

## Compliance with the 2016 State Authorization Regulations Questions and Answers

The questions and answers below relate to the [final regulations](#) (the “2016 state authorization regulations”) published by the Department in the *Federal Register* on December 19, 2016, concerning state authorization and other related matters. 81 Fed. Reg. 92,232. The Department anticipates updating these questions and answers on an ongoing basis.

### Requirements for Out of State Institutions Providing Distance Education, 34 CFR § 600.9(c)

- *Documentation of State Complaint Process (SCP)*

**SCP-Q1: Does the documentation requirement in 34 CFR § 600.9(c)(2) still apply if the State in question lacks its own complaint process and does not participate in a State authorization reciprocity agreement?**

**SCP-A1:** Yes, the documentation requirement in 34 CFR § 600.9(c)(2) applies regardless of whether the State in question has a complaint process. If an institution of higher education offers distance education or correspondence courses to students residing in a State, and the institution is not physically located in that State, the institution must document that the State has a process for reviewing and taking appropriate action on complaints against the institution by those students (or that the State participates a State authorization reciprocity agreement which addresses the issue). If the State does not have such a complaint process applicable to that institution (or participate in an appropriate reciprocity agreement), the institution will be unable to document that the State has such a process. As a result, if the State does not have a complaint process that applies to an out-of-State institution providing distance education to students in that State (or participate in an appropriate reciprocity agreement), the institution cannot comply with the requirement with regard to those students. This same interpretation was offered in the 2016 Final Regulation. *See Program Integrity and Improvement*, 81 Fed. Reg. 92,232, at 92,238 (Dec. 19, 2016) (“if a State does not provide a complaint process as described in a State where an institution's enrolled students reside, the institution would not be able to disburse Federal student aid to students in that State.”).

The Department has since reconsidered the policy of requiring documentation of a complaint process in such situations—based on the harm it will cause to students and institutions alike in conjunction with nonconforming State policies—and has proposed a new regulation based on a consensus reached during negotiated rulemaking that eliminates the complaint documentation requirement. *See Student Assistance General Provisions, the Secretary’s Recognition of Accrediting Agencies, the Secretary’s Recognition Procedures for State Agencies*, 84 Fed. Reg. 27,404, at 27,413 (June 12, 2019). The Department intends to investigate and pursue possible options to seek and obtain protection for students. However, until a new regulation is implemented or the Court rules otherwise, the 2016 regulation applies as written.

7/26/2019 Updated 8/5/19

**SCP-Q2: Does California’s new complaint process comply with the requirements in 34 CFR § 600.9(c)(2)?**

**SCP-A2:** Please see the letter available [here](#).

8/5/19

- *Title IV Eligibility of Students (T4)*

**T4-Q1: My institution has a payment period that began before May 26 that has not yet ended. Can I make a disbursement of Title IV grant or loan funds to an affected student for that payment period if the student continues to be enrolled and attending?**

**T4-A1:** The Department will enforce the implementation of the 2016 regulations as part of its normal compliance process, including considering whether the institution properly made disbursements of Title IV grant funds following a loss of eligibility under 34 CFR 668.26. That regulation states that an institution may make a disbursement of Title IV grant funds to a student for a payment period in which it loses eligibility only if 1) the institution continues to provide educational programs to otherwise-eligible students through the remainder of the payment period; and 2) the commitment was made prior to the date the institution lost eligibility with respect to those students (which in this case, would be May 26, 2019). The regulations define a “commitment” for the Title IV grant programs to be when a student 1) is enrolled and attending for the payment period; and 2) the student either submitted a valid SAR to the institution or the institution received a valid ISIR for the student prior to the date that the institution lost eligibility with respect to that student.

8/5/19

**T4-Q2: My institution originated a Direct Loan for an affected student for a period that included a timeframe prior to May 26. Can I continue to make disbursements of that loan for the remainder of the loan period as long as the student continues to be enrolled and attending?**

**T4-A2:** The Department will enforce the implementation of the 2016 regulations as part of its normal compliance process, including considering whether the institution properly made disbursements of Title IV loan funds following a loss of eligibility under 34 CFR 668.26. That regulation states that an institution may continue making Direct Loan disbursements through the end of a loan period in which it loses eligibility only if 1) the institution continues to provide educational programs to otherwise-eligible borrowers through the remainder of the loan period; and 2) the commitment was made prior to the date the institution lost eligibility with respect to those borrowers (which in this case would be May 26, 2019). The regulations define a “commitment” for the Direct Loan program to be when a student 1) is enrolled and attending for the loan period; and 2) the proceeds of the first disbursement of the loan were delivered or credited to the student’s account prior to the date that the institution lost eligibility with respect to that student.

8/5/19

**T4-Q3: My institution and the State or Territory in which it is located are members of the National Council for State Authorization Reciprocity (NC-SARA). Are the students we enroll in States other than California Title IV-eligible?**

**T4-A3:** Given the Department’s current information (as of today, 8/5/19), NC-SARA maintains a process for States to review and take appropriate action on complaints concerning your institution that meets the requirements of the 2016 State authorization regulations. Your otherwise-eligible students will not lose eligibility on the basis of an appropriate complaint process as long as your institution and the State

in which it is located remain members of NC-SARA, and the State or Territory in which your student resides also remains a member of NC-SARA.

8/5/19

**T4-Q4: My institution is in a State or Territory that is a member of NC-SARA, but my institution is not a member of NC-SARA. Are the students we enroll in States other than California Title IV-eligible?**

**T4-Q4:** As part of your compliance with Title IV regulatory requirements, you must document that there is a State process for review and appropriate action on complaints from any of your enrolled students concerning the institution in each State in which your enrolled students reside. If you determine that a State or Territory does not maintain such a process for students enrolled at your institution, any students residing in that State are not Title IV-eligible on the basis of enrollment at your institution until the State or territory develops such a process.

8/5/19