UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

April 20, 2011

DCL ID: GEN 11-11

Subject: State authorization under the Program Integrity Regulations

Summary: This letter provides guidance on State authorization in the context of distance learning under the Program Integrity regulations.

Dear Colleague:

On October 29, 2010, the Department published in the Federal Register final regulations on program integrity issues (75 FR 66832) (Program Integrity Regulations). These final regulations are available at http://www.ifap.ed.gov/eannouncements/110110PubFinalRulesforTitlveIVStudentAidPrgms.html. More recently, we released a Dear Colleague Letter (DCL GEN-11-05) that provided guidance on three areas of those final regulations: State authorization, incentive compensation, and misrepresentation. That guidance was provided to help institutions understand the changes to the October 2010 regulations and does not make any changes to the regulations.

One of the specific issues addressed in DCL GEN-11-05 was State authorization in the context of distance education, including correspondence study and online learning. Under the State authorization regulations, a student that is enrolled in an educational program offered by an institution cannot use Title IV, HEA program funds for that program if the institution the student is attending does not have State authorization in the State in which the student resides. This is true for all educational programs, including distance education. As explained within the preamble to the October 2010 regulations, if a State fails to timely comply with the State authorization requirements at 34 C.F.R. §§ 600.9(a), and (b), for programs other than distance education, an institution may obtain extensions until July 1, 2013, to secure compliance with these State authorization requirements.

However, since publishing the DCL GEN-11-05, we have heard complaints from some institutions, or their representatives, that they are encountering challenges in seeking and obtaining State authorization for distance education programs. We are also aware that some States are considering steps to modify or update authorization requirements for the provision of distance education training. In some cases, the changes may be a part of a broader effort to coordinate such authorizations with other States and streamline the

authorization processes. In addition, we have been told that some higher education associations and institutions are preparing information on States' requirements in an effort to help institutions with compliance efforts. We believe these efforts are valuable and wish to work with the higher education community and States to encourage and support their development.

In the meantime, some institutions have suggested that time and expense could be expended to comply with requirements that may soon change, and some institutions have further claimed that States may not be prepared to manage a large number of applications for authorization. We are committed to supporting State efforts that help institutions ensure that distance education programs are authorized.

Clarification of Enforcement. With regard to the State authorization provisions at 34 C.F.R. § 600.9(c), the Department will not initiate any action to establish repayment liabilities or limit student eligibility for distance education activities undertaken before July 1, 2014, so long as the institution is making good faith efforts to identify and obtain necessary State authorizations before that date. Evidence of good faith efforts by institutions could include any one or more of the following items:

- Documentation that an institution is developing a distance education management process for tracking students' place of residence when engaged in distance education.
- Documentation that an institution has contacted a State directly to discuss programs the institution is providing to students in that State to determine whether authorization is needed.
- An application to a State, even if it is not yet approved.
- Documentation from a State that an application is pending.

If a State has no applicable regulation or law, then no action on the part of the institution is required. Where States are in the process of establishing new requirements or creating application procedures, institutions acting in good faith would be expected to seek authorization under the new requirements or procedures only after they are established. Monitoring evolving State requirements should be made easier by the many associations, States, and institutions that are sharing on the Internet their analyses of individual State authorization requirements and processes.

However, the Department will review carefully instances where an institution may not be acting in good faith, such as where documents show an institution knew of a State requirement and willfully refused to comply with it.

Development of a Comprehensive Directory. As part of our technical assistance efforts, we are committed to working with appropriate parties to develop a comprehensive directory of State requirements that provides a meaningful opportunity for States to clearly articulate their specific requirements and for institutions of higher education to easily access the requirements and apply to the State for authorization. Once

the directory is developed, we plan to make it publicly available on the Department's Web site.

Supporting State Coordination. States determine what requirements, if any, distance education programs offered within their borders must meet. As a result, efforts to clarify and coordinate State laws require the engagement of States and the entire higher education community. We are interested in working with the community to support States' efforts to develop model reciprocal agreements, common applications, or other methods that States could adopt to foster compliance. We welcome suggestions from institutions and associations about how such efforts could be undertaken to best meet the needs of institutions and States.

The Department recognizes the value of distance education. We are eager to help create an environment that allows innovative approaches to flourish and grow. We thank you for your continued cooperation as we work to implement these regulations.

Sincerely,

Eduardo M. Ochoa