

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 10. ACADEMIC AFFAIRS**

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. State Authorization [NEW]
610:10-1-1. Purpose [NEW]
610:10-1-2. Definitions [NEW]
610:10-1-3. Authorization to operate in the state [NEW]
610:10-1-4. Standards for program authorization [NEW]
610:10-1-5. Standards for operation [NEW]
610:10-1-6. Reporting requirements [NEW]
610:10-1-7. Penalties [NEW]

AUTHORITY:

State Regents for Higher Education; 70 O.S. § 4103

DATES:

Adoption:

January 30, 2014

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The State Regents for Higher Education (State Regents) find that a compelling public interest requires the passage of this emergency rule to comply with deadlines in amendments to federal programs and to avoid violations of federal regulations and further to avoid serious prejudice to private educational institutions operating in Oklahoma. The proposed rules must be in place to meet a deadline imposed by the United States Department of Education (USDOE) requiring compliance with 34 C.F.R. §600.9 by July 1, 2014. This Federal regulation requires states to take an “active role” in the approval or licensure of private institutions offering postsecondary education in order for those institutions to be eligible for Title IV funding and other federal programs. Unfortunately the guidance provided to date by the USDOE has been vague and ambiguous and fails to provide a method to adequately judge what policies will pass USDOE muster. The effective date of this regulation has been changed multiple times and a portion of the regulation was vacated by a U.S. District Court and those rules have not been replaced through negotiated rulemaking. All of these factors have made compliance with this regulation a moving target and contributed to the resulting need for emergency rules. The State Regents suggest that the proposed rules are the least intrusive, cost neutral and efficient way to meet the requirements of USDOE and protect the interests of private institutions operating in Oklahoma.

ANALYSIS:

The proposed emergency rule changes address the following issues:

1. Historically Title 70 Section 4103 of the Oklahoma Statutes has allowed private institutions in Oklahoma to qualify for Title IV funding and other Federal programs by demonstrating to the State Regents that the institution has been “accredited by a national or regional accrediting agency which is recognized by the Secretary of the United States Department of Education as a reliable authority as to the quality of education or training offered by institutions of higher education for the purposes of the Higher Education Act of 1965, as amended” (HEA).

2. The USDOE, due to a variety of factors, including but not limited to, high student loan default rates, gainful employment issues and misleading recruiting practices by some private educational institutions decided that demonstration of so-called “licensure by accreditation” would no longer be sufficient to qualify an institution for programs under Title IV of the HEA.

3. As long as the USDOE relied on accrediting agencies it recognized to protect the federal interest and to insure the quality of education and training being offered by private educational institutions it was unnecessary for the State Regents to exercise its option to promulgate rules.

4. The proposed rules address an emergency created by USDOE in failing to provide clear guidance as to what States are required to do in order to demonstrate an “active role” in approving or authorizing private institutions offering educational programs beyond secondary education. USDOE recognized by extending the effective date of the regulations multiple times but has now insisted on a July 1, 2014 deadline even though a portion of the regulation has been vacated by a U.S. District Court.

5. The State Regents suggest that the proposed rules are the least intrusive, cost neutral and efficient way to meet the requirements of USDOE and protect the interests of private institutions operating in Oklahoma.

The rules are sought on an emergency and temporary basis with the expectation that USDOE will provide further meaningful guidance and will complete the negotiated rulemaking process for those regulations that have been invalidated by court action. Similar permanent rule amendments are being presented simultaneously but may not become effective until the next legislative session.

CONTACT PERSON:

David B. Harting, Associate General Counsel, OSRHE, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104-3506, 405-225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253 (D):

**Title 610. State Regents for Higher Education
Chapter 10. Academic Affairs
Subchapter 1. State Authorization [NEW]**

Section 610:10-1-1. Purpose [NEW]

The Oklahoma State Regents for Higher Education authorizes private institutions to operate educational programs beyond secondary education under the conditions outlined in the sections below.

Section 610:10-1-2. Definitions [NEW]

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Academic degree" is defined as any associate, baccalaureate, first professional, master's, intermediate (specialist) or doctorate degree and any variations of these words to describe postsecondary education.

"Accreditation" is defined as a status determined by an accrediting agency that is recognized by the Secretary of the United States Department of Education.

"Accreditation report" is defined as a report and/or notice provided by the accrediting agency to an institution which includes, but is not limited to, a comprehensive team summary, monitoring, or progress report.

"Asynchronous" is defined as learning in which students and faculty are not present and available simultaneously. Regular communication and instruction may be facilitated by e-mail, discussion boards, or other electronic formats.

"Avocational program" is defined as an instructional program that does not lead to an academic degree.

"Certificate" is defined as a formal award certifying the satisfactory completion of a postsecondary educational program.

"Financial report" is defined as a report and/or notice provided by the United States Department of Education or independent auditor for assessing an institution's financial viability based on audited financial statements.

"Postsecondary education" is defined as formal instruction whose curriculum is designed primarily for students who are beyond the compulsory age for high school, including programs whose purpose is academic or vocational and excludes avocational and adult basic education programs.

"Private institution" is defined as an educational institution controlled by a private individual(s) or by a nongovernmental agency, usually supported primarily by other than public funds, and operated by other than publicly elected or appointed officials. These institutions may be either for-profit or not-for-profit.

"Program" is defined as a sequentially organized series of courses and other educational experiences designed to culminate in a postsecondary certificate or degree (instructional program, academic program, and course of study are considered synonymous).

"Substantive change" is defined as a modification to a postsecondary certificate or degree program requirement from those previously authorized that will change the requirements a student must fulfill to complete the program of study. Substantive changes include, but are not limited to, program deletion, changes in total number of required credit or clock hours to complete the program, changes in required courses for the program, and changes in admission standards for the program.

"Synchronous" is defined as learning that takes place when students and/or faculty are in different geographical locations, but interact (or meet) in real-time using technology.

"University" is defined as a postsecondary institution authorized to offer baccalaureate degrees together with graduate or first professional degrees.

Section 610:10-1-3. Physical presence [NEW]

(a) For the purpose of these rules, any of the following activities constitute a physical presence in the State of Oklahoma. A private institution shall be subject to the rules outlined in this subchapter if it conducts these activities:

(1) Establishes a physical location in the State of Oklahoma for students to receive synchronous or asynchronous instruction; or

(2) Requires students to physically meet at a location in the State of Oklahoma for instructional purposes that comprise more than 2 class periods equivalent to six hours; or

(3) Provides an offering in the nature of a short course or seminar, if instruction for the short course or seminar is greater than twenty (20) classroom hours; or

(4) Establishes an administrative office in the state, including:

(A) Maintaining an administrative office in the State of Oklahoma for the purpose of providing information to prospective students or the general public about the institution, enrolling students, or providing services to enrolled students;

(B) Providing office space to instructional or non-instructional staff; or

(C) Establishing an institutional mailing address, post-office box, street address, or phone number in the State of Oklahoma.

(b) Experiential learning activities arranged for an individual student, such as clinical, practicum, residency or internship, shall not constitute a physical presence provided that:

(1) Only a small number of students from each institution are physically present simultaneously at a single field site; and

(2) There is no multi-year contract between the institution and the field site.

Section 610:10-1-4. Authorization to operate in the state [NEW]

To operate in the State of Oklahoma, a private institution shall apply for, in a prescribed format, and receive authorization to offer educational programs beyond secondary education and shall be accredited by a national or regional accrediting agency which is recognized by the Secretary of the United States Department of Education. Upon receiving an application for authorization to operate in the State of Oklahoma, the agency shall review the application to determine if the institution satisfies the criteria outlined below.

Section 610:10-1-5. Standards for program authorization [NEW]

(a) An institution shall obtain authorization to offer postsecondary certificate or degree programs using the following procedures:

(1) The institution's president or chief executive officer must submit to the Chancellor a letter of intent to initiate a new program and the letter shall include the following:

(A) The location where the program will be offered.

(B) Documentation of accrediting agency approval, if applicable.

(C) A list of the curriculum with total credit or clock hours for the proposed certificate or academic degree program. The institution must demonstrate that proposed programs conform to accrediting agency requirements relative to commonly accepted minimum requirements for general education for all of its undergraduate programs, and conform to minimum program lengths.

(D) Proposed programs must respond to the needs of the larger economic and social environment. Thus, the institution must provide evidence of employer demand. Evidence of employer demand can be demonstrated by, but is not limited to, employer surveys, current labor market analysis, and future employment projects.

(E) Total of tuition and fees relative to the certificate or degree program.

(b) Faculty resources shall be adequate and appropriate to support the program and the qualifications of faculty will support the objectives and curriculum of the program. Faculty shall be academically or experientially qualified for the content they teach. When faculty members are employed based on equivalent experience, the institution shall define a minimum threshold of experience and an evaluation process that is to be used in the appointment process.

(c) The State Regents' staff will review the institution's program request and will submit one of the following recommendations:

(1) Deny the program with a written explanation to the institution of the reason for this action;

(2) Defer the program request until the institution meets specified criteria or provides additional information; or

(3) Approve the program without qualification.

(d) A private institution shall provide notification of substantive changes to postsecondary certificate and degree programs.

Section 610:10-1-6. Standards for operation [NEW]

(a) A private institution shall:

(1) Make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation and its state, federal, or tribal approval or licensing.

(2) Establish a clearly understood and published complaint process and sustain a process within the institution for responding appropriately to complaints and for documenting their resolution. The institution shall also provide its students or prospective students with contact information for filing complaints with its accreditor and with its state approval or licensing entity and any other relevant state official or agency that would appropriately handle a student's complaint.

(b) A private institution shall not:

(1) Use fraud or misrepresentation in advertising or in procuring the enrollment of a student;

(2) Use the term "accredited" in the name or advertisement of the institution unless such institution is accredited by a national or regional accrediting agency that is recognized by the Secretary of the USDE. Additionally, the institution shall not use the term to describe its programs unless such programs hold applicable specialized or programmatic accreditation; and

(3) Use the term "university," "degrees," "associates," "baccalaureate," "master's," "doctorate," "undergraduate," "graduate," and any variations of these words to describe the education provided unless such institution is accredited by a national or regional accrediting agency which is recognized by the Secretary of the USDE.

Section 610:10-1-7. Reporting requirements [NEW]

(a) Unless already reporting data through the Unitized Data System, private institutions shall report enrollment, graduation and retention rates, credentials awarded, financial aid information, and other related information in a prescribed format annually.

(b) A private institution shall:

(1) Provide notice and copies within thirty (30) days of any material information related to an action or review by the institution's accrediting body concerning the institution's accreditation status, including but not limited to, reaffirmation or loss of accreditation or any sanction relative to the institution's level of accreditation such as, but not limited to, warning, probation, or show cause. In addition, the institution shall immediately provide notice if the institution's accrediting body is no longer recognized by the Secretary of the USDE.

(2) Provide notice and copies within thirty (30) days of any material information from an independent auditor and/or the institution's accrediting agency related to the fiscal viability of the institution.

(3) Provide notice and copies within thirty (30) days of any material information related to a Title IV program review conducted by the USDE.

(4) Immediately provide notice if an institution will cease operations or if loss of accreditation is imminent. These institutions shall establish and provide a teach-out plan that shall include, but not be limited to, the following:

(A) Former and current student notification;

(B) Processes for addressing issues relative to degree or course completion;

(C) Detailed plans regarding issuing official transcripts and release of student records; and

(D) Contact information and location of the custodian of records.

Section 610:10-1-8. Penalties [NEW]

The authorization to operate educational programs beyond secondary education may be suspended or revoked for any private institution when it fails to comply with any section of this subchapter.