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To: U.S. Department of Education and Negotiators
From: Whitney Barkley, Christine Lindstrom, Maxwell John Love, Suzanne Martindale, Toby Merrill
Re: Proposal for State Authorization Requirements Applicable to Distance Education
Date: April 2, 2014

Because the negotiators have not yet had an opportunity to talk at any length about the impact on students and taxpayers of state authorization reciprocity agreements as applied to distance education, we share the attached proposal. It puts forward our ideas of ways to ensure that both students and taxpayers are treated consistently and fairly, and receive sufficient protection when federal tax money pays for distance education.

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 as defined by that State, or in which the institution is not 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;

Deleted: 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, provided the requirements in paragraphs (c)(2) and (c)(3) are met; 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, provided the requirements in paragraphs (c)(2) and (c)(3) are met; and

Deleted: ; and

(iii) For programs that prepare students to enter an occupation for which private certification or licensure is necessary, the programs satisfy the licensure or certification requirements of any State where they are offered. If a student wishes to enroll in such a program in a State where the program does not satisfy the licensure or certification requirements, the student is eligible for Title IV aid if paragraphs (c)(i) and (ii) are satisfied and if he/she, in his/her own handwriting, provides a signed and dated statement on or before enrolling that he/she intends to obtain employment in an identified State for which the program satisfies occupational licensure or certification requirements.

(2) An institution described under paragraphs (c)(1)(ii)(B) and (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-to-State agreement or State authorization reciprocity agreement administered by a non-State entity, whichever is applicable; and

(ii) If the student is not satisfied with the result of the student complaint process provided for under the State-to-State agreement or 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.

(3) An institution may be considered legally authorized in a State pursuant to paragraphs (c)(1)(ii)(B) and (c)(1)(ii)(C) of this section only if--

Deleted: described in

(i) The home State takes an active role in approving or licensing the institution; and

Deleted: must inform current and prospective students in writing and by prominently posting on the institution's website that

(ii) The applicable agreement does not:

(A) require participating States to apply the agreement to all education sectors (for example, public, private non-profit, and private for-profit institutions);

(B) prohibit participating States from requiring covered institutions to comply with State consumer protection laws or regulations with respect to their residents, including but not limited to laws and regulations regarding disclosures, the contents of enrollment agreements and other documents provided to students, prohibited practices, refund requirements, cancellation requirements, student relief provisions such as tuition recovery funds, bond requirements, and private causes of action, and minimum performance and financial responsibility standards;

(C) prohibit participating States from investigating or taking any action authorized by State law or regulation for an institution's failure to meet the applicable agreement's minimum standards, the State's minimum standards, or for violations of State laws or regulations, up to and including revocation of approval or licensure;

(D) prohibit participating States from requiring the school to comply with annual reporting requirements, requests for information and audits, announced or unannounced site visits, or collecting information in through any other method authorized by State law or regulation; and

(E) prohibit participating States from charging institutions adequate fees to fund their oversight of an institution's distance or correspondence education.

(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.

Deleted: 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.

(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.