

EDUCATION INVESTORS UPDATE

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Congress Addresses Foreign Institutions in Higher Education Opportunity Act

On August 14, 2008, President Bush signed the Higher Education Opportunity Act (HEOA), which completes the reauthorization of the Higher Education Act (HEA). The HEOA took effect on August 14, 2008, unless otherwise specified in the law. While the HEOA is hundreds of pages long and touches on numerous topics, this summary focuses on key new provisions affecting higher education institutions located outside the United States (Foreign Institutions). The HEOA evinces Congress's desire to respond to the shortage of doctors and nurses in the U.S. while protecting quality. The HEOA tightens eligibility requirements for foreign graduate medical schools, makes foreign nursing schools eligible for federal student financial aid for the first time, and calls for studies that may inform Congress's consideration of further legislation in this area.

Foreign Graduate Medical School Eligibility

- In order to participate in federal student financial aid programs, by July 1, 2010, foreign graduate medical schools must achieve a higher passage rate on examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG). More specifically, at least 75 percent of students and graduates (both U.S. nationals and others) of the foreign graduate medical school taking the ECFMG examinations (in the year prior to the year for which a student seeks federal student financial aid) must receive passing scores. This rate constitutes a 15 percent increase from the passage rate previously required under the HEA.
- Under the HEA, a foreign graduate medical school could also participate in federal student financial aid programs if it had a clinical training program approved by a state as of January 1, 1992. The HEOA clarifies this alternative eligibility criterion by requiring that the foreign graduate medical school continue to operate a clinical training program in at least one state that has approved the program.

Foreign Nursing School Eligibility

- For the first time the HEOA makes foreign nursing schools eligible to receive subsidized and unsubsidized Federal Stafford Loans and Federal Plus Loans.
- In order to participate in those programs, a foreign nursing school must:
 - 1) have an agreement with a hospital or accredited nursing school located in the U.S. that requires the students to complete their clinical training at such hospital or accredited nursing school;



- 2) have an agreement with an accredited nursing school located in the U.S. that provides that the students graduating from the foreign nursing school also receive a degree from the U.S. nursing school;
- 3) certify only Federal Stafford Loans, unsubsidized Federal Stafford Loans, or Federal Plus Loans for students attending the institution;
- 4) 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; and
- 5) have at least 75 percent of the students or graduates of the foreign nursing school taking the National Council Licensure Examination for Registered Nurses (in the year preceding the year for which the institution certifies federal student loans) receive a passing score.

Campus Security

The HEOA amended the HEA by excluding Foreign Institutions from the requirement to disclose their campus security policies and campus crime statistics.

Financial and Compliance Audits

Under the HEA and U.S. Department of Education implementing regulations, a Foreign Institution that participated in federal student financial aid programs was required to submit audited financial statements and a compliance audit to the department annually. If a Foreign Institution received \$500,000 or more in federal student financial aid during its most recently completed fiscal year, its financial statements were required to meet the same standards as those of U.S. institutions, including translation into U.S. generally accepted accounting principles (GAAP). If the Foreign Institution certified less than \$500,000 in federal student financial aid during its most recently completed fiscal year, it could prepare its financial statements in accordance with generally acceptable accounting principles applicable in its home country. Under the HEOA, the Secretary is permitted to modify the regulations regarding financial and compliance audits for Foreign Institutions and may waive those requirements with respect to a Foreign Institution if its students received less than \$500,000 in federal loans during the award year preceding the audit period.

Studies and Reports

The HEOA calls for several studies relating to Foreign Institutions. If Congress appropriates funds for these studies, they may inform Congress's future legislation in this area.

- Under the HEA, a foreign graduate medical school was ineligible to receive federal student financial aid if it could not satisfy the ECFMG passage rate requirement or did not have a clinical program in place and approved by a state as of January 1, 1992. The HEOA requires the Secretary's advisory panel of medical experts to submit a report to the Secretary and the congressional authorizing committees by August 13, 2009, recommending eligibility criteria for participation in federal student loan programs by foreign graduate medical schools that had a clinical training program approved by a state on or prior to January 1, 2008, but do not meet the current statutory criteria described above. The recommended eligibility criteria must include appropriate levels of performance for foreign graduate medical schools in such areas as:

- 1) entrance requirements;
- 2) retention and graduation rates;
- 3) successful placement of students in U.S. medical residency programs;
- 4) passage rates on the U.S. Medical Licensing Examination (not less than 75 percent);
- 5) the extent to which state medical boards have assessed the quality of a school's program of instruction, including through on-site reviews;
- 6) the extent to which graduates of such schools would be unable to practice medicine in one or more states, based on the judgment of a state medical board; and
- 7) any areas recommended by the Comptroller General of the U.S. or the Secretary.

One hundred eighty days after the submission of the report by the advisory panel, the Secretary may issue proposed regulations establishing criteria for the eligibility of foreign graduate medical schools based on the recommendations in the report. Not earlier than one year after the issuance of such proposed regulations, the Secretary may issue final regulations establishing such criteria for eligibility.

- By February 13, 2010, the Comptroller General of the U.S. is to complete a study of the performance of U.S. students receiving federal student financial aid to attend foreign graduate medical schools. The study is to include information regarding:
 - 1) the amount of federal student financial aid spent annually on foreign graduate medical schools and the percentage of overall student aid such an amount represents;
 - 2) the passage rate of students attending foreign graduate medical schools taking the examinations sponsored by the Federation of State Medical Boards of the United States, Inc. and the National Board of Medical Examiners for the first time;
 - 3) the passage rate of students attending foreign graduate medical schools who take the U.S. medical licensing examinations multiple times;
 - 4) the percentage of graduates of foreign graduate medical schools practicing medicine in the U.S. and a description of where they are practicing and in what fields;
 - 5) a comparison between the success rate of malpractice lawsuits brought against graduates of foreign graduate medical schools and graduates of medical schools located in the U.S.; and
 - 6) recommendations regarding the percentage passage rate of the U.S. medical licensing examination that the U.S. should require of foreign graduate medical schools for federal student financial aid purposes.
- By February 13, 2010, the Comptroller General of the United States is also to provide data and make recommendations to the National Committee on Foreign Medical Education and Accreditation to assist the Secretary in determining whether medical education accreditation standards in foreign countries are comparable to those in the United States. Only medical schools in countries with accreditation systems comparable to those in the U.S. may be eligible to participate in federal student loan programs.

About the Education Investors Update

Hogan & Hartson publishes the *Education Investors Update* to track recent developments in education law, such as the Higher Education Act, the No Child Left Behind Act, and the Individuals with Disabilities Education Act. To have this publication sent to additional colleagues or for more information on any of the topics discussed, please contact the attorney with whom you work or the author as listed below.

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*A special thanks to **Michele L. Backus** for her contributions to this Client Update.*

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