

Session #34

Program Integrity: Institutional and Program Eligibility: State Authorization

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Note: Print slide 11 as a full page

Negotiated Rulemaking



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Negotiated Rulemaking

- Hearings and negotiations
 - June 2009 through January 2010
 - No consensus
- Notice of proposed rulemaking: June 18, 2010
 - <http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf>
 - State authorization provisions
 - Preamble: **pp. 34812-34813**
 - Proposed regulations: **p. 34873**
 - Nearly 1,200 comments on NPRM

Negotiated Rulemaking

- Final regulations: October 29, 2010
 - <http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf>
 - State authorization provisions:
 - Preamble: **pp. 66858-66868**
 - Regulations: **pp. 66946-66947**
 - Effective date: July 1, 2011
- Technical corrections: April 13, 2011
 - <http://ifap.ed.gov/fregisters/attachments/FR041311ProgramIntegrityIssues.pdf>



State Authorization General Requirements



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State Authorization

Under the Higher Education Act, for an institution in any State to be eligible to participate in federal programs, it must be legally authorized by the State to provide postsecondary education.

State Authorization Regulations

- For the purposes of federal programs, the regulations:
 - Assure a State role in authorizing postsecondary institutions; and
 - Clarify what is required for an institution to be considered legally authorized by a State
- The regulations do not require the creation of any State licensing agencies

State Authorization Regulations

- New requirements
 - §600.9 State authorization
- Amended requirement
 - §668.43(b) Student consumer information
- Conforming changes
 - §600.4(a)(3) Institution of higher education
 - §600.5(a)(3) Proprietary institution of higher education
 - §600.6(a)(3) Postsecondary vocational institution



State Authorization Regulations

- Two core requirements for main campus and other locations (§600.9(a) and (b))
 - Basis of operating authority and any required approvals
 - Student complaints
- Student consumer requirements (§668.43(b))
- Distance education (§600.9(c))
 - In litigation



Basis of Operating Authority

- Established by name as an educational institution
– Includes all State institutions
Row A of next slide
- Authorized to conduct business
Row B of next slide
- Authorized to operate as a nonprofit charitable organization
Row C of next slide

Basis Of Operating Authority

Meets State Authorization Requirements*			
Row	Legal entity	Entity description	Approval or licensure process
ROW A	Educational institution	<p><u>§600.9(a)(1)(i)(A)</u> A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, articles of incorporation, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.</p>	<p><u>§600.9(a)(1)(i)(B)</u> The institution must comply with any applicable State approval or licensure process and be approved or licensed by name; and if there is an approval or licensure process, may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.</p>
ROW B	Business	<p><u>§600.9(a)(1)(ii)</u> A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.</p>	<p><u>§600.9(a)(1)(ii)(A)</u> The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name to offer postsecondary education.</p> <p><u>§600.9(a)(1)(ii)(B)</u> An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.</p>
ROW C	Charitable organization	<p><u>§600.9(a)(1)(iii)</u> A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.</p>	<p><u>§600.9(a)(1)(iii)(A)</u> The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name to offer postsecondary education.</p> <p><u>§600.9(a)(1)(iii)(B)</u> An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.</p>
<p>*Notes:</p> <ul style="list-style-type: none"> These requirements do not apply to Federal, tribal, and religious institutions (<u>§600.9(a)(1)(i)(iii) and (b)</u>). A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals (<u>§600.9(a)</u>). The chart does not apply to distance education programs offered out-of-State. 			



Established as an Educational Institution (Row A)

- Must comply with any applicable State approval or licensure requirements and be approved by name
 - No mandate that a State have approval or licensure requirements for these institutions

Established as an Educational Institution (Row A)

- May be exempted from State approval or licensure requirements based on
 - The institution's accreditation by a nationally recognized accrediting agency, or
 - The institution being in operation for at least 20 years

Established as a Business or Nonprofit (Row B or C)

- Must comply with the State approval or licensure requirements
- Must be approved or licensed by name
- May not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption

Federal and Tribal Institutions

- Federal institutions
 - Meet provisions if authorized by name by the federal government
- Tribal institutions
 - Meet provisions if authorized by name by the tribal government
 - If a tribal institution is located outside tribal lands or has a location outside tribal lands, must demonstrate that it has the applicable State authorizations

Religious Institutions

- If qualify as a religious institution, exempt from these requirements
- Defined as an institution that
 - Is owned, controlled, operated, and maintained by a religious organization; and
 - Awards only religious degrees or certificates
- Must be exempt from State authorization under State law or State constitution

Complaints

- A State must have a process, applicable to all institutions, to review and address complaints directly or through referrals as determined by the State
 - Applies to religious institutions
 - Does not apply to tribal and federal institutions
- For a tribal institution, a tribal government must have a process to review and appropriately act on complaints

Complaints

- If an institution has additional locations, including a tribal institution off tribal land, it must provide a complaint process for the additional location's State

Implementation

- Were effective July 1, 2011
- Provide for extensions if an institution's State cannot provide the necessary authorization by July 1, 2011
 - Electronic Announcement – August 22, 2011

Consumer Information



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Consumer Information

- The institution must provide its students or prospective students with contact information for filing complaints with
 - Its accreditor; and
 - Its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint
- Effective July 1, 2011



Consumer Information

- The contact information must be on the institution's website. A link to a non-institutional website will not satisfy the requirement
- Consumer information should be provided for all students, including distance education
- The information must be for every State in which the institution is located, including every State where students are enrolled for distance education

Examples



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Legally Authorized Institutions

- College with royal charter from the colonial period recognized by the State as authorizing the institution by name to offer postsecondary education
- Community college based upon its status as a public institution
- Nonprofit with State constitutional authorization by name as a postsecondary institution

Legally Authorized Institutions

- Nonprofit with a State charter in which it is named as a postsecondary institution where, additionally, in lieu of State licensure to operate, the institution is authorized to operate in the State based on accreditation by a regional accrediting agency

Legally Authorized Institutions

- Individual institution owned by a publically traded corporation incorporated in a different State from where the school is located and licensed to provide educational programs beyond the secondary level in the State where it is located

Legally Authorized Institutions

- Individual institution owned by a publically traded corporation established as a business without articles of incorporation specifying that the institution is authorized to offer postsecondary education, but the institution is licensed by the State to operate postsecondary education programs

Legally Authorized Institutions

- Individual institution with articles of incorporation as a business that specify that the institution is established by name to offer postsecondary education, and the institution is exempt from state licensure to offer postsecondary education programs based on its accreditation by a nationally recognized accrediting agency

Legally Authorized Institutions

- Rabbinical school awarding only a certificate of Talmudic studies is exempted as a religious institution offering only religious programs
- Tribal institution located on tribal lands chartered by the tribal government

Not Legally Authorized

- A publicly traded corporation established as a business without the articles of incorporation specifying that it is authorized to offer postsecondary education, and the State has no process to license or approve the institution to offer postsecondary education

Not Legally Authorized

- A nonprofit without specific authorization to offer postsecondary education where State law considers the institution to be authorized based on it being in operation for over 30 years and issues a certificate of good standing to the institution naming it as authorized to offer postsecondary education based on its years of operation

Not Legally Authorized

- A Bible college chartered as a religious institution offering liberal arts and business programs as well as Bible studies. Exempted by State law from State licensure requirements, it does not meet the definition of a religious institution exempt from State licensure for federal purposes because it offers other programs in addition to religious programs

Not Legally Authorized

- An institution authorized based solely on a business license and the State considers the institution to be authorized to offer postsecondary programs based on regional accreditation

Dear Colleague Letters and Electronic Announcements



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Dear Colleague Letters

- GEN-11-05: Implementation of the Program Integrity Regulations
 - March 17, 2011
 - <http://ifap.ed.gov/dpcletters/attachments/GEN1105.pdf>
- GEN-11-11: State Authorization under the Program Integrity Regulations
 - April 20, 2011
 - <http://ifap.ed.gov/dpcletters/attachments/GEN1111.pdf>

Electronic Announcement

- Posted August 22, 2011
- Concerns the two one-year extensions of the effective date for the 2011-12 and 2012-13 award years
- Provides that an institution's State has until July 1, 2013 to make any needed adjustments for institutions in the State to meet the State authorization requirements

Electronic Announcement

- An institution must obtain from the State a written explanation of how a one-year extension will permit the State to modify its procedures so that the institution is able to comply with §600.9
- The written explanation may apply to multiple institutions within that State or be specific to the institution requesting the one-year extension

Electronic Announcement

- Acceptable basis for a one-year extension includes a delay in an institution obtaining any necessary authorization or approvals due to an increase in State workload
- Applies to establishing complaints process

Electronic Announcement

- Institutions should not submit requests for extension or documentation of the one-year extension to the Department, but should keep the documentation on file and be able to produce it upon request
- The Department may request this information when an institution is seeking certification or recertification or if a question arises due to a complaint, program review, or audit

Distance Education



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Distance Education

- Lawsuit: Association of Private Sector Colleges and Universities v. U.S. Department of Education, *et al.* District Court for DC, Civil Action No. 11-0138
- Court upheld the program integrity regulations with one exception relating to distance education
- The court vacated §600.9(c) concerning distance education on procedural grounds

Distance Education

- The Court ruled that the Department should have included the distance education provision in the proposed regulations
- The issues in the district court litigation are under appeal
- The Court ruling does not apply to what institutions must do to comply with State laws regarding distance education

Distance Education

- The provisions in §668.43(b) continue to apply
- An institution must provide the information, including the contact information for filing complaints related for any State in which it has a physical location or enrolls students for distance education programs

Additional Resources and Information



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OPE Website

- Access at either—
 - <http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-qa.html//w>, or
 - IFAP Hot Topics: Program Integrity Information – Questions and Answers



E-App

- An institution should include in its E-App recertification application the information showing its legal authorization based on these regulations, or upon request during an audit or a program review
- If an institution is a limited liability company (LLC), the FSA School Participation Team will work with the institution to identify the relevant information
- School Participation Team
 - <http://www.eligcert.ed.gov/>

State Higher Education Executive Officers (SHEEO)

- State Authorization Resources and Directory
- <http://www.sheeo.org/stateauth/stateauth-home.htm>

Non-ED Initiatives

- Interstate regional compacts
 - Western Interstate Commission on Higher Education (WICHE)
 - Southern Regional Education Board
- President's Forum
- Gates and Lumina Foundations
- Council of State Governments
 - Drafting Team
 - Interstate Reciprocity Compact



Contact Information

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