

Issue Paper 2

Program Integrity and Improvement Issues

Issue: State authorization of distance education providers as a component of institutional eligibility

Statutory cites: §§101(a)(2); 102(a)(1); 102(b)(1)(B); 102(c)(1)(B) of the HEA

Regulatory cites: 34 CFR §§600.4(a)(3); 600.5(a)(4); 600.6(a)(3); 600.9

Summary of Issue: What regulations should the Department propose for State authorization of distance education providers and correspondence education providers so that these education providers can be considered to be legally authorized in a State to provide a program of education beyond secondary education and can therefore begin and continue to participate in title IV HEA Federal student aid and other HEA programs?

The regulations under §600.9(c) provided 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 or in which it is otherwise subject to State jurisdiction as determined by the State, the institution would be required to meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. Furthermore, under §600.9(c), an institution was required to be able to document to the Secretary the State's approval upon request.

On July 12, 2011, in response to a legal challenge by the Association of Private Sector Colleges and Universities, the U.S. District Court for the District of Columbia vacated §600.9(c) on procedural grounds. On August 14, 2012, on appeal, the D.C. Circuit ruled that §600.9(c) was not a logical outgrowth of the Department's proposed rules published at 75 FR 34806 et seq. (June 18, 2010) and directed that the matter be remanded to the Department for reconsideration consistent with the Court's opinion.

Comments and Questions:

- How should the Department address the statutory requirement of legal authorization by a State in the context of distance and correspondence education?
- What should trigger any requirements for demonstration of State authorization by distance and correspondence education providers?
- Should regulations regarding required approvals for institutions providing distance education and correspondence education based upon an institution's operating authority be comparable to those for institutions with physical presence in a State?
- How should reciprocal agreements be treated under the regulations?
- Should blended courses, internships, and joint degree programs be defined and addressed?