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To: Department of Education and Negotiation Committee Members
Date: March 4, 2024
Re: Exemptions for State Authorization

The Department proposed to phase out exemptions in the regulations that currently allow institutions of higher education to access federal financial aid programs without complying with their state's authorization requirements. While we generally agree with and support the Department's proposal, we also recognize the objections of some negotiators that this will force some of the lowest-risk institutions in the country to comply with authorization requirements, stretching state resources with minimal added benefit.

To that end, we are proposing a middle-ground option. Under this option, institutions could continue to use exceptions related to their having been named individually in state laws, charters, or constitutions -- in essence, legally authorized -- or for institutions subject to a state action to exempt them from authorization based on operation prior to the date of enactment of the Higher Education Act of 1965 (provided those institutions have not changed ownership). On the other hand, exemptions that rely on the accreditation of the institution (deflecting the state's role instead to another member of the triad) or to the operation of the institution over at least 20 years (abdicating the state's responsibility based solely on the age of the institution) would be phased out. Note that even where we would permit these exemptions for institutions, we strongly support the Department's clarification that all changes in ownership should require state approval of the change and initial approval of the state's authorization to the institution.

Note: Proposed edits appear in blue text below.

§ 600.9 State authorization.

(3) The institution may be exempted from requirements for initial or renewed application for authorization or licensure if:

(i) ~~The institution is offering distance education in that State under a State authorization reciprocity agreement, as defined in § 600.2, to students in that State, but is not physically located in that State;~~

(ii) ~~Not later than July 1, 2030, a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity establishes the institution by name as an educational institution and authorizes it to operate educational programs beyond secondary education, including programs leading to a degree or certificate; or~~

(iii) ~~Not later than July 1, 2030, a State action exempts the institution based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based on the institution being in operation for at least 20 years.~~

(i) a charter, statute, or constitutional provision, or other action issued by an appropriate State agency or State entity establishes the institution by name as an educational institution and authorizes it to operate educational programs beyond secondary education, including programs leading to a degree or certificate, though this exemption shall expire on July 1, 2030, or

(ii) A State action exempts the institution based on the institution being in operation on or before November 8, 1965 without undergoing a change of ownership; or

(iii) A State action exempts the institution based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based on the institution being in operation for at least 20 years, though this exemption shall expire on July 1, 2030, or;

(iv) An institution exempt from initial State authorization or licensure requirements under this section that undergoes a change in ownership shall

(A) not be exempted from the requirements of 34 CFR 600.20(h)(3)(ii), which requires that the institution receive approval for the change in ownership from each State in which the institution is physically located or, for an institution that offers only distance education, from the agency that authorizes the institution to legally provide postsecondary education in that State; and

(B) seek initial approval for State authorization.

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