval of the site by the institution's medical accrediting agency, and the requirement that instruction must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country) because the LCME accrediting standards are those that are applied to medical schools in the United States. Therefore, the Department's final proposal, which was agreed to by the Committee, provided that clinical training may be offered outside the United States and the country in which the main campus is located without the site meeting the three criteria, if the location is included in the accreditation of a medical program accredited by the LCME, or if no individual student takes more than two electives at the location and the combined length of the electives does not exceed eight weeks.

Because of the importance and more standardized nature of core and required clinical rotations, proposed § 600.55(e)(1) would require a foreign graduate medical school to have 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. However, for any hospital or clinic at which only clinical rotations that are not required are provided, a school would be permitted to have other written arrangements instead of a formal affiliation agreement, and the proposed regulations would not require a school to have any written arrangements 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 combined total of eight weeks. Also, in accordance with NCFMEA Recommendation 12(b), proposed § 600.20(a)(3)(iii) and § 600.20(b)(3)(iii) would require a foreign graduate medical school to provide as a part of any application for initial certification or recertification to participate in the Title IV, HEA programs, copies of the affiliation agreements that it is required to have for locations that offer the core and required-clinical-rotation parts of the clinical training, but not copies of written arrangements for locations offering the not-required-clinical-rotation part of the program. The Department was persuaded by the non-Federal negotiators who noted that it would be quite burdensome for institutions to execute formal affiliation agreements with the sites of rotations that are not required, because there are often so many of them and use is often for the short-term. They assured the Department that other written arrangements, such as letters of good standing, insurance arrangements, and other documents specific to a particular student, are made with these locations that cover the elements of formal affiliation agreements. Because of the multitude of documentation comprising the written arrangements with these often short-term sites, the Department did not believe it was necessary to require a regular submission to the Department. In accordance with NCFMEA Recommendation 12(b), to ensure continuity of the eligible program from the main campus to remote locations, the proposed regulations would require that all required affiliation agreements or other written arrangements address maintenance of the school's standards, appointment of faculty, design of the curriculum, provision of liability insurance, and supervision and evaluation of student performance.

Although an institution would not be required to have formal affiliation agreements with locations that offer the not-required-clinical-rotation part of the clinical training, proposed § 600.20(a)(3)(i) and § 600.20(b)(3)(i) would provide that, for initial certification or for recertification, a foreign graduate medical school would be required to list these locations and where they are located on the application to participate, along with the sites at which the non-clinical, core clinical, and required-clinical-rotation parts of the program are offered, except that those not-required-clinical-rotation 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, do not have to be listed. The Department believes it is essential for the Department to be aware of all locations of an institution to which Title IV, HEA program funds are provided, and agreed to make an exception only for sites that are not used regularly and, therefore, would be difficult and burdensome to track. Some non-Federal negotiators indicated that most institutions can and do track the locations the proposed regulations would require them to report to the Department, so providing this information to the Department would not be unduly burdensome.

Consistent with these proposed regulations, proposed § 600.20(c)(5) would require 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 the Secretary's approval before providing Title IV, HEA program funds to the students at the location. In proposed 600.21(a)(10), they would allow a foreign graduate medical school that adds a location that offers all or a portion of the school's clinical rotations that are not required to provide Title IV, HEA program funds to the students at the location without waiting for approval from the Secretary, provided the school notifies the Secretary no later than 10 days after the location is added. As with the proposed exceptions to the requirements for offering a portion of the clinical training portion of the program outside of the country in which the main campus of the school is located, and the proposed regulations specifying when affiliation agreements would be required, an exception from the prior approval requirement for adding locations offering core/required rotations would be allowed for those locations that are included in the accreditation of a medical program accredited by the LCME. No notification to the Department would be required for adding LCME locations, or locations offering only non-core, non-required rotations 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.

So that the Department may track and enforce provisions specific to post-baccalaureate/equivalent medical programs, proposed §§ 600.20(a)(3)(ii) and 600.20(b)(3)(ii) would require 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) indicate whether it offers only post-baccalaureate/equivalent medical programs, other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine, or both.

Finally, a proposed definition of *NCFMEA* was added to make clear that the NCFMEA is 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 U.S., for purposes of evaluating the eligibility of accredited foreign graduate medical schools to participate in the Title IV, HEA programs.

**General**

Proposed § 600.52 would remove from the definition of a foreign graduate medical school the requirement that a foreign graduate medical school be a foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the World Directory of Medical Schools published by the World Health Organization (WHO) as the Department believes it is no longer a needed measure of comparability in light of the proposed new criteria for foreign graduate medical schools as well as the proposed changes to the definition of a foreign institution.

Proposed § 600.55(a)(1) would clarify that the general criteria that must be satisfied is all applicable criteria in part 600, rather than just § 600.54, to make clear that, unless otherwise specified, all the provisions of part 600 apply to foreign institutions, including foreign graduate medical schools. Current regulations require only instruction that is offered outside of the United States to be provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, and require only the training located in the United States to be approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary. Proposed § 600.55(a)(2) would apply these provisions to all portions of the medical program, regardless of whether the program is located outside or inside the United States, as the Department believes they are good requirements regardless of location. To provide consistency with the proposed provisions addressing the location of clinical training (see the discussion of *Location of a graduate medical education program, affiliation agreements, and application and notification procedures for foreign graduate medical schools* above), the proposed regulations would make clear that a foreign graduate medical school may offer, as part of its clinical training, no more than two electives consisting of a combined total 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 that is accredited by the LCME. Non-Federal negotiators noted that foreign graduate medical schools do not necessarily directly employ faculty for the clinical training portion of the program, but rather appoint them and the individuals are usually employed by the hospital or clinic at which the clinical training takes place. The Committee agreed the regulations should be changed to reflect actual practice.

**Admission Criteria and Collection and Submission of Data**

The Department initially proposed that, consistent with NCFMEA Recommendations 1(a) and 1(b), a foreign graduate medical school would have to require students who it admits to have a specific educational background (*e.g.,* for a post-baccalaureate equivalent medical program, students must have a baccalaureate degree, or at least 90 semester credit hours or the equivalent, in general education that includes, but is not limited to, coursework in the social sciences, history, and languages). Several of the non-Federal negotiators felt that such provisions were unduly limiting. The Committee, including the Department, ultimately agreed it would be more appropriate for the NCFMEA to establish these provisions as guidelines for accrediting bodies. The Department had also included as a part of its initial proposal, that a school having an integrated program for a first professional program leading to a Doctor of Medicine (M.D.) degree, or its equivalent, must require students who are U.S. citizens, nationals, or permanent residents to take the MCAT no later than three years after admission to the program. Although this provision was consistent with NCFMEA Recommendation 1(b), the Department was ultimately persuaded to remove the provision by non-Federal negotiators who pointed out that requiring students to take the MCAT early in the program would distract them from the education that was preparing them to take the USMLE.

Ultimately, the Department agreed to retain from Recommendations 1(a) and 1(b) only the provision that would require U.S. students who are admitted to a school having a post-baccalaureate equivalent medical program to have taken the MCAT and to report the score. This provision would not require a foreign graduate medical school to give weight to a U.S. student's score on the MCAT as part of its admission requirements. Although some non-Federal negotiators expressed concern that the MCAT would not be readily available to U.S. students who are residing outside of the United States prior to enrolling in a foreign graduate medical school, it was determined that the MCAT is administered several times during the year in countries around the world.

The inclusion of the requirement that a foreign graduate medical school determine the consent requirements for, and require the necessary consents of, all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements for MCAT scores, residency placement, and USMLE scores reflects NCFMEA Recommendations 9(a), 3, and 4(a), but limits the requirement to U.S. citizens, nationals, or eligible permanent residents. These proposed regulations would not establish eligibility thresholds for MCAT scores or residency placement. As indicated in the discussion of these recommendations in the NCFMEA report, the NCFMEA believes, and the Department agrees, that successful performance by an institution in these three areas may be valuable for the evaluation of the quality of education being provided to students attending foreign graduate medical schools. The data will facilitate the NCFMEA's further study of the issues, strengthen the accreditation process, and allow for the potential development of additional recommendations for regulatory change, and/or the NCFMEA standards for evaluating accrediting bodies of foreign graduate medical schools. Non-Federal negotiators argued, and the Department agreed, that the Department's main concern is how well students from the United States, who represent potential borrowers of Title IV, HEA funds, are doing at these schools. The non-Federal negotiators felt that it was inappropriate to include non-U.S. students who may not have as much at stake when they take the United States' MCAT or USMLE, or attempt to be placed in a

U.S. residency, and, thus, may skew the data.

Some non-Federal negotiators expressed concern that requiring foreign institutions to obtain student consent for the release of information may be in violation of certain countries' privacy laws. In response to the Department's request for specific information, the Department was provided with an analysis of the privacy laws and requirements of one country that had been identified as one that could have problems in this area. After analyzing the information, the Department concluded that there would be several ways that institutions in that country could legally obtain the required information from students, and committed to working with those schools and schools in any country that have concerns to facilitate compliance. The Department noted, however, that the Department cannot waive statutory or regulatory requirements used to determine institutional eligibility and that if a foreign country's privacy laws did preclude obtaining the information and materials necessary for establishing compliance the institutions located in those countries would not be able to qualify for participation in the Title IV, HEA programs.

The proposed regulations state that collection and submission of data must be done at the institution's own expense to emphasize that the institution is ultimately responsible for providing this information. In the future, the Department may be able to obtain the necessary USMLE pass rates directly from the ECFMG. However, unless and until the Secretary notifies institutions that this is the case, an institution would be required to take whatever steps are necessary to obtain and provide the data to its accrediting agency and the Secretary. Currently, an institution can obtain a student's consent for USMLE pass rate data on Steps 1 and 2 by requiring students to sign ECFMG's Institutional Request for an Official USMLE Transcript Form 173. The form and information on its use are available at the ECFMG's Web site at *http://www.ecfmg.org/usmle/transcripts/index.html*. We also note that the ECFMG has established an online procedure by which schools can obtain data on Steps 1 and 2 directly from the ECFMG (*see* the ECFMG's Web site at *http://www.ecfmg.org/emswp.html*). As this procedure is still new, the Committee was not able to ascertain whether the data provided to schools in this manner would be sufficient for schools to meet the requirements of these proposed regulations. As information becomes available, the Department will evaluate the appropriateness of these data for meeting the proposed requirement.

Although the Department originally proposed requiring schools to submit data on all steps of the USMLE, non-Federal negotiators pointed out that it would be extremely difficult for schools to obtain data on Step 3. The non-Federal negotiators noted that this difficulty stems from the fact that Step 3, which is administered by the Federation of State Medical Boards (FSMB), is taken by students after they have graduated from the institution and a student cannot sign a consent to provide information on Step 3 to third parties until he or she is actually taking the test. Although the Department is continuing to explore the collection of data from the FSMB for evaluating its use in the future, the Department agrees that it would be unreasonable to require institutions to be responsible for its collection and submission at this time.

As one of the purposes of the data submission provision is to provide data for the evaluation of whether additional performance measures should be required of foreign graduate medical schools, all foreign graduate medical schools, even those that are exempt from meeting the 60 percent/75 percent USMLE pass rate requirement, would have to submit the data under proposed § 600.55(d).

The Department believes that the proposed periods for which data must be collected and the proposed annual September 30 submission deadline will provide for consistent submission of data by all schools, taking into consideration the timing of the events for which data must be obtained. As these data, other than the USMLE data, are to be collected for the use of the accrediting bodies and, indirectly, by the NCFMEA, schools would be required to make submissions of the data to their accrediting bodies but, except for data on the USMLE, would be required to submit such data to the Secretary only upon request. The Secretary would collect the USMLE data on a regular basis in support of the requirement in § 600.55(f)(1)(ii) that an institution have at least a 75 percent pass rate on the USMLE.

**Notification to Accrediting Body**

Proposed § 600.55(e)(2), which would require a foreign graduate medical school to notify its accrediting body within one year of any material changes in educational programs and the overseeing bodies in the formal affiliation agreements with hospitals and clinics, would reflect NCFMEA Recommendations 12(a) and 12(b) and would allow a school's accrediting body to assess any substantive impact the change would have on the school's operations.

**Citizenship and USMLE Pass Rate Percentages**

The proposed change in § 600.55(f)(1)(i)(B) would allow a foreign graduate medical school to be exempt from the existing citizenship rate requirement if it had a clinical training program approved by a State as of January 1, 2008, and continues to operate a clinical training program in at least one State that approves the program reflects the statutory change made by the HEOA. As a result, both foreign graduate medical schools that had a clinical training program approved by a State as of January 1, 1992, and those that had a clinical training program approved by a State as of January 1, 2008, are exempt from the citizenship rate provision, provided the school continues to operate a clinical training program in at least one State that approves the program. The increase in the USMLE pass rate threshold from 60 percent to 75 percent also reflects a change made by the HEOA, as does proposed § 600.55(f)(2)(ii), which would allow a foreign graduate medical school that was eligible and exempt from the USMLE pass rate requirement based on having a clinical training program approved by a State as of January 1, 1992, to continue to be eligible and exempt from the USMLE pass rate requirement as long as it continues to operate a clinical training program in at least one State that approves the program.

Although the Department originally proposed requiring pass rate information for all steps of the USMLE, as stated previously in the discussion of the submission of USMLE pass data under *Admission criteria and collection and submission of data* above, the Department believes that it would be unreasonable to require institutions to obtain data on Step 3 of the USMLE for inclusion in the pass rate at this time.

As suggested by NCFMEA Recommendations 4(b) and 4(c), the proposed regulations would require a foreign graduate medical school to have at least a 75 percent pass rate on each step/test of the USMLE (limited to Step 1, Step 2–CS, and Step 2–CK), rather than a combined pass rate for all steps/tests. This approach would provide an assessment of the sequential performance of students on the USMLE, which the NCFMEA and the Department believe provides a better measure of a medical program's effectiveness by evaluating how well it prepares students

for each step/test of the USMLE and, in particular, will allow for the judgment of the performance of each institution in preparing students for future clinical performance.

The Committee decided to limit the USMLE pass rate calculation to U.S. citizens, nationals, and eligible permanent residents for the reasons discussed for limiting the collection and submission of data related to MCAT scores, placement in a U.S. medical residency program, and the USMLE in the same manner (*see Admission criteria and collection and submission of data* above). That is, the Committee desired to focus the pass rate on the students the Department is most concerned about, students from the United States, who represent potential borrowers of Title IV, HEA funds, and to prevent a school's rate from being lowered by non-U.S. students who may not be as invested in passing the USMLE as U.S. students.

As for the actual calculation used to determine the pass rate for each step/test of the USMLE, the Department had suggested a rate that would have required an institution to count an individual student in the denominator for each time the student took Step 1, Step 2–CS and Step 2–CK. The Department believed this approach was consistent with NCFMEA Recommendation 4(b) and was a better measure of how well prepared students were by the medical education program because it would reflect failures on repeated attempts. Some non-Federal negotiators felt that this approach was too burdensome and not an appropriate means of achieving the Department's goal. They argued that the pass rates of students in subsequent attempts is typically quite low; thus, such a measure would be redundant and not more indicative of the quality of the institution's instruction. Eventually, the non-Federal negotiators suggested that the calculation be limited to first time test takers only. The non-Federal negotiators noted that reports issued in other contexts about pass rates for domestic schools have included only first time test takers. Ultimately, the Department was persuaded that a proposed regulation that would require foreign graduate medical schools to include only first time test takers in the calculation provided a better evaluation of an institution's performance than that required under current regulations, and had the benefit of being comparable to rates published for domestic schools.

The non-Federal negotiators raised strong concerns about the pass rate's applicability to schools with small numbers of U.S. students. They pointed out that such a school's eligibility for participation could be put at risk by the failure of just a small number of students, or even one student, for those with fewer than four students who would be included in the cohort for the calculation. The non-Federal negotiators felt that schools with small numbers of students should be exempt from this requirement or, at the very least, the regulations should provide an alternative way for these institutions to comply. The Department noted that the statute does not provide for exempting institutions from this requirement. However, in response to these concerns, the Department proposed an alternative way to comply in § 600.55(f)(4) to allow for the use of a rate that would combine the performance of U.S. students on Step 1, Step 2–CS and Step 2–CK, if the result of any step/test pass rate would be based on fewer than eight students. If that combined pass rate would be based on fewer than eight step/test results, the school would be deemed to have no pass rate for that year, and the results for the year would be combined with each subsequent year until a pass rate based on at least eight step/test results could be derived. The Department believes that this approach applies the pass rate provision to all institutions, while appropriately mitigating the unduly harsh effect a small number of failures could have on the pass rate calculation for schools with small numbers of U.S. students.

**Other Criteria**

The proposed requirements in § 600.55(g)(1) and (g)(2) that would require a foreign graduate medical school to include in its satisfactory academic progress standards a requirement that a student complete his or her educational program within 150 percent of the published length of the educational program and document the educational remediation it provides to assist students in making satisfactory academic progress adopts NCFMEA Recommendation 9(b), but requires schools to document, rather than submit to the Department as the NCFMEA recommended, any educational remediation provided.

For consistency with current regulations, in adopting NCFMEA Recommendation 9(b), suggesting that a student's enrollment prior to graduation must not exceed 150 percent of the normal length of the program, the proposed regulations refer to existing §§ 668.16(e)(2)(ii)(B), (C), and (D). These regulations, currently applicable to undergraduate programs, provide additional requirements as to the quantitative aspect of a foreign graduate medical school's institutional satisfactory academic progress standards.

Although the Committee agreed with the NCFMEA that there is merit to requiring institutions to document the remediation it provides to assist students in making satisfactory academic progress so that, as needed, the Department, the NCFMEA, or the accrediting body may collect and examine the data to see if this is an area of concern that may need to be addressed, they did not believe it was necessary or cost effective to require the regular submission of these data to the Department.

Finally, proposed § 600.55(g)(3), which would require a foreign graduate medical school to publish all the languages in which instruction is offered, would provide information to students that could be essential to a student's success in the program. Although NCFMEA Recommendation 10 suggested requiring schools to publish the primary language of instruction, and if not English, identify any alternate language of instruction, the Committee agreed that requiring schools to publish all languages in which instruction is offered would be more beneficial and no more burdensome.

**Foreign Veterinary Schools (§ 600.56)**

*Statute:* Section 102(a)(2)(A)(ii) of the HEA stipulates that Title IV borrowers attending a foreign for-profit veterinary school must complete clinical training at an approved veterinary school located in the United States. The HEA does not establish additional eligibility criteria specific to foreign veterinary schools. Section 102(a)(2)(A) of the HEA requires the Secretary, through regulations, to develop eligibility criteria for foreign institutions that are comparable to the eligibility criteria for domestic "institutions of higher education."

*Current Regulations:* Section 600.56 of the Institutional Eligibility regulations includes additional eligibility criteria for foreign veterinary schools. Under § 600.56(a)(1)(i), foreign veterinary school facilities outside the United States must be adequately equipped and staffed to provide students comprehensive clinical and classroom veterinary instruction. Under § 600.56(a)(1)(ii), foreign veterinary school programs provided inside the United States must be approved by all veterinary licensing boards and evaluating bodies that the Secretary considers to be relevant. Under § 600.56(a)(3), the credentials of faculty members employed by the foreign veterinary school must be equivalent to the credentials of faculty members

teaching the same or similar courses in the United States.

*Proposed Regulations:* The proposed regulations would combine the requirements in § 600.56(a)(1)(i) and § 600.56(a)(1)(ii) into one paragraph, eliminating the distinction in those sections between portions of veterinary programs provided inside and outside of the United States. Proposed § 600.56(a)(4) would require a foreign veterinary school to be accredited or provisionally accredited by an organization acceptable to the Secretary. Proposed § 600.56(a)(4) would also specify that the requirement for accreditation or provisional accreditation does not take effect until July 1, 2015. Finally, proposed § 600.56(b)(2)(i) would require that, for a for-profit veterinary school, the school's students must complete their clinical training at an approved veterinary school located in the United States. Under proposed § 600.56(b)(2)(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 in the United States or in the home country, and may also take clinical training at a location outside of the United States or the home country if no individual student takes more than two electives at the location and the combined length of the elective(s) does not exceed eight weeks.

*Reasons:* The Department proposed revising the regulations governing eligibility criteria for foreign veterinary schools to improve the Department's process for making determinations of eligibility of foreign veterinary schools to participate in the Title IV, HEA programs. The Department's expertise with regard to making independent evaluations of the academic quality of veterinary programs is limited, and currently the Department relies heavily on information provided to us by the foreign veterinary school to make eligibility determinations. If the school has been accredited or reviewed by the American Veterinary Medical Association (AVMA), the Department considers reports provided by the AVMA to the school to assist in making eligibility determinations.

The Department initially proposed to build on the Department's current practice by requiring AVMA accreditation for foreign veterinary schools applying to participate in the Title IV, HEA programs. We believed that requiring AVMA accreditation would provide the Department with an assurance of the academic quality of the veterinary program. AVMA standards for accrediting veterinary schools are detailed and specific, and the AVMA has the expertise and resources to evaluate veterinary schools that the Department lacks. In addition, the AVMA has a history of accrediting foreign veterinary school academics. For example, veterinary schools in Canada, Australia, and the Netherlands are currently accredited by the AVMA.

Non-Federal negotiators generally acknowledged the high quality of the AVMA's accreditation standards and procedures. One non-Federal negotiator agreed that it was logical to require AVMA accreditation of foreign veterinary schools, as most U.S. students studying at those schools ultimately practice as veterinarians in the United States. However, several non-Federal negotiators had concerns about requiring AVMA accreditation as a condition for participation in the Title IV, HEA programs.

Some non-Federal negotiators pointed out that the process for receiving AVMA accreditation is lengthy and expensive. Non-Federal negotiators asserted that the standards of foreign accrediting agencies such as the Veterinary Schools Accreditation Advisory Committee (VSAAC), which accredits veterinary schools in Australia and New Zealand, and the Royal College of Veterinary Surgeons (RCVS), which accredits veterinary schools in the United Kingdom, are comparable to the AVMA's standards. These non-Federal negotiators contended that it would be unnecessarily burdensome to require a veterinary school that has already been accredited by an agency such as VSAAC to also obtain AVMA accreditation to participate in the Title IV, HEA programs. The non-Federal negotiators cautioned the Department that foreign veterinary schools that enroll small numbers of Title IV borrowers may determine that obtaining AVMA accreditation is not cost effective, and may choose to end their participation in the Title IV, HEA programs. This would have the effect of limiting the options of U.S. students considering attending foreign veterinary schools.

Other non-Federal negotiators contended that it is extremely difficult for for-profit veterinary schools to obtain AVMA accreditation. Although they felt that for-profit veterinary schools can meet AVMA's standards around facilities, curriculum, and faculty, the AVMA standards also require veterinary schools to have a strong research component. These negotiators stated that for-profit veterinary schools tend not to have the resources to pursue research to the extent required by AVMA. These negotiators pointed out that public veterinary schools often have State sources of funding for research programs, while for-profit veterinary schools do not. The expense of establishing a research program acceptable to AVMA could be prohibitive for most for-profit veterinary schools. These non-Federal negotiators contended that, for purposes of preparing students for employment as competent veterinarians in most non-research venues, it is not necessary to include a research component of the kind required by AVMA.

In addition, non-Federal negotiators expressed concerns that foreign veterinary schools without AVMA accreditation that currently participate in the Title IV, HEA programs might be forced out of the Title IV, HEA programs if the Department went forward with its proposal. The effective date for most of the regulations in this NPRM is expected to be July 1, 2011. As the accreditation process can take several years, even a school that ultimately receives AVMA accreditation might not be able to obtain AVMA accreditation before the regulations become effective. Although AVMA offers provisional accreditation for schools in the U.S. or Canada that are on track to become accredited, it currently does not offer provisional accreditation to other schools.

As an alternative, non-Federal negotiators recommended using other measures, such as pass rates on licensing exams, licensure rates, or default rates, to determine eligibility of a foreign veterinary school. In addition, non-Federal negotiators recommended that the Department delay the effective date for the accreditation provision of the proposed regulations for up to ten years, if the Department goes forward with the AVMA requirement.

The Department noted that using measures such as pass rates on licensing examinations can be operationally complicated, raising concerns over privacy rights, obtaining exam results, and calculating pass rates in ways that are not disadvantageous to schools with low numbers of Title IV students. In addition, pass rates would not necessarily be a reliable indicator of the academic credentials of the faculty at a foreign veterinary school, and would provide no indication that the facilities at the veterinary school are adequate and safe for the students or for the animals housed in the facilities.

Instead, the Department accepted the recommendation of some of the non-Federal negotiators to replace the proposed requirement that a foreign veterinary school be accredited or provisionally accredited by the AVMA,

with a requirement that the school be accredited or provisionally accredited by an agency acceptable to the Secretary. Although the Department continues to believe that AVMA accreditation is the most desirable standard for foreign schools that train students for veterinary practice in the United States, we recognize that other accrediting agencies may also be satisfactory for this purpose. Under the revised regulations, foreign veterinary schools must still be accredited or provisionally accredited by an agency with expertise in accrediting veterinary education programs, but the agency does not have to be the AVMA. This gives the Department some flexibility in evaluating schools' compliance with the accreditation requirement, and gives schools some flexibility with regard to obtaining accreditation.

In addition, the Department delayed the effective date of the accreditation requirement until July 1, 2015, giving foreign veterinary schools that are currently in the Title IV, HEA programs approximately five years after final regulations are published to obtain accreditation from an acceptable accrediting agency. The Department believes that five years should be sufficient time for a school to obtain accreditation or provisional accreditation from an acceptable accrediting agency. In addition, Title IV borrowers who are currently enrolled in a foreign veterinary school should be able to complete their education programs before the five years elapses. Newly enrolled Title IV borrowers coming into those schools after this NPRM is published should be advised by the school's financial aid officers that there is a possibility that the school could lose Title IV, HEA program eligibility after July 1, 2015, so those borrowers can plan accordingly.

The Department proposed combining the requirements in § 600.56(a)(1)(i) and in § 600.56(a)(1)(ii) into one paragraph to simplify the regulations, and to eliminate the distinction between veterinary school activities in the United States and outside the United States for purposes of these particular requirements. The Department did not believe that this distinction in the current regulations served any useful purpose. The non-Federal negotiators did not express concerns about this modification to the existing regulations.

Regarding the provisions addressing the location of a foreign veterinary school in proposed § 600.57(b), the Committee agreed to be consistent with provisions that would permit some clinical training locations of foreign graduate medical schools to be outside of the United States and of the country in which the main campus of the school is located. Proposed § 600.57(b) would permit students who attend a public or private nonprofit foreign veterinary school to take no more than two electives at the clinical training location per student, as long as the elective(s) have a combined length of not more than eight weeks. This provision could not be extended to for-profit veterinary schools because the statute requires students who attend these schools to complete their clinical training in the United States.

**Foreign Nursing Schools (§ 600.57)**

*Statute:* The HEOA amended section 102(a)(2)(A) of the HEA to provide specific standards for foreign nursing schools. The amendments are effective beginning July 1, 2010, except that, for nursing schools that were eligible for Title IV, HEA program participation on August 13, 2008 (the day before enactment of the HEOA), they are effective July 1, 2012.

The HEA, as amended by the HEOA and HCERA, provides that a foreign nursing school, including a for-profit nursing school, may not participate in the Title IV, HEA programs unless the school—

- Has an agreement with a hospital or accredited school of nursing (as those terms are defined in section 801 of the Public Health Service Act (42 United States Code 296)) located in the United States that requires the students of the nursing school to complete the students' clinical training at the hospital or accredited school of nursing;
- Has an agreement with an accredited school of nursing located in the United States providing that the students graduating from the foreign nursing school also receive a degree from the accredited U.S. school of nursing;
- Certifies only Federal Direct Stafford loans under section 455(a)(2)(A) of the HEA, Federal Direct Unsubsidized loans under section 455(a)(2)(D) of the HEA, or Federal Direct PLUS loans under section 455(a)(2)(B) of the HEA for students attending the school; and
- Reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the school's cohort default rate during the previous fiscal year.

In addition, the HEOA amendments to the HEA require that at least 75 percent of the individuals who were students or graduates of a foreign nursing school, and who took the National Council Licensure Examination for Registered Nurses (NCLEX–RN) in the year preceding the year for which the school is certifying a Title IV, HEA program loan, received a passing score on the NCLEX–RN.

*Current Regulations:* Current regulations do not define *foreign nursing school,* or specify Title IV eligibility criteria unique to foreign nursing schools.

*Proposed Regulations:* The proposed regulations would add several new definitions relating to foreign nursing schools to § 600.52, would redesignate current § 600.57 as § 600.58, and would add a new § 600.57 specifying additional Title IV eligibility criteria for foreign nursing schools. The proposed regulations would add definitions to § 600.52 for *associate degree school of nursing, collegiate school of nursing,* and *diploma school of nursing.* The proposed new definitions are derived from definitions relating to nursing schools in section 801 of the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*), as required by the HEA as amended by the HEOA.

Under the proposed definitions, the primary distinction between the three types of nursing schools is the type of degree offered by the school. For an associate degree school of nursing, the nursing program must lead to a degree equivalent to an associate degree in the U.S. For a collegiate school of nursing, the nursing program must lead to a degree equivalent to a bachelor of arts, a bachelor of science, or a bachelor of nursing in the U.S, or to a degree equivalent to a graduate degree in nursing in the U.S. For a diploma school of nursing, the nursing program must lead to the equivalent of a diploma in the U.S. or to other indicators equivalent to a diploma that demonstrate that the student has satisfactorily completed the program.

Proposed new § 600.57 would require a *foreign nursing school* to meet the applicable eligibility criteria elsewhere in part 600. In addition, a *foreign nursing school* must—

- Meet the definition of *associate degree school of nursing, collegiate school of nursing,* or *diploma school of nursing;*
- Have 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;
- Have 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;

• Only certify Federal Stafford Loan program loans or Federal PLUS program loans for students attending the nursing school;

• Reimburse 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;

• 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 NCLEX–RN results or pass rates;

• 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 Secretary;

• 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 Secretary;

• Demonstrate at least a 75 percent pass rate on the NCLEX–RN for all of the U.S. citizens, nationals, or eligible permanent residents who were students or graduates of the school and who took the NCLEX–RN in the year preceding the year for which the institution is certifying Federal Stafford or Federal Plus loans;

• Provide a program of clinical and classroom nursing instruction, which students are normally required to complete, that is supervised closely by members of the school's faculty. The program, which includes programs provided through agreements with nursing schools in the United States, must be 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;

• 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; and

• Employ 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.

In addition, the proposed regulations would specify that for purposes of reimbursing the Secretary for defaulted loans, the cost of a loan default is the sum of the defaulted loan's—

• Outstanding principal;

• Accrued interest;

• Unpaid late fees and collection costs;

• Special allowance payments;

• Reinsurance payments; and

• Any related or similar payments the Secretary is obligated to make on the loan.

The proposed regulations also would specify that after a school reimburses the Secretary for the cost of a loan default, the loan is assigned to the school. The borrower remains liable to the school for the outstanding balance of the loan, under the terms and conditions specified in the promissory note.

Finally, proposed § 600.57(d) would provide that 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.

*Reasons:* The Department modeled the proposed language in new § 600.57 on the provisions in the HEOA regarding foreign nursing schools, as well as on language in existing §§ 600.55 and 600.56, which provide additional eligibility criteria for foreign graduate medical schools and foreign veterinary schools. In addition, in an effort to alleviate some of the burden entailed in demonstrating compliance with the NCLEX–RN pass rate requirement, the Department provided leeway for the school to obtain and submit, if available, reports on NCLEX–RN results from the NCSB, or one of its affiliates or contractors, showing the percentage of students from the school who passed the NCLEX–RN.

In most cases, the non-Federal negotiators did not have concerns or questions regarding the proposed language in § 600.57 that was modeled on language in sections §§ 600.55 and 600.56. However, non-Federal negotiators did have concerns relating to several of the provisions unique to foreign nursing schools.

The non-Federal negotiators believed that the new requirements in §§ 600.57(a)(2) and 600.57(a)(3), requiring agreements between foreign nursing schools and U.S nursing schools and hospitals, would force many foreign nursing schools that currently participate in the Title IV, HEA programs out of the Title IV, HEA programs. The non-Federal negotiators stated that most foreign nursing schools do not currently have such agreements and could not revamp their nursing programs to provide clinical training in the U.S. for their Title IV students. This issue was of special concern with regard to foreign nursing schools that enroll relatively small numbers of Title IV borrowers. The Title IV loan amounts such schools receive might not be sufficient enough to justify the expense of revamping their nursing programs.

The Department noted that the proposed regulations reflect the statute, and that any regulations developed by the Department must be consistent with statutory requirements.

Non-Federal negotiators also had concerns about the statutory provision, reflected in proposed § 600.57(a)(5), requiring a foreign nursing school to reimburse the Secretary for the cost of loan defaults for loans included in the calculation of a school's cohort default rate. Discussion of the reimbursement requirement centered around two major topics: the cost of a loan default and the status of the loan after the school reimburses the Secretary. Proposed §§ 600.57(b) and 600.57(c) address these two issues.

At the time that these proposed regulations were being negotiated, it was unclear whether foreign institutions would continue to participate in the FFEL program or be required to switch over to the Direct Loan Program. Given this uncertainty, the Department drafted proposed §§ 600.57(b) and 600.57(c) in such a way that the regulations could apply to either a FFEL loan or a Direct Loan.

The cost of a loan default, as specified in proposed § 600.57(b), includes some items that only apply to FFEL loans, such as special allowance payments, reinsurance payments, and payments of other fees. For a Direct Loan, the calculation of cost of a loan default would not include such costs. The cost of loan default for a Direct Loan would include such items as outstanding principal, accrued interest, and unpaid late fees or collection costs.

Proposed § 600.57(c) would specify that after a school reimburses the Secretary for the cost of a loan default,

the loan would be assigned to the school. The borrower would be required to repay the loan to the school, under the terms and conditions of the promissory note. The reimbursement by the school would not change the school's official cohort default rate or exempt the school from the consequences of its cohort default rate.

In the initial discussions with the non-Federal negotiators, the non-Federal negotiators emphasized the importance of borrowers remaining liable for repayment of the loan after the school has reimbursed the Department for the loan default. The non-Federal negotiators stressed that if the reimbursement is deemed to have paid off the loan, the borrower's obligation to repay the loan would effectively be discharged. This would provide a perverse incentive for borrowers to default deliberately on their Title IV loans.

The Department agreed with the non-Federal negotiators. Initially we proposed that after the Secretary is reimbursed, the loan would remain with the loan holder, who would continue to collect on the loan. However, the Department determined that after it received the reimbursement payment, it would have no financial interest in the loan, and would have no statutory basis for collecting on the loan. Accordingly, the Department modified the proposed regulatory language to require that the loan to be assigned to the school.

Although non-Federal negotiators supported borrowers remaining liable for the loan, some non-Federal negotiators had concerns about how assigning the loan to the school would affect the borrower. One non-Federal negotiator asked how NSLDS reporting, loan rehabilitation, and total and permanent disability discharges would be handled for these loans.

The Department did not address in detail operational matters with regard to defaulted loans assigned to a school. Instead, the Department pointed out that currently a FFEL loan can fall out of the FFEL program, usually due to a due diligence failure. The terms and conditions on the promissory note remain in effect on these loans, and loan holders continue to collect on them. Procedures currently in place for FFEL loans that have lost their eligibility would apply to defaulted Title IV loans that are assigned to a foreign nursing school.

Non-Federal negotiators questioned how foreign schools could comply with proposed § 600.57(a)(8), which would require that the clinical training provided at a U.S. school or hospital be "supervised closely" by members of the foreign school's faculty, in light of the fact that that training would already be supervised by faculty of the U.S. school. The Department noted that faculty at the U.S. clinical training facility could be appointed as faculty of the foreign school as well, and that, in any event, the foreign graduate medical school needs to have its own faculty supervise its entire program. The Department emphasized that Title IV eligibility is based on a school offering an eligible program, not a portion of an eligible program. The foreign school would have to develop agreements with U.S. schools that ensure continuity between the training offered at the foreign school and at the U.S. school.

Non-Federal negotiators also questioned the provision in § 600.57(a)(8) requiring a training program to be approved "by all licensing boards and evaluating bodies whose views are considered relevant by the Secretary." Non-Federal negotiators asked how a nursing program could be expected to obtain approval from state licensing boards in all 50 states. The Department responded that the Department would focus on the licensing boards and evaluating bodies applicable to the state where the training program is located, not licensing boards and evaluating bodies for all of the states, in determining compliance with this eligibility requirement, although approval or disapproval decisions from other states would be considered if available.

Proposed § 600.57(d) would provide that 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, to protect the coherence of the educational program and ensure continuity of oversight by the foreign government. The statute requires these nursing programs to provide their clinical training in the United States.

As negotiated, proposed § 600.57(d) does not reflect the inapplicability, through June 30, 2012, to foreign nursing schools that were participating in a Title IV, HEA program as of August 13, 2008, of the HEOA's new eligibility requirements for foreign nursing schools. In the final regulations, the Department will specify that this section becomes effective on July 1, 2012, with respect to foreign nursing schools that were participating in a Title IV, HEA program as of August 13, 2008.

**Part 668 Student Assistance General Provisions Audited Financial Statements (§ 668.23)**

*Statute:* Section 487(c)(1)(A)(i) of the HEA was amended by the HEOA to give the Secretary the authority to modify the financial and compliance audit requirements for foreign institutions, and the authority to waive the audit requirements for foreign institutions that receive less than $500,000 in Title IV, HEA program funds in the preceding year.

*Current Regulations:* Currently, under § 668.23(a)(2), an annual submission of both a compliance audit and audited financial statements is required of all institutions participating in the Title IV, HEA programs. Section 668.23(d)(1) requires that an institution's audited financial statements must be prepared on an accrual basis in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and audited by an independent auditor in accordance with U.S. generally accepted government auditing standards (U.S. GAGAS) and other guidance contained in the Office of Management and Budget Circular A–133 and A–128 regarding audits of States, Local Government and Non-Profit Organizations, or in audit guides developed by, and available from, the Department of Education's Office of Inspector General, whichever is applicable. Section 668.15(h) permits a foreign institution whose enrolled students received less than $500,000 in U.S. FFEL Program funds per fiscal year to have its required audited financial statements prepared according to the generally accepted accounting principles and auditing standards of the institution's home country. Current regulations notwithstanding, on May 15, 2009, the Department of Education published a Dear Colleague Letter (GEN–09–06) that announced that the Secretary was waiving the annual audited financial statements requirement for foreign institutions whose enrolled students received less than $500,000 in U.S. FFEL Program funds during the award year preceding the audit period. The waiver applies to any audited financial statements for such a foreign institution due on or after August 14, 2008, the effective date of the HEOA amendment described previously, and renders unnecessary § 668.15(h), providing for submission of audits prepared under home country standards.

*Proposed Regulations:* Proposed § 668.23 would establish new financial audit submission requirements for foreign institutions as follows:

• 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 would 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.

• For a public or nonprofit foreign institution that received at least $500,000 but less than $3,000,000 in U.S. Title IV, HEA program funds during its most recently completed fiscal year, the institution would 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.

• For a public or nonprofit foreign institution that 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, the institution would 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.

• For a public or nonprofit foreign institution that received $5,000,000 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 audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country *and* U.S. GAAP.

Proposed § 668.23(h)(3)(i) would allow the Secretary to issue a letter to a foreign institution that has been identified as having problems with its financial condition or financial reporting that would require the foreign institution to submit its audited financial statements in the manner specified by the Secretary.

In addition, the proposed regulations would: (1) Remove the superseded language in § 668.15 addressing submission of financial audits for foreign institutions; (2) make technical corrections to reflect the Office of Management and Budget's (OMB's) 2003 rescission of Circular A–128 and expansion of Circular A–133 to include State and local governments and (3) add "issued by the Comptroller General of the United States" to § 668.23(d)(1) to make clear that United States generally accepted government auditing standards must be used for all submitted financial statements, including those from foreign institutions. The removal of the superseded language in § 668.15(h) would not impact the Secretary's ability to make a determination of financial responsibility for any foreign institution. The Secretary would make such a determination on the basis of financial statements submitted under proposed § 668.23(h).

These proposed regulations would supersede the May 15, 2009, Dear Colleague Letter (GEN–09–06). The proposed regulations would apply the waiver of the annual audited financial statements requirement to 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, instead of applying it to foreign institutions that received less than $500,000 in U.S. Title IV, HEA Program funds during the award year preceding the audit period, as the Dear Colleague Letter does. This would match the Title IV, HEA program funds being administered by a foreign institution with the period of time covered in the audited financial statements of the institution. If this proposed provision becomes final, the Department will provide implementation guidance to institutions addressing the change in the period used to determine the amount of Title IV, HEA program funds received by a foreign institution.

*Reasons:* The negotiators reached agreement on the proposed regulatory language only after extensive negotiations and significant compromises.

The Department initially proposed to require audited financial statements prepared in accordance with U.S. GAAP, which is the requirement for domestic institutions, for public foreign institutions that received $1,000,000 or more in U.S. Title IV, HEA program funds, or private foreign institutions that received $500,000 or more in U.S. Title IV, HEA program funds, as well as for any institution in its initial provisional period of participation. For public foreign institutions, if an institution received at least $500,000 in U.S. Title IV, HEA program funds, but less than $1,000,000 in U.S. Title IV, HEA program funds during the institution's fiscal year preceding the audit period, the institution would have been allowed to submit 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. If there was an unpaid liability due to the Secretary by any public institution controlled by the same government entity, all public institutions controlled by that government entity would be required to submit audited financial statements prepared in accordance with U.S. GAAP.

Upon hearing the Department's initial proposal, some non-Federal negotiators argued that nonprofit foreign institutions should be treated the same as public foreign institutions. Others opined that requiring the audited financial statements to be prepared in accordance with U.S. GAAP was cost prohibitive, and suggested that a non-U.S. GAAP financial statement such as the International Financial Reporting Standards (IFRS) would be comparable and provide the Department with the information it needs. Another non-Federal negotiator suggested that the cost of preparing audited financial statements would be paid by students in the form of higher tuition and fees. It was also suggested that a rating from a financial rating agency such as Moody's or Standard and Poor's could be used as an indicator of financial solvency. Several non-Federal negotiators suggested that the Department should accept audited financial statements prepared under the institution's home country accounting standards from nonprofit or public foreign institutions where the Department determined those home country standards were comparable to U.S. GAAP, regardless of the amount of U.S Title IV, HEA program funds that an institution may have received in the fiscal year preceding the audit. Non-Federal negotiators pointed out that no evidence had been presented during the negotiating sessions that international accounting principles are inferior to U.S. GAAP, and noted that an institution's compliance audit would continue to be used to demonstrate that

Title IV, HEA program funds are being handled appropriately.

Other suggestions made by the non-Federal negotiators included that the Department tie its requirement of U.S. GAAP financial statements to a foreign institution's cohort default rate, given that such rates are generally lower than those for domestic institutions, and that public foreign institutions be relieved from submitting U.S. GAAP financial statements if the total number of U.S. students enrolled at that entity was less than fifty, regardless of the amount of U.S. Title IV, HEA program funds received during the institution's fiscal year.

The Department responded that it believes 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. These submissions would 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 Department explained that financial statements prepared under U.S. GAAP provide Department staff with detailed information about the financial condition and operation of an institution. The additional information comes from the analysis of the audited financial statements, the accompanying audit opinion letters and related disclosures, and items in the footnote disclosures. Although the Department explored the use of IFRS as an alternative to U.S. GAAP, the Department believes it is premature to consider doing so now because the adoption of IFRS by the U.S. and other countries is proceeding slowly and inconsistently within the different countries.

After consideration of the feedback from the non-Federal negotiators, the Department agreed to treat nonprofit and public foreign institutions alike, and removed the requirement that an unpaid liability due to the Secretary by related public institutions would require the submission of audited financial statements prepared in accordance with U.S. GAAP. In order to reach a compromise with the non-Federal negotiators, the Department agreed to raise the threshold for nonprofit and public foreign institutions that would be allowed to submit audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country from $1,000,000 to $3,000,000 in U.S. Title IV, HEA program funds.

The Department also clarified that a foreign institution required to submit audited financial statements prepared in accordance with U.S. GAAP would be required also to submit a copy of the institution's audited financial statements that were prepared under the institution's home country accounting standards for the same period. By doing so, the Department would be able to perform a comparative analysis between both sets of financial statements to determine if the requirement to provide U.S. GAAP financial statements could be changed in the future.

Upon hearing the revised regulatory proposals, several non-Federal negotiators suggested that, in lieu of a required annual submission of any audited financial statements, the Department could simply rely on applying the exception provided to the Secretary under § 668.23(h)(3)(i) and require an institution to submit audited financial statements on only an "as needed" basis. Some non-Federal negotiators suggested raising the threshold to as much as $10,000,000 in U.S. Title IV, HEA program funds. Others suggested that a threshold should be based on a percentage of U.S. Title IV, HEA program funds received against the total student generated revenues by an institution.

The Department responded to these concerns with a final modification for public and nonprofit institutions that receive at least $3,000,000 but less than $5,000,000 in U.S. Title IV, HEA program funds annually. The Department was unwilling to accept only audited financial statements prepared in the home country standards on an ongoing basis for these institutions due to the unknown comparability of these submissions to audited financial statements prepared under U.S. GAAP. However, the Department proposed having these institutions submit U.S. GAAP financial statements once every three years, rather than every year, which would allow the Department to achieve the appropriate level of monitoring while providing some burden relief to these institutions. This proposal was discussed in detail, and consensus was reached on this issue.

**Compliance Audits (§ 668.23)**

*Statute:* Section 487(c)(1)(A)(i) of the HEA was amended by the HEOA to give the Secretary the authority to modify the financial and compliance audit requirements for foreign institutions, and the authority to waive the audit requirements for foreign institutions that receive less than $500,000 in Title IV, HEA program funds in the preceding year.

*Current Regulations:* Section 668.23(a)(2) of the current regulations requires an annual submission of both a compliance audit and audited financial statements from all institutions participating in the Title IV, HEA programs.

Sections 668.23(b)(1) and (2) require that an 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. They also require that the compliance audit under this section be conducted in accordance with the general standards for compliance audits contained in the U.S. GAO Government Auditing Standards and procedures for audits contained in audit guides developed by the Department of Education's Office of Inspector General.

The Inspector General's current Foreign School Audit Guide, as amended, includes an Alternative Compliance Engagement that may be used for foreign institutions whose enrolled students received less than the $500,000 threshold in U.S. Title IV, HEA program funds.

*Proposed Regulations:* The proposed regulations would separate 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 proposed § 668.23(h)(2)(ii) and (iii), foreign institutions that receive less than $500,000 per year in U.S. Title IV, HEA program funds would be required to submit compliance audits under an alternative compliance audit performed in accordance with the audit guide from the Department's Office of Inspector General. The proposed regulations would require an annual submission of the compliance audit, except that, under certain conditions as described in the following paragraphs, an institution would submit a compliance audit annually for two consecutive years, then, once notified by the Secretary, would be permitted to submit a cumulative compliance audit every three years thereafter.

In order to submit a cumulative compliance audit once every three years instead of annually, a foreign institution would be required to have received less than $500,000 U.S. in U.S. Title IV, HEA program funds for its most recently

completed fiscal year, be fully certified, have timely submitted and had accepted compliance audits for two consecutive fiscal years, and have no history of late submissions since then.

Under an alternative compliance audit, the auditor performs prescribed procedures and reports the findings, but, unlike a standard compliance audit, is not required to express an opinion of the reliability of the institution's assertions concerning the institution's compliance with the requirements. The alternative compliance audit is performed as an agreed-upon procedures attestation engagement, and the standard compliance audit is performed as an examination-level attestation engagement. 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 engagement.

Under proposed § 668.23(h)(2)(i), foreign institutions that receive $500,000 or more per year in U.S. Title IV, HEA program funds, as in the current regulations, would be required to submit annual compliance audits using the standard audit procedures for foreign institutions set out in the audit guide issued by the Office of Inspector General.

When an institution submits a standard compliance audit because it received more than $500,000 in U.S. Title IV, HEA program funds in its previous year, the institution must also submit any alternative compliance audit or audits for preceding years that were prepared in accordance with proposed § 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.

Section 668.23(h)(3)(ii) of the proposed regulations would provide the Secretary with the authority to require that a foreign institution's compliance audit must be performed at a higher level of engagement, and/or require that a compliance audit must be submitted to the Secretary annually, if the institution has been notified by the Secretary about problems with its administrative capability or compliance reporting.

Section 668.23(h)(2) of the proposed regulations would make clear that, as under current regulations, a foreign institution's compliance audit must be done on a fiscal year basis, and all Title IV, HEA program transactions that have occurred since the period covered by the institution's last compliance audit must be covered. For institutions that are permitted to submit one compliance audit every three years, this requirement ensures that the compliance audit is cumulative. Also, when an institution is required to submit a compliance audit, the compliance audit must be submitted no later than six months after the last day of the institution's preceding fiscal year.

*Reasons:* The Department believes that by allowing foreign institutions that receive $500,000 or less in U.S. Title IV, HEA program funds per year to make less frequent audit submissions, the proposed regulations would provide a basis to establish a streamlined set of compliance audit requirements that would provide flexibility and cost benefits to a large number of relatively small foreign institutions and would reduce the reporting burden for the majority of foreign institutions that currently participate in the Title IV, HEA programs.

The proposed regulations would also allow the Department to concentrate its resources on reviewing compliance audits from larger volume institutions and institutions that have demonstrated Title IV, HEA program problems, which represent the Department's greatest financial risk. It would also be more efficient to review the cumulative audit submissions from lower-volume foreign institutions. Approximately 75% of the foreign institutions that participate in the Title IV, HEA programs are in this lower-volume group, and these institutions account for less than 7.5% of total Title IV, HEA program funds received by foreign institutions. Where problems are identified with a foreign institution, § 668.23(h)(3)(ii) of the proposed regulations provides that the Secretary may require the compliance audit to be performed at a higher level of engagement and may require the compliance audit to be submitted annually.

**Public Foreign Institutions and Financial Responsibility (§ 668.171)**

*Statute:* Section 487(c)(1)(B) of the HEA provides that the Secretary shall prescribe regulations, as necessary, to provide for the establishment of reasonable standards of financial responsibility for institutions that participate in the Title IV, HEA programs. Section 102(a)(2)(A) of the HEA provides that the Secretary shall prescribe regulations for determining the comparability of foreign institutions to Title IV "institutions of higher education."

*Current Regulations:* Section 668.171(c) provides that an institution is financially responsible if the institution—

- Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and
- Provides a letter from an official of that State or other government entity confirming that the institution is a public institution. In addition, the institution may not be in violation of any past performance requirement.

*Proposed Regulations:* The proposed regulations would permit a foreign public institution to meet the financial responsibility requirements in a manner similar to domestic public institutions. That is, the Secretary would consider a public foreign institution to be financially responsible if the institution: (1) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and (2) provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity. As with domestic public institutions, a foreign public institution would not meet this standard of financial responsibility if it was in violation of any past performance requirement.

If a foreign public institution did not meet the new requirements, its financial responsibility would be determined under the general requirements of financial responsibility, including the application of the equity, primary reserve, and net income ratios. Although the full faith and credit provision would provide an alternate way of meeting the financial responsibility standards for public foreign institutions, it would not excuse the institution from required submissions of audited financial statements (*see* the discussion under *Audited Financial Statements* above). If a government entity provided full faith and credit backing, the entity would be held liable for any Title IV, HEA program liabilities that were not paid by the institution.

*Reasons:* Current § 668.171(c) is not addressed to foreign institutions. Therefore, the proposed regulations would establish a financial responsibility standard for public foreign institutions that is comparable to public domestic institutions that participate in the Title IV, HEA programs. Although the Department has not identified specific countries that would be willing to provide the

proposed full faith and credit backing, and one non-Federal negotiator reported that a particular country with several public institutions that participate in the Title IV, HEA programs did not think that it would be willing to provide such backing, the Committee agreed that it was a good idea to make this alternative available.

**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, eligibility criteria for foreign graduate medical schools that have a clinical training program approved by a State prior to January 1, 2008, 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 rules, the reasons for adopting them, and an analysis of their effects is presented in the following sections of this NPRM:

*Definition of a Foreign Institution (§§ 600.51, 600.52, 600.54, 682.200, 682.611):* Section 102(a)(2)(A) of the HEA requires the Secretary to establish regulatory criteria for the approval of foreign institutions and for the determination that they are comparable to an institution of higher education within the United States. Proposed §§ 600.52 and 600.54 would include a more detailed definition of *foreign institution* to ensure that a foreign institution is comparable to institutions in the United States, in accordance with HEA section 102(a)(1)(C), before allowing a foreign institution to participate in the Title IV, HEA programs. The Department is concerned that a foreign institution that is not comparable to a domestic institution, especially in terms of the quality of its educational programs, may misuse Federal funds to the detriment of its students who may have to borrow heavily in order to attend the foreign institution. The proposed regulations also more fully implement the scheme of the HEA, which distinguishes between foreign and domestic institutions and includes provisions unique to each. For example, these regulations would prevent a domestic institution from claiming to be a foreign institution by virtue of the fact that it has established an offshore location, thereby avoiding the requirements applied to domestic institutions such as recognized accreditation, but that sends its students to the United States for the majority of the required coursework.

As described in the preamble section related to this provision, under current regulations a foreign institution is eligible to participate if it is comparable to an institution of higher education located in the United States; has been approved by the Secretary; does not offer its programs through any use of telecommunications, correspondence course, or direct assessment program; is not located in a State as defined in § 600.2; admits as regular students only those with a secondary school credential or recognized equivalent; and is legally authorized by an appropriate authority to provide an eligible program beyond the secondary level in the country in which it is located. The foreign institution must also provide eligible programs for which the institution is authorized to award the equivalent of an associate, baccalaureate, graduate, or professional degree in the United States; or a two-year program acceptable for full credit towards the equivalent of a baccalaureate degree awarded in the United States; or a program equivalent to a one-academic year training program that leads to a certificate, degree, or other credential and prepares a student for gainful employment in a recognized occupation.

The proposed regulations would consolidate the definitions and requirements related to the eligibility of foreign institutions to apply for Title IV, HEA program eligibility in subpart E of 34 CFR 600. As is the current practice, foreign institutions would be required to comply with all other requirements for eligible and participating institutions except to the extent the provisions are inconsistent with the HEA, 34 part CFR 600, or other regulatory provisions specific to foreign institutions. Proposed § 600.51(c) would also exempt foreign institutions from requirements that the Secretary identifies through a notice in the **Federal Register**. The proposed regulations would amend § 600.52 to include a detailed definition of *foreign institution.* Under the definition proposed, *foreign institution* would mean, for the purposes of students who receive Title IV, HEA program aid, an institution that is not located in a State; has no U.S. locations except with respect to clinical training for foreign graduate medical, veterinary, and nursing schools; has no written agreements with institutions or organizations located in the United States for students to take a portion of the program in the United States; does not permit students to enroll in any course offered by the foreign institution in the United States except for independent research under very limited circumstances; is legally authorized by an agency of its home country to provide an education program beyond its secondary level; awards degrees that are officially recognized by the institution's home country; and, for a program designed to prepare a student for gainful employment in a recognized occupation, provides a credential that satisfies the education requirements in the institution's home country for entry into that occupation and satisfies the educational requirements for entry into that occupation in the United States, including licensure. Proposed § 600.54(a) clarifies that, with the exception of freestanding foreign

graduate medical, veterinary, or nursing schools that may be for-profit, foreign institutions must be public or private nonprofit education institutions to be eligible.

*Nonprofit Status for Foreign Institutions (§ 600.2):* As foreign institutions must be public or private nonprofit institutions to participate in the Title IV, HEA programs, unless they are medical, veterinary, or nursing schools, the Department believes it is necessary to delineate in regulations the requirements for demonstrating nonprofit status for foreign institutions. Current section 600.2 defines a nonprofit institution as an institution that—

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

Under proposed § 600.2, a new paragraph (2) of the definition of a nonprofit institution would provide that if a recognized tax authority of a foreign institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for Title IV, HEA purposes, the Secretary would automatically accept that tax authority's determination of nonprofit educational status for any institution located in that country. If a recognized tax authority of the institution's home country is not recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for Title IV, HEA program purposes, a foreign institution would have to demonstrate to the satisfaction of the Secretary that it is a nonprofit educational institution. The proposed regulations would also make clear that a nonprofit foreign institution may not be owned by a for profit entity, directly or indirectly. A foreign institution that did not meet this definition of a nonprofit foreign institution would not be eligible to participate in the Title IV, HEA programs unless it was a medical, veterinary, or nursing school.

The proposed regulations should increase comparability in the determination of nonprofit status between domestic and foreign institutions. A domestic institution must be determined by the IRS to be a nonprofit organization in order to be eligible as a nonprofit institution for participation in the Title IV, HEA programs. Additionally, certain countries may not have standards for the determination of nonprofit status that are comparable to those used in the United States, and may not ensure that the institution's net earnings do not benefit any private shareholder or individual. Therefore, to make the proposed regulations as comparable as possible to those applicable to domestic institutions, the Department proposed, and the Committee agreed, that a determination that an institution is nonprofit by an entity in the institution's foreign country would qualify an institution as nonprofit only if the determination is made by a recognized tax authority of the country, and the Secretary has recognized that tax authority as one that can make a determination using criteria that are similar to those used by the U.S. IRS. The Secretary may recognize more than one tax authority in a country. Information submitted by entities other than recognized tax authorities would be taken into account by the Department; however, this would be done as part of an individual determination of the eligibility of an institution.

*Foreign Graduate Medical Schools (§§ 600.20, 600.21, 600.52, 600.55):* As discussed in the section of the preamble related to this provision, the proposed regulations reflect amendments made to the sections 102(a)(2)(A) and (B) of the HEA by the HEOA and the requirement in 102(a)(2)(B)(iii)(IV)(aa) of the HEA that the regulations be based on the recommendations of the 2009 NCFMEA report. The NCFMEA is a panel of medical experts that evaluates the medical school accrediting agency standards used in the country where medical education is provided to determine comparability to the standards of accreditation applied to medical schools in the United States.

Current section 600.52 defines a foreign graduate medical school as a foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the World Directory of Medical Schools published by the World Health Organization. The regulations do not define clinical training, the NCFMEA, or a post-baccalaureate/equivalent medical degree. Neither section 600.20, which addresses the application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification, nor § 600.21, which addresses when and how an institution must update application information, currently include any provisions specific to foreign graduate medical schools. Foreign graduate medical schools generally must meet the criteria in § 600.54 for determining a foreign institution's eligibility (except the criterion that the institution be public or private nonprofit), as well as the additional criteria in § 600.55(a)(5). The additional criteria include the following: (1) Providing and requiring students to complete a program of clinical and classroom medical instruction of not less than thirty-two months that is supervised closely by faculty and that is provided (a) outside the United States in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or (b) in the United States, through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary; (2) having 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) employing 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; and (4) being approved by an accrediting body that is legally authorized to evaluate graduate medical schools in the country where the school is located and whose standards of accreditation have been evaluated by the advisory panel of medical experts established by the Secretary and have been determined to be comparable to standards of accreditation applied to medical schools in the United States. In addition, current regulations provide that foreign graduate medical schools that do not have a clinical training program that has been continuously approved by a State since January 1, 1992, must: (1) During the academic year preceding the year for which any of the school's students seeks a FFEL program loan, have 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 be persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); and (2) for a foreign graduate medical school outside of Canada, have at least 60 percent of the school's students and graduates who took any step of the USMLE administered by the

ECFMG (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks a FFEL program loan to have received passing scores on the exams.

The proposed regulations would deal with location requirements for foreign medical education programs, affiliation agreements, application and notification procedures, accreditation, admission criteria, collection and submission of data, citizenship and USMLE pass rate percentages, maximum timeframes for program completion, required documentation related to educational remediation a school provides as part of a satisfactory academic progress policy, and publication of the languages in which instruction is offered.

Proposed § 600.55(h) contains regulations concerning the locations where a foreign graduate medical school can establish its program. No portion of the medical education program offered to United States students by a foreign graduate medical school, other than the clinical training portion of the program, would be allowed to be offered outside the country where the main campus of the school is located. In addition to distinguishing between the basic science and the clinical training parts of the program, the Committee discussions distinguished between the different parts of clinical training; referred to in these proposed regulations as the core, the required clinical rotation (the electives that students are required to take), and the not required clinical rotation (the electives that students can choose). The proposed regulations set three criteria for clinical training sites outside the United States—the requirement to be located in an approved comparable country; required on-site evaluation and specific approval of the site by the institution's medical accrediting agency if a location is in a comparable foreign country outside the country of the program's main campus; and the requirement that instruction be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country—but allow two exceptions. The two exceptions would permit a foreign graduate medical school to have a clinical training program in a foreign country other than the country in which the main campus is located or in the United States without meeting these three criteria if the clinical training location is included in the accreditation of a medical program accredited by the LCME, or if no individual student takes more than two electives at the clinical training location and the combined length of the electives does not exceed eight weeks.

Proposed § 600.55(e)(1) would require a foreign graduate medical school to have: (1) 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 (2) 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 combined total of eight weeks. The proposed regulations would require these affiliation agreements or other written arrangements to state how the following will be addressed at each site: (1) Maintenance of the school's standards; (2) appointment of faculty to the medical school staff; (3) design of the curriculum; (4) supervision of students; (5) provision of liability insurance; and (6) evaluation of student performance. In addition, the proposed regulations would require a foreign graduate medical school to do the following in its application for participation in Title IV, HEA programs: (1) To provide copies of the affiliation agreements with hospitals and clinics that it is required to have under proposed § 600.55(e)(2); (2) to list all educational sites associated with its program on its application for participation, except those not used regularly that are chosen by individual students who take no more than two electives there for no more than a combined total of eight weeks; (3) to apply for certification and wait for approval before dispensing Title IV, HEA program funds at any additional location that offers core clinical training, except for those locations included in the accreditation of a medical program accredited by the LCME; and (4) to indicate whether it offers only post-baccalaureate/equivalent medical programs, other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine, or both. The Department believes that distinguishing between the parts of the medical education program allows a balance between effective oversight and exposure to other medical environments and cultures for short-term elective training.

Other proposed regulations address general definitions and requirements related to foreign graduate medical programs. The proposed regulations would change the definition of a *foreign graduate medical school,* removing the requirement that a school qualify for listing in the World Directory of Medical Schools and clarifying that schools would have to meet all applicable criteria for foreign institution's Title IV, HEA program eligibility in part 600, not just the criteria in § 600.55. In its place, the definition proposed would clarify that a foreign graduate medical school can be free-standing or a component of an eligible foreign institution. Current regulations require only clinical training and classroom instruction that is offered outside of the United States to be provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, and require only the clinical training and classroom instruction located in the United States to be approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary. Proposed § 600.55(a)(2) would apply these provisions to the entire medical program, regardless of whether a particular portion is located outside or inside the United States, as the Department believes both are good requirements for medical education regardless of location. In § 600.52, the proposed regulations would add a definition of clinical training. Clinical training would be defined as the portion of a graduate medical education program that counts as a clinical clerkship for purposes of medical licensure. Proposed §§ 600.20(a)(3)(i)(B) and (b)(3)(i)(B) would require freestanding foreign graduate medical schools, and foreign institutions that include a foreign graduate medical school, to identify, for each clinical site reported in the certification or recertification application as required under §§ 600.20(a)(3)(i)(A) and (b)(3)(i)(A), the type of clinical training (core, required clinical rotation, not required clinical rotation) offered at that site. Proposed § 600.55(a)(3) would require foreign graduate medical schools to appoint, rather than employ, faculty members with comparable academic credentials to those teaching similar courses at U.S. medical schools. The proposed regulations make no substantive changes to existing accreditation requirements for foreign graduate medical schools.

The proposed regulations also address admission criteria and collection and submission of data in order to provide data for the evaluation of whether additional performance measures should be required of foreign graduate medical schools. Proposed § 668.55(c)

would require foreign graduate medical school with a post-baccalaureate/equivalent medical program to require U.S. citizens, nationals, or permanent residents accepted as students to have taken the MCAT and have reported the scores to the school. To provide information valuable for the future evaluation of the quality of education being provided to students attending foreign graduate medical schools, foreign graduate medical schools must determine consent requirements, obtain necessary consents from U.S. citizens, nationals, or eligible permanent residents, and comply with the collection and submission requirements in proposed § 600.55(d) for MCAT scores, residency placement, and USMLE examination scores. Proposed § 600.55(d) requires that schools obtain the required information at their own expense, submit MCAT scores and medical residency data to their accrediting agency by September 30 of each year, and submit the USMLE scores for Step 1, Step 2—Clinical Skills, and Step 2—Clinical Knowledge to the Department annually by September 30 unless the Department informs the school that it will get the USMLE scores from ECFMG. The provision in proposed § 600.55(e)(2) would require a foreign graduate medical school to notify its accrediting body within one year of any material changes in educational programs, and the overseeing bodies and in the formal affiliation agreements with hospitals and clinics would reflect NCFMEA Recommendations 12(a) and 12(b) and would allow a school's accrediting body to assess any substantive impact the change would have on the school's operations.

The proposed change in § 600.55(f)(1)(i)(B) to allow a foreign graduate medical school to be exempt from the existing citizenship requirement if it had a clinical training program approved by a State as of January 1, 2008, and continues to operate a clinical training program in at least one State that approves the program, reflects a change made by the HEOA. As a result, both foreign graduate medical schools that had a clinical training program approved by a State as of January 1, 1992, and those that had a clinical training program approved by a State as of January 1, 2008, are exempt from the citizenship rate provision, provided the school continues to operate a clinical training program in at least one State that approves the program.

The increase in the USMLE pass rate threshold from 60 percent to 75 percent also reflects a change made by the HEOA, as does proposed § 600.55(f)(2)(ii), which would allow a foreign graduate medical school that was eligible to participate in the Title IV, HEA programs and exempt from the USMLE pass rate requirement based on having a clinical training program approved by a State as of January 1, 1992, to continue to be eligible and exempt from the USMLE pass rate requirement as long as it continues to operate a clinical training program in at least one State that approves the program. Proposed § 600.55(f)(1)(ii) would make the following changes to the USMLE pass rate requirement: (1) Increase the USMLE pass rate threshold from 60 percent to 75 percent (§ 600.55(f)(1)(ii)); (2) limit the pass rate requirement to Step 1, Step 2—CS, and Step 2—CK, excluding Step 3; (3) require a foreign graduate medical school to have at least a 75 percent pass rate on each step/test of the USMLE (limited to Step 1, Step 2—CS, and Step 2—CK), rather than a combined pass rate for all steps/tests; (4) require foreign graduate medical schools to include in the calculation only U.S. citizens, nationals, or eligible permanent residents, rather than all students taking the USMLE; and (5) require foreign graduate medical schools to include only first time test takers in the calculation. As described in the preamble section related to this provision, under proposed § 600.55(f)(4), pass rates must be based on at least eight step/test results.

Proposed § 600.55(g)(1) would require a foreign graduate medical school to follow existing regulations currently applicable to undergraduate programs for establishing a maximum timeframe in which a student must complete his or her program of medical education and require that a student complete his or her program within 150 percent of the published length of the program. This adopts NCFMEA Recommendation 9(b). In addition, proposed § 600.55(g)(2) would require a foreign graduate medical school to document the educational remediation it provides to assist students in making satisfactory academic progress. In the future, the Department or the NCFMEA may collect and examine the data to see if this is an area of concern that may need to be addressed, but they did not believe it was currently necessary or cost effective to require the regular submission of these data to the Department. Finally, proposed § 600.55(g)(3) would require a foreign graduate medical school to publish all the languages in which instruction is offered. Although NCFMEA Recommendation 10 suggested requiring schools to publish the primary language of instruction, and if not English, identify any alternate language of instruction, the Committee agreed that requiring schools to publish all languages in which instruction is offered would be more beneficial and no more burdensome.

*Foreign Veterinary Schools (§ 600.56):* Section 102(a)(2)(A)(ii) of the HEA stipulates that Title IV borrowers attending a foreign for-profit veterinary school must complete clinical training at an approved veterinary school located in the United States. The HEA does not establish additional eligibility criteria specific to foreign veterinary schools, and requires the Secretary to develop, through regulation, eligibility criteria for foreign institutions that are comparable to the eligibility criteria for domestic institutions of higher education. Under current regulations, foreign veterinary school facilities outside the United States must be adequately equipped and staffed to provide students comprehensive clinical and classroom veterinary instruction, foreign veterinary school programs provided inside the United States must be approved by all veterinary licensing boards and evaluating bodies that the Secretary considers to be relevant, and the credentials of faculty members employed by the foreign veterinary school must be equivalent to the credentials of faculty members teaching the same or similar courses in the United States.

The Department proposed revising the regulations governing eligibility criteria for foreign veterinary schools to improve the Department's process for making determinations of eligibility of foreign veterinary schools to participate in the Title IV, HEA programs. The proposed regulations would apply the current regulatory standards regarding facilities, approvals and faculty credentials without distinguishing between portions of veterinary programs provided inside and outside of the United States, and, as of July 1, 2015, would require a foreign veterinary school to be accredited or provisionally accredited by an organization acceptable to the Secretary. As required by the HEA, the proposed regulations also distinguish between for-profit foreign veterinary schools and those that are public or private nonprofit. Students from a for-profit foreign veterinary school must complete their clinical training at an approved veterinary school located in the United States. Students from public or private nonprofit foreign veterinary schools may complete their clinical training at an approved veterinary school located

in the United States or in the home country, and may also take clinical training outside the United States or the home country if no individual student takes more than two electives at the location and the combined length of the elective does not exceed eight weeks. The Department agreed to be consistent with medical school provisions that would permit some clinical training locations of foreign graduate medical schools to be outside of the United States and the country in which the main campus of the school is located. This provision could not be extended to for-profit veterinary schools because the statute requires students who attend these schools to complete their clinical training in the United States.

*Foreign Nursing Schools (§ 600.57):* The HEOA amended section 102(a)(2)(A) of the HEA to provide specific standards for foreign nursing schools. The amendments are effective beginning July 1, 2010, except that, for nursing schools that were eligible for Title IV, HEA program participation on August 13, 2008 (the day before enactment of the HEOA), they are effective July 1, 2012. The HEA, as amended by the HEOA and HCERA, provides that a foreign nursing school, including a for-profit nursing school, may not participate in the Title IV, HEA programs unless the school: (1) Has an clinical training agreement with a hospital or accredited school of nursing located in the United States; (2) has an agreement with an accredited school of nursing located in the United States providing that the students graduating from the foreign nursing school also receive a degree from the accredited U.S. school of nursing; (3) certifies only Federal Direct Stafford Loans under section 455(a)(2)(A) of the HEA, Federal Direct Unsubsidized Stafford Loans under section 455(a)(2)(D) of the HEA, or Federal Direct PLUS loans under section 455(a)(2)(B) of the HEA for students attending the school; and (4) reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the school's cohort default rate during the previous fiscal year. In addition, the HEOA amendments to the HEA require that at least 75 percent of the individuals who were students or graduates of a foreign nursing school, and who took the National Council Licensure Examination for Registered Nurses (NCLEX–RN) in the year preceding the year for which the school is certifying a Title IV, HEA program loan, received a passing score on the NCLEX–RN. Current regulations do not define the term "foreign nursing school", or specify Title IV, HEA program eligibility criteria unique to foreign nursing schools.

The proposed regulations would add several new definitions relating to foreign nursing schools to § 600.52, and would add a new § 600.57 specifying additional Title IV eligibility criteria for foreign nursing schools. The proposed regulations would add definitions to § 600.52 for the terms *associate degree school of nursing, collegiate school of nursing,* and *diploma school of nursing,* with the primary distinction between the three types of nursing schools being the type of degree offered by the school. For an associate degree school of nursing, the nursing program must lead to a degree equivalent to an associate degree in the U.S. For a collegiate school of nursing, the nursing program must lead to a degree equivalent to a bachelor of arts, a bachelor of science, or a bachelor of nursing in the U.S., or to a degree equivalent to a graduate degree in nursing in the U.S. For a diploma school of nursing, the nursing program must lead to the equivalent of a diploma in the U.S. or to other indicia equivalent to a diploma that demonstrates that the student has satisfactorily completed the program. These definitions are drawn from the Public Health Service Act, as required by the foreign nursing school provisions of the HEOA amendments to the HEA.

Proposed new § 600.57 would require a *foreign nursing school* to meet the applicable eligibility criteria elsewhere in part 600. In addition, a foreign nursing school must meet the statutory requirements described above as well as the following eligibility criteria: (1) Meet the definition of *associate degree school of nursing, collegiate school of nursing,* or *diploma school of nursing;* (2) reimburse the Department 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; (3) 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 NCLEX–RN results or pass rates; (4) 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 Secretary; (5) 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 Secretary; (6) provide, a program of clinical and classroom nursing instruction, which students are normally required to complete, that is supervised closely by members of the school's faculty. The program, which includes programs provided through agreements with nursing schools in the United States, must be 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; (7) 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; and (8) employ 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.

The proposed regulations also would specify that after a school reimburses the Secretary for the cost of a loan default, the loan is assigned to the school. The borrower remains liable to the school for the outstanding balance of the loan, under the terms and conditions specified in the promissory note.

Proposed § 600.56(b) would provide that 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, which by statute must be located in the United States.

**Single Legal Authorization for Groups of Foreign Institutions (§ 600.54)**

To ease administrative burden for foreign institutions, the Department sought to determine if compliance with any of the foreign institution institutional eligibility criteria could be demonstrated at a nationwide level, for all eligible institutions within a country, rather than at the individual institution level. After discussions with the non-Federal negotiators and our own

internal review of the Title IV institutional eligibility criteria, the Department determined that the requirement for proof of legal authorization to provide postsecondary education could be provided this way. Section 600.54(b) of the current regulations requires a foreign institution to be legally authorized by an appropriate authority to provide postsecondary education in the country where the institution is located. Proposed § 600.54(f) would provide three different methods for a foreign institution to prove that it is legally authorized to provide postsecondary education in the country where the institution is located. The documentation from a foreign country's education ministry, council, or equivalent agency may either be: (1) A single legal authorization that covers all eligible foreign institutions in the country; (2) a single legal authorization that covers all eligible foreign institutions in a jurisdiction within the country; or (3) separate legal authorizations for each eligible foreign institution in the country.

The proposed regulations reflect recommendations made in response to concerns raised by non-Federal negotiators about reliance on national governments to produce lists of institutions legally authorized to provide postsecondary education because of efficiency and provincial level regulation of educational providers in some countries. In addition to allowing proof of legal authorization to be provided on a nationwide basis, the proposed regulations allow for proof of legal authorization to be provided for all eligible institutions in a jurisdiction within the country, and continue to allow proof of legal authorization to be provided separately for each eligible institution in a country.

*Eligibility of Training Programs at Foreign Institutions (§ 600.54):* Section 101(b)(1) of the HEA provides, in part, that one type of educational program that a Title IV "institution of higher education" may provide to be eligible to apply to participate in the Title IV, HEA programs, is a training program of at least one year that prepares students for gainful employment in a recognized occupation. Section 102(a)(2)(A) provides for participation in the Title IV, HEA programs by entities that are comparable to such institutions under regulations prescribed by the Secretary. Current regulations provide that, in order to be eligible to apply to participate in the Title IV, HEA programs, a foreign institution must provide an eligible educational program that leads to a degree that is equivalent to a U.S. degree, or be at least a two-academic year program acceptable for full credit toward the equivalent of a U.S. baccalaureate degree, or be equivalent to at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation.

Under the proposed regulations, a foreign institution would have to demonstrate to the satisfaction of the Secretary (who would 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—

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

The Department believes the proposed regulations are necessary because many foreign institutions use educational measurements other than conventional U.S. semester, trimester, quarter credits and clock-hours. The non-Federal negotiators provided the Department with information regarding the definition of non-degree programs by different countries, units of measurement for programs in other countries, and evaluation and comparability determinations made by private entities. The information provided consistently indicates that the assignment of credits or other measures of academic work by foreign institutions vary greatly. As the definition of an academic year—the program length measurement used here—specifically references these U.S. measurements, it is necessary to make some sort of comparability determination in order to determine the eligibility of these programs at foreign institutions, and in some cases to determine the eligibility of the foreign institution itself. Under the proposed regulations, the Secretary would make determinations of comparability on a program-by-program basis, based on information provided by a foreign institution to demonstrate that the amount of academic work required by a program it seeks to qualify as eligible as comparable to at least a one-academic-year training program is equivalent to the academic work required for eligibility of these programs at domestic institutions.

*Audited Financial Statements (§ 668.23):* Section 487(c)(1)(A)(i) of the HEA was amended by the HEOA to give the Secretary the authority to modify the financial and compliance audit requirements for foreign institutions and the authority to waive the audit requirements for foreign institutions that receive less than $500,000 in Title IV, HEA program funds in the preceding year. Currently, under § 668.23(a)(2), an annual submission of both a compliance audit and audited financial statements is required of all institutions participating in the Title IV, HEA programs. Section 668.23(d)(1) requires that an institution's financial statements must be prepared on an accrual basis in accordance with U.S. GAAP, and audited by an independent auditor in accordance with U.S. GAGAS, or in compliance with guidance in Office of Management and Budget Circular A–133 and A–128 or in audit guides developed by, and available from, the Department of Education's Office of Inspector General.

The proposed regulations categorize foreign institutions by control and amount of Title IV, HEA program funds received during the institution's most recently completed fiscal year and establish new financial audit submission requirements. 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 normally would be waived. However, if the institution is in its initial provisional period of participation, and received Title IV, HEA program funds during that year, the institution must submit, in English, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country. For a public or nonprofit foreign institution that received at least $500,000 but less than $3,000,000 in U.S. Title IV, HEA program funds during its most recently completed fiscal year, the institution would 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. For a public or nonprofit foreign institution that 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, the institution would 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. Foreign institutions that receive more than $5,000,000 or more annually would remain subject to current requirements for audited financial statements prepared in accordance with U.S. GAAP.

The proposed regulations also allow the Secretary to issue a letter to a foreign institution that has been identified as having problems with its financial condition or financial reporting that requires the foreign institution to submit its audited financial statements in the manner specified by the Secretary.

*Compliance Audits (§ 668.23):* Current regulations require an annual submission of both a compliance audit and audited financial statements from all institutions participating in the Title IV, HEA programs. An 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 and be conducted in compliance with the general standards for compliance audits contained in the U.S. GAO Government Auditing Standards and procedures for audits contained in audit guides developed by the Department of Education's Office of Inspector General. The current Inspector General's Audit Guide concerning compliance audits for foreign institutions includes an Alternative Compliance Engagement that may be used for foreign institutions whose enrolled students received less than the $500,000 threshold in U.S. Title IV, HEA program funds.

The proposed regulations would separate 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. For foreign institutions that receive less than $500,000 per year in U.S. Title IV, HEA program funds would be required to submit compliance audits under an alternative compliance audit performed in accordance with the audit guide from the Department's Office of Inspector General. Under an alternative compliance audit, the auditor performs prescribed procedures and reports the findings, but, unlike a standard compliance audit, is not required to express an opinion of the reliability of the institution's assertions concerning the institution's compliance with the requirements. The alternative compliance audit is performed as an agreed-upon procedures attestation engagement, and the standard compliance audit is performed as an examination-level attestation engagement. The proposed regulations would require an annual submission of the compliance audit, except that, in specified circumstances, an institution would submit a compliance audit annually for two consecutive years, then, once notified by the Department, would be permitted to submit a compliance audit every three years thereafter. To qualify for these less frequent submission requirements, a foreign institution would be required to have received less than $500,000 in the most recently completed fiscal year, be fully certified, have timely submitted and had accepted compliance audits for two consecutive fiscal years, and have no history of late submissions since then.

Foreign institutions that receive $500,000 or more in U.S. Title IV, HEA program funds would be required to submit an annual compliance audit using the standard audit procedures for foreign institutions in the audit guide issued by the Office of Inspector General. The compliance audit would be submitted along with any alternative compliance audits for any preceding fiscal years in which the institutions received less than $500,000 in U.S. Title IV, HEA program funds.

Section 668.23(h)(3)(ii) of the proposed regulations would provide the Secretary with the authority to require that a foreign institution's compliance audit be performed at a higher level of engagement, and/or require that a compliance audit must be submitted to the Secretary annually if it has been identified that the institution has problems with its administrative capability or compliance reporting. Section 668.23(h)(2) of the proposed regulations would make clear that, as under the current regulations, a foreign institution's compliance audit must be done on a fiscal year basis, and all Title IV, HEA program transactions that have occurred since the period covered by the institution's last compliance audit must be covered. Also, a compliance audit must be submitted no later than six months after the last day of the institution's fiscal year.

The Department believes the proposed regulations provide a basis to establish a streamlined set of compliance audit requirements that would provide flexibility and cost benefits to the large number of relatively small foreign institutions and reduce the reporting burden for the majority of foreign institutions. Approximately 75% of the foreign institutions that participate in the Title IV, HEA programs are in this lower-volume group, and these institutions account for less than 7.5% of total Title IV, HEA program funds received by foreign institutions. The proposed regulations should allow the Department to concentrate its resources on reviewing compliance audits from the larger volume institutions and institutions that have demonstrated Title IV, HEA program problems that represent the Department's greatest financial risk.

**Public Foreign Schools and Financial Responsibility (§ 668.171)**

Section 487(c)(1)(B) of the HEA provides that the Secretary shall prescribe regulations, as necessary, to provide for the establishment of reasonable standards of financial responsibility for institutions that participate in the Title IV, HEA programs. Section 102(a)(2)(A) provides that the Secretary shall prescribe regulations for determining the comparability of foreign schools to Title IV "institutions of higher education." Current section 668.171(c) provides that an institution is financially responsible if the institution notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation, and provides a letter from an official of that State or other government entity confirming that the institution is a public institution. In addition, the institution may not be in violation of any past performance requirement. Current § 668.171(c) is not addressed to foreign institutions. The proposed regulations would permit a foreign public institution to meet the financial responsibility in a manner similar to domestic public institutions as described above. If a foreign public institution did not meet the new requirements, its financial responsibility would be determined under the general requirements of financial responsibility, including the application of the equity, primary reserve, and net income ratios.

Although the full faith and credit provision would provide an alternate way of meeting the financial responsibility standards for public foreign institutions, it would not excuse the institution from required submissions of audited financial statements.

The following section addresses the alternatives that the Secretary considered in implementing these regulations. These alternatives are also discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

**Regulatory Alternatives Considered**

*Definition of a Foreign Institution (§§ 600.51, 600.52, 600.54, 682.200, 682.611):* As described in the section of the preamble related to this provision, there were extensive comments and negotiations related to the definition of a foreign institution. In response to the Department's position that a more detailed definition of *foreign institution* is necessary and request for comments, several non-Federal negotiators urged the Department to define the term to ensure quality control through high academic standards and suggested subjecting foreign institutions to accreditation by accreditors recognized by the Department. When the Department indicated that it does not recognize U.S. accreditors for accreditation of institutions outside the United States, the non-Federal negotiators suggested a requirement that foreign institutions be "legally authorized" by an appropriate authority in the country in which the institution is located, with some negotiators urging the Department to be flexible in this area as such authority could reside in different branches of government depending on the country. Several non-Federal negotiators suggested that the Department require foreign countries to recognize the degrees and licenses offered by a foreign institution.

The Department drafted regulatory language that responded to these suggestions and also included provisions prohibiting foreign institutions from entering into written arrangements with institutions located in the United States and preventing foreign institution students from engaging in courses, research, work, and other pursuits within the United States that drew objections from the non-Federal negotiators. The Department included these provisions to address abuses whereby an institution sets up an offshore campus to claim foreign institution status and thus avoids domestic requirements even though the institution is, for all intents and purposes, a domestic institution, but the non-Federal negotiators felt the language was too broad and urged the Department to make exceptions for research conducted in the United States by PhD students. In responding to these comments, the Department clarified the meaning of the terms *written agreement* and *educational enterprise* and sought to further distinguish between foreign and domestic institutions by prohibiting foreign locations of an educational enterprise from being considered additional locations of a domestic location of the educational enterprise if the enterprise has at least twice as many students enrolled in foreign locations as those enrolled in domestic locations.

The non-Federal negotiators were comfortable with the majority of the Department's proposed language but several non-Federal negotiators continued to raise concerns about the proposed language prohibiting U.S. locations of foreign institutions and written arrangements with institutions located in the United States. The Department indicated that foreign institutions can establish locations in the United States, but that such locations and institutions would need to be separately certified and meet the requirements applicable to domestic institutions in order for U.S. students attending them to receive Title IV, HEA funds. The Department does not want a foreign institution to send its U.S. students to a U.S. location of a foreign institution or to a U.S. institution with which it has an agreement for their training because students enrolled in a foreign institution are only eligible for Direct Loan program (or, before July 1, 2010, FFEL program) loans. Instead, the Department wants U.S. students attending postsecondary institutions in the United States to be eligible for the full range of Title IV, HEA program funds available to domestic institutions.

*Foreign Graduate Medical Schools (§§ 600.20, 600.21, 600.52, 600.55):* The Department's initial proposal related to the location of foreign graduate medical schools reflected the approach recommended by NCFMEA Recommendation 12(a) and the Department's current policy of allowing clinical training sites outside of the program's main country if the site is located in an NCFMEA approved country, the institution's medical accrediting agency has conducted an on-site evaluation and specifically approved the site, and the clinical instruction is offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that foreign country. Several non-Federal negotiators felt this initial proposal was too limiting and that matriculating in different countries as part of a graduate medical program would benefit students by exposing them to medical education and practice in different environments and cultures. After negotiations involving possible locations for the basic science portion of the program as well as accreditation requirements for clinical training sites, the proposed framework that distinguishes the basic science, required clinical training, and elective clinical training was established. The Department reiterated its belief that the basic sciences part of a graduate medical program should be located in the same country as the main campus so that the classroom instruction part of the program will be under the direct authority of the school's accrediting body. In addition, the Department agreed to the position of some non-Federal negotiators who felt that clinical locations that are included in the accreditation of a medical program accredited by the LCME, such as locations of some Canadian schools, should be eligible regardless of locale because the LCME accrediting standards are those that are applied to medical schools in the United States.

The Department initially proposed that, consistent with NCFMEA Recommendations 1(a) and 1(b), a foreign graduate medical school would have to require students who it admits to have a specific educational background (*e.g.,* for a post-baccalaureate/equivalent medical program, students must have a baccalaureate degree, or at least 90 semester credit hours or the equivalent, in general education that includes, but is not limited to, coursework in the social sciences, history, and languages). Several of the non-Federal negotiators felt that such provisions were unduly limiting, and ultimately the negotiators agreed it would be more appropriate for the NCFMEA to establish these provisions as guidelines for accrediting bodies. The Department had also included as a part of its initial proposal, that a school having an integrated program for a first professional program leading to a Doctor of Medicine (M.D.) degree, or its equivalent must require students who are U.S. citizens, nationals, or permanent residents to take the MCAT no later than three years after admission to the program. The Department was ultimately persuaded to remove the provision by non-Federal negotiators who pointed out that requiring students to take the MCAT early in the program would distract

them from the education that was preparing them to take the USMLE. Ultimately, the Department agreed to retain from Recommendations 1(a) and 1(b) only the provision that would require U.S. students who are admitted to a school having a post-baccalaureate/equivalent medical program to have taken the MCAT and to report the score. This provision would not require a foreign graduate medical school to give weight to a U.S. student's score on the MCAT as part of its admission requirements.

The Department originally proposed requiring schools to submit data on all steps of the USMLE, but non-Federal negotiators pointed out that it would be extremely difficult for schools to obtain data on Step-3 as it is taken by students after they have graduated from the institution and a student cannot sign a consent to provide information on Step 3 to third parties until he or she is actually taking the test. Although the Department is continuing to explore the collection of data from the FSMB for evaluating its use in the future, the Department agrees that it would be unreasonable to require institutions to be responsible for its collection and submission at this time. To focus the USMLE pass rate on the students the Department is most concerned about and allow comparability to domestic schools, the USMLE pass rate calculation was limited to U.S. citizens, nationals, and eligible permanent residents taking the tests for the first time.

Some non-Federal negotiators expressed concern that requiring foreign institutions to obtain student consent for the release of information may be in violation of certain countries' privacy laws. After reviewing an analysis of the privacy laws and requirements of one country that had been identified as one that could have problems in this area, the Department concluded that there would be several ways that institutions in that country could legally obtain the required information from students, and committed to working with those schools and schools in any country that have concerns to facilitate compliance. The Department noted, however, that the Department cannot waive statutory or regulatory requirements used to determine institutional eligibility and that if a foreign country's privacy laws did preclude obtaining the information and materials necessary for establishing compliance, the institutions located in those countries unfortunately would not be able to qualify for participation in the Title IV, HEA programs.

*Foreign Veterinary Schools (§ 600.56):* The Department's initial proposal built on current practice by requiring AVMA accreditation for foreign veterinary schools applying to participate in Title IV, HEA programs. The AVMA's standards are detailed and specific, it has the expertise to evaluate foreign veterinary programs that the Department lacks, and it has a history of accrediting foreign veterinary programs as veterinary schools in Australia, Canada, the Netherlands and other foreign countries are currently accredited by the AVMA. Non-Federal negotiators acknowledged the quality of the AVMA's accreditation standards and the logic of requiring it for foreign veterinary schools as most U.S. students at those schools eventually practice in the United States. However, several non-Federal negotiators had concerns about requiring AVMA accreditation as it is a lengthy and expensive process, many foreign accrediting agencies have comparable standards, some schools with a small number of U.S. students would opt out of receiving Title IV, HEA program funds thus limiting the options for U.S. students, and it is difficult for for-profit veterinary schools to obtain AVMA accreditation because of the research component. The non-Federal negotiators suggested using other measures such as pass rates on licensing exams, licensure rates, or default rates to determine eligibility of foreign veterinary schools. The Department noted that using measures such as pass rates on licensing examinations can be operationally complicated, raising concerns over privacy rights, obtaining exam results, and calculating pass rates in ways that are not disadvantageous to schools with low numbers of Title IV, HEA program students. In addition, pass rates would not necessarily be a reliable indicator of the academic credentials of the faculty at a foreign veterinary school, and would provide no indication that the facilities at the veterinary school are adequate and safe for the students or for the animals housed in the facilities. Instead, the Department accepted the recommendation of some of the non-Federal negotiators to replace the proposed requirement that a foreign veterinary school be accredited or provisionally accredited by the AVMA, with a requirement that the school be accredited or provisionally accredited by an agency acceptable to the Secretary. This gives the Department some flexibility in evaluating school's compliance with the accreditation requirement, and gives schools some flexibility with regard to obtaining accreditation. In addition, the Department delayed the effective date of the accreditation requirement until July 1, 2015, giving foreign veterinary schools that are currently in the Title IV, HEA programs approximately five years after final regulations are published to obtain accreditation from an acceptable accrediting agency.

*Foreign Nursing Schools (§ 600.57):* As described in the preamble section related to this provision, the Department modeled the proposed language on portions of the HEOA related to foreign nursing schools and on existing regulatory language related to foreign medical and veterinary schools. For the most part, the non-Federal negotiators accepted this approach, but had some concerns about the provisions specific to foreign nursing programs. In particular, the requirement for clinical training to be provided in the United States, the requirement that a foreign nursing school reimburse the Department for the cost of loan defaults for loans included in the calculation of a school's cohort default rate, and the status of loans post-default were subject to extensive discussion.

*Audited Financial Statements (§ 668.23):* The negotiators reached agreement on the proposed regulatory language on financial audits only after extensive negotiations and significant compromise. As detailed in the section of the preamble related to this provision, the Department initially proposed to require audited financial statements prepared in accordance with the same requirements for domestic institutions (U.S. GAAP) for public institutions that received $1,000,000 or more in U.S. Title IV, HEA program funds, or private foreign institutions that received $500,000 or more in U.S. Title IV, HEA program funds, as well as for any institution in its initial provisional period of participation. For public foreign institutions, if an institution received at least $500,000 in U.S. Title IV, program funds, but less than $1,000,000 in U.S. Title IV, HEA program funds during the institution's fiscal year preceding the audit period, the institution would have been allowed to submit 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. If there was an unpaid liability due to the Secretary by any public institution controlled by the same government entity, all public institutions controlled by that government entity would be required to submit audited financial statements prepared in accordance with U.S. GAAP. Non-Federal negotiators argued

that foreign nonprofit institutions should be treated the same as foreign public institutions, the requirement to submit audited financial statements prepared in accordance with U.S. GAAP was cost prohibitive, a non-U.S. GAAP financial statement such as one prepared in accordance with International Financial Reporting Standards (IFRS) would be comparable and provide any information the Department with the information it needs, or that the audited financial statement requirement should be tied to cohort default rates.

After consideration of the feedback from the non-Federal negotiators, the Department revised its initial proposal to treat nonprofit and public foreign institutions alike, and eliminated the provision that would have required all public institutions controlled by the same government entity to submit audited financial statements prepared in accordance with the same requirements for domestic institutions if there is an unpaid liability due to the Secretary by any public institution controlled by the same government entity. In addition, the Department raised the threshold for nonprofit and public foreign institutions that would be allowed to submit audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country from $1,000,000 to $3,000,000 in U.S. Title IV, program funds. The Department also clarified that it would require that foreign institutions that would be required to submit audited financial statements prepared in accordance with U.S. GAAP would also be required to submit a copy of an institution's audited financial statements for the same period that were prepared under the institution's home country standards, allowing a comparative analysis to determine if the requirement to provide U.S. GAAP financial statements could be changed in the future.

Non-Federal negotiators responded to this revised proposal with additional comments on the thresholds for audit requirements and a suggestion to eliminate the $3,000,000 cap and rely entirely upon "exceptions" that would permit the Secretary to require U.S. GAAP financial statements on a case-by-case basis. The Department reiterated its view that did not view the matter in terms of rigor of accounting standards of other countries, but a level of risk that justified requiring submission of U.S. GAAP financial statements. The Department offered a final revised proposal that modified the audit submission requirements for public and nonprofit institutions that receive at least $3,000,000 but less than $5,000,000 in U.S. Title IV, HEA program funds annually. Pursuant to the revised proposal, institutions in this group would submit financial statements prepared in accordance with home country accounting standards and U.S. GAAP for one year, and then, if no problems were identified, submit financial statements prepared in accordance with the home country standards for the next two years and once every three years, rather every year, U.S. GAAP financial statements.

**Benefits**

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. It is difficult to quantify benefits related to the new institutional and other third-party requirements, as there is little specific data available on the effect of the provisions on borrowers, institutions, or the Federal taxpayer. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

As discussed in greater detail under *Net Budget Impacts* below, these proposed provisions result in net costs to the government of $0.0 million over 2011–2015.

**Costs**

Several of the provisions implemented though this NPRM would require regulated entities to update existing policies and procedures related to financial and compliance audits. Other proposed 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 student aid programs have already absorbed many of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily due to new procedures that, while possibly significant in some cases, are an unavoidable cost of continued program participation. As discussed above, foreign nursing schools would be required to reimburse the Department for the costs of defaults for loans included in the calculation of the school's cohort default rate for the previous year. This is estimated to cost the participating schools approximately $3.1 to $3.9 million a year in gross default costs. As the subsequent holders of the loans, the schools would be able to pursue recovery of those funds, reducing the anticipated net costs to approximately $1.7 to $2.2 million. Some foreign institutions could choose to withdraw from participation in the Title IV, HEA programs as a result of these provisions. However, the Department believes the flexibility and targeting of the negotiated provisions should allow institutions to remain in the programs while enhancing the security of Title IV, HEA program funds and ensuring compliance with statutory requirements.

In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants, as described below. (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, 18,364 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 of this NPRM, if the regulatory changes had not been proposed, the burden associated with the financial statement and compliance audit requirements would be significantly higher. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics and used for domestic institutions, is $466,569 of which $461,321 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 $24.88 was used to monetize the burden of these provisions. This was a blended rate based on wages of $15.51 for office and administrative staff and $36.33 for managers and financial professionals, assuming that office staff would perform 55 percent of the work affected by these regulations. Given the limited data available, the Department is particularly interested in comments and supporting information related to possible burden stemming from the proposed regulations. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

**Net Budget Impacts**

The provisions implemented by these proposed regulations are estimated to have a net budget impact of −$2.6 million over FY 2011–2015, from savings associated with the assignment of defaulted loans from foreign nursing schools. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan 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. This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009. 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 proposed 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 the proposed regulations included in this NPRM 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 defaulted loans is expected to generate approximately $2.6 million in savings for the Department between 2011 and 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 proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

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, as noted earlier in this discussion, the Department is particularly interested in receiving comments in this area.

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 proposed 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 requirements. |
| Annualized Monetized Transfers. | $0. |
| From Whom To Whom? | Federal Government To Student Loan Borrowers. |

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 601.30.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed 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 U.S.; operates primarily within the U.S. 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. The Secretary invites 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, if so, requests evidence to support that belief.

**Paperwork Reduction Act**

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**

Proposed § 600.20(a)(3) and § 600.20(b)(3) would 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) be required to—

- List on the application to participate all educational sites and where they are located, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks;
- 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.

Proposed § 600.20(c)(5) would require 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.

While we recognize that there would 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 would take .58 hours (35 minutes) per institution to submit a reapplication, which would increase burden by 34 hours. We estimate that 10 private nonprofit institutions would take .58 hours (35 minutes) per institution to submit a reapplication, which would increase burden by 6 hours. We estimate that 3 for-profit institutions would take .58 hours (35 minutes) per institution to submit a reapplication, which would increase burden by 2 hours. There would 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**

Proposed § 600.21(a)(10) would require, 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, or those 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 of proposed § 600.20(c)(5).

We estimate that 6 public institutions would take .17 hours (10 minutes) per institution to fulfill the reporting requirement, which would increase burden by 1 hour. We estimate that 1 private nonprofit institution would take .17 hours (10 minutes) to fulfill the reporting requirement, which would increase burden by 10 minutes. We estimate 1 for-profit institution would take .17 hours (10 minutes) to fulfill the reporting requirement, which would increase burden by 10 minutes. Therefore, the proposed total increase in burden would be 1 hour and 20 minutes 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 FFEL Programs**

Under proposed § 600.54(d)(3)(ii), a foreign institution would have to demonstrate to the satisfaction of the Secretary (who would 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 would take .17 (10 minutes) to demonstrate the comparability of the academic work and would increase burden by 16 hours. We estimate that 33 private institutions would take .17 (10 minutes) to demonstrate the comparability of the academic work and would increase burden by 6 hours. Therefore, the proposed total increase in burden would be 22 hours associated with § 600.54(d)(3)(ii) in OMB 1845–NEWA.

**Section 600.55—Additional Criteria for Determining Whether a Foreign Graduate Medical School Is Eligible To Apply To Participate in the Title IV, HEA Programs**

Proposed § 668.55(c)(2) would require a foreign graduate medical school to determine the consent requirements for, and require the necessary consents of, all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements in proposed § 600.55(d) for Medical College Admission Test (MCAT) scores, residency placement, and U.S. Medical Licensing Examination (USMLE) scores.

We estimate that 58 public institutions would take .50 hours (30 minutes) to develop this consent form and would increase burden by 29 hours. We estimate that 5 private nonprofit institutions would take .50 hours (30 minutes) to develop this consent form and would increase burden by 5 hours. We estimate that 3 for-profit institutions would take .50 hours (30 minutes) to develop this consent form and would increase burden by 2 hours. We estimate that 2,800 individuals would take .08 hours (5 minutes) to complete this consent form and would increase burden by 224 hours. Therefore, the total proposed burden increase would be 260 hours associated with § 600.55(c)(2) in OMB 1845–NEWA.

Proposed § 600.55(d) would require a foreign graduate medical school to obtain, at its own expense, and by September 30 of each year submit to its accrediting authority for all students who are U.S. citizens, nationals, or eligible permanent residents: (1) MCAT scores for students admitted during the preceding award year and the number of times each student took the exam; and (2) the percentage of students graduating during the preceding award year who are placed in an accredited U.S. medical residency. A school would have to submit the data on MCAT scores and placement in a U.S. residency program to the Department only upon request. In addition, proposed § 600.55(d) would require a foreign graduate medical school to obtain, at its own expense and by September 30 of each year submit to the Department, unless the Department notifies schools that it will receive the information directly from the ECFMG, or other responsible third parties, USMLE scores earned during the preceding award year on the first attempt by at least each student, and each student who graduated during the three preceding years, and the date each student/graduate took each test, including any failed tests. The USMLE scores submitted would have to 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 would not be required to submit data on the USMLE Step 3.

We estimate that 58 public institutions would require 1.25 hours (1 hour 15 minutes) to create this annual report and would increase burden by 73 hours. We estimate that 10 private nonprofit institutions would require 1.25 hours (1 hour 15 minutes) to create this annual report and would increase burden 13 hours. We estimate that 3 for-profit institutions would require 1.25 hours (1 hour 15 minutes) to create this annual report and would increase burden by 4 hours. Therefore, the total proposed burden increase would be 90 hours associated with § 600.55(d) in OMB 1845–NEWA.

Proposed § 600.55(e)(2) would require a foreign graduate medical school to notify its accrediting body within one year of any material changes in (1) the educational programs, including changes in clinical training programs; and (2) the overseeing bodies and (3) the formal affiliation agreements with hospitals and clinics.

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

Proposed § 600.55(g)(1) would require 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, proposed § 600.55(g)(2) would require 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 would require 2.5 hours (2 hours 30 minutes) to update the satisfactory academic policy and document remediation provided to student and would increase burden by 145 hours. We estimate that 10 for private nonprofit institutions would require 2.5 hours (2 hours 30 minutes) to update the satisfactory academic policy and document remediation provided to student and would increase burden by 25 hours. We estimate that 3

for-profit institutions would require 2.5 hours (2 hours 30 minutes) to update the satisfactory academic policy and document remediation provided to student and would increase burden by 7 hours and 30 minutes. The total proposed burden for increase would be 177 hours and 30 minutes associated with § 600.55(g)(1) and (2) in OMB 1845–NEW2.

Finally, proposed § 600.55(g)(3) would require a foreign graduate medical school to publish all the languages in which instruction is offered.

We estimate that 58 public institutions would 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 would 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 would require .33 hours (20 minutes) to publish the languages in which instruction is provided increasing burden by 1 hour. Therefore, the total proposed burden increase would be 23 hours associated with § 600.55(g)(3) in OMB 1845–NEWA.

In total, we estimate that proposed § 600.55 would increase by 389 hours in OMB 1845–NEWA, and 177 hours and 30 minutes in OMB 1845–NEW2.

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

Proposed § 600.56(a)(4) would require a foreign veterinary school to be accredited or provisionally accredited by an organization acceptable to the Secretary. Proposed § 600.56(a)(4) would also specify that the requirement for accreditation or provisional accreditation does not take effect until July 1, 2015.

The Department has delayed the effective date of the accreditation requirement until July 1, 2015. This allows foreign veterinary schools that are currently in the Title IV, HEA programs approximately five years after final regulations are published to obtain accreditation from an acceptable accrediting agency. Therefore, no burden assessment has been made at this time, but the issue will be reviewed closer to the effective date of this section of the regulations thereby enabling 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 FFEL Program**

The proposed regulations would add a new § 600.57 specifying additional Title IV, HEA program eligibility criteria for foreign nursing schools. These criteria include § 600.57(a)(6)(i), where the school must 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 nursing institutions would require .50 hours (30 minutes) to develop the consent form increasing burden by 1 hour and 30 minutes. We estimate that 1,200 individuals would require .08 hours (10 minutes) to respond to this consent form and increasing burden by 96 hours in OMB Control Number 1845–NEWA.

The foreign nursing school eligibility also includes § 600.57(a)(6)(ii) where an institution must 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 nursing institutions would 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 there would be 102 hours of burden associated with § 600.57(a)(6) in OMB Control Number 1845–NEWA.

In addition, proposed § 600.57(c) would specify that after a school reimburses the Department for the cost of a loan default, the loan would be assigned to the school. The borrower would remain liable to the school for the outstanding balance of the loan, under the terms and conditions specified in the promissory note.

While burden would normally be associated with notification and collection activity, because there is no history of Federal borrowing for attendance at these 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**

The proposed regulations would amend § 668.13(b)(1) to specify that the period of participation 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 process is reduced from six years to three years and, therefore, the time associated with the submission for recertification will be filed more often, this proposed change in the regulations does not represent a substantive impact on the amount of annual burden generated by these regulations. We do not estimate a change in the burden as a result of the proposed regulations to OMB 1845–0022.

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

The proposed regulation in § 668.23(h)(1) would 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 would 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 would 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 $5,000,000 in U.S. Title IV, HEA program funds during its most recently completed fiscal year, the institution would 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 $5,000,000 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 audited financial statements prepared in accordance with the generally accepted accounting principles of both the institution's home country *and* U.S. GAAP.

We estimate that 15 public institutions would require 35 hours for the translation of financial statements to English increasing burden by 525 hours. We estimate that 15 private institutions would require 35 hours for the translation of financial statements to English increasing burden by 525 hours for a total of 1,050 hours.

We estimate 20 public institutions would require 100 hours for the preparation of the U.S. GAAP financial statement increasing burden by 2,000 hours. We estimate that 8 private nonprofit institutions would require 100 hours for the preparation of the U.S. GAAP financial statement increasing burden by 800 hours. We estimate that four for-profit institutions require 100 hours for the preparation of the U.S. GAAP financial statement increasing burden by 400 hours for a total of 3,200 hours. Collectively, we estimate that there would be 4,250 hours of burden associated with proposed § 668.23(h)(1) in OMB Control Number 1845–0038.

Proposed § 668.23(h)(2) would separate 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.

For foreign institutions that receive less than $500,000 per year in U.S. Title IV, HEA program funds, under proposed § 668.23(h)(2)(ii) and (iii) they would be required to submit compliance audits under an alternative compliance audit performed in accordance with the audit guide from the Department's Office of Inspector General. The alternative compliance audit is performed as an agreed-upon procedures attestation engagement, and the standard compliance audit is performed as an examination-level attestation engagement. 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 proposed regulations would require an annual submission of the compliance audit, except that, under certain conditions as described in the following paragraphs, an institution would submit a compliance audit annually for two consecutive years, then, if notified by the Department, would be permitted to submit a cumulative compliance audit every three years thereafter as long as the institution continued to receive less than $500,000 in U.S. Title IV funds each fiscal year being audited.

We anticipate 269 public institutions would require 25 hours to provide the alternate compliance audit increasing burden by 6,725 hours. We anticipate 81 private institutions would require 25 hours to provide the alternate compliance audit increasing burden by 2,025 hours. Collectively we anticipate a total of 8,750 hours of increased burden for § 668.23(h)(2)(ii) and (iii) in OMB Control Number 1845–0038.

For foreign institutions that receive $500,000 or more per year in U.S. Title IV, HEA program funds, as in the current regulations, under proposed § 668.23(h)(2)(i) they would be required to submit annual compliance audits using the standard audit procedures for foreign institutions set out in the audit guide issued by the Office of Inspector General. This compliance audit would be submitted together with an alternative compliance audit or audits prepared in accordance with proposed § 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 90 public institutions would require 40 hours to submit a full compliance audit increasing burden by 3,600 hours. We estimate 29 private nonprofit institutions would require 40 hours to submit a full compliance audit increasing burden by 1,160 hours. We estimate 4 for-profit institutions would require 40 hours to submit a full compliance audit increasing burden by 160 hours for a total of 4,920 hours. Collectively, we estimate that there would be 13,670 hours of increased burden associated with § 668.23(h)(2)(i) in OMB Control 1845–0038.

In total, we estimate that the burden related to proposed § 668.23(h) would increase by 17,920 hours in OMB Control Number 1845–0038.

Although audited financial statements and compliance audits have long been required of foreign schools, no separate calculation of the burden of those requirements had been done until now. As a result, by and large the burdens estimated are not new. What is new is the reduction in already-existing burdens that would result from the proposed regulations if finalized.

In relation to the proposed requirement to submit audited financial statements, if the proposed regulations (allowing for alternate submissions for institutions with funding over $500,000 in U.S. Title IV, HEA program funds) had not been offered, there would have been 123 foreign institutions required 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). The proposed regulations reduce that burden by 9,100 hours (proposed burden of 3,200 hours subtracted from estimated burden of 12,300 hours required under current regulations).

In relation to the proposed requirement to submit a compliance audit, if the proposed regulations had not been offered, there would have been an annual standard compliance audit submission requirement burden of 17,500 hours over two years (350 institutions × 25 hours annual burden × 2 years) that foreign institutions disbursing less than $500,000 in U.S. Title IV, HEA program funds would have had to complete. The proposed regulations decrease burden by allowing for submission of alternative compliance audits once every three years upon notification from the Department.

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

Proposed § 668.171 would consider a public foreign institution to be financially responsible if the institution: (1) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and (2) provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity. A foreign public institution would not meet this standard of financial responsibility if it was in violation of any past performance requirements in § 668.174.

If a foreign public institution did not meet the new requirements, its financial responsibility would be determined under the general requirements of financial responsibility, including the application of the equity, primary reserve, and net income ratios. Although the full faith and credit provision would provide an alternate way of meeting the financial responsibility standards for public foreign institutions, it would not excuse the institution from required submissions of audited financial statements. In addition, if a government entity provided full faith and credit backing, the entity would be held liable for any Title IV, HEA program liabilities that were not paid by the institution.

We estimate 13 public institutions would require 16 hours to obtain documentation from the applicable government entity at 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 proposed regulation change would add information that must be collected to determine the eligibility of foreign graduate medical schools to participate in Title IV programs. | OMB 1845–0012. The burden would increase by 42 hours. This regulatory change may require changes to the form, but they cannot be completed until the language of the final rule is determined. |
| 600.21—Updating application information ..... | This proposed regulation would identify when a foreign graduate medical school must notify the Department of specific changes in locations used by the school. | OMB 1845–0012. The burden would increase by 1 hour and 20 minutes. This regulatory change may require changes to the form, but they cannot be completed until the language of the final rule is determined. |
| 600.54—Criteria for determining whether a foreign institution is eligible to participate in the FFEL programs. | This proposed regulation would require that the foreign institution demonstrate that its academic work for 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. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden would increase by 22 hours. |
| 600.55—Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Title IV, HEA programs. | This proposed regulation would require the schools to provide a consent form allowing the school to receive a copy of the students' MCAT score; would require a medical school to produce annually and to provide to its accrediting agency a report with data regarding its students who are US citizens, nationals, or eligible permanent residents, some of which data would be required to be submitted to the Department on an annual basis; and would require the school to notify their accrediting body within one year of material changes to its educational program and formal affiliation agreements. This section also would require schools to identify the languages in which it provides instruction. | OMB 1845–NEWA. This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden would increase by 389 hours. |
| 600.55(g)(2)—Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Title IV, HEA programs. | This proposed regulation would require the foreign graduate medical schools to expand the satisfactory academic progress policy requirements to include foreign graduate medical schools and calculations of maximum timeframes to complete the program, and document any student remediation regarding SAP. | OMB 1845–NEW2. This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden would increase by 177 hours and 30 minutes. |
| 600.57—Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the FFEL program. | This proposed regulation would require the schools to provide a consent form allowing the school to receive a copy of the students' NCLEX–RN results or pass rate and would require 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. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden would increase by 102 hours. |

COLLECTION OF INFORMATION—Continued

| Regulatory section | Information collection | Collection |
|---|---|---|
| 668.13—Certification procedures | The proposed regulation would change the certification time frame for for-profit schools from 6 to 3 years. | OMB 1845–0022. We do not anticipate a change in burden. |
| 668.23(h)(1)—Compliance audits and audited financial statements. | The proposed regulation would change the requirements of institutions for submission of audited financial statements to the Department and would change the requirements of institutions for submission of compliance audits to the Department. | OMB 1845–0038. The burden would increase by 17,920 hours. |
| 668.171—General (Subpart L—Financial Responsibility). | The proposed regulation would provide an alternate method to show financial responsibility by showing that it is a public institution designated by the proper governing authority in the country and by providing documentation of the full faith and credit of that country. | OMB 1845–0022. The burden would increase by 208 hours. |

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

**Intergovernmental Review**

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Electronic Access to This Document:* You can view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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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.

Dated: July 12, 2010.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 668, and 682 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 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 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 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

* * * * *

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 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 600.51 is amended by revising paragraph (c) to read as follows:

**§ 600.51 Purpose and scope.**

* * * * *

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

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

(2) When the Secretary, through a notice in the **Federal Register**, identifies specific provisions as inapplicable to foreign institutions.

* * * * *

6. 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;

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

(v) For any program designed to prepare the student for employment in a recognized occupation, with or without licensure, provides a credential, including a degree, that—

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

(B) Satisfies the educational requirements, including requirements for licensure, for entry into that occupation in the United States; 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 U.S., 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.

* * * * *

7. 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 FFEL programs.**

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the FFEL

programs if the foreign institution meets the following requirements:

(a) 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.

(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)(1) 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.

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

(i) 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

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

(d) 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.

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

(e) 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.

(f) 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—

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

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

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

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

8. 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 title IV, HEA programs.**

(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).

(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 NCFMEA 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 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 who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements of paragraph (d) of this section.

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

(1) 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 award 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;

(2) To its accrediting authority and, on request, to the Secretary, the percentage of students graduating during the preceding award 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;

(3) To the Secretary, except upon written notice from the Secretary that the necessary information has been obtained by the Secretary for the year directly from the Educational Commission for Foreign Medical Graduates (ECFMG) or other responsible third parties, 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 award year by at least each student and graduate who is a U.S. citizen, national, or eligible permanent resident, 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;

(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) Provision of liability insurance; and

(F) Evaluation of student performance.

(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 academic 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 U.S. citizen, national, or eligible permanent resident 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) Count as a graduate each U.S. citizen, national, or eligible permanent resident who graduated from the school during the three years preceding the year for which the calculation is performed; and

(ii) Count each U.S. citizen, national, or eligible permanent resident who takes more than one step/test of the USMLE examination in a 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 U.S. citizen, national, and eligible permanent resident 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 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

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

9. 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 FFEL programs.**

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in 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 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.

10. 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 FFEL program.**

(a) The Secretary considers a foreign nursing school to be eligible to apply to participate in the FFEL programs 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 sum of the defaulted loan's—

(1) Outstanding principal;

(2) Accrued interest;

(3) Unpaid late fees and collection costs;

(4) Special allowance payments;

(5) Reinsurance payments; and

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

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

(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

11. 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.

12. 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).

13. Section 668.13(b) is revised 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 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.

### § 668.15 [Amended]

14. Section 668.15 is amended by removing paragraph (h).

15. 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 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 $5,000,000 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 $5,000,000, 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 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;

(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 a letter to a foreign institution 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.

16. 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

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

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

18. 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]**

19. Section 682.611 is removed and reserved.

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