

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1229	State Authorization	<p><b>4 School Participation</b>  <b>4.1 Institutional Eligibility</b>  <b>4.1.C Maintaining Eligibility</b>  <b>4.1.D Loss of Eligibility</b>  <b>4.4.B Student Consumer Information</b>  <b>17.3.A The Preliminary Review</b>  <b>Appendix G</b></p> <p>Provides that in order to participate in Title IV programs, a school must be legally established or authorized by a state to provide postsecondary educational programs to students in the state. The state must have a process to review and appropriately act on complaints concerning the school including enforcing applicable state laws. State requirements are categorized by the Department on the basis of a school's authority to operate.</p> <p>Also requires a school to provide a student with the name of its accrediting agency, state, federal or tribal licensing and/or authorization entity, and applicable contact information for filing a complaint with each accreditor and any state approval or licensing entity, as well as any other relevant state official or agency that would appropriately handle a student's complaint.</p> <p>A new glossary definition for "state authorization" has been incorporated.</p>	Federal	School eligibility on or after July 1, 2011.

Batch 174 (Approved)

# COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2011

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	with no changes	Apr 21

**SUBJECT:** State Authorization

**AFFECTED SECTIONS:** 4 School Participation  
4.1 Institutional Eligibility  
4.1.C Maintaining Eligibility  
4.1.D Loss of Eligibility  
4.4.B Student Consumer Information  
17.3.A The Preliminary Review  
Appendix G

**POLICY INFORMATION:** 1229/Batch 174

**EFFECTIVE DATE/TRIGGER EVENT:** School eligibility on or after July 1, 2011.

**BASIS:**

§600.4; §600.5; §600.6; §600.9; *Federal Register* dated October 29, 2010, pp. 66858-66868 and 66946-66947.

**CURRENT POLICY:**

Current policy states that to qualify as an eligible institution of higher education, proprietary institution, or postsecondary vocational institution, a school must comply with state licensing requirements.

**REVISED POLICY:**

Revised policy provides that in order to participate in Title IV programs, a school must be legally established or authorized by a state to provide postsecondary educational programs to students in the state. The state must have a process to review and appropriately act on complaints concerning the school including enforcing applicable state laws. State requirements are categorized by the Department on the basis of a school's authority to operate. Revised policy includes certain exemptions from this provision. Revised policy also requires a school to provide a student with the name of its accrediting agency, state, federal or tribal licensing and/or authorization entity, and applicable contact information for filing a complaint with each accreditor and any state approval or licensing entity, as well as any other relevant state official or agency that would appropriately handle a student's complaint. A new glossary definition for "state authorization" has been incorporated.

**REASON FOR CHANGE:**

This change is made to comply with Final Rules published in the *Federal Register* dated October 29, 2010.

**PROPOSED LANGUAGE - COMMON MANUAL:**

Revise Chapter 4, page 1, column 1, paragraph 2, as follows:

In addition to meeting the terms and conditions of its Program Participation Agreement (PPA) with the Department, a participating school must comply with:

- 34 CFR Part 99 (Family Educational Rights and Privacy), 34 CFR Part 600 (Institutional Eligibility), 34 CFR Part 668 (General Provisions), and 34 CFR Part 682 (FFELP)—as well as other Department directives.
- State, federal, or tribal licensing and/or authorization requirements. [\$600.9]
- Guarantor policies, procedures, and requirements.
- . . .

- ...
- All other related requirements for schools, as specified in the Higher Education Act of 1965, as amended.

A participating foreign school is required to comply with the provisions of the regulations, except to the extent that the Department states in the regulation, or in other official publications

Revise Chapter 4, page 1, column 1, by adding a new paragraph 4, as follows:

A participating foreign school is required to comply with the provisions of the regulations, except to the extent that the Department states in the regulations, or in other official publications or documents, that foreign schools are exempt from certain provisions. [§682.611]

### **State Authorization**

In order to participate in Title IV programs, a school must be legally established by a state to provide postsecondary educational programs to students in the state. The state must have a process to review and appropriately act on complaints concerning the school including enforcing applicable state laws. State requirements are categorized by the Department on the basis of a school's authority to operate, as follows:

- *A school established by name by a state as a postsecondary educational institution.* A school is authorized if it is a public, nonprofit, or for-profit school established by a state and identified by name in a charter, statute, constitutional provision, or official action as an educational institution authorized to provide postsecondary educational programs, including programs leading to a degree or certificate. [§600.9(a)(1)(i)(A)]
  - The school must comply with any applicable state approval or licensure requirements, unless the state exempts the school by name from any requirements based on the school's approval by a Department-recognized accrediting agency or based on the school being in operation for at least 20 years. [§600.9(a)(1)(i)(B)]
- *A school established by a state on the basis of an authorization to conduct business.* This includes a for-profit school established by a state to conduct commerce or provide services. If the school is named as a school that is authorized to provide postsecondary educational programs, including programs leading to a degree or certificate, the school is authorized. If the school is *not* established by name to provide postsecondary educational programs, the school must be approved or licensed by name by a state to provide postsecondary programs, including programs leading to a degree or certificate. In this case, the school must comply with all applicable state approval or licensure requirements; there are no exemptions.
- *A school established by a state on the basis of an authorization to operate as a charitable organization.* This includes a nonprofit school established by a state to support the public interest or common good. If the school is named as an entity established to provide postsecondary educational programs, including programs leading to a degree or certificate, the school is authorized. If the school is *not* established by name to provide postsecondary educational programs, the school must be approved or licensed by name by a state to provide postsecondary programs, including programs leading to a degree or certificate. The school must comply with all applicable state approval or licensure requirements; there are no exemptions.
- *A religious institution exempted from state authorization by state constitution or law.* This includes a nonprofit postsecondary school that is owned, controlled, operated,

and maintained by a religions organization lawfully operating as a nonprofit religious corporation. The school must award only religious degrees or certificates in order to be exempt from state approval or licensure requirements.

- A school established by federal government or an Indian tribe. A public, nonprofit, or for-profit school that is authorized by the federal government or an Indian tribe by name to provide postsecondary educational programs is exempt from state approval or licensure requirements. A federal school must comply with applicable federal requirements and laws. If a school is authorized by an Indian tribe, the school must be located on tribal lands and the tribal government must have a process to review and act on complaints regarding the school and to enforce applicable tribal requirements or laws.

If an institution offers postsecondary education through distance or correspondence education to students in a state in which it is not physically located as determined by the state, the institution must meet any state requirements for it to legally offer postsecondary distance or correspondence education in that state..

[§600.9]

Revise Section 4.1, page 1, column 1, paragraph 3, bullet 1, as follows:

The following types of schools may apply for participation as an eligible institution of higher education:

- Public or private nonprofit institutions of higher education.  
[§600.4; §600.9]
- Proprietary institutions of higher education (private and for-profit).  
[§600.5; §600.9]
- Public or private nonprofit postsecondary vocational institutions.  
[§600.6; §600.9]

Revise Subsection 4.1.C, page 7, column 1, paragraph 5, as follows:

To continue eligibility to participate in Title IV programs, a school experiencing such a change in ownership or status must submit an E-App so that it is received by the Department no later than 10 business days after the change. The application must include the following documentation.

[§600.20(g)(1)]

- Any required and fully completed Department forms.  
[§600.20(g)(2)]
- Required documentation of state, federal, or tribal licensing approval, and/or authorization.  
[§600.9; §600.20(g)(2)(i)]
- . . .

Revise Subsection 4.1.C, page 7, column 2, paragraph 2, bullet 2, as follows:

- A “same day” balance sheet that shows the school’s financial position as of the date . . .
- Documentation of state, federal, or tribal licensing and/or authorization approval, if not already provided.  
[§600.9; §600.20(h)(3)(ii)]

Revise Subsection 4.1.D, page 12, column 2, paragraph 3, as follows:

To regain eligibility to participate in the Title IV programs, a proprietary institution must demonstrate that it has complied with the state, federal, or tribal licensing and/or authorization, the accreditation, and the financial responsibility requirements for a minimum of two fiscal years after the end of the fiscal year in which the school became ineligible. [§600.9; §668.28(c)]

Revise Subsection 4.4.B, page 26, column 2, bullet 8, as follows:

- The names of the school's accrediting, authorizing or licensing organizations and the procedures under which any current or prospective student may review a copy of the documents describing the school's accreditation, ~~approval or licensing~~, and/or authorization. The school must also provide contact information for filing a complaint with each entity, as applicable, as well as any other relevant state official or agency that would appropriately handle a student's complaint. [§600.9; §668.43(a)(6); §668.43(b)]

Revise Subsection 17.3.A, page 3, column 2, paragraph 1, bullet 8, as follows:

During the preliminary review, a guarantor establishes contact with the school . . .

*For Schools*

- School catalog
- Documentation from prior program reviews
- . . .
- . . .
- . . .
- . . .
- . . .
- State, federal, or tribal licensing and/or authorization documentation, as applicable
- Default management plan, if applicable.
- . . .
- . . .

Revise Appendix G, page 22, column 2, by adding a new paragraph 1, as follows:

**State Authorization:**

A state charter, statute, constitutional provision, or other action issued by an appropriate state agency or entity that establishes a school by name as a postsecondary educational entity, and the school otherwise meets the requirements established for that authorization in 34 CFR 600.9.

**PROPOSED LANGUAGE - COMMON BULLETIN:**

**State Authorization**

The *Common Manual* is being revised to conform to a final rule change published in the *Federal Register* dated October 29, 2010. Manual language is being revised to provide that in order to participate in Title IV programs, a school must be established or legally authorized by a state to provide postsecondary educational programs to students in the state. The state must have a process to review and appropriately act on complaints concerning the school including enforcing applicable state laws. State requirements are categorized by the Department on the basis of a school's authority to operate. The policy includes certain exemptions from this provision. Revised policy also requires a school to provide a student with the name of its accrediting agency, state, federal or tribal licensing and/or authorization entity, and applicable contact information for filing a complaint with each accreditor and state approval or licensing entity, as well as any other relevant state official or agency that would appropriately handle a student's complaint. The changes also add a new glossary definition for "state authorization".

**GUARANTOR COMMENTS:**

None.

**IMPLICATIONS:**

*Borrower:*

None.

*School:*

In order to participate in Title IV programs, a school must ensure that it is legally established or authorized by a state, federal, or Indian tribe to provide postsecondary educational programs to students in the state. An institution that offers postsecondary education through distance or correspondence education to students in a state in which it is not physically located, must ensure that it meets any state requirements for it to legally offer postsecondary distance or correspondence education in that state. The school must be able to document its state approval to the Department upon request. A school must provide a student with the name of its accrediting agency, state, federal or tribal licensing and/or authorization entity, and applicable contact information for filing a complaint with each accreditor and state approval or licensing entity, as well as any other relevant state official or agency that would appropriately handle a student's complaint.

*Lender/Service:*

None.

*Guarantor:*

The guarantor may need to amend its program review procedures.

*U.S. Department of Education:*

The Department may need to amend its program review procedures.

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**To be completed by the Policy Committee**

**POLICY CHANGE PROPOSED BY:**

CM Policy Committee

**DATE SUBMITTED TO CM POLICY COMMITTEE:**

November 12, 2010

**DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:**

April 14, 2011

**PROPOSAL DISTRIBUTED TO:**

CM Policy Committee  
CM Guarantor Designees  
Interested Industry Groups and Others  
CM Governing Board

**Comments Received from:**

AES/PHEAA, ASA, Great Lakes, HESAA(NJ), HESC(NY), NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLISA, TG, USA Funds, and VSAC.

**Responses to Comments**

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Most commenters supported this proposal as written. Other commenters recommended only wordsmithing changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

**COMMENT:**

Three commenters noted that the year of the effective date is 2011 and not 2010.

**Response:**

The Committee agrees.

**Change:**

The year of the effective date was changed to 2011.

**COMMENT:**

Three commenters noted that the Department stressed that it was establishing minimum standards to determine whether an institution is legally authorized to offer postsecondary education by a state for purposes of participation in the Title IV programs and that this should be emphasized within the proposed text. They requested that the exceptions to these standards be included as well.

**Response:**

The Committee agrees.

**Change:**

A new subheading and paragraph 4 has been added to the Introduction to Chapter 4 as follows:

State Authorization

In order to participate in Title IV programs, a school must be legally established by a state to provide postsecondary educational programs to students in the state. The state must have a process to review and appropriately act on complaints concerning the school including enforcing applicable state laws. State requirements are categorized by the Department on the basis of a school's authority to operate, as follows:

- *A school established by name by a state as a postsecondary educational institution.* A school is authorized if it is a public, nonprofit, or for-profit school established by a state and identified by name in a charter, statute, constitutional provision, or official action as an educational institution authorized to provide postsecondary educational programs, including programs leading to a degree or certificate.  
[§600.9(a)(1)(i)(A)]
  - The school must comply with all applicable state approval or licensure requirements, unless the state exempts the school by name from any requirements based on the school's approval by a Department-recognized accrediting agency or based on the school being in operation for at least 20 years.  
[§600.9(a)(1)(i)(B)]
- *A school established by a state on the basis of an authorization to conduct business.* This includes a for-profit school established by a state to conduct commerce or provide services. If the school is named as a school that is authorized to provide postsecondary educational programs, including programs leading to a degree or certificate, the school is authorized. If the school is *not* established by name to provide postsecondary educational programs, the school must be approved or licensed by name by a state to provide postsecondary programs, including programs leading to a degree or certificate. In this case, the school must comply with all applicable state approval or licensure requirements; there are no exemptions.
- *A school established by a state on the basis of an authorization to operate as a charitable organization.* This includes a nonprofit school established by a state to support the public interest or common good. If the school is named as a school that is authorized to provide postsecondary educational programs, including programs leading to a degree or certificate, the school is authorized. If the school is *not* established by name to provide postsecondary educational programs, the school must be approved or licensed by name by a state to provide postsecondary programs, including programs leading to a degree or certificate. The school must comply with all applicable state approval or licensure requirements; there are no exemptions.
- *A religious institution exempted from state authorization by state constitution or law.* This includes a nonprofit postsecondary school that is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation. The school must award only religious degrees or certificates in order to be exempt from state approval or licensure requirements.
- *A school established by federal government or an Indian tribe.* A public, nonprofit, or for-profit school that is authorized by the federal government or an Indian tribe by name to provide postsecondary educational programs is exempt from state approval or licensure requirements. A federal school must comply with applicable federal requirements and laws. If a school is authorized by an Indian tribe, the school must

be located on tribal lands and the tribal government must have a process to review and act on complaints regarding the school and to enforce applicable tribal requirements or laws.

If an institution offers postsecondary education through distance or correspondence education to students in a state in which it is not physically located as determined by the state, the institution must meet any state requirements for it to legally offer postsecondary distance or correspondence education in that state..  
[§600.9]

**COMMENT:**

One commenter felt the definition of the term “state authorization” provided in Appendix G was incomplete and suggested language to complete the definition. This was to address the responsibility of the schools, versus inferring that the state entity must assert the school’s compliance.

**Response:**

The Committee agrees.

**Change:**

The definition has been revised, as follows:

**State Authorization:** A state charter, statute, constitutional provision, or other action issued by an appropriate state agency or entity that establishes a school by name as a postsecondary educational entity, and the school otherwise meets the requirements established for that authorization in 34 CFR 600.9.

om/edited-as