

State Authorization – In-State Authorization

April 4, 2024

What is the issue?

The U.S. Department of Education questioned how some states authorized in-state institutions for purposes of participation in Title IV financial aid. They questioned the sufficiency of the practice in some states to provide exemptions based on the institution's accreditation or if the institution has been in operation for more than 20 years. The Department was concerned that the state may not be serving its intended purpose in the regulatory triad for institution oversight. Greater risk for poor instructional quality or the improper use of financial aid funds was expressed when offering these exemptions for institutions without a mechanism to minimize that risk to students.

Proposed language

The [Department's proposed language](#) (pages 2-4) would revise 600.9(a). This proposed language would limit state exemptions for in-state institutional authorization. States would be required to sunset existing institution exemptions in some states for accreditation and being in operation for more than 20 years. However, states may exempt certain institutions listed below, unless the institution has undergone a change in ownership. Proposed exemptions to be allowed to remain in place:

- Public institutions backed by the full faith and credit of the state. (includes community colleges)
- Institutions chartered on or before November 8, 1965.

Current policy

[Section 600.9\(a\)](#) directs that an institution is legally authorized by a state, for purposes of Title IV, if the state has a process to review and act on complaints against the institution including enforcing applicable state laws and meets the provisions of the current regulation which includes state approvals or designated exemptions.

Potential impact

If the proposed language goes forward, an institution subject to a current state authorization exemption and does not fall under one of the new proposed allowed exemptions must follow state-specific requirements to be approved by the state. Sunsetting by July 1, 2030, allows states the time to revise state laws to terminate these exemptions and bring institutions under the authorization of the state.

New exemptions allow the states to rely upon inherent state structures of oversight for public institutions and community colleges and to provide for the continuation of exemptions for long-standing private institutions.

Finally, there are questions about the authority of a federal agency to direct a state process to determine the authorization of an institution serving students in the state. The earliest the regulation would go into effect is July 1, 2025.

Next steps

Institutions that are subject to current exemptions or states that must develop new state laws should consider the following:

- Review current processes to determine what changes might need to be made should the proposed language be finalized as regulations.
- Work with your government relations department to contact your federal and state elected officials.
- Be prepared to explain the impact on students that the proposed language would have.

Note: This document was created for members of the [SAN \(State Authorization Network\)](#) and [WCET \(WICHE Cooperative for Educational Technologies\)](#). Regulatory language and references are subject to change. The information should not be considered legal advice. Legal questions should be directed to legal counsel.