

Issue Paper 2

Program Integrity and Improvement Issues

Issue: State authorization of distance education providers as a component of institutional eligibility

Statutory cites: §§101(a)(2); 102(a)(1); 102(b)(1)(B); 102(c)(1)(B) of the HEA

Regulatory cites: 34 CFR §§600.4(a)(3); 600.5(a)(4); 600.6(a)(3); 600.9

Summary of Change: Section 101(a)(2) of the HEA defines the term “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. For purposes of title IV of the HEA, section 102(a) of the HEA provides that the term “institution of higher education” means, in part, an educational institution (including proprietary institutions of higher education and postsecondary vocational institutions) in any State that is legally authorized within the State to provide a program of education beyond secondary education.

The previously vacated regulations under §600.9(c) had provided that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located, or in which it is otherwise subject to State jurisdiction as determined by the State, the institution would be required to meet any State requirements in order to legally offer postsecondary distance or correspondence education in that State. Furthermore, an institution was required to be able to provide, upon request, documentation of the State’s approval for the distance or correspondence education to the Secretary.

Proposed §600.9(c)(1) provides the conditions under which an institution is considered to be legally authorized by a State to offer any postsecondary education through distance or correspondence education to students in a State in which the institution is not physically located or otherwise subject to State jurisdiction. An institution is considered to be legally authorized by a State if (1) the State has a process to review and appropriately act in a timely manner on complaints about the institution where the final authority to resolve complaints and enforce applicable State law is with the State; and (2) the institution is legally authorized to offer distance or correspondence education in at least one of three ways: State-by-State, under a State-to-State agreement, or under a State authorization reciprocity agreement.

Proposed §600.9(c)(2) requires an institution approved under a State-to-State agreement to notify students in writing and by prominently posting on its website that it participates in a State-to-State agreement as well as the student complaint process available to the student. Proposed §600.9(c)(3) requires an institution approved under a State authorization reciprocity agreement administered by a non-State entity to notify students in writing and by prominently posting on its website that it participates in a State authorization reciprocity agreement as well as the student complaint process available to the student.

Proposed §600.9(c)(4) provides that an institution that solely provides distance education must be also authorized in the institution’s home State. Proposed §600.9(c)(5) provides that an institution authorized under §600.9(a) or (b) is considered to be legally authorized to offer distance or correspondence education to students physically located in that State. Proposed

§600.9(c)(6) requires an institution to document its State approval or license to the Secretary upon request.

Proposed §600.9(c)(7) provides that institutions exempted from State approval of distance or correspondence education occurring in that State based on accreditation, years in operation, or other comparable exemption would not be considered to be legally authorized. Proposed §600.9(c)(8) provides that an institution authorized by name to offer distance or correspondence education beyond secondary education by the Federal Government, or under certain conditions, an Indian tribe, is considered to be legally authorized. Proposed §600.9(c)(9) provides the conditions under which a religious institution that is exempted from State authorization due to an exemption for religious institutions under that State's law is considered to be legally authorized.

Proposed §600.9(c)(10) provides that an institution that loses its State approval to provide distance or correspondence education in a State becomes ineligible to disburse Federal student aid to distance or correspondence education students in that State, and it would require the institution to provide notice of the loss of eligibility to students and on the institution's Web site. Lastly, proposed §600.9(c)(11) sets forth requirements for the case in which a non-State entity administering a State authorization reciprocity agreement ceases to operate.

Change:

600.9 State authorization.

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(c) State authorization of distance or correspondence education providers. (1) Subject to paragraphs (c)(2), (c)(3), and (c)(4) of this section, an institution described under §§600.4, 600.5, and 600.6 that offers any postsecondary education through distance or correspondence education to students in a State in which the institution is not physically located, or in which the institution is otherwise subject to State jurisdiction as determined by the State, is considered to be legally authorized in that State if--

(i) The State has a process to review and appropriately act in a timely manner on complaints concerning the institution, including enforcing applicable State law, and has the final authority to resolve complaints and enforce applicable State law; and

(ii) The institution meets State requirements that it be approved or licensed by name--

(A) By the State to offer postsecondary distance or correspondence education, including programs leading to a degree or certificate, in that State;

(B) To offer postsecondary distance or correspondence education, including programs leading to a degree or certificate, in that State under a State-to-State agreement administered by the participating States; or

(C) To offer postsecondary distance or correspondence education, including programs leading to a degree or certificate, by a State that approves and annually reviews the

implementation of a State authorization reciprocity agreement administered by a non-State entity; and

(2) An institution described under paragraph(c)(1)(ii)(B) of this section must inform current and prospective students in writing and by prominently posting on the institution's website that--

(i) The institution is participating in a State-to-State agreement; and

(ii) If the student is not satisfied with the result of the student complaint process provided for under the State-to-State agreement, the student may utilize the student complaint process for distance or correspondence education providers in the State in which the student legally resides.

(3) An institution described in paragraph(c)(1)(ii)(C) of this section must inform current and prospective students in writing and by prominently posting on the institution's website that--

(i) The institution is participating in a State authorization reciprocity agreement administered by a non-State entity; and

(ii) If the student is not satisfied with the result of the student complaint process provided for under the State authorization reciprocity agreement, the student may utilize the student complaint process for distance or correspondence education providers in the State in which the student legally resides.

(4)(i) An institution described under §§600.4, 600.5, or 600.6 that solely provides distance education must additionally demonstrate that it is legally authorized to operate in its home State consistent with paragraphs (a) and (b) of this section. For purposes of this section, the institution's home State is the State in which the institution's principal office is physically located.

(ii) If such an institution changes the State in which its principal office is physically located, the new State in which the institution physically locates its principal office becomes the institution's home State. The institution must provide the Secretary with documentation demonstrating that it is legally authorized in its new home State under paragraph (a) or (b) of this section to be considered an eligible institution.

(5) An institution described under §§600.4, 600.5, or 600.6 that meets the requirements under paragraph (a) or (b) of this section for a State in which the institution is physically located is considered to be legally authorized to offer distance or correspondence education to students physically located in that State.

(6) An institution must provide documentation of each applicable State approval or license to the Secretary upon request.

(7) An institution is not considered to be legally authorized to offer postsecondary distance or correspondence education in a State if it is exempt from State approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(8) The Secretary considers an institution to meet the provisions of paragraph (c)(1) or (c)(5) of this section if the institution is authorized by name to offer distance or correspondence education beyond secondary education by--

(i) The Federal Government; or

(ii) As defined in 25 U.S.C. §1802(2), an Indian tribe, with respect to students who legally reside on tribal lands, if the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(9)(i) Notwithstanding paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education in a State if it is exempt from State authorization as a religious institution under that State's constitution or State law.

(ii) For purposes of this paragraph (c)(9)(i), a religious institution is an institution that meets the requirements of paragraph (b)(2) of this section.

(10) An institution described under paragraph (c)(1) or (c)(5) of this section that loses its State approval to offer distance or correspondence education is considered to be an ineligible institution in that State and must immediately inform current and prospective students in writing that it is prohibited from disbursing Federal student aid to students participating in distance or correspondence education in that State because the institution is no longer considered to be legally authorized by that State. This information must also be immediately posted prominently on the institution's website.

(11)(i) If an institution was considered to be legally authorized to offer distance or correspondence education by a State under paragraph (c)(1)(ii)(C) of this section and the non-State entity administering the State authorization reciprocity agreement ceases to operate, the institution is considered an ineligible institution in that State and must immediately inform current and prospective students in writing that it is prohibited from disbursing Federal student aid to students participating in distance or correspondence education because the institution is no longer considered to be legally authorized by the State. This information must also be immediately posted prominently on the institution's website.

(ii) Notwithstanding paragraph (c)(11)(i) of this section, the Secretary considers an institution to remain legally authorized in that State for such additional time as the Secretary determines to be reasonable based on ongoing review of documentation submitted by the institution of steps taken and to be taken by the institution and the State to enable the institution to meet the requirements of paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this section, as applicable.