§ 1002. Definition of institution of higher education for purposes of student assistance programs

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions

Subject to paragraphs (2) through (4) of this subsection, the term ''institution of higher education'' for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) a proprietary institution of higher education (as defined in subsection (b) of this section);

(B) a postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) only for the purposes of part C of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part C of subchapter IV of this chapter, consistent with the requirements of section 1087b(d) of this title.

(2) Institutions outside the United States

(A) In general

For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001(a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made under part C of subchapter IV of this chapter unless—

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

(I)(aa) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part C of subchapter IV of this chapter; and

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

(II) the institution—

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

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

(ii) in the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States; or

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

(I) the nursing school has an agreement with a hospital, or accredited school of nursing (as such terms are defined in section 296 of title 42), located in the United States that requires the students of the nursing school to complete the students' clinical training at such hospital or accredited school of nursing;

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

(III) the nursing school certifies only Federal Direct Stafford Loans under section 1087e(a)(2)(A) of this title, Federal Direct Unsubsidized Stafford Loans under section 1087e(a)(2)(D) of this title, or Federal Direct PLUS Loans under section 1087e(a)(2)(B) of this title for students attending the institution;

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

(V) not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying a Federal Direct Stafford Loan under section 1087e(a)(2)(A) of this title, a Federal Direct Unsubsidized Stafford Loan under section 1087e(a)(2)(D) of this title, or a Federal Direct PLUS Loan under section 1087e(a)(2)(B) of this title, received a passing score on such examination.

(B) Advisory panel

(i) In general

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

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

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

(ii) Special rule

If the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(iii) Report

(I) In general

Not later than 1 year after August 14, 2008, the advisory panel described in clause (i) shall submit a report to the Secretary and to the authorizing committees recommending eligibility criteria for participation in the loan programs under part C of subchapter IV of this chapter for graduate medical schools that—

(aa) are located outside of the United States;

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

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

(II) Recommendations

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

(aa) Entrance requirements.

(bb) Retention and graduation rates.

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

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

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

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

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

(hh) Any additional areas the Secretary may require.

(III) Minimum eligibility requirement

In the recommendations described in subclause (II), the criteria described in subparagraph (A)(i)(I)(bb) shall be a minimum eligibility requirement for a graduate medical school described in subclause (I) to participate in the loan programs under part C of subchapter IV of this chapter.

(IV) Authority

The Secretary may—

(aa) not earlier than 180 days after the submission of the report described in subclause (I), issue proposed regulations establishing criteria for the eligibility of graduate medical schools described in such subclause to participate in the loan programs under part C of subchapter IV of this chapter based on the recommendations of such report; and

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

(C) Failure to release information

The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part C of subchapter IV of this chapter.

(D) Special rule

If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part C of subchapter IV while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment

An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) offers more than 50 percent of such institution's courses by correspondence (excluding courses offered by telecommunications as defined in section 1091(*l*)(4)[1] of this title), unless the institution is an institution that meets the definition in section 2302(3)(C) of this title;

(B) enrolls 50 percent or more of the institution's students in correspondence courses (excluding courses offered by telecommunications as defined in section 1091(*l*)(4)[1] of this title), unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2- or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

[1] See References in Text note below.

(C) has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management

An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) the institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification

The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility

An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria

For the purpose of this section, the term ''proprietary institution of higher education'' means a school that—

(A)(i) provides an eligible program of training to prepare students for gainful employment in a recognized occupation; or

(ii)(I) provides a program leading to a baccalaureate degree in liberal arts, and has provided such a program since January 1, 2009; and

(II) is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier;

(B) meets the requirements of paragraphs (1) and (2) of section 1001(a) of this title;

(C) does not meet the requirement of paragraph (4) of section 1001(a) of this title;

(D) is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter; and

(E) has been in existence for at least 2 years.

(2) Additional institutions

The term ''proprietary institution of higher education'' also includes a proprietary educational institution in any State that, in lieu of the requirement in section 1001(a)(1) of this title, admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.

(c) Postsecondary vocational institution

(1) Principal criteria

For the purpose of this section, the term ''postsecondary vocational institution'' means a school that—

(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001(a) of this title; and

(C) has been in existence for at least 2 years.

(2) Additional institutions

The term ''postsecondary vocational institution'' also includes an educational institution in any State that, in lieu of the requirement in section 1001(a)(1) of this title, admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.

(Pub. L. 89–329, title I, §102, as added Pub. L. 105–244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1586;

amended Pub. L. 108–98, § 1(a), Oct. 10, 2003, 117 Stat. 1174; Pub. L. 109–171, title VIII, § 8002, Feb. 8, 2006, 120 Stat. 155; Pub. L. 109–270, § 2(c)(1), Aug. 12, 2006, 120 Stat. 746; Pub. L. 110–315, title I, § 102(a)–(d)(1), Aug. 14, 2008, 122 Stat. 3083–3085; Pub. L. 111–39, title I, § 101(b)(1), July 1, 2009, 123 Stat. 1935; Pub. L. 111–152, title II, § 2209(b)(1), Mar. 30, 2010, 124 Stat. 1077.)

REFERENCES IN TEXT

Section 1101 of the Higher Education Opportunity Act, referred to in subsec. (a)(2)(B)(iii)(II)(gg), is section 1101 of title XI of 110–315, Aug. 14, 2008, 122 Stat. 3490, which is not classified to the Code.

Section 1091(*l*) of this title, referred to in subsec. (a)(3)(A), (B), was struck out and a new section 1091(*l*) was added by Pub. L. 110–315, title IV, § 485(a)(5), Aug. 14, 2008, 122 Stat. 3288. As so amended, section 1091(*l*) no longer contains a par. (4) or a definition of ''telecommunications''.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1088(a) to (c) of this title prior to repeal by Pub. L. 105–244.

A prior section 1002, Pub. L. 89–329, title I, § 102, as added Pub. L. 102–325, title I, § 101, July 23, 1992, 106 Stat. 459, related to partnership agreements required for grant eligibility, prior to the general amendment of this subchapter by Pub. L. 105–244.

Another prior section 1002, Pub. L. 89–329, title I, § 102, as added Pub. L. 99–498, title I, § 101, Oct. 17, 1986, 100 Stat. 1278, defined terms ''continuing education'', ''adult learner'', ''eligible institution'', and ''qualified entity'', prior to the general amendment of this subchapter by Pub. L. 102–325.

Another prior section 1002, Pub. L. 89–329, title I, § 102, as added Pub. L. 96–374, title I, § 101(a), Oct. 3, 1980, 94 Stat. 1374, provided for establishment of Commission on National Development in Postsecondary Education, prior to the general amendment of this subchapter by Pub. L. 99–498.

Another prior section 1002, Pub. L. 89–329, title I, § 102, Nov. 8, 1965, 79 Stat. 1219; Pub. L. 94–482, title I, § 101(b)(1), (g)(2), Oct. 12, 1976, 90 Stat. 2083, 2086, defined the terms ''community service program'', ''continuing education program'', and ''resource materials sharing programs'', prior to the general amendment of this subchapter by Pub. L. 96–374.

AMENDMENTS

2010—Pub. L. 111–152, § 2209(b)(1)(A), substituted ''part C'' for ''part B'' wherever appearing before ''subchapter IV''.

Subsec. (a)(1)(C). Pub. L. 111–152, § 2209(b)(1)(B), inserted '', consistent with the requirements of section 1087b(d) of this title'' before period at end.

Subsec. (a)(2)(A). Pub. L. 111–152, § 2209(b)(1)(C)(i), substituted ''made'' for ''made, insured, or guaranteed'' in introductory provisions.

Subsec. (a)(2)(A)(iii)(III). Pub. L. 111–152, § 2209(b)(1)(C)(ii)(I), substituted ''only Federal Direct Stafford Loans under section 1087e(a)(2)(A) of this title, Federal Direct Unsubsidized Stafford Loans under section 1087e(a)(2)(D) of this title, or Federal Direct PLUS Loans under section 1087e(a)(2)(B) of this title'' for ''only Federal Stafford Loans under section 1078 of this title, unsubsidized Federal Stafford Loans under section 1078–8 of this title, or Federal PLUS loans under section 1078–2 of this title''.

Subsec. (a)(2)(A)(iii)(V). Pub. L. 111–152, § 2209(b)(1)(C)(ii)(II), substituted ''a Federal Direct Stafford Loan under section 1087e(a)(2)(A) of this title, a Federal Direct Unsubsidized Stafford Loan under section 1087e(a)(2)(D) of this title, or a Federal Direct PLUS Loan under section 1087e(a)(2)(B) of this title'' for ''a Federal Stafford Loan under section 1078 of this title, an unsubsidized Federal Stafford Loan under section 1078–8 of this title, or a Federal PLUS loan under section 1078–2 of this title''.

2009—Subsec. (a)(2)(D). Pub. L. 111–39 substituted ''under part B of subchapter IV'' for ''under part B''.

2008—Subsec. (a)(2)(A). Pub. L. 110–315, § 102(a)(1)(A), inserted ''nursing school,'' after ''graduate medical school,'' in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 110–315, § 102(a)(1)(B)(i), inserted ''except as provided in subparagraph (B)(iii)(IV),'' before ''in the case'' in introductory provisions.

Subsec. (a)(2)(A)(i)(I)(bb). Pub. L. 110–315, § 102(b), substituted ''75'' for ''60''.

Subsec. (a)(2)(A)(i)(II). Pub. L. 110–315, § 102(a)(1)(B)(ii), added subcl. (II) and struck out former subcl. (II) which read as follows: ''the institution has a clinical training program that was approved by a State as of January 1, 1992; or''.

Subsec. (a)(2)(A)(iii). Pub. L. 110–315, § 102(a)(1)(C), (D), added cl. (iii).

Subsec. (a)(2)(B)(iii). Pub. L. 110–315, § 102(a)(2), added cl. (iii).

Subsec. (b)(1)(A). Pub. L. 110–315, § 102(d)(1)(A)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''provides an eligible program of training to prepare students for gainful employment in a recognized occupation;''.

Subsec. (b)(1)(D) to (F). Pub. L. 110–315, § 102(c), struck out ''and'' after semicolon in subpar. (D), substituted ''; and'' for period in subpar. (E), and struck out subpar. (F) which read as follows: ''has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.''

Subsec. (b)(2). Pub. L. 110–315, § 102(d)(1)(A)(ii), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''The term 'proprietary institution of higher education' also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001(a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.''

Subsec. (c)(2). Pub. L. 110–315, § 102(d)(1)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''The term 'postsecondary vocational institution' also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001(a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.''

2006—Subsec. (a)(3)(A). Pub. L. 109–270 substituted ''2302(3)(C) of this title'' for ''2471(4)(C) of this title''.

Pub. L. 109–171, § 8002(1), inserted ''(excluding courses offered by telecommunications as defined in section 1091(*l*)(4) of this title)'' after ''courses by correspondence''.

Subsec. (a)(3)(B). Pub. L. 109–171, § 8002(2), inserted ''(excluding courses offered by telecommunications as defined in section 1091(*l*)(4) of this title)'' after ''correspondence courses''.

2003—Subsec. (a)(2)(A). Pub. L. 108–98 amended subpar. (A) generally. Prior to amendment, subpar. (A) required the Secretary to establish criteria for approval of institutions outside the United States for purposes of par. (1)(C), including certain requirements for graduate medical or veterinary schools.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title II, § 2209(b)(2), Mar. 30, 2010, 124 Stat. 1078, provided that: ''The amendments made by subparagraph (C) of paragraph (1) [amending this section] shall be effective on July 1, 2010, as if enacted as part of section 102(a)(1) of the Higher Education Opportunity Act (Public Law 110–315) and subject to section 102(e) of such Act as amended by section 101(a)(2) of Public Law 111–39 (20 U.S.C. 1002 note).''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–315, title I, § 102(e), Aug. 14, 2008, 122 Stat. 3086, as amended by Pub. L. 111–39, title I, § 101(a)(2), July 1, 2009, 123 Stat. 1935, provided that: ''The amendments made by subsections (a)(1), (b), and (d) [amending this section] shall take effect on July 1, 2010, except that, with respect to foreign nursing schools that were eligible to participate in part B of title IV [20 U.S.C. 1071 et seq.] as of the day before the date of enactment of this Act [Aug. 14, 2008], the amendments made by subsection (a)(1)(D) [amending this section] shall take effect on July 1, 2012.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VIII, § 8001(c), Feb. 8, 2006, 120 Stat. 155, provided that: ''Except as otherwise provided in this subtitle [subtitle A (§§ 8001–8024) of title VIII of Pub. L. 109–171, see Short Title of 2006 Amendment note set out under section 1001 of this title] or the amendments made by this subtitle, the amendments made by this subtitle shall be effective July 1, 2006.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–98, § 1(b), Oct. 10, 2003, 117 Stat. 1175, provided that: ''This Act [amending this section] and the amendments made by this Act shall be effective as if enacted on October 1, 1998.''

CONSTRUCTION

Pub. L. 110–315, title I, § 102(d)(2), Aug. 14, 2008, 122 Stat. 3086, provided that: ''Nothing in the amendment made by paragraph (1)(A)(i) to section 102(b)(1)(A) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1)(A)) shall be construed to negate or supercede any State laws governing proprietary institutions of higher education.''

§ 1003. Additional definitions

In this chapter and part C of subchapter I of chapter 34 of title 42:

(1) Authorizing committees

The term ''authorizing committees'' means the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives.

(2) Combination of institutions of higher education

The term ''combination of institutions of higher education'' means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on the group's behalf.

(3) Critical foreign language

Except as otherwise provided, the term ''critical foreign language'' means each of the languages contained in the list of critical languages designated by the Secretary in the Federal Register on August 2, 1985 (50 Fed. Reg. 31412; promulgated under the authority of section 212(d) of the Education for Economic Security Act (repealed by section 2303 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988)), as updated by the Secretary from time to time and published in the Federal Register, except that in the implementation of this definition with respect to a specific title, the Secretary may set priorities according to the purposes of such title and the national security, economic competitiveness, and educational needs of the United States.

(4) Department

The term ''Department'' means the Department of Education.

(5) Diploma mill

The term ''diploma mill'' means an entity that—

(A)(i) offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training; and

(ii) requires such individual to complete little or no education or coursework to obtain such degree, diploma, or certificate; and

(B) lacks accreditation by an accrediting agency or association that is recognized as an accrediting agency or association of institutions of higher education (as such term is defined in section 1002 of this title) by—

(i) the Secretary pursuant to subpart 2 of part G of subchapter IV of this chapter; or

(ii) a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.

(6) Disability

The term ''disability'' has the same meaning given that term under section 12102(2) of title 42.

(7) Distance education

(A) In general

Except as otherwise provided, the term ''distance education'' means education that uses one or more of the technologies described in subparagraph (B)—

(i) to deliver instruction to students who are separated from the instructor; and

(ii) to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.

(B) Inclusions

For the purposes of subparagraph (A), the technologies used may include—

(i) the Internet;

(ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(iii) audio conferencing; or

(iv) video cassettes, DVDs, and CD–ROMs, if the cassettes, DVDs, or CD–ROMs are used in a course in conjunction with any of the technologies listed in clauses (i) through (iii).