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Department of Education Guidance Sheds Light on Satisfying State Authorization Rules

The U.S. Department of Education's Aug. 9, 2013, Dear Colleague Letter (DCL) provides guidance on the types of documentation colleges and universities may use to show compliance with state authorization regulations. Schools must comply in order to be eligible for Title IV federal student aid programs.

Background on State Authorization

In 2010, the department released its state authorization rule as part of its "Program Integrity" regulations. Under the rule, an educational institution must demonstrate that it has "state authorization" to operate postsecondary educational programs – see 34 CFR 600.9(a)(1)(i). To meet this requirement, three components are necessary:

1. The institution must be authorized by name as an educational institution by the "State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity" For example, an institution's state license or approval in the name of the educational institution (not a corporate entity) would meet the requirement.
2. The institution must be "authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate."
3. The authorizing state must have a complaint process for students who wish to file a complaint with the state regarding the institution.

Dear Colleague Letter Provides Examples

The new DCL, among other things, sheds light on the second component above by providing examples of how an institution can demonstrate that it is authorized by the state to operate “educational programs beyond secondary education.”¹ This guidance is necessary as methods of authorizing postsecondary programs vary by state, and some states do not issue documentation (e.g., licenses or approvals) that expressly state that an institution is authorized to operate postsecondary programs. As such, the DCL provides the following examples of how an institution may show it is authorized by the state to offer educational programs beyond secondary education:

State grant program: “Documentation identifying the institution by name as participating in a State grant program where its students receive State funds that are only provided to students attending postsecondary institutions in that State.”

Articulation agreement with public postsecondary state institution: “[A]n articulation agreement with a public postsecondary institution in the State for transfer students from the institution to receive credits at the postsecondary level for courses completed at the institution. The documentation submitted must include both the articulation agreement and credit transfer policy of the receiving public postsecondary institution in the State.”

Application and approval: An application submitted by the institution to the state agency and approval from the agency that expressly says the institution is approved to offer postsecondary education.

State laws and regulations: State laws and regulations that establish that a state agency is responsible for authorizing and approving postsecondary education in the state. For example, a college has a license from the state, but the license does not expressly say that the institution is authorized to offer educational programs beyond secondary. To evidence its compliance with the state authorization regulations, the college also may provide a copy of the state law that shows the state agency is authorized under the law to approve postsecondary educational programs.

In addition to the above examples, the DCL states that an institution may submit other types of documentation to the department for review to support that it is meeting the state authorization requirements.

¹ This Legal Alert only focuses on the second component above. Please contact your Husch Blackwell attorney if you would like guidance related to components 1 and 3.

What This Means to You

The burden to meet state authorization requirements rests with the educational institution, not the state. Therefore, in order to be eligible for Title IV funding, your educational institution must be prepared to provide necessary state authorization documentation to show it is authorized by the state to “operate educational programs beyond secondary education.”

Contact Information

For more information concerning this or other issues affecting educational institutions, please contact your Husch Blackwell attorney or a member of our education practice.