

Federal Requirements for State Authorization



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TOPICS

**Regulations, Policy, and
Guidance
Operational Considerations**

Why 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
- Section 101(a)(2) of the HEA defines “institution of higher education” to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education

Why State Authorization?

- Section 201(a)(2) of the HEA provides that a proprietary institution of higher education and a postsecondary vocational institution must be legally authorized within the State to provide a program of education beyond secondary education
- Pre-October 2010: No definition or description in regulations

Regulations

- Notice of Proposed Rulemaking: June 18, 2010
 - <http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf>
- Final Regulations: October 29, 2010
 - <http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf>
 - Effective Date: July 1, 2011
- Technical Corrections: April 13, 2011
 - <http://ifap.ed.gov/fregisters/attachments/FR041311ProgramIntegrityIssues.pdf>

Regulations

- For the purposes of Federal programs, the State authorization 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

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

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)) – currently vacated

The Regulations: § 600.9(a) and (b)

There are 2 distinct basic requirements:

- The State must authorize an institution by name to operate educational programs beyond secondary education
 - Applies to all institutions, but compliance depends on the type of institution being authorized
- The State must have a process applicable to all institutions, except tribal and Federal institutions, to review and appropriately act on complaints concerning the institution, including enforcement of applicable State laws

Basis of Operating Authority

- The institution is established as an educational institution: 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 (§600.9(a)(1)(i)(A))
- 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, the State may exempt the institution from such requirement based on its accreditation, or being in operation at least 20 years (§ 600.9(a)(1)(i)(B))

Basis of Operating Authority

- The institution is established as a business: A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services, but not established by name as an educational institution (§600.9(a)(1)(ii))
- 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 (§600.9(a)(1)(ii)(A))
- An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption (§600.9(a)(1)(ii)(B))

Basis of Operating Authority

- The institution is established as a charitable organization: A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good, but not established by name as an educational institution (§600.9(a)(1)(ii))
 - 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 (§600.9(a)(1)(ii)(A))
 - An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption (§600.9(a)(1)(ii)(B))

Federal and Tribal Institutions § 600.9(a)(2)

- Federal institutions
 - Meet State authorization provisions under § 600.9(a)(1) if authorized by name to offer educational programs beyond secondary education by the Federal government
- Tribal institutions
 - Meet provisions under § 600.9(a)(1) if authorized by name to offer educational programs beyond secondary education by an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints about an institution and enforces applicable tribal requirements or laws
 - An institution located outside tribal lands or with a location outside tribal lands must show that it has the applicable State authorizations

Religious Institutions § 600.9(b)

- 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

State's Complaint Process

- 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 (see requirement below) and federal institutions
- For a tribal institution, a tribal government must have a process to review and appropriately act on 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

Consumer Information § 668.43(b)

- The institution must make available for review to its students or prospective students, upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing
- 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
- Regulations were effective July 1, 2011

Consumer Information § 668.43(b)

- The contact information must be on the institution's website. A link to a non-institutional website will satisfy the requirement so long as the link is accessible from the institution's website and is prominently displayed and accurately described
 - An institution linking to a non-institutional website is responsible for ensuring that the link functions and is accurate
- 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

Implementation

- Final regulations were effective July 1, 2011
- ED provided for delays of the implementation date of the final regulations under certain circumstances
- The implementation date for certain State authorization regulations (34 CFR 600.9(a) and (b)) was delayed to July 1, 2015 for institutions of postsecondary education whose State authorization does not meet the regulatory requirements, so long as the State is establishing an acceptable authorization process that will take effect by the delayed implementation date

Delay of Implementation Date

- The institution was required to:
 - Obtain from the State an explanation, such as information on timeline and action steps to ensure compliance, of how an additional one-year extension would permit the State to finalize its procedures so that the institution would be in compliance with amended § 600.9
 - Provide the information to Department staff upon request

<http://www.ifap.ed.gov/fregisters/attachments/FR062414.pdf>

Dear Colleague Letters

- GEN-11-05: Implementation of the Program Integrity Regulations (March 17, 2011)
 - Contains Q&As on the basics of the State authorization regulations

<http://ifap.ed.gov/dpcletters/attachments/GEN1105.pdf>

- GEN-11-11 Amended: State Authorization under the Program Integrity Regulations (May 6, 2011)
 - Provided guidance in the context of distance learning

<http://www.ifap.ed.gov/dpcletters/attachments/GEN1111.pdf>

Dear Colleague Letters

- GEN-12-13: Guidance on Program Integrity Regulations Relating to Legal Authorization by a State (July 27, 2012)
 - Provides further guidance in general, as well as answers to questions concerning other locations and consortia, the court decision, and student complaints and consumer information
 - Q&A number 7, regarding the court decision states, in part:
“The Department will not enforce the requirements of 600.9(c), although institutions continue to be responsible for complying with all State laws as they relate to distance education.”

<http://www.ifap.ed.gov/dpcletters/attachments/GEN1213Attach.pdf>

Dear Colleague Letters

- GEN-13-20: State Authorization Regulations – Documentation of “other action,” State recognition of educational programs beyond secondary education, State’s “active role” in approving or licensing institutions, and alternative State approval or licensure process (August 9, 2013)
 - Provides guidance on documentation of “other actions” that institutions may use to meet the State authorization regulations

Dear Colleague Letters

- Examples of “other State action” include:
 - Documentation identifying the institution by name as participating in a State Grant program providing funds only to students attending postsecondary institutions in that State
 - Documentation from an in-State institution that it has an articulation agreement with a public postsecondary institution in the State for transfer students from the institution to receive credits at the postsecondary level for courses completed at the institution

Dear Colleague Letters

For purposes of State recognition of educational programs beyond secondary education, if an institution's documentation of State approval to offer educational programs does not show that the programs it provides are postsecondary, the institution can show that the State agency is only authorized to resolve applications from postsecondary institutions

Dear Colleague Letters

- An institution established to conduct business in the State or to operate as a nonprofit charitable institution must show that the State took an active role in approving or licensing the institution as an institution operating educational programs beyond secondary education
 - If the State entity that issues the license or approval does so for institutions operating both secondary and postsecondary programs, students and prospective students should be able to tell whether a specific institution has been authorized by the State to provide postsecondary educational programs

<http://www.ifap.ed.gov/dpcletters/attachments/GEN1320Attachment.pdf>

Dear Colleague Letters

- GEN-14-04: State Authorization Regulations - Student complaint process - further guidance and clarification (February 27, 2014)
 - Reminds institutions about and provides clarification regarding the State student complaint process
 - State authorization for an institution must include a process where the State reviews and appropriately acts on complaints
 - States can use a State agency or the State Attorney General's office so long as a process to review, investigate, and resolve complaints is in place
 - The final authority to resolve a complaint timely must reside with the State

Dear Colleague Letters

- Contact information for the State approval or licensing entities and the State complaint process must be made available to any enrolled or prospective student
- If an institution cannot identify a compliant State complaint process, ED would not consider the institution to be legally authorized by the State

<http://www.ifap.ed.gov/dpccletters/attachments/GEN1404.pdf>

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
- The Court ruled that the Department should have included the distance education provision in the proposed regulations

Distance Education

- The regulations were remanded to the Department of Education for reconsideration consistent with the Circuit Court's opinion
- The Court ruling does not apply to what institutions must do to comply with State laws regarding 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

Negotiated Rulemaking

- Negotiated rulemaking conducted on Program Integrity Issues starting in February 2014 for 4 sessions:
 - Session 1: February 19-21, 2014
 - Session 2: March 26-28, 2014
 - Session 3: April 23-25, 2014
 - Session 4: May 19-20, 2014
- Six agenda items – did not achieve consensus
- Two State authorization items:
 - State authorization of distance education providers as a component of institutional eligibility – did not achieve tentative agreement
 - State authorization of foreign locations of domestic institutions – achieved tentative agreement

Negotiated Rulemaking

- Since consensus was not achieved, ED is not bound to any language developed during the course of the negotiated rulemaking sessions
- Proposed regulations on the State authorization topics are currently “paused”
- No timeline for publication of NPRM containing proposed State authorization regulations

Distance Education - Present State

Institutions continue to be responsible for complying with all State laws and regulations as they relate to distance education

Eligibility Documents: the E-App

- Electronic Application for Approval to Participate in the Federal Student Financial Aid Programs (E-App) (at www.eligcert.ed.gov)
 - Institutions must use the E-App to apply for approval to participate initially in Title IV, HEA Programs, to apply to continue to participate, and to report changes to their participation as required
 - State Authorization is an institutional eligibility requirement
 - Compliance documentation submitted with Initial, Recertification, Reinstatement, Change in Ownership, Merger, and Eligibility Only applications
 - Compliance documentation must be submitted with applications to change the address of the main location, add or modify additional locations and programs, as well as certain other updates

Eligibility Documents: the ECAR

- Eligibility and Certification Approval Report (ECAR) (at www.eligcert.ed.gov)
 - Displays the State agency/entity that documents that the institution is legally authorized within the State, by name, to provide a program of education beyond secondary education
 - Other institutional eligibility information also displayed
 - Once an institution is approved to participate, ECAR is visible at www.eligcert.ed.gov

Eligibility Documents: the PPA

- Program Participation Agreement (PPA)
(at www.eligcert.ed.gov)
 - Institution's agreement with the Department
 - Signed copy on file at institution

Completing the E-App

- In Section B, Question 17 of the E-App, select one answer from responses (a) through (c):
- 17. What state agencies or entities authorize or license you by name to provide postsecondary education in your state? (for this question, do not include educational programs that are provided at “distance learning” sites)
 - a. Check here if you are a public institution and do **not** provide at least 50% of an educational program outside your state, and go to Section C
 - b. Check here if you are a public institution and you **do** provide at least 50% of an educational program outside your state, and list (for each state other than your “home” state) each state agency that licenses you, or otherwise provides you with legal authority, to offer postsecondary education in that state
 - c. Check here if you are a private institution, and list each state agency that licenses you, or otherwise provides you with legal authority, to provide postsecondary education programs
 - d. Check here if you or your programs are not required to be authorized or licensed by a state agency

Completing the E-App

- In Section B, Question 17 of the E-App:
 - Option “d,” “Check here if you or your programs are not required to be authorized or licensed by a state” is no longer an option for schools
- Schools must demonstrate legal authorization to operate in their States
- Final determination of the sufficiency of an institution’s state authorization documentation will be made based on the documentation

Completing the E-App

- In Section K, Question 69 of the E-App, identify the State complaints process that the institution provides to students that complies with 34 CFR 600.9(a) for the State of the main institution and each eligible additional location located in a different State
- The statement should identify the complaints process utilized by the school and the state agency/entity that it provides to students. In addition, the institution should indicate where the complaints process is identified for students

Completing the E-App

Section M of the E-App has a list of the documentation, including State authorization documentation, that must be sent to the Department along with the signed cover page (Section L)

Documentation Requirements

- Must demonstrate to the Department that the institution is in compliance with the regulations relevant to its operating authority
- An educational institution (§ 600.9(a)(1)(i)(A)) must document:
 - Institution's authorization to operate educational programs beyond secondary education via charter, statute, articles of incorporation, or other action
 - Approval or licensure by name to offer postsecondary programs in the State, if applicable
 - Complaint process (§ 600.9(a))
- A business (§ 600.9(a)(1)(ii)(A)) must document:
 - Approval or licensure by name to offer postsecondary programs in the State
 - Complaint process (§ 600.9(a))

Documentation Requirements

- A charitable institution (§ 600.9(a)(1)(ii)) must document:
 - Approval or licensure by name to offer postsecondary programs in the State
 - Complaint process (§ 600.9(a))
- As institution authorized by the Federal government (§ 600.9(a)(2)(i)) must provide an approval or licensure by name to offer postsecondary programs in the State by the Federal government

Documentation Requirements

- A tribal institution (§ 600.9(a)(2)(ii)) must document:
 - Approval or licensure by name to offer postsecondary programs by the tribal government if on tribal lands, and of complaints process (tribal laws)
 - Approval or licensure by name to offer postsecondary programs by the State if not on tribal lands, and of complaints process (State)
- A religious institution (§ 600.9(b)) must document:
 - Control, operation, and maintenance by a religious organization
 - Awarding of only religious degrees and certificates
 - Complaints process
 - Exemption from State Authorization by State law or State constitution

Documentation: The Institution's Responsibility

- It is the institution's responsibility to explain how the documentation demonstrates compliance
- For complex documentation, the institution *should*—
 - Cite specific passages that it believes provide the necessary information
 - Explain how relevant pieces of information fit together to provide the necessary information, and
 - Provide relevant page numbers for PDF documents that cannot be searched
- For complex documentation, the institution *should not*—
 - Only provide references to large sections of State code or regulation with no identification of relevant passages or explanation

References

- Code of Federal Regulations (CFR)
 - 600.2 – Definitions
 - 600.9 – State Authorization
 - 600.20 – Application Procedures
 - 600.21 – Update Application Information
- *Federal Student Aid Handbook*, Volume 2, Chapter 1
- Program Integrity Questions and Answers – State Authorization
(<http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/sa.html>)

SCHOOL ELIGIBILITY SERVICE GROUP (SESG)

Ron Bennett - Director, School Eligibility Service Group, Washington, DC (202) 377-3181
School Eligibility Service Group General Number: (202) 377-3173 or e-mail: CaseTeams@ed.gov

Or call the appropriate School Participation Division manager below for information and guidance on audit resolution, financial analysis, program reviews, school and program eligibility/recertification, and school closure information.

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Patrice Fleming – Washington, DC (202) 377-4209

Chris Curry – New York (646) 428-3738

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