

**Proposal Regarding Direct State Authorization Triggers**  
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The language below includes proposed modifications and additions (blue text) to the Department's proposed modifications (red text) pertaining to triggering events that would require an institution to seek direct state authorization. As explained in more detail below, the proposed modifications are intended to tether direct state authorization to specific risk factors as opposed to more arbitrary factors such as total enrollment in each state. The proposal also replaces the requirement to *obtain* direct authorization within one year with a requirement to *apply for* direct authorization within six months, which is intended to address the fact that an institution has little control over how quickly a state's direct authorization process operates.

**Proposed Language:**

**§ 600.9 State authorization.**

(d) If an institution is authorized to offer distance education in another State under a State authorization reciprocity agreement, as defined in § 600.2:

...

(4) As a condition of participation, in each participating State in which the institution enrolls students, the institution must: ~~obtain within one year direct authorization from any participating State where it enrolls more than 500 students.~~

(i) Notify the State within 21 days after—

(A) The institution's accrediting agency determines that institution has experienced significant enrollment growth in the State, in accordance with 34 CFR § 602.19; or

(B) The institution is provisionally certified by the Department, in accordance with 34 CFR § 668.13(c)(1); and

(ii) Apply for direct authorization from any participating State that requests the institution to do so within six months after receiving such request.

**Rationale:**

This proposal replaces the 500-student enrollment threshold with two risk-based triggers for requiring direct authorization in a state notwithstanding the state's participation in a reciprocity agreement:

- The **first trigger**, an accreditor’s determination that the institution has experienced significant enrollment growth, addresses both the accreditor’s role in the triad and the potential risks associated with rapid enrollment growth in the state.
- The **second trigger**, the Department’s determination that the institution should be provisionally certified, addresses both the Department’s role in the triad and indicators that the Department has already identified as risk factors, such as failures with respect to financial responsibility, administrative capability, and gainful employment standards.

With respect to the first trigger, the Department has identified “significant enrollment growth” as a circumstance that accrediting agencies must monitor. Specifically, each accrediting agency “must monitor overall growth of the institutions or programs it accredits and, at least annually, collect head-count enrollment data from those institutions or programs,” and the agency also “must monitor the growth of programs at institutions experiencing significant enrollment growth.” See 34 C.F.R. § 602.19(c)-(d). Relying on this circumstance as trigger for institutions to provide notification to states, which may then choose to require the institution to obtain direct state authorization, serves as a check-and-balance mechanism and helps reinforce the role of the accrediting agency in the triad, while respecting each state’s role and authority in the triad.

With respect to the second trigger, the Department has identified (and recently expanded) the circumstances in which a participating institution may become provisionally certified, including when an institution does not satisfy financial responsibility or administrative capability standards, when the Department determines that the institution is at risk of closure, or when an institution is required to post financial protection. The Department has recently provided its rationale for using these circumstances as triggering mechanisms for provisional certification and enhanced oversight requirements, and the Department should be similarly amenable to adopting that rationale here. Relying on these circumstances as a trigger for direct state authorization serves as a check-and-balance mechanism and helps reinforce the role of the Department in the triad, while respecting each state’s role and authority in the triad.

Finally, the proposal replaces the requirement to *obtain* direct authorization with a requirement to *apply for* direct authorization. Direct state authorization processes can vary significantly by state, and the speed of those processes also may vary based on a variety of factors that an institution cannot predict, influence, or avoid. In some instances, an institution may expeditiously apply for direct state authorization but, through no fault of its own, the institution may not obtain such authorization within a one-year timeframe. A requirement to *apply for* direct state authorization within a shorter 6-month timeframe helps alleviate these concerns.