



Program Integrity Final Regulations: State Authorization

May 4, 2011

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Office of
Postsecondary Education**





Negotiated Rulemaking

Negotiated rulemaking

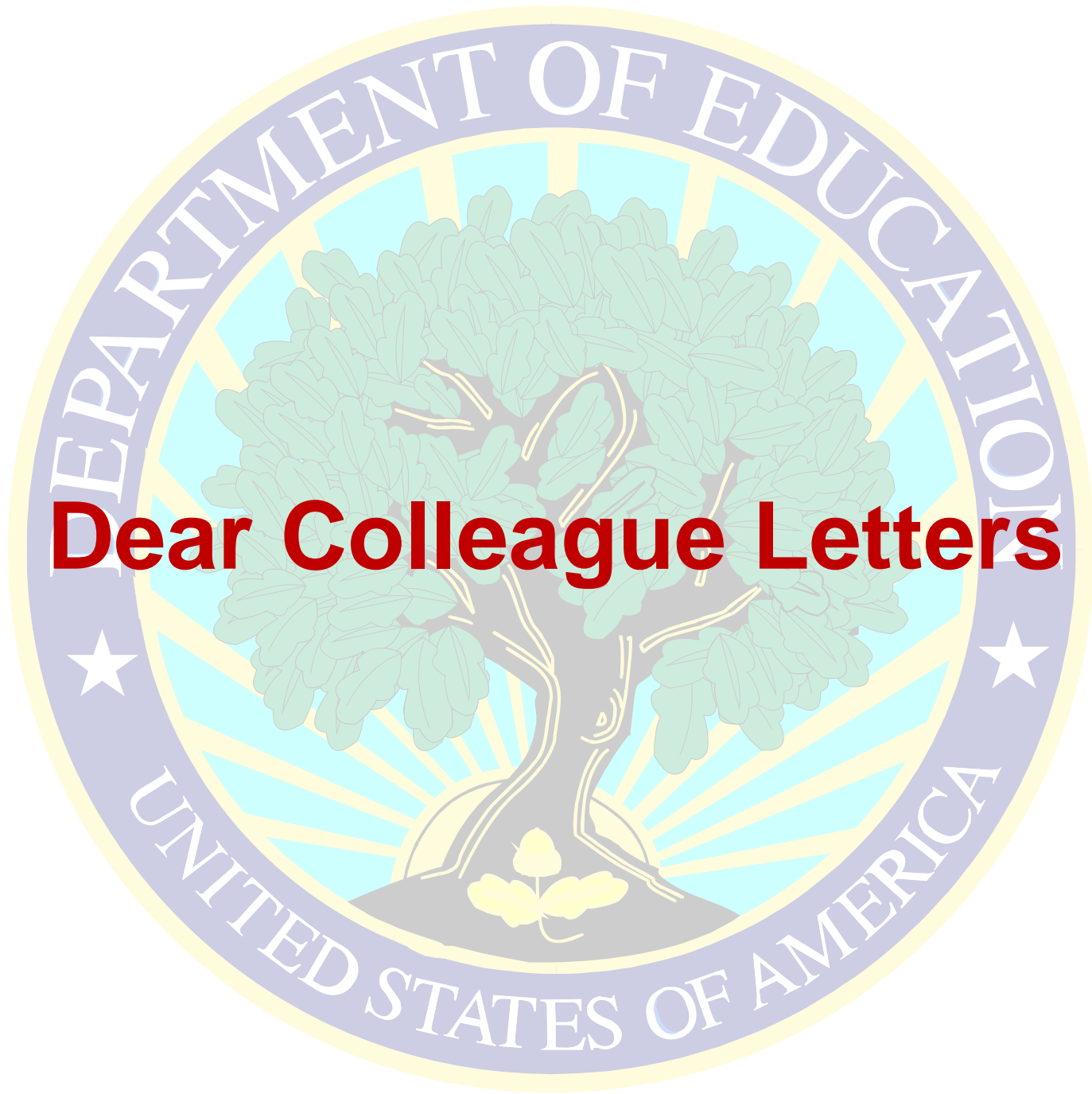
- Higher Education Opportunity Act
 - August 2008
- American Recovery and Reinvestment Act
 - February 2009
 - \$16 billion in new Pell funding and additional FWS
- Health Care and Education Reconciliation Act
 - March 2010
 - \$40 billion in additional Pell funding
- 2011-2012: over \$140 billion in Federal student aid available (approximately \$70 billion in 2008)

Negotiated rulemaking

- Hearings in Denver, Little Rock, and Philadelphia: June 2009
- Federal Register Notice: September 2009
- Two teams: Program Integrity and Foreign Schools
- Negotiated 14 issues for program integrity
- Held three meetings: November 2009, December 2009, and January 2010
- Did not reach consensus

Program integrity regulations

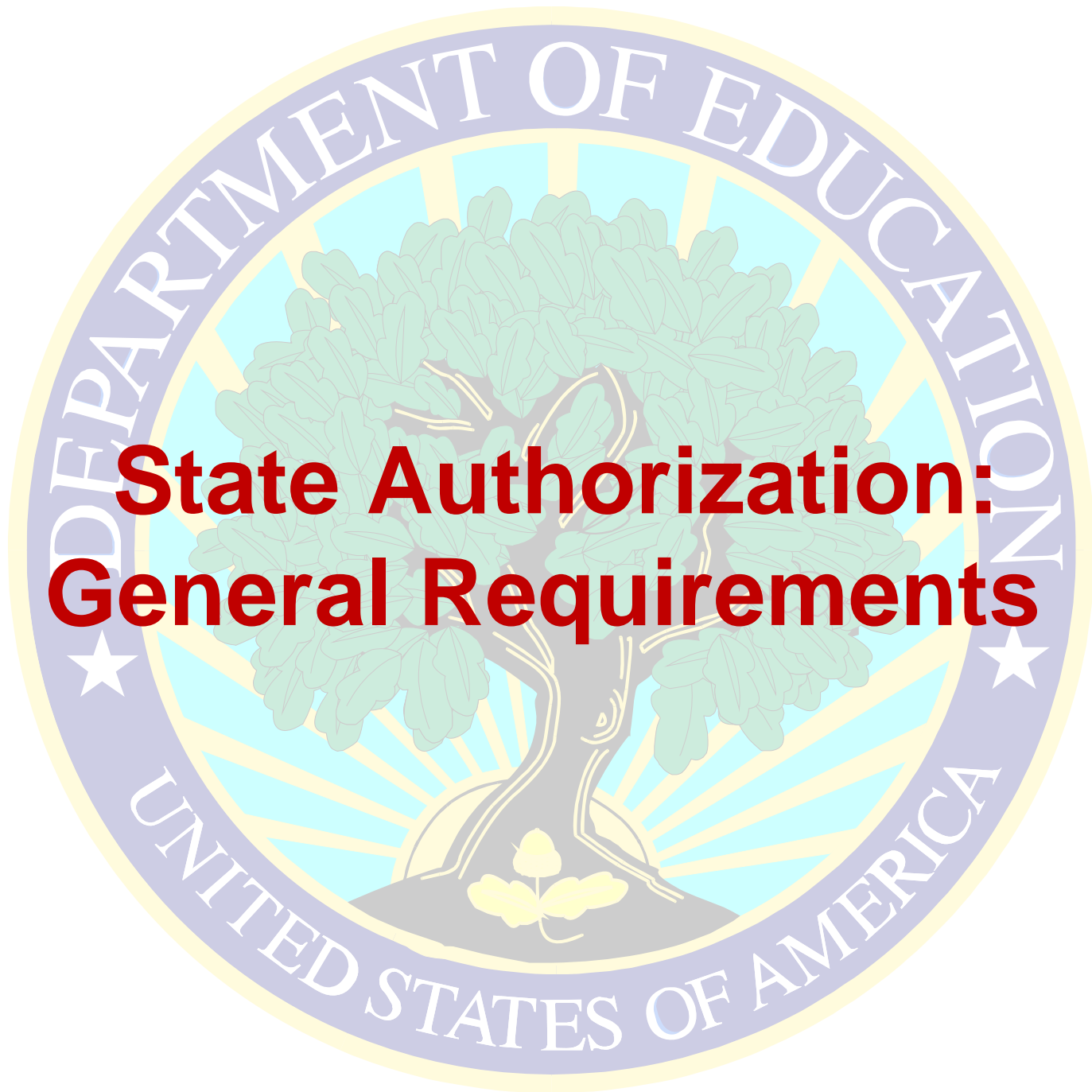
- Notice of proposed rulemaking: June 18, 2010
 - <http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf>
- Comment period through: August 2, 2010
- Nearly 1,200 comments
- Final regulations: October 29, 2010
 - <http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf>
- Effective date: July 1, 2011
- Technical amendments: April 13, 2011
 - <http://ifap.ed.gov/fregisters/attachments/FR041311ProgramIntegrityIssues.pdf>



Dear Colleague Letters

Dear colleague letters

- GEN-11-05 – Implementation of the Program Integrity Regulations
 - March 17, 2011
 - <http://ifap.ed.gov/dpcletters/attachments/GEN1105.pdf>
- GEN-11-11 – State authorization under the Program Integrity Regulations
 - April 20, 2011
 - <http://ifap.ed.gov/dpcletters/attachments/GEN1111.pdf>



State Authorization: General Requirements

State authorization

Under the Higher Education Act, for an institution in any State to be eligible to participate in Federal programs, it must be legally authorized by the State to provide postsecondary education.

- For purposes of Federal programs, the regulations—
 - Assure a direct State role in authorizing postsecondary institutions, and
 - Clarify what is required for an institution to be considered legally authorized by a State.
- The regulations do not require the creation of any State licensing agencies.

- New requirements
 - §600.9 State authorization
- Amended requirement
 - §668.43(b) student consumer information
- Conforming changes
 - §600.4(a)(3) institution of higher education
 - §600.5(a)(4) proprietary institution of higher education
 - §600.6(a)(3) postsecondary vocational institution

- Basis of operating authority
- Exemptions
- Student complaints
- Student consumer requirements
- Distance education

Basis of operating authority

- Established by name as an educational institution
– Includes all State institutions
Row A of chart
- Authorized to conduct business
Row B of chart
- Authorized to operate as a nonprofit charitable organization
Row C of chart

Established as an educational institution

- Must comply with any applicable State approval or licensure requirements and be approved by name
 - No mandate that a State have approval or licensure requirements for these institutions
- May be exempted from State approval or licensure requirements based on—
 - The institution's accreditation by a nationally recognized accrediting agency, or
 - The institution being in operation for at least 20 years

Established as a business or nonprofit

- Must comply with the State approval or licensure requirements
- Must be approved or licensed by name
- May not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption

Basis of operating authority

- Federal institutions
 - Meet provisions if authorized by name by the Federal Government
- Tribal institutions
 - Meet provisions if authorized by name by the tribal government
- Religious institutions
 - If qualify as a religious institution, exempt from these requirements

Religious institutions

- Defines a religious institution as an institution that is owned, controlled, operated, and maintained by a religious organization and awards only religious degrees or certificates
- Considers religious institutions authorized if exempt from State authorization under State law or under a State's constitution

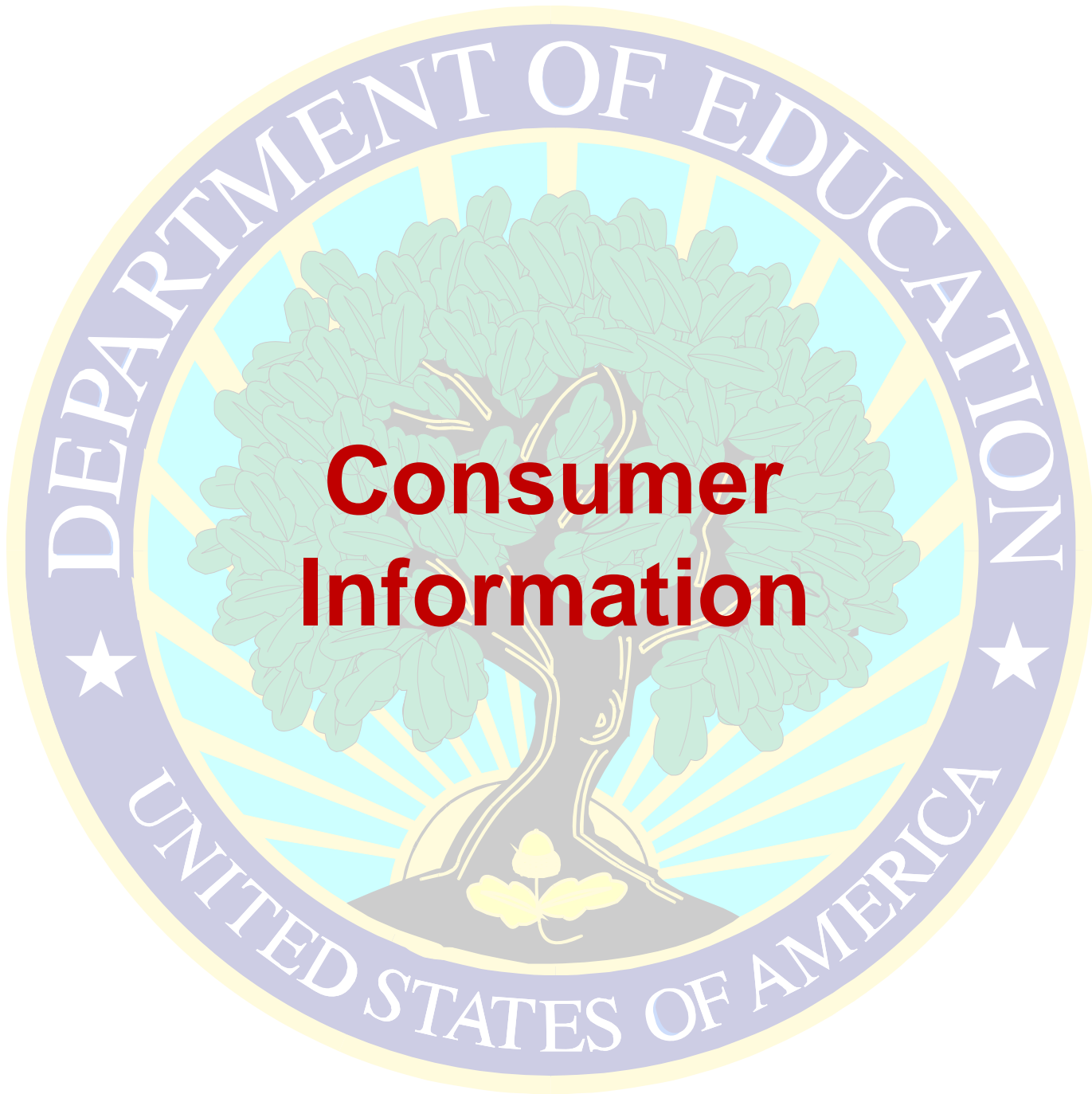
- A State must have a process, applicable to all institutions, to review and address complaints directly or through referrals as determined by the State.
 - Applies to religious institutions
 - Does not apply to tribal and Federal institutions
- For a tribal college, a tribal government must have a process to review and appropriately act on complaints.

Consumer information

- The institution must provide its students or prospective students with contact information for filing complaints with—
 - Its accreditor; and
 - Its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

Implementation

- Are effective July 1, 2011
- Provide for extensions if an institution's State cannot provide the necessary authorization by July 1, 2011 -- brick-and-mortar
 - An institution may request one-year extensions for the 2011-12 and 2012-13 award years.
 - The institution's State has until July 1, 2013 to make any needed adjustments to assure that institutions in the State may meet the new regulatory requirements.



Consumer information

- An institution must provide its students or prospective students with contact information for filing complaints with—
 - Its accreditor; and
 - Its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.
- Consumer information applies to distance education.
- Provisions are effective July 1, 2011.



State Authorization: Distance Education

Distance education: basic provisions

- Separate provisions for distance, online, or correspondence education to students in a State in which an institution is not physically located or in which it is otherwise subject to State jurisdiction
- State requirements, if any—
 - Must meet the State's requirements, to be legally offering postsecondary distance, online, or correspondence education in the State
 - Must be able to document the State's approval upon request

Additional considerations

- The regulations do not require that a State have an authorization/licensure process in this circumstance.
- State would determine the requirements for an institution to be considered to be legally operating in the State.
- The regulations apply to any institution—public, nonprofit, for-profit—operating in a State that regulates institutions offering distance, online, or correspondence education in the State.

Additional considerations

- If an institution has a physical presence offering postsecondary education in a State—
 - It must comply with the general requirements for State authorization; and
 - The distance provisions do not apply.
- If an institution does not establish legal authorization by a State that regulates distance or online education or correspondence study—
 - The institution is ineligible for Federal programs in that State; and
 - Any title IV student aid disbursed to students located in that State is an institutional liability. The institution may be subject other adverse actions.

- Challenges for States
- Challenges for institutions
- Good faith effort and enforcement
- Compliance not later than July 1, 2014
- Directory
- State coordination and reciprocity

Contact Information

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