**Issue 4 – Change of Ownership and Change In Control of Institutions of Higher Education**

**34 CFR § 600.31 - Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.**

**§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.**

**(a)**

**(1)** Except as provided in [paragraph (a)(2)](https://www.law.cornell.edu/cfr/text/34/600.31#a_2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change of ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent of that entity, acquires or loses the ability to control the institution.

**(2)** If a private nonprofit, private for-profit, or public institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of [§ 600.20(g) and (h)](https://www.law.cornell.edu/cfr/text/34/600.20#g), continue the institution's participation in the title IV, HEA programs on a provisional basis, provided that the institution submits, under the provisions of [§ 600.20(g)](https://www.law.cornell.edu/cfr/text/34/600.20#g), a materially complete application -

**(i)** No later than 10 business days after the change occurs; or

**(ii)** For an institution owned by a publicly-traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

**(3)** In order to reestablish eligibility and to resume participation in the title IV, HEA programs, the institution must demonstrate to the Secretary that after the change in ownership and control -

**(i)** The institution satisfies all the applicable requirements contained in [§§ 600.4](https://www.law.cornell.edu/cfr/text/34/600.4), 600.5, and 600.6, except that if the institution is a proprietary institution of higher education or postsecondary vocational institution, it need not have been in existence for two years before seeking eligibility; and

**(ii)** The institution qualifies to be certified to participate under [34 CFR part 668](https://www.law.cornell.edu/cfr/text/34/part-668), subpart B.

**(b)** ***Definitions.*** The following definitions apply to terms used in this section:

*Closely-held corporation.* [Closely-held corporation](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=82d1dea609f5cda4ecfbe4277c2c4556&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:VI:Part:600:Subpart:C:600.31) (including the term “close corporation”) means -

**(1)** A corporation that qualifies under the law of the State of its incorporation or organization as a [closely-held corporation](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=82d1dea609f5cda4ecfbe4277c2c4556&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:VI:Part:600:Subpart:C:600.31); or

**(2)** If the State of incorporation or organization has no definition of [closely-held corporation](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=82d1dea609f5cda4ecfbe4277c2c4556&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:VI:Part:600:Subpart:C:600.31), a corporation the stock of which -

**(i)** Is held by no more than 30 persons; and

**(ii)** Has not been and is not planned to be publicly offered.

*Control.* Control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

*Ownership or ownership interest.*

**(1)** Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

**(2)** Ownership or ownership interest does not include an ownership interest held by -

**(i)** A mutual fund that is regularly and publicly traded;

**(ii)** A U.S. institutional investor, as defined in [17 CFR 240.15a-6](https://www.law.cornell.edu/cfr/text/17/240.15a-6)(b)(7);

**(iii)** A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or its corporate parent are included in the plan; or

**(iv)** An employee stock ownership plan (ESOP).

*Parent.* The parent or parent entity is the entity that controls the specified entity directly or indirectly through one or more intermediaries.

*Person.* Person includes a legal entity or a natural person.

*Wholly-owned subsidiary.* A wholly-owned subsidiary is one substantially all of whose outstanding voting securities are owned by its parent together with the parent's other wholly-owned subsidiaries.

**(c)** ***Standards for identifying changes of ownership and control*** -

**(1)** ***Closely-held corporation.*** A change in ownership and control occurs when -

**(i)** A person acquires more than 50 percent of the total outstanding voting stock of the corporation;

**(ii)** A person who holds an ownership interest in the corporation acquires control of more than 50 percent of the outstanding voting stock of the corporation; or

**(iii)** A person who holds or controls 50 percent or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

**(2)** ***Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC).*** A change in ownership and control occurs when -

**(i)** A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

**(ii)** (A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in [17 CFR 240.15a-6](https://www.law.cornell.edu/cfr/text/17/240.15a-6)(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

**(B)** When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the “same day” balance sheet.

**(C)** If a publicly-traded institution is provisionally certified due to a change in ownership under [paragraph (c)(2)(ii)](https://www.law.cornell.edu/cfr/text/34/600.31#c_2_ii) of this section, and that institution experiences another change of ownership under [paragraph (c)(2)(ii)](https://www.law.cornell.edu/cfr/text/34/600.31#c_2_ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling shareholder was listed on the change of ownership application for which the original provisional approval was granted.

**(3)** ***Other entities.*** The term “other entities” includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities. A change in ownership and control of an entity that is neither closely-held nor required to be registered with the SEC occurs when -

**(i)** A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total of outstanding voting stock of the corporation and control of the corporation; or

**(ii)** A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation.

**(4)** ***General partnership or sole proprietorship.*** A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

**(5)** ***Wholly owned subsidiary.*** An entity that is a wholly owned subsidiary changes ownership and control when its parent entity changes ownership and control as described in this section.

**(6)** ***Nonprofit institution.*** A nonprofit institution changes ownership and control when a change takes place that is described in [paragraph (d)](https://www.law.cornell.edu/cfr/text/34/600.31#d) of this section.

**(7)** ***Public institution.*** The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided -

**(i)** The new governing authority is in the same State as included in the institution's program participation agreement; and

**(ii)** The new governing authority has acknowledged the public institution's continued responsibilities under its program participation agreement.

**(d)** ***Covered transactions.*** For the purposes of this section, a change in ownership of an institution that results in a change of control may include, but is not limited to -

**(1)** The sale of the institution;

**(2)** The transfer of the controlling interest of stock of the institution or its parent corporation;

**(3)** The merger of two or more eligible institutions;

**(4)** The division of one institution into two or more institutions;

**(5)** The transfer of the liabilities of an institution to its parent corporation;

**(6)** A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or

**(7)** A change in status as a for-profit, nonprofit, or public institution.

**(e)** ***Excluded transactions.*** A change in ownership and control reported under [§ 600.21](https://www.law.cornell.edu/cfr/text/34/600.21) and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement -

**(1)** From an owner to a “family member” of that owner as defined in [§ 600.21(f)](https://www.law.cornell.edu/cfr/text/34/600.21#f); or

**(2)** Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer.