



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper 6: Certification Procedures
Session 3: March 14-18, 2022

Issue: Certification Procedures

Statutory cites: §498 of the Higher Education Act of 1965, as amended

Regulatory cites: 34 CFR 668.13, 668.14, 668.43

Proposed Regulations Redline

§ 668.13 Certification.

(a) Requirements for certification.

(1)

(i) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

(ii) On application from the institution, the Secretary certifies a location of an institution that meets the requirements of § 668.13(a)(1)(i) as a branch if it satisfies the definition of “branch” in 34 CFR 600.2.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under § 668.14:

(i) The individual the institution designates under § 668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high-level institutional official the chief administrator designates.

(3)

(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) Period of participation.

Certification Procedures 2

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

- (i) The period of participation for a private, for-profit foreign institution expires three years after the date of the Secretary's certification; and
- (ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month-to-month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

~~(3) In the event that the Secretary does not make a determination to grant or deny certification within 12 months of the expiration of its current period of participation, the institution will automatically be granted renewal of certification, which may be provisional.~~

(c) *Provisional certification.*

(1)(i) The Secretary may provisionally certify an institution if -

- (A) The institution seeks initial participation in a Title IV, HEA program;
- (B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;
- (C) The institution is a participating institution -
 - (1) That is applying for a certification that the institution meets the standards of this subpart;
 - (2) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 and subpart L of this part or the standards of administrative capability under § 668.16; and
 - (3) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;
- (D) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; ~~or~~
- (E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 602~~3~~; ~~or~~; or
- ~~(F) The institution has received the same finding of noncompliance on more than one program review or audit. The Secretary has determined that the institution is at risk of closure.~~
- ~~(F) The institution is a participating institution that has been provisionally recertified under the automatic recertification requirement in paragraph (b)(3) of this section.~~

(ii) An institution's certification automatically becomes provisional upon notification from the Secretary if—

(A) The institution triggers one of the financial responsibility events under §668.171(c) or (d) and, as a result, the Secretary requires the institution to post financial protection; or

(B) Any The institution or an owner or interest holder of the institution with control over that institution, as defined in 34 CFR 600.31, also owns another institution with fines or liabilities owed to the Department and is not making payments in accordance with an agreement to repay that liability.

(iii) A proprietary institution's certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program federal educational assistance funds, as required under § 668.14(b)(16).

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c)-(3) ~~and (4)~~ of this section, a provisionally certified institution's period of participation expires -

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i) (A) of this section;

(ii) Not later than the end of the second complete award year following the date on which the Secretary provisionally certified an institution that had been fully certified for reasons related to substantial liabilities owed or potentially owed to the Department for discharges related to borrower defense to repayment or false certification, or for other consumer protection concerns as identified by the Secretary;

(iii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1) (i)(B), (C), and (D), and (F) (iii), (iii), (iv) or (c)(1)(ii)(e)(2) of this section; and

(iv) If the Secretary provisionally certified the institution under paragraph (c)(1) (iv)(E) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, "provisional certification" means that the Secretary certifies that an institution has demonstrated to the Secretary's satisfaction that the institution -

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution's responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) Revocation of provisional certification.

Certification Procedures 4

(1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)

(i) If the Secretary revokes the provisional certification of an institution under paragraph (d)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary ~~mails-transmits~~ the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in § 668.26.

(3)

(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or ~~facsimile-electronic~~ transmission.

(ii) The filing date of the request is the date on which the request is -

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by ~~facsimile-electronic~~ transmission.

(iii) Documents filed by electronic transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation.

~~**(iv)** The Secretary discourages the use of facsimile transmission for documents longer than five pages.~~

(4)

(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of -

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service or another service that provides delivery confirmation for that document.

§ 668.14 Program participation agreement.

(a)

(1) An institution may participate in any Title IV, HEA program, other than the LEAP and NEISP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(3) An institution's program participation agreement must be signed by—

(i) An authorized representative of the institution; and

(ii) For a proprietary or private nonprofit institution, by an authorized representative of an entity with direct or indirect ownership of the institution if that entity has the power to exercise control over the institution. The Secretary considers the following as examples of circumstances in which an entity has such power—:

(A) If the entity has at least 50 percent control over the institution through direct or indirect ownership, by voting rights, or by its right to appoint board members to the institution or any other entity, whether by itself or in combination with other entities or natural persons with which it is affiliated or related, or pursuant to a proxy or voting or similar agreement.;

(B) If the entity has the power to block significant actions.;

(C) If the entity is the 100 percent direct or indirect interest holder of the institution.; or

(D) If the entity provides or will provide the financial statements to meet any of the requirements of 34 CFR 600.20(g) or (h), or Subpart L of this part.

(b) By entering into a program participation agreement, an institution agrees that -

* * *

(5) It will comply with the provisions of ~~§ 668.15 s~~Subpart L relating to factors of financial responsibility;

* * *

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, ~~the Secretary of Veterans Affairs~~Federal agencies, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, ~~and~~ State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, ~~and State attorneys general~~ have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud, ~~and~~ abuse, ~~or other violations of law~~;

(18) It will not knowingly -

(i) Employ in a capacity that involves the administration of the ~~t~~Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated ~~under section 432 of the HEA from participation in the title IV, HEA programs~~ for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds, ~~or whose owners, officers, or employees exercised substantial control over an institution, or a direct or indirect parent entity of an institution, that owes a liability for a violation of a title IV, HEA program, requirement and is not making payments in accordance with an agreement to repay that liability~~; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been -

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; ~~or~~

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; ~~or~~

~~(C) Ten-percent-or-higher equity owners, directors, officers, principals, or executives at an institution or contractor whose participation as an institution or as a contractor to a participating institution resulted in a loss of Federal funds in excess of 5 percent of the participating institution's annual student aid volume in any given year.~~

* * *

(26) ~~If For~~ an educational program offered by the institution ~~that~~ is required to prepare a student for gainful employment in a recognized occupation, ~~the institution must~~ -

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. Effective [one year from the effective date of these regulations], the Secretary limits title IV, HEA eligibility for the program to consider the relationship to be reasonable if the number of clock hours provided in the program does not exceed the greater/lesser of -

(A) One hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; or

(B) If at least half of States license the recognized occupation for which the program prepares students, the national median of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student as established in those States, as determined by the Secretary for the year of the effective date of these regulations and published in a notice in the *Federal Register* adjacent to the State in which the institution is located; and

(ii) The institution must establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student;

* * *

(32) In each State in which the institution is located or in which students enrolled by the institution are located the institution is otherwise required to obtain State approval under 34 CFR 600.9, the institution must ensure that each program —

(i) Ensure that each program is programmatically accredited, if such accreditation is required by the State or a Federal agency a Federal governmental entity or by a governmental entity in the State; and

(ii) Ensure that each program satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

(iii) Complies with all State consumer protection laws, including both generally applicable State laws and those specific to educational institutions, except where State requirements for obtaining authorization are inapplicable pursuant to a State authorization reciprocity agreement.

(33) It will not withhold transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution's administration of the title IV, HEA programs, or any fraud or misconduct by the institution or its personnel, unless the error was the result of fraud on the part of the student.

(34) It will not maintain policies and procedures or condition institutional aid or other student benefits in a manner that induces a student to limit the amount of Federal student aid, including

Federal loan funds, that the student receives, except that the institution may provide a scholarship on the condition that a student forego borrowing if the amount of the scholarship provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.

* * *

(e) If an institution is provisionally certified, the Secretary may apply such conditions as are determined to be appropriate to the institution, including –

(1) For an institution that the Secretary determines may be at risk of closure—

(i) Submission of an acceptable teach-out plan or agreement to the Department, to the State, and to the institution's recognized accrediting agency;

(ii) Submission to the Department of an acceptable records retention plan, including but not limited to student transcripts and other title IV, HEA records, to the Department and evidence that the plan has been implemented; and

(2) For an institution that the Secretary determines may be at risk of closure, that is teaching out or closing, or that is not financially responsible or administratively capable, t(iii) The release of holds on student transcripts over a de minimis amount, and the release of all holds on student transcripts in the event of a closure;

(23) Restrictions on the addition of new programs or locations;

(34) Restrictions on the rate of growth or new enrollment of students or of Title IV volume in one or more programs;

(45) Restrictions on the institution providing a teach-out on behalf of another institution;

(55) Restrictions on the acquisition of another participating institution, which may include the posting of financial surety protection in an amount determined by the Secretary but not less than 10 percent of the acquired institution's Title IV volume for the prior fiscal year. This surety financial protection is in addition to any other required surety financial protection;

(67) Additional reporting requirements, which may include, but are not limited to, cash balances, an actual and protected cash flow statement, student rosters, student complaints, and interim unaudited financial statements;

(78) Limitations on the institution entering into a written arrangement with another eligible institution or an ineligible institution or organization for that other eligible institution or ineligible institution or organization to provide between 25 and 50 percent of the institution's educational program under §668.5(a) or (c);

(89) For an institution alleged or found to have engaged in misrepresentations to students, engaged in aggressive recruiting practices, or violated incentive compensation rules, requirements to submit marketing and other recruiting materials for the review and approval of the Secretary; and

(910) Such other conditions as the Secretary deems necessary or appropriate.

(f) If a proprietary institution seeks to convert to nonprofit status following a change in ownership, the following conditions will apply to the institution following the change in ownership, in addition to any other conditions that the Secretary may deem appropriate:—

Certification Procedures 9

(1) The institution must continue to meet the requirements under §668.28(a) and §668.28(b) until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years in which the institution meets the requirements of §668.14(b)(16) with passing 90/10 reporting under its new ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later.;

(2) The institution must continue to meet the gainful employment requirements of sSubpart Q of this part until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years under its new ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later.; and

(3) The institution will be required to must submit regular and timely reports on agreements entered into with its former for-profit owner or entities affiliated or related persons or entities, so long as the institution participates as a nonprofit institution.; and

(4) The institution may not advertise that it operates as a nonprofit institution for the purposes of Title IV until the Department approves the institution's request to convert to nonprofit status.

(g) If an institution is initially certified as a nonprofit institution, or if it has undergone a change of ownership and seeks to convert to nonprofit status, the following conditions will apply to the institution upon initial certification or following the change in ownership, in addition to any other conditions that the Secretary may deem appropriate:

(1) The institution will be required to must submit regular and timely reports on accreditor and Sstate authorization agency actions and any new servicing agreements within 10 business days of receipt of the notice of an action or of entering into the agreement, as applicable, until the Department has accepted, reviewed, and approved the institution's financial statements and compliance audits that cover two complete consecutive fiscal years following initial certification, or two complete fiscal years under its new after a change in ownership, or until the Department approves the institution's request to convert to nonprofit status, whichever is later.; and

(2) The institution will be required to must submit regular and timely reports on communications from the Internal Revenue Service or any Sstate or foreign country related to tax-exempt or nonprofit status within 10 business days of receipt so long as the institution participates as a nonprofit institution.

(he)

(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(if)

(1) Except as provided in paragraphs (ig) and (kh) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (f) of this section, the Secretary establishes the termination date.

(ig) An institution's program participation agreement automatically expires on the date that -

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a) (1), (2), (4), or (7).

(kh) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

§ 668.43 Institutional and programmatic 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; and

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, a list of all States where the institution offers the program and where the program does and does not meet such requirements and a list of all States where it does not meet such requirements.