UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

July 27, 2012

GEN-12-13

Subject: Guidance on Program Integrity Regulations Relating to Legal Authorization by a State

Summary: This letter provides further guidance on the program integrity final regulations published on October 29, 2010, addressing State authorization.

Dear Colleague:

On October 29, 2010, the Department published in the Federal Register final regulations on program integrity issues (75 FR 66832). The final regulations are available at http://www.ifap.ed.gov/eannouncements/110110PubFinalRulesforTitlveIVStudentAidPrgms.html. These final regulations make a number of changes to the regulations governing the programs authorized by the Higher Education Act of 1965, as amended (HEA). The regulations were generally effective July 1, 2011.

The enclosure to this letter provides additional guidance on State authorization. This guidance is provided to assist institutions with understanding the changes to the regulations in this area and does not make any changes to the regulations. Affected parties are responsible for taking the steps necessary to comply by the effective dates established in the final regulations.

We encourage you to review the preambles to the notice of proposed rulemaking (75 FR 34812-34813, June 18, 2010) and the final regulations (75 FR 66858-66868, Oct. 29, 2010) as well as the final regulations themselves (75 FR 66946-66947, Oct. 29, 2010) with respect to the provisions concerning State authorization. In addition, relevant technical corrections were published on April 13, 2011 (76 FR 20534-20536).

We thank you for your continued cooperation as we work to implement these regulations. For further information, please contact Sophia McArdle by telephone at (202) 219-7078 or by e-mail at sophia.mcardle@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Enclosure

General

Question 1: Is an institution required to update its Eligibility and Certification Approval Report (ECAR) by submitting updated information about its State authorization on its Application for Approval to Participate in Federal Student Financial Aid Programs (E-App)?

Answer 1: An institution should ensure that it is currently in compliance with the regulations but is not required to immediately update its ECAR. An institution applying for recertification should submit an application using the Application for Approval to Participate in the Federal Student Financial Aid Programs (E-App) to include the information showing its legal authorization based on these regulations. In addition, an institution may be asked to provide that information upon request during an audit or program review. If an institution has any questions about documenting its State legal authorization, it should contact its School Participation Team. Contact information for School Participation Teams is found at http://www.eligcert.ed.gov/ .

Question 2: If an institution's articles of incorporation establish the institution by name and identify its purpose as offering postsecondary education, is the institution considered to comply with the provisions of 34 CFR 600.9 (a)(1)(i)(A) and to be legally authorized by the State in which it is incorporated?

Answer 2: Yes, if the institution can demonstrate that the State played an active role in authorizing the entity to provide postsecondary education, and if the State has a student complaints process in accordance with 34 CFR 600.9(a)(1). The institution must also show that it meets any other applicable State approval or licensure requirements under 34 CFR 600.9(a)(1)(i)(B).

Question 3: Can a limited liability company (LLC) be compliant with 34 CFR 600.9 (a)(1)(i)(A), or is it considered a business subject to the provisions of 34 CFR 600.9 (a)(1)(ii)?

Answer 3: An LLC is considered a business subject to the provisions of 34 CFR 600.9(a)(1)(ii), and the institution must have State approval or licensure. For purposes of the student aid programs, LLCs will be reviewed on a case by case basis to determine if the State has authorized the entity to operate a postsecondary educational institution. These reviews will be done routinely during the recertification process, but may also arise during a program review.

Other locations and consortia

Question 4: Must an institution provide State authorization information for locations for which it offers less than 50 percent of any program?

Answer 4: No. The Department is continuing its policy that students attending one or more locations of an institution where the students cannot complete more than 50 percent of a program are considered to be enrolled at the main campus of the institution and these locations need not be listed on its E-App or included on its ECAR. Please note, however, that State requirements

may require an institution to obtain approval of such sites, and the Department may take that information into consideration when determining whether the institution meets applicable State requirements.

Question 5: How does the 50 percent standard apply to internships and externships?

Answer 5: The portions of programs students take in internships and externships are considered when determining whether a student can complete more than 50 percent of a program at a location not recognized by the Department as a separate additional location of the institution, provided that those activities are monitored by qualified institutional personnel. However, if the Department is notified by a State that the institution's activities are not in compliance with State authorization or licensure requirements, the Department will take that information into consideration when determining whether the institution meets the applicable State authorization requirements.

Question 6: How do the regulations on State authorization apply to institutions involved in consortia agreements with institutions in other States?

Answer 6: For purposes of the Title IV, HEA programs, an institution offering a program is responsible for ensuring that all parts of the program it offers to its students meet all applicable State requirements. If a student enrolled in a program from one institution takes required coursework from an institution located in another State, that coursework is deemed to be a part of the program offered by the first institution, unless the student is required to enroll separately in the out-of-State institution. The first institution is responsible for determining what State approvals are needed and for ensuring that any needed approvals are obtained by it or by the institution providing the out-of State coursework. In addition, the institution must provide to its students or prospective students the contact information for the relevant State official or agency that could handle a student's complaint for an issue at that location. The institution enrolling the student must also ensure that its accreditation includes all needed approvals applicable to the program.

In addition, institutions must comply with the regulations in 34 CFR 668.5 that govern written arrangements between eligible institutions to provide all or part of an educational program.

<u>Decision in legal challenge to program integrity regulations</u>

Question 7: How does the ruling of the U.S. Court of Appeals for the District of Columbia Circuit concerning the validity of the State authorization regulations affect what institutions must do to be in compliance with those regulations?

Answer: The Court of Appeals upheld the requirements intended to give greater substance to the concept of State authorization by sustaining the need for an institution to be authorized by name by an appropriate State agency and affirming that this agency must have a process for reviewing and acting upon student complaints, as established in 600.9(a). The Court vacated on procedural grounds the requirement intended to clarify existing Department policy that State authorization

extends to students receiving distance education in a State in which the institution is not physically located.

As a result, institutions must comply with the provisions found in 600.9(a). The Department will not enforce the requirements of 600.9(c), although institutions continue to be responsible for complying with all State laws as they relate to distance education.

Student complaints and student consumer information

Question 8: If a tribal college has an additional location that is not on tribal lands, does the college need to obtain State authorization for that location and identify a separate complaint process for students attending the additional location in the State?

Answer 8: Yes, a location of a tribal college located in a State rather than on tribal land must comply with the State approval process in that State. In addition, the college must provide to its students or prospective students the contact information for the relevant State official or agency that could handle a student's complaint for an issue at that location.

Question 9: Can an institution offering distance education in multiple States satisfy the provisions of 34 CFR 668.43(b) that it provide State contact information for filing complaints by providing a link to a noninstitutional Web site that identifies the contact information for multiple States?

Answer 9: Yes, so long as the link is accessible from the institution's Web site and the link is prominently displayed and accurately described. The institution is also responsible for ensuring that the link is functioning and accurate.

Question 10: Is an institution required to provide consumer information to all students, including students enrolled in distance education?

Answer 10: Yes, an institution must make sure that all of its students are provided with the applicable information that corresponds to their enrollment. The information must be for every State in which the institution is operating, including every State where students are enrolled for distance education.

Question 11: If an institution offering distance education in a State has only one student in that State, must it still provide the contact information for that State?

Answer 11: Yes.

Question 12: If a student taking a program by distance education moves to another State, must the institution list the contact information for that State in its consumer information? What if the student is temporarily taking the program in another State because, for example, the student is visiting a friend?

Answer 12: Institutions determine that students are still enrolled as a part of the normal disbursement process each payment period. To the extent an institution is aware a student taking distance education has moved to another State, it must make sure the student has access to the State contact information for filing complaints in that State.

Question 13: If a student taking distance education is in the military and is given an assignment outside the United States, is the contact information for the institution's main location sufficient?

Answer 13: Yes.

Question 14: Is there an updated version of the summary chart published in the preamble of the regulations that includes the relevant regulatory citations?

Answer 14: Yes.

Meets State Authorization Requirements*			
Row	Legal entity	Entity description	Approval or licensure process
ROW A	Educational institution	§600.9(a)(1)(i)(A) A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, authorized by the State to offer postsecondary education in its articles of incorporation, or other action by an appropriate State agency or State entity.	§600.9(a)(1)(i)(B) The institution must comply with any applicable State approval or licensure process and be approved or licensed by name; and if there is an approval or licensure process, may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
ROW B	Business	§600.9(a)(1)(ii) A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	§600.9(a)(1)(ii)(A) The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name to offer postsecondary education. §600.9(a)(1)(ii)(B) An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.
ROW C	Charitable organization	§600.9(a)(1)(ii) A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	§600.9(a)(1)(ii)(A) The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name to offer postsecondary education. §600.9(a)(1)(ii)(B) An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

*Notes:

- These requirements do not apply to Federal, tribal, and religious institutions (§600.9(a)(1)(iii) and (b)).
- A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals (§600.9(a)).
- The chart does not apply to distance education programs offered out-of-State.