

**Code of Federal Regulations, Chapter VI –
Office of Postsecondary Education, Department of Education**

**Part 600 - Institutional Eligibility under the Higher Education Act of 1965
(Amendments to take effect July 1, 2018)**

General Comment:

Will the Department enforce all or part of the regulation on July 1, 2018? Institutions spend considerable time in meeting regulatory requirements set forth by ED and would appreciate early notification about whether or not the rules will be further delayed, clarified or redeveloped in advance of the July 1, 2018 deadline.

§600.2 Definitions.

State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

Comment: We encourage revision to clarify the meaning of the phrase “and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.” It is unclear if this allows enforcement of state regulations that conflict with the provisions of the reciprocity agreement. Further clarification is needed for the use of “residing” above. The use of the word “reside” is inconsistent with state laws. During the 2014 negotiated rulemaking process, the word “located” was used and we ask that ED use this term in place of “reside.”

§600.9 State authorization.

(1) For any additional location at which 50 percent or more of an educational program (as defined in §600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the foreign governmental authority is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with §§602.24(a) and 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

(2) An additional location at which less than 50 percent of an educational program (as defined in §600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses the information regarding the student complaint process described in 34 CFR 668.43(b), of the State in which the main campus of the institution is located.

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

Comment: We encourage removal of all provisions related to authorization of, and reporting on, foreign locations as outside of the scope of the Department. In particular, these regulations do not address states where the higher education approving agency does not regulate operations of foreign locations or branch campuses.

Part 668 – Student Assistance General Provisions

(Amendments to take effect July 1, 2018)

(Subpart D – Institutional and Financial Assistance Information for Students, existing regulations)

§668.50 Institutional disclosures for distance or correspondence programs.

(b) Public disclosures. An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(various)... a description of the process for submitting complaints

Comment: We encourage revision to remove “description of the process” phrasing from the regulations, leaving intact “contact information for receipt of consumer complaints” as some states do not publically publish a full process for submitting complaints. Additional clarification should be provided as to how a non-profit, out-of-state institution can be in compliance for activities it provides in California, a state with no complaint process for these types of institutions. Additional clarification should be provided to

clarify how institutions should address “hybrid” programs, in which some of the coursework is provided at a distance and some face-to-face?

(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(5) Any adverse actions an accrediting agency has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

Comment: We encourage clarification of what constitutes an “adverse action.”

(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

(A) Each State in which the program's enrolled students reside; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect.

Comment: We encourage revision of this regulation to remove the requirement that an institution should determine the requirements to professional licensure or certification in each state. State requirements for educational programs that lead to professional licensure or certification are often complex, not easily determined, and frequently change. It is overly burdensome on institutions to research and constantly monitor these state requirements.

(c) Individualized disclosures. (1) An institution described under 34 CFR 600.9(a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—

(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence; and

(ii) To each enrolled and prospective student—

(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

Comment: We encourage removal of this requirement as the individualized disclosures are overly burdensome to the institution due to the factors previously mentioned above. If this requirement is not removed, then further clarification is needed regarding the definition of "prospective" student and the acceptable forms of acknowledgements.

**Part 600 - Institutional Eligibility under the Higher Education Act of 1965
(existing regulations)**

§600.2 Definitions.

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

Comment: We encourage removal of this definition. While we understand the desire of some parties to utilize a standard definition of a credit hour as a tool to limit federal student aid fraud, the regulations that created the federal definition of a credit hour represent too great an expansion of federal authority over the academic affairs of colleges and universities. Accrediting agencies were already required to have policies related to the awarding of credit and reviewed their affiliated institutions of higher education to ensure those policies were being followed. However, they could do so in a way that did not take a "one size fits all" approach. Ultimately, the credit hour chiefly an academic unit, not a fiscal unit. Institutions of higher education need the ability to design academic programs best suited to their individual mission and responsive to the needs of students and the community.

Part 668 – Student Assistance General Provisions

(Subpart D – Institutional and Financial Assistance Information for Students, existing regulations)

§668.43 Institutional information.

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;

(iii) The institution's faculty and other instructional personnel; and

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

Comment: We encourage removal of item (iv), as being too broad. Many plans for improving academic programs remain just that – plans – and never move to the implementation phase. Institutions of higher education are required to provide a significant number of disclosures and other information to prospective and current students; the requirement for academic program improvement plans causes confusion as to what the institution actually intends to move forward with and can even cause students to make decisions based on proposals that are not guaranteed to come to fruition.

(Subpart F – Misrepresentation, existing regulations)

Comment: We encourage removal of this subpart, as the interpretation of “misrepresentation” and “misleading statements” is ambiguous and overly broad. In addition, there are other existing regulations regarding disclosures and other information to be provided to prospective and enrolled students and we feel these (with the exception of notations made above) to be sufficient in scope and requirement to ensure that students in an institution have diverse and accurate information to make a fully informed decision about their enrollment.

(Subpart Q – Gainful Employment programs, existing regulations)

Comment: We encourage removal of this subpart. These regulations limit the ability of millions of individuals to gain the skills and training necessary to succeed in the workplace through legislative overreach. As noted above, we believe that there are existing regulations regarding disclosures and other information to be provided to prospective and enrolled students that are sufficient in scope and requirement to ensure that students in an institution have diverse and accurate information to make a fully informed decision about their enrollment. The accreditation review process is designed to ensure that institutions of higher education work provide quality academic programs. While we recognize the federal government’s desire to ensure that students fulfill their obligation to repay government loans, the determination of program quality is best made through the accreditation review system, rather than through government established metrics.