

**STATE AUTHORIZATION (Sec. 600.9; FR pps. 66946-7)
(Sec. 668.43; FR p. 66954)**

Several changes made to NPRM.

Rational for Regulation: The Department believes that many States have been too lax in undertaking the consumer protection functions expected of them and developed these more detailed rules in order to clarify the role of the States in assuring the integrity of federal student aid programs.

Key Provisions of the Regulation:

- **Complaints** – A State must have a process to review and appropriately act on complaints about an institution.
- **Establishment “by name”** – An institution must be “established by name” by a State as a postsecondary educational institution—not as a business or nonprofit charity.
- **Exemptions to State regulation** – The institution is subject to State approval or licensure requirements, unless exempted by the State based on its accreditation or being in operation for at least 20 years.
 - **Exceptions** – An institution that is not established as a postsecondary educational institution must be approved or licensed by name and may not be exempted from this requirement unless it is a religious institution under the State constitution or law.
 - **Religious exemption** – To qualify for an exemption as a religious institution, the institution must be “owned, controlled, operated, and maintained” by a religious corporation and must award only religious degrees or certificates.
- **Distance education** – If offering distance education to students in another state, the institution must meet that State’s requirements for offering postsecondary distance or correspondence education and be able to document that it does so.
- **Disclosures** – An institution must also disclose to students and prospective students information about filing complaints with an accreditor, a State approval or licensing agency, and any other appropriate State agency.

Regulatory Language:

§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—

(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)

Section 668.43 is amended by:

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D. Revising paragraph (b)

§668.43 Institutional information.

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(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

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