

From: Carolyn Fast, Negotiator for Consumer Advocates/Civil Rights (Primary)
Barmak Nassarian, Negotiator for U.S. Military Service Members, Veterans, or Groups
Representing Them (Primary)
To: Department of Education and Negotiation Committee Members
Date: February 6, 2024
Re: Session Two Proposals on State Authorization and Reciprocity Agreements

NOTE: Red text is Department-proposed text; yellow highlighted text is Department-proposed text that is new to Session Two. Negotiator proposals appear in blue highlighted text.

§ 600.9 State authorization.

(a)

(1) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State if the State:

(i) ~~Requires~~ Ensures the institution to comply with any applicable State authorization or licensure requirements, except as described in subsection (3) of this section, and ~~continues to meet a~~ to comply with the State's general-purpose and postsecondary education-specific laws and regulations; and

(ii) ~~Has~~ Has a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section

(i)

(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

- (i) The Federal Government; or
- (ii) As defined in 25 U.S.C. 1802(2), 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 concerning an institution and enforces applicable tribal requirements or laws.

(3) The institution may be exempted from State requirements for initial or renewed applications and fees 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 education 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.

(b) An institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt as a religious institution from State authorization under the State constitution or by State law.

(c)

(1) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses to students located in

a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request;

(i) Document the State's approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State not relating to State authorization of distance education. The institution must, upon request,

(ii) For institutions participating in a State authorization reciprocity agreement under § 600.2, submit documentation of its coverage under such an agreement to the Secretary.

(2)

(i) For purposes of this section, an institution must make a determination, in accordance with the institution's policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(ii) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.

(iii) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures, that the student's location has changed to another State.

(3)

(i) A State authorization reciprocity agreement must include a process for communicating information received on complaints regarding institutions or programs subject to the State reciprocity agreement to the State in which a student is located at the time of the student's initial enrollment, as determined in accordance with paragraph (c)(2) of this section.

(ii) If a State authorization reciprocity agreement is administered by an organization, the agreement must require that complaints received by States from institutions subject to the

State reciprocity agreement are communicated to the organization. The organization must make information received on complaints public at least annually, including but not limited to the number and type of complaints by institution that is subject to the State reciprocity agreement.

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

(1) Such agreement must:

(i) Not delegate authority to ~~Provide for a State led process through which participating States can propose and/or collectively adopt, modify, or eliminate substantive policies of the agreement, including policies on State and institutional participation and the scope of reciprocity, or to make determinations regarding institutional participation in the agreement, to any entity that is not exclusively composed of representatives from member State regulatory or law enforcement agencies. Such a process, and such State-adopted or -modified policies and determinations, cannot be overruled by any external entities that administer the agreement;~~

Commented [1]: We propose this change because the use of the term "state-led" would permit participation from regulated entities and others who may have conflicts of interest or are not accountable to member states in setting standards for regulated entities.

(ii) Allow any member State of the agreement to enforce its own ~~general purpose State laws and regulations outside of the State authorization of distance education; [Moved from 600.2]~~

Commented [2]: This change is required to make this provision consistent with the new 600.9(a), which requires States to apply both general and education-specific laws outside of authorization application/renewal requirements.

(iii) Include a process for communicating information about a student's complaints related to State authorization and the reciprocity agreement's policies to the State in which the student is located in accordance with paragraph (c)(2)(i)-(iii) of this section, including the time of the student's initial enrollment or, if there has been a formal receipt of information from the student in accordance with the institution's procedures, that the student's location has changed to another State;

~~(iv) Permit the member States responsible for receiving, and providing a final determination on, a student complaint, as determined under the agreement's policies, to, at the States' discretion, accept, investigate, and resolve complaints about an institution without the student first going through the institution's own procedures for resolution of grievances under limited circumstances. Reasons for exercising State discretion include but are not limited to impracticability, impossibility, inaction by the institution, and possible harm to the student;~~

Commented [3]: We propose striking (iv) because it is largely duplicative of (vii). In addition, (iv) would permit reciprocity agreements to prohibit state agencies in a student's home state from accepting/investigating complaints from SARA schools located outside of that state, where the complaints were not first submitted to and resolved by the institution. It is important that a student's home state have the ability to accept complaints, if the state so chooses. Accordingly, (iv) should be stricken, and (vii) should remain in the regulation.

(iv) Provide that complaints received by States about institutions subject to the State reciprocity agreement must be communicated to the organization(s) that administer(s) the agreement. The organization(s) must make information received on complaints public at least annually, including but not limited to the number and type of complaints by institution that is subject to the State reciprocity agreement;

(v) Provide that complaints alleging criminal offenses or violations of a State's general-purpose laws, including but not limited to fraud, misrepresentation, and harassment, may be made directly to appropriate State agencies in the institution's or student's home State; and

(vi) permit member States to, at the State's discretion, accept, investigate, and resolve complaints about an institution of higher education that have not yet been submitted to and resolved by the institution of higher education; and

(vii) require, as a condition of participation, that an institution begin the process of, and obtain within one year, direct authorization from any participating State where it enrolls more than 1,000 students.

(2) If administered by an organization, the governing body of such organization must consist solely of representatives from State regulatory bodies, enforcement agencies, and attorneys general offices.

[Moved from 600.2]