STATE AUTHORIZATION PROVISIONS
Final Regulations: Program Integrity
Federal Register – October 29, 2010

§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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State Authorization Preamble Language – Corrected Version[1]

IMPLEMENTATION DATE [p. 66833]

While the Secretary has designated amended §600.9(a)and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-year extension of the effective date to July 1, 2013. To receive an extension of the effective date of amended §600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended §600.9.

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PREAMBLE [pp. 66858 - 66868]

State Authorization (§§600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9, and 668.43(b))

General - No Mandate for a State Licensing Agency

Comment: Several commenters believed the proposed regulations would create mandates for States to create new State oversight bodies or licensing agencies, or compel States to create bureaucratic structures that would further strain higher education resources. Some commenters believed that a majority of the States would have to modify licensing requirements or adopt new legislation and that the regulations would cause a major shift in State responsibility.

Discussion: These final regulations do not mandate that a State create any licensing agency for purposes of Federal program eligibility. Under the final regulations, an institution may be legally authorized by the State based on methods such as State charters, State laws, State constitutional provisions, or articles of incorporation that authorize an entity to offer educational programs beyond secondary education in the State. If the State had an additional approval or licensure requirement, the institution must comply with those requirements. In the case of an entity established as a business or nonprofit charitable organization, i.e., not as an educational institution, the entity would be required to have authorization from the State to offer educational programs beyond secondary education. While these final regulations **do not** require the creation of a State licensing agency, a State may choose to rely on such an agency to legally authorize institutions to offer postsecondary education in the State for purposes of Federal program eligibility.

[1] Language in red shows corrections issued on April 13, 2011. (See Federal Register/Vol. 76, No. 71, pp. 20534-6.)

Changes: None.

Comment: Several commenters supported the proposed regulations as an effort to address fraud and abuse in Federal programs through State oversight. An association representing State higher education officials noted that despite differences in State practice, all the States, within our Federal system, have responsibilities to protect the interests of students and the public in postsecondary education and supported the basic elements of proposed §600.9. A State agency official praised the Department's proposed regulations but suggested that the Department insert "by name" in the proposed § 600.9(a)(1) to provide some protection against recurrence of situations such as the one in California when the State licensing agency lapsed prior to the State renewing the agency or a successor to the agency and no State approval was in place that named an institution as licensed or authorized to operate in the State.

Discussion: We appreciate the support of the commenters. We agree with the commenter that a State's authorization should name the institution being authorized. We believe that by naming the institution in its authorization for the institution to offer postsecondary education in the State, the State is providing the necessary positive authorization expected under §600.9.

Changes: We are amending proposed §600.9, where appropriate, to recognize that an institution authorized by name in a State will meet the State authorization requirements as discussed further in response to other comments.

Comment: Some commenters believed that the proposed regulations exceeded the Department's authority and infringed on the States' authority. One commenter requested that the proposed regulations be eliminated because private institutions are authorized through various unique authorizations. Another commenter believed that the proposed regulations upset the balance of the "Triad" of oversight by States, accrediting agencies, and the Federal Government. One commenter questioned whether the Department could impose conditions restricting a State's freedom of action in determining which institutions are authorized by the State by requiring that a State's authorization must be subject to, for example, adverse actions and provision for reviewing complaints. The commenter believed that there was no intent to have the Department impose such conditions. Another commenter believed that proposed §600.9 unnecessarily intruded on each State's prerogative to determine its own laws and regulations relative to the authorization of higher education institutions and to define the conditions for its own regulations. One commenter suggested that the Department only apply proposed §600.9 to the problem areas that the commenter identified as substandard schools, diploma mills, and private proprietary institutions.

One commenter believed that the proposed regulations would infringe upon the States' sovereignty by commanding state governments to implement legislation enacted by Congress. Specifically, the commenter noted that under the proposed regulations the States must adopt legislation or rules that expressly authorize institutions to offer

postsecondary programs and further make such an authorization subject to adverse action by the State and that the proposed regulations would require that States establish a process to act on complaints about the institution and enforce State laws against the institution.

The commenter believed that the Department would improperly direct State officials to participate in the administration of a federally enacted regulatory scheme in violation of State Sovereignty. By doing so, the commenter believed that the Federal Government would be forcing State governments to absorb the financial burden of implementing a Federal regulatory program, while allowing the Federal government to take credit for "solving" problems without having to ask their constituents to pay for the solutions with higher Federal taxes. The commenter believed that the Department cannot construe the HEA to require a State to regulate according to the Department's wishes. The commenter believed that such a construction would exceed the Department's authority under the HEA and violate the States' rights under the Tenth Amendment.

Discussion: We disagree with the commenters that the proposed regulations exceed the Department's authority and infringe on States' authority. Under the provisions of the HEA and the institutional eligibility regulations, the Department is required to determine whether an institution is legally authorized by a State to offer postsecondary education if the institution is to meet the definition of an institution of higher education, proprietary institution of higher education, or postsecondary vocational institution (20 U.S.C. 1001 and 1002) as those terms are defined in §§600.4, 600.5, and 600.6 of the institutional eligibility regulations. In accordance with the provisions of the HEA, the Department is establishing minimum standards to determine whether an institution is legally authorized to offer postsecondary education by a State for purposes of Federal programs. The proposed regulations do not seek to regulate what a State must do, but instead considers whether a State authorization is sufficient for an institution that participates, or seeks to participate, in Federal programs.

Contrary to the commenter's suggestion that the Department is upsetting the Triad, we believe these regulations clarify the role of the States, a key participant in the Triad, in establishing an institution's eligibility for Federal programs. Further, the Department believes that clarifying the State role in the Triad will address some of the oversight concerns raised by another commenter regarding problem areas with certain types of institutions.

Changes: None.

Comment: Several commenters questioned the need for proposed §600.9. For example, several commenters questioned whether the Department's concern that the failure of California to reinstate a State regulatory agency was justified. Commenters believed that the regulations would not have prevented the concerns the Department identified in the case of the lapsing of the California State agency. One commenter believed the California issue was resolved and that accreditation and student financial aid processes worked. Some commenters believed that the current State regulatory bodies or other authorization

methods were sufficient. One commenter stated that authorizations are spelled out in State statutes, and there is no need for the regulations. Some commenters believed that additional information is needed, such as a State-by-State review of the impact of proposed §600.9, or the States with adequate or inadequate oversight. Several commenters were concerned that proposed §600.9 would unnecessarily impact small States without discernable problems. Some commenters believed there is no evidence of marginal institutions moving to States with lower standards and that there is no danger to title IV, HEA program funds. One commenter believed that proposed §600.9 should be eliminated because the commenter believed that its full effect is not known and that it will be chaotic if implemented. Another commenter believed that proposed §600.9 would be burdensome, is not economically feasible, and would leave an institution at the mercy of the State. One commenter believed that proposed §600.9 would encourage for-profit institutions to undermine State agencies such as through lobbying to underfund an agency and would stall reconsideration of legislation.

Some commenters believed that the Department's concerns were valid. One of these commenters believed that, in the absence of regulations, many States have forfeited their public responsibilities to accrediting agencies. In the case of the interim lapse of the State regulatory agency in California, the commenter believed that we do not know yet the extent of the mischief that may have occurred or may still occur, but the commenter has received reports that schools began operating in the gap period and are being allowed to continue to operate without State approval until the new agency is operational. The commenter understood that at least one of those schools closed abruptly, leaving many students with debts owed and no credential to show for their efforts.

Some commenters believed that the proposed regulations would not address issues with degree mills as they are not accredited. Some commenters urged the Department to offer leadership and support of Federal legislation and funding to combat diploma mills.

One commenter recommended that the Department use Federal funds for oversight. Another commenter suggested that the Department encourage the Federal Government to provide incentives to the States.

Discussion: We do not agree with the commenters who believe that proposed §600.9 should be eliminated. For example, we believe these regulations may have prevented the situation in California from occurring or would have greatly reduced the period of time during which the State failed to provide adequate oversight. While it may appear that the California situation was satisfactorily resolved as some commenters suggested, the absence of a regulation created uncertainty. As one commenter noted, during the period when the State failed to act, it appears that problems did occur, and that no process existed for new institutions to obtain State authorization after the dissolution of the State agency. We are concerned that States have not consistently provided adequate oversight, and thus we believe Federal funds and students are at risk as we have anecdotally observed institutions shopping for States with little or no oversight. As a corollary effect of establishing some minimal requirements for State authorization for purposes of Federal programs, we believe the public will benefit by reducing the possibilities for

degree mills to operate, without the need for additional Federal intervention or funding. We do not believe that additional information is needed to support §600.9 in these final regulations as §600.9 only requires an institution demonstrate that it meets a minimal level of authorization by the State to offer postsecondary education. Because the provisions of §600.9 are minimal, we believe that many States will already satisfy these requirements, and we anticipate institutions in all States will be able to meet the requirements under the regulations over time. This requirement will also bring greater clarity to State authorization processes as part of the Triad. Since the final regulations only establish minimal standards for institutions to qualify as legally authorized by a State, we believe that, in most instances they do not impose significant burden or costs. States are also given numerous options to meet these minimum requirements if they do not already do so, and this flexibility may lead to some States using different authorizations for different types of institutions in order to minimize burden and provide better oversight. The question of whether these regulations will impact the ability of any group to seek changes to a State's requirements is beyond the purview of these final regulations. As one commenter requested, we will continue to support oversight functions as provided under Federal law, and we believe that these final regulations will provide the necessary incentives to the States to assure a minimal level of State oversight.

Changes: None.

Comment: Some commenters questioned how the Department would enforce the proposed regulations. One commenter stated that the Department has no mechanism to enforce the proposed regulations and asks how they will improve program integrity. One commenter questioned why an institution may be held accountable for the actions of the State over which it has no direct control.

Discussion: Any institution applying to participate in a Federal program under the HEA must demonstrate that it has the legal authority to offer postsecondary education in accordance with §600.9 of these final regulations. If a State declines to provide an institution with legal authorization to offer postsecondary education in accordance with these regulations, the institution will not be eligible to participate in Federal programs.

As to an institution's inability to control the actions of a State, we do not believe such a circumstance is any different than an institution failing to comply with an accreditation requirement that results in the institution's loss of accredited status. We believe that in any circumstance in which an institution is unable to qualify as legally authorized under §600.9 of these final regulations, the institution and State will take the necessary actions to meet the requirements of §600.9 of these final regulations.

Changes: None.

Comment: One commenter believed that proposed §600.9 would result in an unfunded mandate by the Federal Government. Another commenter stated that many States may see proposed §600.9 as a revenue-generating opportunity and pass the costs of this

requirement on to institutions, which would have no choice but to pass that cost on to students.

Discussion: We do not agree that §600.9 of these final regulations will result in an unfunded mandate by the Federal Government, since many States will already be compliant and options are available that should permit other States to come into compliance with only minimal changes in procedures or requirements if they want to provide acceptable State authorizations for institutions. The regulations also include a process for an institution to request additional time to become compliant. Furthermore, if a State is unwilling to become compliant with §600.9, there is no requirement that it do so. We also do not agree that States will see coming into compliance with §600.9 as a revenue-generating opportunity, since any required changes are likely to be minimal.

Changes: None.

Implementation

Comment: Some commenters believed that the proposed regulations are ambiguous in meaning and application or are vague in identifying which State policies are sufficient. For example, one State higher education official suggested that proposed §600.9 should be amended to differentiate among authorities to operate arising from administrative authorization of private institutions from legislation and from constitutional provisions assigning responsibility to operate public institutions. The commenter believed that proposed §600.9 obfuscated the various means of establishing State authorization and the fundamental roles of State legislatures and State constitutions and recommended that these means of authorization and roles of State entities should be clarified.

Several commenters questioned what authorizing an institution to offer postsecondary programs entails. A few commenters pointed out that there is a wide array of State approval methods and many institutions were founded before the creation of State licensing agencies. An association representing State higher education officials urged that ample discretionary authority explicitly be left to the States. One commenter indicated that proposed §600.9 failed to address when more than one State entity is responsible for a portion of the oversight in States where dual or multiple certifications are required. Another commenter believed that proposed §600.9 did not adequately address the affect an institution's compliance with proposed §600.9 would have if one of two different State approvals lapsed and both were necessary to be authorized to operate in the State or if the State ceased to have a process for handling complaints but the institutions continued to be licensed to offer postsecondary education.

Some commenters asked whether specific State regulatory frameworks would meet the provisions of the proposed regulations. For example, one commenter believed that, under State law and practice in the commenter's State, the private institutions in the State already met the requirements in proposed §600.9 that the commenter believed included: (1) the institution being authorized by a State through a charter, license, approval, or other document issued by an appropriate State government agency or State entity; (2) the

institution being authorized specifically as an educational institution, not merely as a business or an eleemosynary organization; (3) the institution's authorization being subject to adverse action by the State; and (4) the State having a process to review and appropriately act on complaints concerning an institution.

The commenter noted that all postsecondary institutions in the State must either have a "universal charter" awarded by the legislature or be approved to offer postsecondary programs. The commenter noted that these institutions are authorized as educational institutions, not as businesses. In another example, a commenter from another State believed that current law in the commenter's State addresses and covers many of the requirements outlined in proposed §600.9. The commenter noted that many of the State laws are enforced by the State's Attorney General and attempt to protect individuals from fraud and abuse in the State's system of higher education. However, the commenter believed that it remained unclear whether the State would be required to create an oversight board for independent institutions like the commenter's institution or would be subject to State licensure requirements via the State licensure agency. The commenter believed that either option would erode the autonomy of the commenter's institution and add layers of bureaucracy to address issues currently covered by State and Federal laws.

One commenter suggested that proposed §600.9(a)(1) be amended to provide that authorization may be based on other documents issued by an appropriate State government agency and delete the reference to "state entity." The commenter believed that the documents would affirm or convey the authority to the institution to operate educational programs beyond secondary education by duly enacted State legislation establishing an institution and defining its mission to provide such educational programs or by duly adopted State constitutional provisions assigning authority to operate institutions offering such educational programs.

Some commenters questioned whether there were any factors that a State may not consider when granting legal authorization. One commenter requested confirmation that under the proposed regulations authorization does not typically include State regulation of an institution's operations nor does it include continual oversight. A few commenters expressed concern regarding the involvement of the States in authorization and that a State's role may extend into defining, for example, curriculum, teaching methods, subject matter content, faculty qualifications, and learning outcomes. One commenter was concerned that proposed §600.9 would create fiscal constraints on an institution due to, for example, additional reporting requirements or would impose homogeneity upon institutions that would compromise their unique missions. One commenter stated that the Department does not have the authority to review issues of academic freedom or curriculum content.

One commenter wanted assurances that the Department does not intend to use the proposed regulations to strengthen State oversight of colleges beyond current practices. One commenter was concerned that States could exercise greater and more intrusive oversight of private colleges.

One commenter suggested that the Department grandfather all institutions currently operating under a State's regulatory authority without a determination of its adequacy. Another indicated that private colleges and universities operating under a State-approved charter issued prior to 1972 are already subject to State regulation, even as they are exempt from State licensing.

One commenter believed that the Department should accept State laws and regulations that can be reasonably interpreted as meeting the regulatory requirements.

Discussion: We agree with the commenters who were concerned that proposed §600.9 may be viewed as ambiguous in describing a minimal standard for establishing State legal authorization. We agree, in principle, with the State higher education official who suggested that proposed §600.9 should be amended to differentiate the types of State authorizations for institutions to operate, but not based upon whether the source of the authorization is administrative or legislative. We believe the distinction for purposes of Federal programs is whether the legal entities are specifically established under State requirements as educational institutions or instead are established as business or nonprofit charitable organizations that may operate without being specifically established as educational institutions. We believe this clarification addresses the concerns of whether specific States' requirements were compliant with §600.9 as provided in these final regulations.

We continue to view State authorization to offer postsecondary educational programs as a substantive requirement where the State takes an active role in authorizing an institution to offer postsecondary education. This view means that a State may choose a number of ways to authorize an institution either as an educational institution or as a business or nonprofit charitable organization without specific authorization by the State to offer postsecondary educational programs.

These legal means include provisions of a State's constitution or law, State charter, or articles of incorporation that name the institution as established to offer postsecondary education. In addition, such an institution also may be subject to approval or licensure by State boards or State agencies that license or approve the institution to offer postsecondary education. If a legal entity is established by a State as a business or a nonprofit charitable organization and not specifically as an educational institution, it may be subject to approval or licensure by State boards or State agencies that license or approve the institution to offer postsecondary education. The key issue is whether the legal authorization the institution receives through these means is for the purpose of offering postsecondary education in the State.

In some instances, as one commenter noted, a State may have multiple State entities that must authorize an institution to offer postsecondary programs. In this circumstance, to comply with §600.9, we would expect that the institution would demonstrate that it was authorized to offer postsecondary programs by all of the relevant State entities that conferred such authorizations to that type of institution.

We do not believe it is relevant that an institution may have been established prior to any State oversight. We are concerned that institutions currently be authorized by a State to offer postsecondary education, although we recognize that a State's current approval for an institution may be based on historical facts. We therefore do not believe it is necessary to grandfather institutions currently operating under a State's regulations or statutes nor are we making any determination of the adequacy of a State's methods of authorizing postsecondary education apart from meeting the basic provisions of §600.9 in these final regulations. If a private college or university is operating under a State-approved charter specifically authorizing the institution by name to offer postsecondary education in the State, a State may exempt an institution from any further State licensure process. The requirement to be named specifically in a State action also applies if the institution is exempt from State licensure based upon another condition, such as its accreditation by a nationally recognized accrediting agency or years in operation.

Further, these regulations only require changes where a State does not have any authorizing mechanisms for institutions other than an approval to operate as a business entity, or does not have a mechanism to review complaints against institutions. We anticipate that many States already meet these requirements, and will have time to make any necessary adjustments to meet the needs of the institutions.

With regard to the commenters who were concerned with the potential scope of a State's authority, we note that the Department does not limit a State's oversight of institutions, and only sets minimum requirements for institutions to show they are legally authorized by a State to provide educational programs above the secondary level.

These regulations neither increase nor limit a State's authority to authorize, approve, or license institutions operating in the State to offer postsecondary education.

Further, nothing in these final regulations limits a State's authority to revoke the authorization, approval, or license of such institutions. Section 600.9 ensures that an institution qualifies for Federal programs based on its authorization by the State to offer postsecondary education.

Changes: We are amending proposed §600.9 to distinguish the type of State approvals that are acceptable for an institution to demonstrate that it is authorized by the State to offer educational programs beyond the secondary level.

An institution is legally authorized by the State if the State establishes the institution by name as an educational institution through a charter, statute, constitutional provision, or other action to operate educational programs beyond secondary education, including programs leading to a degree or certificate. If, in addition, the State has an applicable State approval or licensure process, the institution must also comply with that process to be considered legally authorized. However, an institution created by the State may be exempted by name from any State approval or licensure requirements based on the institution's accreditation by an accrediting agency recognized by the Secretary or based upon the institution being in operation for at least 20 years.

If the legal entity is established by a State as a business or a nonprofit charitable organization and not specifically as an educational institution, the State must have a separate procedure to approve or license the entity by name to operate programs beyond secondary education, including programs leading to a degree or certificate. For an institution authorized under these circumstances, the State may not exempt the entity from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

[page 66862]

The following chart and examples illustrate the basic principles of amended §600.9:

Meets State Authorization Requirements*		
Legal entity	Entity description	Approval or licensure process
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	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. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	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. 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: • Federal, tribal, and religious institutions are exempt from these requirements. • A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals. • The chart does not take into account requirements related to State reciprocity.		

EXAMPLES

Institutions considered legally authorized under amended §600.9:

• A college has a royal charter from the colonial period recognized by the State as authorizing the institution by name to offer postsecondary programs. The State has no licensure or approval process.

• A community college meets the requirements based upon its status as a public institution.

• A nonprofit institution has State constitutional authorization by name as a postsecondary institution; State does not apply a licensure or approval process.

• A nonprofit institution has a State charter as a postsecondary institution by name. State law, without naming the institution, considers the institution to be authorized to operate in lieu of State licensure based on accreditation by a regional accrediting agency.

• An individual institution is owned by a publically traded corporation that is incorporated in a different State from where the institution is located. The institution is licensed to provide educational programs beyond the secondary level in the State where it is located.

• An institution is owned by a publicly traded corporation established as a business without the articles of incorporation specifying that the institution is authorized to offer

postsecondary education, but the institution is licensed by the State to operate postsecondary education programs.

• An individual institution is owned by a publically traded corporation that is incorporated in a different State from where the institution is located. The State licenses the institution by name as a postsecondary institution.

• Rabbinical school awarding only a certificate of Talmudic studies has exemption as a religious institution offering only religious programs.

• Tribal institution is chartered by the tribal government.

Institutions not considered legally authorized under amended §600.9:

• An institution is a publicly traded corporation established as a business without the articles of incorporation specifying that it is authorized to offer postsecondary education, and the State has no process to license or approve the institution to offer postsecondary education.

• A nonprofit institution is chartered as a postsecondary institution. A State law considers the institution to be authorized based on accreditation in lieu of State licensure but the institution is not named in the State law and does not have a certification by an appropriate State official, e.g., State Secretary of Education or State Attorney General, that it is in compliance with the exemption for State licensure requirements.

• An institution is established as a nonprofit entity without specific authorization to offer postsecondary education, but State law considers the institution to be authorized based on it being in operation for over 30 years. The State Secretary of Education issues a certificate of good standing to the institution naming it as authorized to offer postsecondary education based on its years in operation.

• A Bible college is chartered as a religious institution and offers liberal arts and business programs as well as Bible studies. It is exempted by State law from State licensure requirements but does not meet the definition of a religious institution exempt from State licensure for Federal purposes because it offers other programs in addition to religious programs.

• An institution is authorized based solely on a business license, and the State considers the institution to be authorized to offer postsecondary programs based on regional accreditation.

Comment: One commenter provided proposed wording to amend proposed §600.9(a)(1) to clarify that the State entity would include a State's legal predecessor. The commenter believed that the change was necessary to ensure that colonial charters would satisfy the State authorization requirement.

Discussion: If a State considers an institution authorized to offer postsecondary education programs in the State based on a colonial charter that established the entity as an educational institution offering programs beyond the secondary level, the institution would be considered to meet the provisions of §600.09(a)(1)(i) of these final regulations so long as the institution also meets any additional licensure requirements or approvals required by the State.

Changes: None.

Comment: Several commenters expressed concern that all institutions within a State could lose title IV, HEA program eligibility at once and that the regulations put students at risk of harm through something neither they nor the institution can control.

One commenter was concerned with how the Department would specifically assess State compliance with proposed §600.9. Another commenter believed that the Department should accept State laws and regulations that can be reasonably interpreted as meeting the requirements of §600.9 especially if State officials interpret their laws and regulations in such a manner.

One commenter requested that the Department explain how it would address currently enrolled students if a State is deemed not to provide sufficient oversight in accordance with Federal regulatory requirements. Another commenter asked how the Department will avoid such negative consequences as granting closed school loan discharges for large numbers of enrolled students. One commenter requested that the Department provide for seamless reinstatement of full institutional eligibility when a State meets all eligibility requirements after losing eligibility.

Discussion: We do not anticipate that all institutions in a State will lose title IV, HEA program assistance due to any State failing to provide authorization to its institutions under the regulations, because States may meet this requirement in a number of ways, and also with different ways for different types of institutions. If a State were to undergo a change that limited or removed a type of State approval that had previously been in place, it would generally relate to a particular set of institutions within a State. For example, a licensing agency for truck driving schools could lapse or be closed at a State Department of Transportation without providing another means of authorizing postsecondary truck driving programs. Only the eligibility of truck driving schools in the State would be affected under §600.9 while the State could continue to be compliant for all other institutions in the State. It also seems likely that the State would consider alternate ways to provide State authorization for any institutions affected by such a change.

We believe that the provisions in amended §600.9 are so basic that State compliance will be easily established for most institutions. The determination of whether an institution has acceptable State authorization for Federal program purposes will be made by the Department. We also note that the regulations permit a delayed effective date for this

requirement under certain circumstances discussed below, and this delay will also limit the disruption to some institutions within a State.

If an institution ceased to qualify as an eligible institution because its State legal authorization was no longer compliant with amended §600.9, the institution and its students would be subject to the requirements for loss of eligibility in subpart D of part 600 and an institution would also be subject to §668.26 regarding the end of its participation in those programs. If an institution's State legal authorization subsequently became compliant with amended §600.9, the institution could then apply to the Department to resume participation in the title IV, HEA program.

Changes: None.

Comment: Several commenters were concerned that students may lose eligibility for title IV, HEA program funds if a State is not compliant with proposed §600.9. Some commenters noted that States may have to take steps to comply, which may include making significant statutory changes, and the regulations therefore need to allow adequate time for such changes, reflecting the various State legislative calendars. In some cases, the commenters believed a State's noncompliance would be because the State could no longer afford to meet the provisions of proposed §600.9. One commenter believed that alternative pathways should be allowed for meeting State authorization and that States that exempt or grant waivers from licensing should be considered to fulfill requirements of proposed §600.9 and another questioned whether a State that is not in compliance would have an opportunity to cure perceived problems before all institutions operating in the State lost institutional eligibility.

Discussion: We recognize that a State may not already provide appropriate authorizations as required by §600.9 for every type of institution within the State. However, we believe the framework in §600.9 is sound and provides a State with different ways to meet these requirements.

Unless a State provides at least this minimal level of review, we do not believe it should be considered as authorizing an institution to offer an education program beyond secondary education.

If a State is not compliant with §600.9 for a type or sector of institutions in a State, we believe the State and affected institutions will create the necessary means of establishing legal authorization to offer postsecondary education in the State in accordance with amended §600.9.

However, in the event a State is unable to provide appropriate State authorizations to its institutions by the July 1, 2011 effective date of amended §600.9(a) and (b), we are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one extension of the effective date to July 1, 2013.

As described in the section of the preamble entitled "Implementation Date of These Regulations," to receive an extension of the effective date of amended §600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended §600.9.

Changes: None.

Comment: A few commenters requested that the Department identify, publish, and maintain a list of States that meet or do not meet the requirements. One commenter cited an analysis that estimated that 13 States would comply with the proposed regulations upon implementation; 6 States would clearly not be in compliance; and 37 States would likely have to amend, repeal, or otherwise modify their laws. One commenter requested data to be provided by the Department for each sector of postsecondary education, including how many States are out of compliance, how many institutions are within those States, and how many students are enrolled at those institutions.

Discussion: We do not believe that there is a need to maintain and publish a list of States that meet, or fail to meet the requirements. States generally employ more than one method of authorizing postsecondary education. For example, a State may authorize a private nonprofit university through issuing a charter to establish the university, another private nonprofit college through an act of the State legislature, a for-profit business school through a State postsecondary education licensing agency, a cosmetology school through a State cosmetology board, and a truck-driving school through the State's Department of Transportation. We believe that an institution of whatever sector and type already is aware of the appropriate State authorizing method or methods that would establish the institution's legal authorization to offer postsecondary education and publication of any list is unnecessary.

Changes: None.

Comment: One commenter expressed concern with whether a State must regulate the activities of institutions and exercise continual oversight over institutions.

Discussion: While a State must have a process to handle student complaints under amended §600.9(a) for all institutions in the State except Federal and tribal institutions, the regulations do not require, nor do they prohibit, any process that would lead to continual oversight by a State.

Changes: None.

Comment: Several commenters expressed concern regarding the financial burden on the States to make changes in State laws and the amount of time that would be needed to make the necessary changes. Commenters feared that the States would most likely have to reduce further State tax subsidies provided to public institutions. As a result, costs will

be increased for students at public institutions to cover lost revenues and increase costs for the title IV, HEA programs.

One commenter stated that schools could delay progress of degree completion at State funded universities because they will be forced to reduce offerings.

Discussion: We do not believe that it would impose an undue financial burden on States to comply with the provisions in §600.9. In most instances we believe that a State will already be compliant for most institutions in the State or will need to make minimal changes to come into compliance. Thus, we do not agree with commenters who believed that the regulations would generally impact the funding of public institutions in a State or would necessitate a reduction in the offerings at public institutions.

Changes: None.

Exemptions: Accreditation and Years of Operation

Comment: Several commenters supported the existing practice by which a State bases an institution's legal authorization to offer postsecondary education upon its accreditation by a nationally recognized accrediting agency, i.e., an accrediting agency recognized by the Secretary. The commenters believed that proposed §600.9 should be revised or clarified to permit existing practices allowing exemption by accreditation. Another commenter indicated that several States have exempted accredited institutions from State oversight unless those institutions run afoul of their accreditors' requirements. One commenter believed that proposed §600.9 would require the creation of unnecessary, duplicative, and unaffordable new bureaucracies, and recommended that its State should continue its partial reliance on nationally recognized accrediting agencies. Another commenter believed it appropriate that a State delegate some or all of its licensure function to a nationally recognized accrediting agency provided that the State enters into a written agreement with the accrediting agency.

One commenter stated that the Department should eliminate the ambiguity about how much a State may rely on accrediting agencies. Several commenters stated that the regulations are confusing as to which exemptions are permissible and which are not. One commenter believed that the Department should make it clear that although a State is not prohibited from relying on accrediting agencies for quality assessments, the essential duties of State authorization cannot be collapsed into the separate requirement for accreditation.

Some commenters noted that an institution's legal authorization may be based on a minimum number of years that an institution has been operating. One of the commenters cited a minimum number of years used by States that ranged as low as 10 years of operation while two other commenters noted that institutions had been exempted in their State because they had been in operation over 100 years and were accredited. The commenters believed that the Department should consider it acceptable for a State to rely on the number of years an institution has been operating.

Some commenters did not think that States should be allowed to defer authorization to accrediting agencies. One of these commenters believed that basing State authorization on accreditation was contrary to law. One commenter believed that existing law makes clear that institutional eligibility for title IV, HEA programs is based on the Triad of accreditation, State authorization, and the Federal requirements for administrative capability and financial responsibility. As a result the commenter believed that the extent to which States may rely on accrediting agencies should be clear and limited. Along the same lines, another commenter believed strongly that accrediting agencies should never be allowed to grant authorization to operate in a State, and that further clarifications about the ways in which accrediting agencies may substitute for State agencies is necessary. One commenter encouraged the Department to study more carefully the role of State entities and accreditation agencies.

Another commenter believed that relying on accrediting agencies to be surrogates for State authorization is inappropriate and should not be the sole determinant for authorization. One commenter stated that accreditation may not be accepted as a sufficient basis for granting or continuing authorization to operate and that the authorization process must be independent of any accreditation process or decision. One commenter believed that proposed §600.9 would undermine the role of accreditation and the public-private partnership and would call for States to intrude into academic areas. The commenter believed that the proposed regulations would move toward establishing accreditation as a State actor, a role that is incompatible with accreditation's commitment to self-regulation and peer and professional review. Another commenter believed that the Department should make it clear that although a State is not prohibited from relying on accrediting agencies for quality assessments, the essential duties of State authorization cannot be collapsed into the separate requirement for accreditation. If an institution's State and accrediting agency have different standards, one commenter was concerned regarding which entity's standards would be applied.

Discussion: While we recognize and share the concerns of some commenters that States should not be allowed to defer authorization to accrediting agencies, we believe that such a practice would be permissible so long as it does not eliminate State oversight and clearly distinguishes the responsibilities of the State and accreditor under such an arrangement. We also do not agree that additional study is needed of the roles of State entities and accrediting agencies as we believe these relationships are well understood. We believe that accreditation may be used to exempt an institution from other State approval or licensing requirements if the entity has been established by name as an educational institution through a charter, statute, constitutional provision, or other action issued by an appropriate State entity to operate educational programs beyond secondary education, including programs leading to a degree or certificate. For such an educational institution, a State could rely on accreditation to exempt the institution from further approval or licensing requirements, but could not do so based upon a preaccredited or candidacy status.

We also agree with the commenters that States may utilize an institution's years in operation to exempt it from State licensure requirements, but only, as with accreditation, for a legal entity that the State establishes as an educational institution authorized to offer postsecondary education. However, we believe that there should be a minimum standard for allowing years of operation to exempt an institution to ensure that this exemption is not set to a short period of time that would not provide a historical basis to evaluate the institution.

Based on our consideration of the public comment, we believe that standard should be at least 20 years of operation. As in the case of accreditation, such an exemption could only be used if the State has established the entity as an educational institution. As noted above, a State may use a separate process to recognize by name the entity as an educational institution that offers programs beyond the secondary level if an institution was not authorized by name to offer educational programs in its approval as a legal entity within a State. We note that a State may also base a licensing exemption on a combination of accreditation and the number of years an institution has been in operation, as long as the State requirements meet or exceed at least one of the two minimum requirements, that is, an institution must be fully accredited or must have been operating for at least 20 years.

If an institution is established as a legal entity to operate as a business or charitable organization but lacks authorization to operate by name as an educational institution that offers postsecondary education, the institution may not be exempted from State licensing or approval based on accreditation, years in operation, or comparable exemption from State licensure or approval.

We do not believe that permitting such exemptions from State licensing requirements will distort the oversight roles of the State and an accrediting agency. We believe these comments are based on a misunderstanding of the role of a State agency recognized by the Secretary under 34 CFR part 603 as a reliable authority regarding the quality of public postsecondary vocational education in its State.

Public postsecondary vocational institutions are approved by these agencies in lieu of accreditation by a nationally recognized accrediting agency. As noted in the comments, there are overlapping interests among all members of the Triad in ensuring that an educational institution is operating soundly and serving its students, and a State may establish licensing requirements that rely upon accreditation in some circumstances.

If an institution's State and accrediting agency have different standards, there is no conflict for purposes of the institution's legal authorization by the State as the institution must establish its legal authorization in accordance with the State's requirements.

Changes: We have amended proposed §600.9 to provide that, if an institution is an entity that is established by name as an educational institution by the State and the State further requires compliance with applicable State approval or licensure requirements for the institution to qualify as legally authorized by the State for Federal program purposes, the

State may exempt the institution ~~by name~~ from the 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. If an institution is established by a State as a business or a nonprofit charitable organization, for the institution to qualify as legally authorized by the State for Federal program purposes, the State may not exempt the institution from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

Complaints

Comment: An association of State higher education officials recommended that the States, through their respective agencies or attorneys general, should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by postsecondary institutions. The commenter stated that handling complaints is not a role that can or should be delegated to nongovernmental agencies such as accrediting agencies, nor should it be centralized in the Federal Government. Another commenter asked about the role of State enforcement of laws unrelated to postsecondary institutions licensure such as a law related to fraud or false advertising. A few commenters asked for clarification as to whether State consumer protection agencies or State Attorneys General could retain the primary role for student consumer protection and handling student complaints.

One commenter believed that the proposed regulations failed to address circumstances where the State licensure or approval agency and the agency handling complaints are different agencies. Several commenters recommended that the Department allow States to rely on accrediting agencies but require a memorandum of understanding with the accrediting association that would include, at a minimum, procedures for periodic reports on actions taken by the association and procedures for handling student complaints. One commenter strongly believed that accrediting agencies should never be allowed to handle complaints in lieu of the State.

One commenter expressed concern that the Department is requiring States to serve as an additional check on institutional integrity, but believed that there would be no check on the State.

One commenter from an accrediting agency believed that proposed §600.9(b)(3) is an unnecessary use of limited public resources, is impractical, and would be impractical and chaotic to administer. Several other commenters expressed concern that requiring States to act on complaints would be duplicative because 34 CFR 602.23 already requires accrediting agencies to have a process to respond to complaints regarding their accredited institutions. One commenter requested that the Department exempt public postsecondary institutions from the complaint processes. Otherwise, the commenter asked that the Department clarify that a State is permitted to determine whether an institution within its borders is sufficiently accountable through institutional complaint and sanctioning processes. One commenter requested that the Department clarify that student complaints

unrelated to violations of State or Federal law are not subject to State process or reviewing and acting on State laws, instead the commenter believed that student complaints are appropriately addressed at the institutional level. A commenter questioned how the requirements for State review of complaints relate to student complaints about day-to-day instruction or operations and whether the potential review process represents an expansion of State authority. The commenter believes that student complaints that are unrelated to violations of State or Federal law are appropriately addressed at the institutional level and thus not subject to the process for review of complaints included as part of proposed §600.9.

One commenter suggested that the Department's Office of Ombudsman respond to student complaints as an alternative if a State does not have a process for complaints.

Discussion: We agree with the commenters who believed that the States should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by some postsecondary institutions. For an institution to be considered to be legally authorized to offer postsecondary programs, a State would be expected to handle complaints regarding not only laws related to licensure and approval to operate but also any other State laws including, for example, laws related to fraud or false advertising. We agree that a State may fulfill this role through a State agency or the State Attorney General as well as other appropriate State officials. A State may choose to have a single agency or official handle complaints regarding institutions or may use a combination of agencies and State officials. All relevant officials or agencies must be included in an institution's institutional information under §668.43(b). Directly relying on an institution's accrediting agency would not comply with §600.9(a)(1) of these final regulations; however, to the extent a complaint relates to an institution's quality of education or other issue appropriate to consideration by an institution's accrediting agency, a State may refer a complaint to the institution's accrediting agency for resolution. We do not believe it is necessary to prescribe memoranda of understanding or similar mechanisms if a State chooses to rely on an institution's accrediting agency as the State remains responsible for the appropriate resolution of a complaint. Section 600.9(a)(1) requires an institution to be authorized by a State, thus providing an additional check on institutional integrity; however, we do not believe there are inadequate checks on State officials and agencies as they are subject to audit, review, and State legislative action.

We do not agree with the commenters that proposed §600.9(b)(3) would unnecessarily use State resources, be impractical, or be chaotic to administer. There are complaints that only a State can appropriately handle, including enforcing any applicable State law or regulations. We do not agree that public institutions should be exempt from this requirement as a complainant must have a process, independent of any institution—public or private, to have his or her complaint considered by the State. The State is not permitted to rely on institutional complaint and sanctioning processes in resolving complaints it receives as these do not provide the necessary independent process for reviewing a complaint. A State may, however, monitor an institution's complaint

resolution process to determine whether it is addressing the concerns that are raised within it.

We do not agree with the suggestions that the Department's Student Loan Ombudsman is an appropriate alternative to a State complaints process. The Ombudsman is charged, under the HEA, with the informal resolution only of complaints by borrowers under the title IV, HEA loan programs. By comparison, a State's complaint resolution process would cover the breadth of issues that arise under its laws or regulations.

Changes: We have amended proposed §668.43(b) to provide that an institution must make available to a student or prospective student 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.

Comment: One commenter believed that proposed §668.43(b) under which an institution must provide to students and prospective students the contact information for filing complaints with the institution's State approval or licensing entity should make allowance for situations in which a State has no process for complaints, or defers to the accrediting agency to receive and resolve complaints.

Another commenter believed that, in the case of distance education, the institution should be responsible for responding to complaints. Instead of providing students and prospective students, under proposed §668.43(b), the contact information for filing complaints with the institution's accrediting agency and State approval or licensing entity, the commenter recommended that the institution provide students with the institution's name, location, and Web site to file complaints.

Discussion: We do not agree that proposed §668.43(b) needs to make allowance for an institution in a State without a process for complaints, since every State is charged with enforcing its own laws and no institution is exempt from complying with State laws. If no complaint process existed, the institution would not be considered to be legally authorized. With respect to an institution offering distance education programs, the institution must provide, under §668.43(b), not only the contact information for the State or States in which it is physically located, but also the contact information for States in which it provides distance education to the extent that the State has any licensure or approval processes for an institution outside the State providing distance education in the State.

Changes: None.

Reciprocity and Distance Education

Comment: In general, commenters expressed concerns regarding legal authorization by a State in circumstances where an institution is physically located across State lines as well as when an institution is operating in another State from its physical location through distance education or online learning. One commenter urged the Department to include

clarifying language regarding a State's ability to rely on other States authorization in the final regulation rather than in the preamble. Several commenters requested that the Department limit the State authorization requirement in §600.9 to the State in which the institution is physically located. One commenter believed that a State should only be allowed to rely on another State's determination if the school has no physical presence in the State and the other State's laws, authority, and oversight are at least as protective of students and taxpayers. One commenter asked whether the phrase "the State in which the institution operates" is the same as "where the institution is domiciled". The commenter asked for clarification of the meaning of "operate" including whether it means where online students are located, where student recruiting occurs, where an instructor is located, or where fundraising activity is undertaken. One commenter requested that the Department clarify and affirm that reciprocity agreements that exist between States with respect to public institutions operating campuses or programs in multiple States are not impacted by these regulations. Another commenter believed that the Department should issue regulations rather than merely provide in the preamble of the NPRM that a State is allowed to enter into an agreement with another State. One commenter asked whether an institution that operates in more than one State can rely on an authorization from a State that does not meet the authorization requirements. One commenter urged the Department to clarify that States may rely on the authorization by other States, particularly as it relates to distance education. One commenter stated that the proposed regulations would be highly problematic for students who transfer between different States.

Another commenter feared that large proprietary schools that are regional or national in scope would likely lobby States to turn over their oversight to another State where laws, regulations, and oversight are more lax. Another commenter was concerned that for-profit institutions may lobby a State to relinquish its responsibilities to a State of those institutions choosing. This situation could result in a State with little regulation that is home to a large for-profit institution actually controlling policies in many States where the corporation does business. One commenter suggested that if an institution is not physically located in a State, the State could enter into an agreement with other States where the institution does have physical locations to rely on the information the other States relied on in granting authority. In this case, the commenter recommended that the oversight be at least as protective of students and the public as those of the State, and t he State should consider any relevant information it receives from other sources. However, the commenter thought the State should retain authority to take independent adverse action including revoking the authority to offer postsecondary programs in the State. Another commenter expressed concern that the proposed regulations would confuse and burden the States and institutions because they are not clear regarding whether a State can continue to rely on the authorization of another State. The commenter believed that without clarification, an institution that offers education to students located in other States might be needlessly burdened with seeking authorization from each of those States. Another commenter expressed concern that the proposed regulations could potentially require an institution offering distance education courses in 50 different States to obtain authorization in each State, which would be an administrative burden that could result in increased tuition fees for students. Another commenter stated that during the negotiations, the Department indicated it was not its intent to require authorization in

every State. Therefore, the commenter urged the Department to include this policy expressly in the final regulations.

Discussion: We agree with the commenters that further clarification is needed regarding legal authorization across State lines in relation to reciprocity between States and to distance education and correspondence study.

In making these clarifications, we are in no way preempting any State laws, regulations, or other requirements established by any State regarding reciprocal agreements, distance education, or correspondence study.

To demonstrate that an institution is legally authorized to operate in another State in which it has a physical presence or is otherwise subject to State approval or licensure, the institution must demonstrate that it is legally authorized by the other State in accordance with §600.9. We continue to believe that we do not need to regulate or specifically authorize reciprocal agreements. If both States provide authorizations for institutions that comply with §600.9 and they have an agreement to recognize each other's authorization, we would consider the institution legally authorized in both States as long as the institution provided appropriate documentation of authorization from the home State and of the reciprocal agreement. In addition, the institution must provide the complaint contact information under 34 CFR 668.43(b) for both States.

If an institution is offering postsecondary education through distance or correspondence education in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document upon request from the Department that it has such State approval.

A public institution is considered to comply with §600.9 to the extent it is operating in its home State. If it is operating in another State, we would expect it to comply with the requirements, if any, the other State considers applicable or with any reciprocal agreement between the States that may be applicable.

Changes: We have revised §600.9 to clarify in paragraph (c) that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. We are further providing that an institution must be able to document upon request by the Department that it has the applicable State approval.

State Institutions

Comment: Many commenters requested that public institutions be exempted from the proposed regulations. They were concerned that requiring States to reexamine their State authorization for public colleges would not be a good use of resources. One commenter requested that the Department explicitly state that public institutions are by definition

agents of the State and thus need no further authorization. One commenter from a State university system believed that the Federal Government should not impose a uniform model with "one size fits all States."

Another commenter noted that a State may not have legal power over decisions made by authorities given under the State's constitution for oversight of certain public postsecondary institutions. One commenter believed that public institutions should be exempt from the proposed requirements for adverse actions and complaint processes.

Discussion: As instrumentalities of a State government, State institutions are by definition compliant with §600.9(a)(1)(i), and no exemption from the provisions of §600.9 of these final regulations is necessary. We do not agree that State institutions should be exempt from the requirement that a State have a process to review and appropriately act on complaints concerning an institution.

We believe that students, their families, and the public should have a process to lodge complaints that is independent of an institution.

Changes: None.

Religious Institutions

Comment: Two commenters requested a definition of the term religious institution. One of these commenters felt strongly that a religious exemption must be tailored to prevent loopholes for abuse but needed to offer an alternative for religious institutions so that changes to a State's constitution would not be necessary. The commenter suggested that a religious institution should be exempted if the institution is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation pursuant to the Internal Revenue Code and meets the following requirements:

- Instruction is limited to the principles of that religious organization.
- A diploma or degree awarded by the institution is limited to evidence of completion of that education.
- The institution offers degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization.
- The institution does not award degrees in any area of physical science.
- Any degree or diploma granted by the institution contains on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area.
- A degree awarded by the institution reflects the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."

Discussion: We agree with the commenters that a definition of a religious institution is needed to clarify the applicability of a religious exemption. We also agree that

a modification to the proposed regulations is needed to allow a State to provide an exemption to religious institutions without requiring the State to change its constitution.

Changes: We have expanded §600.9(b) to provide that an institution is considered to be legally authorized by the State if it is exempt from State authorization as a religious institution by State law in addition to the provision of the proposed regulations that the exemption by law, or exempt under the State's constitution. We have also included a definition of a religious institution, which provides that an institution is considered a religious institution if it is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awards only religious degrees or religious 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. We note, however, that a religious institution is still subject to the requirement in §600.9(a)(1) of these final regulations that, for the institution to be considered to be legally authorized in the State, the State must have a process to review and appropriately act on complaints concerning the institution.

Tribal Institutions

Comment: One commenter suggested the Department should exempt from State authorization any institution established and operated by tribal governments. Three commenters stated that the Department should recognize that tribal institutions would not be subject to State oversight but instead the tribe would exercise oversight. One of those commenters suggested amending the regulations to add "tribal authority" wherever State authority is mentioned in the proposed regulations.

Discussion: We agree that tribal institutions are not subject to State oversight for institutions operating within tribal lands. Proposed §600.9(a)(2) provided that a tribal college would be considered to meet the basic provisions of proposed §600.9(a)(1) if it was authorized to offer educational programs beyond secondary education by an Indian tribe as defined in 25 U.S.C. 1802(2). However, proposed §600.9(b), could be read as inappropriately making a tribal institution subject to adverse actions by the State and a State process for handling student complaints.

We did not intend to make a tribal institution subject to any State process for handling complaints and have clarified the language in §600.9. If a tribal college is located outside tribal lands within a State, or has a physical presence or offers programs to students that are located outside tribal lands in a State, the tribal college must demonstrate that it has the applicable State approvals needed in those circumstances.

Changes: Section 600.9 has been revised to clarify the status of tribal institutions. As noted elsewhere in this preamble, we have removed proposed §600.9(b)(2) regarding adverse actions. Further, we are providing that, in §600.9(a)(2)(ii) of the final regulations, the tribal government must have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws.

PAPERWORK REDUCTION ACT OF 1995

Section 668.43—Institutional Information (pp. 66938-39)

*** * ***

Currently, the Department requires that an 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 Department requires in §668.43(b) that the institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and State approval or licensing entity. We estimate that 1,919 (or 92 percent of all 2,086 proprietary institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of proprietary institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to proprietary institutions by 326 hours.

We estimate that 1,593 (or 92 percent all 1,731 private non-profit institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of private non-profit institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to private non-profit institutions by 271 hours.

We estimate that 1,740 (or 92 percent of all 1,892 public institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of public institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to proprietary institutions by 296 hours.

FINAL REGULATIONS

(pp. 66946-7)

Section 600.9 is added to subpart A to read as follows:

§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)

(p. 66948)

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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Appendix A –Regulatory Impact Analysis (pp. 66968-75)

Appendix A - Regulatory Impact Analysis
(p. 66969)

With respect to the provisions relating to misrepresentation, we have revised §668.72(c) to prohibit false, erroneous, or misleading statements concerning whether completion of an educational program qualifies a students for licensure or employment in the States in which the educational program is offered and not just the State in which the institution is located. **Additionally, we have revised §668.72(n) to specify that a failure to disclose that the degree requires specialized accreditation is a misrepresentation.**

(p. 66970)

The provisions related to State authorization generated comments from those who supported the regulations as an effort to address fraud and abuse in Federal programs through State oversight and from others who believed the regulations infringed on States' authority and upset the balance of the "Triad" of oversight by States, accrediting

agencies, and the Federal Government. We clarified that the final regulations do not mandate that a State create any licensing agency for purposes of Federal program eligibility as an institution may be legally authorized by the State based on methods such as State charters, State laws, State constitutional provisions, or articles of incorporation that authorize an entity to offer educational programs beyond secondary education in the State.

We revised §600.9 to clarify that an institution's legal authority to offer postsecondary education in a State must be by name and, thus, it must include the name of the institution being authorized. We have removed proposed §600.9(b)(2) regarding adverse actions. In response to concerns about the effect on distance education and reciprocity arrangements, we clarified that an institution must meet any State requirements for it to be legally offering distance or correspondence education in that State and must be able to document to the Secretary the State's approval upon request. Thus, a public institution is considered to comply with §600.9 to the extent it is operating in its home State, and, if operating in another State, it would be expected to comply with the requirements, if any, the other State considers applicable or with any reciprocal agreement that may be applicable. In making these clarifications, we are not preempting any State laws, regulations, or other requirements regarding reciprocal agreements, distance education, or correspondence study.

We also have revised the State authorization provisions in §600.9 to distinguish between a legal entity that is established as an educational institution and one established as a business or nonprofit entity. An institution authorized as an educational institution may be exempted by name from any State approval or licensure requirements based on the institution's accreditation by an accrediting agency recognized by the Secretary or based on the institution being in operation for at least 20 years. An institution established as a business or nonprofit charitable organization and not specifically as an educational institution may not be exempted from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption. Chart A illustrates the basic principles of §600.9 of these final regulations, with additional examples discussed in the preamble to these regulations.

The following chart and examples illustrate the basic principles of amended §600.9:

CHART A – STATE AUTHORIZATION REQUIREMENTS [Meets State Authorization Requirements*]		
Legal entity	Entity description	Approval or licensure process
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in

	authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	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. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	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. 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: • Federal, tribal, and religious institutions are exempt from these requirements. • A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals. • The chart does not take into account requirements related to State reciprocity.		

To maintain the State's role in student consumer protection and handling student complaints related to State laws, we have revised §668.43(b) to provide that an institution must make available to students or prospective students contact information for not only

the State approval or licensing entities but also any other relevant State official or agency that would appropriately handle a student's complaint.

Finally, we have clarified the meaning of a religious institution for the applicability of the religious exemption. We also have expanded §600.9(b) to provide that an institution is considered to be legally authorized by the State if it is exempt from State authorization as a religious institution by State law, in addition to the provision of the proposed regulations that an institution be exempt from State authorization as a religious institution under the State's constitution. We also have included a definition of a religious institution providing that an institution is considered a religious institution if it is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awards only religious degrees or religious 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.

In response to comments, we confirmed that tribal institutions are not subject to State oversight or subject to the State process for handling complaints and revised §600.9 to clarify the status of tribal institutions. As noted in the preamble discussion of State Authorization, we have removed proposed §600.9(b)(2) regarding adverse actions. Further, we are providing that, in §600.9(a)(2)(ii) of the final regulations, the tribal government must have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws.

Finally, while the Secretary has designated amended §600.9(a) and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-year extension of the effective date to July 1, 2013. To receive an extension of the effective date of amended §600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended §600.9.