

State Authorization for Distance Education Proposed Changes – February 2019

The proposed changes to the state authorization for distance education regulations (§600.2, §600.9, and §668.50) were developed by Cheryl Dowd, Dan Silverman, and Russ Poulin of WCET.

Our thoughts guiding our proposals:

- The protection of students and of Title IV financial aid expenditures are primary concerns to be addressed.
- We sought to make language conform with state regulations and with institutional practice, where possible.
- We used the 2016 language as a base.
- There are two types of institution-wide state approvals: 1) those obtained directly by the state, if any, and 2) those obtained through a reciprocity agreement. We tried to more clearly delineate the two and use parallel wording and structure in subsequent sections when compliance requirements differed based on the type of approval obtained by an institution.
- There was some confusion regarding the 2016 language regarding reporting requirements for complaints. We wanted to assure that the student receives notification of the processes they will use and not receive notices for processes for which they will not receive help. For example, students in a state may have different refund policies depending on the institutional approval. The student should receive the information appropriate for them.
- We tried to simplify language.
- In the comment boxes, we explain our reasoning.

§600.2 Definitions.

State authorization reciprocity agreement^{}: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students ~~located~~residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.*

^{*}~~This definition was added to section 600.2 by 81 FR 92232 on 12/16/2016. The effective date of those regulations has been delayed until July 1, 2020. We propose to delete this definition.~~

§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 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.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that—
publicly identifies itself as having, in part or in whole, a religious mission, or that maintains an institutional religious affiliation.

(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and

(ii) Awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

(Authority: 20 U.S.C. 1001 and 1002)

[75 FR 66946, Oct. 29, 2010]

600.9 State authorization²

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students located ~~residing in a State in which the institution is not physically located~~ ~~domiciled~~ 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.~~ ~~For~~ for each State in which a student is located, the institution must, upon request, document to the Secretary that the institution either:

(i) ~~meets~~ Meets direct compliance requirements, if ~~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, document the State's approval to the Secretary; or~~

(ii) ~~Meets~~ Meets reciprocity requirements if ~~if~~ an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in is a member of a State authorization reciprocity agreement, and the institution is covered by ~~approved by its State to participate in such agreement, the~~

²Section 600.9 was revised through the publication of 81 FR 92232 on 12/19/2016. The effective date of section 600.9(c) has been delayed until July 1, 2020. We propose to delete this language.

Commented [RP1]: These changes were proposed by the Department and are outside the scope of the Subcommittee.

Commented [RP2]: State consumer protection laws are based upon the location of the student when receiving instruction and not the student's state of residence (where they pay taxes, have a driver's license, etc.). It's a subtle but important difference.

For example, say that I am an active duty military person with Colorado residence who is stationed in Texas while taking online courses from an institution in New Hampshire. Asking the student to complain to Colorado will be frustrating for the student as it has no jurisdiction.

Commented [RP3]: We defined the two types of institutional approvals here in two bullets. When the requirements for an institution differ by the type of approval in subsequent language, we mirror the language and format of this section. That should make it easier for institutional personnel to understand.

Commented [CD4]: These suggestions make clear that States are "members" of the state authorization reciprocity agreement and institutions "participate." Also suggest avoidance of the word "covered."

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. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(2) Location of a student is initially determined at the time of enrollment in an academic program, consistent with other determinations of student eligibility, it must also be reevaluated each time an institution makes a new award to a student.

(3) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students located residing in a State in which the institution is not domiciled physically located, for the institution to be considered legally authorized in that State, the institution must document that there is a State process for review and appropriate action on complaints from any of those enrolled students concerning the institution—

(i) In each State where the institution met direct compliance requirements, in which the institution's enrolled students are located, if that state has a complaint process reside; or

(ii) In each State where the institution met reciprocity compliance requirements, through a State authorization reciprocity agreement which designates for this purpose either the State in which the institution's enrolled students are located reside or the State in which the institution's main campus is located.

(d)² An additional location or branch campus of an institution that meets the requirements under paragraph (a)(1) of this section and that is located in a foreign country, i.e., not in a State, must comply with §§ 600.8, 600.10, 600.20, and 600.32, and the following requirements:

(1) For any additional location at which 50 percent or more of an educational program (as defined in § 600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the foreign governmental authority

Commented [RP5]: This language is taken from a Dear Colleague letter issued by the Department in March of 2011.

<https://ifap.ed.gov/dpccletters/attachments/GEN1105.pdf>
(See question 20)

Commented [RP6]: Institutions should be able to document the complaint process in states in which their students are located. However, some states (e.g., California) have no oversight or complaint process for public or non-profit institutions offering distance courses from out-of-state. Efforts to get California to create a complaint process has been fruitless.

²Section 600.9(d) was effective July 1, 2018. We propose to retain this language.

is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with §§ 602.24(a) and 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

(2) An additional location at which less than 50 percent of an educational program (as defined in § 600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses the information regarding the student complaint process described in 34 CFR 668.433(b), of the State in which the main campus of the institution is located.

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

§668.50 Institutional disclosures for distance or correspondence programs.

(a) General. In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9 (a)(1) or (b) that offers a 50 percent or more of an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) Public disclosures. An institution described under 34 CFR 600.9(a)(1) that offers a 50 percent or more of an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(i) Whether the institution is met direct compliance requirements or authorized by each State reciprocity compliance requirements in each State in which enrolled students are or will be enrolled in reside to provide the program;

(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2, to provide the program; and

(iii) A general explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;

(2)(i) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b), and

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9 (c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

(3) A description of the process for submitting consumer complaints in each State in which the program's current or prospective enrolled students are located, including: reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

Commented [RP7]: The suggestion to move to "50 percent or more of an educational program" was rooted in a concern that "solely" was ill-defined and could easily be circumvented to avoid compliance.

The "50 percent" is suggested because:

- 50% of a program is the threshold used to define an "additional location."
- If an institution begins to offer 50% or more of its program at a distance, then most (all?) accrediting agencies seek a review of the program.
- We would be protecting student who are receiving the bulk of their instruction at a distance or via correspondence.

One problem is that 50% is hard to define, but since it is already in use other places, there are lessons that can be learned from those cases.

Many states actually cover ANY activity in a state whether it is related to distance education or not. NC-SARA affects distance education and a limited amount of face-to-face activity.

Commented [RP8]: This was an ill-defined requirement. There are a very large number of permutations of the consequences depending on variations in student activity and state regulations. If the institution does not cover the particular permutation for a given student, is it at risk?

Does adding the word "general" still allow for informing students that there are consequences, but relieves the institution of specific consequences?

Commented [RP9]: We are in agreement for the notice for complaint processes, but tried to simplify the language in the next section.

(i) If the institution met direct compliance requirements, the complaint process of the State where the student is located.

(ii) If the institution met reciprocity compliance requirements, the complaint process required by the State authorization reciprocity agreement in which the State or institution are located..of which the State is a member.

(4) Any adverse actions taken by a State entity ~~has initiated~~, and the years in which such actions were initiated, related to postsecondary education programs for which 50 percent or more of the program was offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

Commented [RP10]: "Taken" typically means that there is a finding against an institution. "Initiated" means that the review is just beginning. We're suggesting that only "taken" actions be listed.

Commented [RP11]: Is five years too many?

(5) Any adverse actions taken by an accrediting agency ~~has initiated~~, and the years in which such actions were initiated, related to postsecondary education programs ~~offered solely through~~ that could be 50% completed through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(6) Any adverse actions taken by a State authorization reciprocity agreement in which the institution participates, and the years in which such actions were initiated, related to postsecondary education programs that could be 50% completed through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

Commented [CD12]: Rationale: Since participation in a reciprocity agreement can be used to demonstrate compliance, any significant adverse action by such an entity is relevant, too.

~~(6)~~ Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees as required by the State or State authorization reciprocity agreement or for the State in which enrolled students are located; and

Commented [RP13]: There was considerable disagreement among state authorization professionals about the meaning of this section. We tried to clarify it.

~~(7)~~(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

The intent is that the student receives the notification of the refund policy that applies to him or her. Some interpreted the original wording to require the institution to notify the student of all refund policies for the state or institution, whether it was applicable to the student or not. That would seem like a confusing disservice to the student.

(A) Each State in which the program's enrolled students are located ~~reside~~; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement ~~to that effect~~ as to the protocol used to determine whether the program satisfies applicable educational prerequisites and why the institution was not able to make a final determination.

(c) Individualized disclosures. (1) An institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that ~~50% or more is provided, or~~ can be completed ~~solely~~ through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—

(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet ~~or cannot determine if the institution meets~~ licensure or certification prerequisites in the State of the student's residence; and

(ii) To each enrolled and prospective student—

(A) Any adverse action ~~taken~~~~initiated~~ by a State, ~~or an~~ accrediting agency or State authorization reciprocity agreement related to postsecondary education programs offered by the institution ~~solely for~~ which 50 percent or more of the educational program is provided through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.