



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-13-20

SUBJECT: State Authorization Regulations – Documentation of “other action,” State recognition of educational programs beyond secondary education, State’s “active role” in approving or licensing institutions, and alternative State approval or licensure process.

SUMMARY: This letter provides guidance on the documentation of “other actions” that institutions may use to establish they have met the State authorization regulatory requirements set forth in 34 CFR 600.9(a)(1)(i). This letter also provides guidance regarding State recognition of educational programs beyond secondary education. Furthermore, this letter provides guidance on the requirement that States take an “active role” in approving or licensing institutions, including the documentation institutions may use to distinguish between postsecondary and secondary education in order to comply with 34 CFR 600.9(a)(1)(ii)(A). Finally, this letter provides some examples of alternative State approval or licensure processes that can be used by institutions to comply with the State authorization regulatory requirements under 34 CFR 600.9(a)(1)(ii)(B).

Other guidance relating to these regulatory requirements has been published in Dear Colleague Letter (DCL) GEN 11-05 and DCL GEN 12-13.

Dear Colleague:

An institution that participates in the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, must be authorized by the State where it is located (*See* 34 CFR 600.9). Under 34 CFR 600.9(a)(1)(i)(A), an educational institution must demonstrate that it has been established by name as an educational institution by a State through a specified method or “other action issued by an appropriate State agency or State entity.” The institution must also show it is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate. Institutions that meet this State authorization requirement may be exempted by a State from other license or approval requirements based upon their accreditation or based upon being in operation for at least 20 years.

For an institution that is not established by name as an educational institution in a State, but is established to conduct business or to operate as a nonprofit charitable institution, the State must approve or license the entity as an educational institution to offer programs beyond secondary education (*See* 34 CFR 600.9(a)(ii)(A)). Furthermore, under 34 CFR 600.9(a)(1)(ii)(B), an institution that was not established by name as an educational institution may not be exempt from an applicable State approval or licensure process based on accreditation, years in operation, or other comparable exemption.

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Other State action

In some States, there may be an “other action issued by an appropriate State agency or State entity” which demonstrates that the State recognizes that the institution is providing postsecondary education in accordance with the requirements set forth in 34 CFR 600.9(a)(1)(i)(A). An institution seeking to demonstrate that it has been authorized by a State based upon “other action” to operate educational programs beyond secondary education must provide acceptable documentation to the U.S. Department of Education (Department). Examples of “other action” that the Department may find acceptable include:

- Documentation identifying the institution by name as participating in a State Grant Program where its students receive State funds that are only provided to students attending postsecondary institutions in that State.
- Documentation from an in-State institution that it has an articulation agreement with a public postsecondary institution in the State for transfer students from the institution to receive credits at the postsecondary level for courses completed at the institution. The documentation submitted by the in-State institution must include both the articulation agreement and credit transfer policy of the receiving public postsecondary institution in the State.

An institution may submit other types of similar documentation to the Department for review to support meeting the State authorization requirement under this provision.

State recognition of educational programs beyond secondary education

If an institution’s documentation of State approval to offer educational programs does not show that the programs it provides are postsecondary, the institution can show that the State agency is only authorized to resolve applications from postsecondary institutions.

State’s “active role” in approving or licensing institutions

Under 34 CFR 600.9(a)(1)(ii)(A), to be compliant with the State authorization regulations, an institution that is established to conduct business in the State or to operate as a nonprofit charitable institution, must show that the State took an active role in approving or licensing the institution as an institution operating educational programs beyond secondary education. For example, a State might approve an institution to offer a program for students that have stopped attending high school after reaching the age of compulsory school attendance, but that program would not qualify under those standards as being “beyond secondary education.” A State approval or licensing process where an institution simply pays a fee to the State and receives an approval or license to operate as a business without an additional process to evaluate the institution to offer educational programs beyond secondary education would also not suffice.

Furthermore, if the State entity that issues the license or approval does so for institutions operating both secondary and post-secondary programs, students and prospective students should be able to determine whether a specific institution has been authorized by the State to provide postsecondary educational programs. Examples of documentation that an institution could provide to show that the State took an active role in distinguishing between postsecondary/secondary education in the approval or licensure process include the application and approval for that institution, or the State's laws and regulations that establish the responsibility of the respective agency.

Alternative approval or licensure process

The State authorization regulations under 34 CFR 600.9(a)(1)(ii) provide that an institution established in a State on the basis of an authorization to conduct business or to operate as a nonprofit charitable institution may not be exempted from State authorization requirements for postsecondary institutions based upon its accreditation, years in operation, or other comparable exemption. An institution established to conduct business or operate as a non-profit organization that has a State approval tied to its accreditation may be asked to document that a State agency considered the institution's operating history with its accrediting agency as a part of the information the State reviewed. For example, a State could review an institution's audited financial statements in conjunction with the institution's operating history and complaint history with its accrediting agency.

We hope that this guidance provides additional clarification on the State authorization regulations. For further information, please contact Sophia McArdle at (202) 219-7078 or by e-mail at sophia.mcardle@ed.gov.

Sincerely,

A handwritten signature in blue ink that reads "Brenda Dann-Messier". The signature is written in a cursive, flowing style.

Brenda Dann-Messier
Delegated the Authority to Perform the Functions
and Duties of the Assistant Secretary