

Finally, CGFNS stated that it should be exempt from the 5-year review process because it is specifically listed in the statute as an organization authorized to issue certifications.

The DHS does not feel that it is appropriate to modify the proposed review process at this time by conducting additional scheduled reviews or by exempting any organizations. The DHS will adopt the suggestion to review an organization at any time during the 5-year period by reserving the right to conduct reviews of the approval of any request for authorization to issue certificates. The DHS retains the right to conduct a review at any time within the 5-year period of authorization. This authority under § 212.15(k)(8)(iii) provides that the DHS can request information of the organization and its program for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization. The DHS intends to use this authority to conduct periodic reviews. The DHS notes the concerns expressed by the commenters that organizations should be monitored on a bi-annual basis to ensure compliance with the approval standards but finds that a 5-year review period appears appropriate at this time. It should be noted that the DHS also has the ability to initiate termination proceedings any time after approval has been granted. The DHS can initiate termination proceedings at any time during the 5-year period based on information received from other sources, *e.g.*, adverse information provided by state licensing boards or uncovered during the course of an ordinary review of approval of an entity's authorization.

The DHS will not exempt CGFNS from the 5-year review process. While CGFNS is named in section 212(a)(5)(C) of the Act, it is named as one of the entities from which an alien may receive a valid certificate in order to gain admission. This language relates to the alien and his or her admissibility, not to CGFNS' authority to issue certificates, which is still subject to approval by the Bureau of Citizenship and Immigration Services. Just as this language does not preclude approval of other certifying organizations, it is the position of the Bureau of Citizenship and Immigration Services that it does not guarantee approval in the case of CGFNS either. Finally, Congress named CGFNS as an example in the statute because it was aware that this entity existed and was active in this field, but did not mean to confer any authority on

CGFNS. Thus, CGFNS is not exempt from governmental oversight. The approval and review process is a guarantee that CGFNS will continue to meet the standards required for all certifying organizations.

The DHS also received two comments relating to the fees that an organization charges for the certification. One commenter stated that the CGFNS fee was too high while the other commenter proposed a rolling fee based on an alien's monthly income in his or her country.

The DHS will not modify the proposed rule to address the fee issue. The statute does not give the DHS the authority to set fees for organizations approved to issue certifications or certified statements. The DHS is confident that organizations authorized to issue certifications and statements will charge a reasonable fee that covers the cost of their respective processes.

Only one comment was received regarding what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates. The commenter suggested that 60 days would be an appropriate time period.

The DHS has decided to accommodate this concern. As the comment notes, this rule provides at 8 CFR 212.15(k)(4)(x) that certificates must be provided to applicants in a timely manner. The BCIS shares the commenter's concern that the certification requirement may unduly delay the recruitment of foreign health care workers and adversely affect health care in the United States. The BCIS notes that in such a case, it retains authority to commence termination proceedings against a certifying organization if the situation warrants. The BCIS may also provide other remedies, such as a waiver under section 212(d)(3) of the Act of the certification requirement in individual cases upon request. Such a waiver will only facilitate a determination of admissibility in the context of an application for admission, change of status, and/or extension of stay, however, and the alien must continue the process of obtaining the certificate as described in 8 CFR 212.15(n)(2)(i). The BCIS intends to monitor this situation and welcomes input from the public on the performance of certifying organizations.

Finally, it should be noted that the proposed criteria for awarding and governing certificate holders had the unintended effect of requiring an alien to submit evidence of passage of the profession's licensing or certification examination when in fact the statute

permits an alien to demonstrate that he or she has passed the profession's licensing or certification examination or a test predicting the success on such an examination, if a majority of states licensing the profession recognize such a predictor test. After consultation with HHS, the DHS has amended language at 8 CFR 212.15(k)(7)(i) to clarify that health care workers have the option to demonstrate passage of an acceptable predictor test for purposes of obtaining health care worker certification.

Process for Terminating an Organization's Authorization To Issue Certifications

The proposed rule provided that, upon notification that an authorized credentialing organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted, of a violation of state or federal laws, so that the fitness of the organization to continue to issue certificates is called into question, the DHS shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt or discovery of information that the credentialing organization is no longer complying with the standards contained in 8 CFR 212.15(k), or upon receipt or discovery of information that termination of the organization's approval is otherwise warranted, the DHS will issue a Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to the credentialing organization. The credentialing organization will be given 30 days from the date of the Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to rebut or cure the allegations made in the DHS' notice.

DHS will submit any information received in response to the Notice to HHS upon receipt. Thirty days after the date of the Notice of Intent to Terminate, the DHS will request an opinion from HHS regarding whether the organization's authorization should be terminated and forward any additional evidence. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the organization's response, if any, to the Notice of Intent to Terminate, and of HHS' opinion, the DHS will provide the organization with a written decision.

The DHS's decision terminating an organization's authorization may be appealed to the AAO pursuant to 8 CFR 103.3. Termination of credentialing