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State Registration of Distance Education Programs and Defining a Credit Hour – An Update on Federal Law

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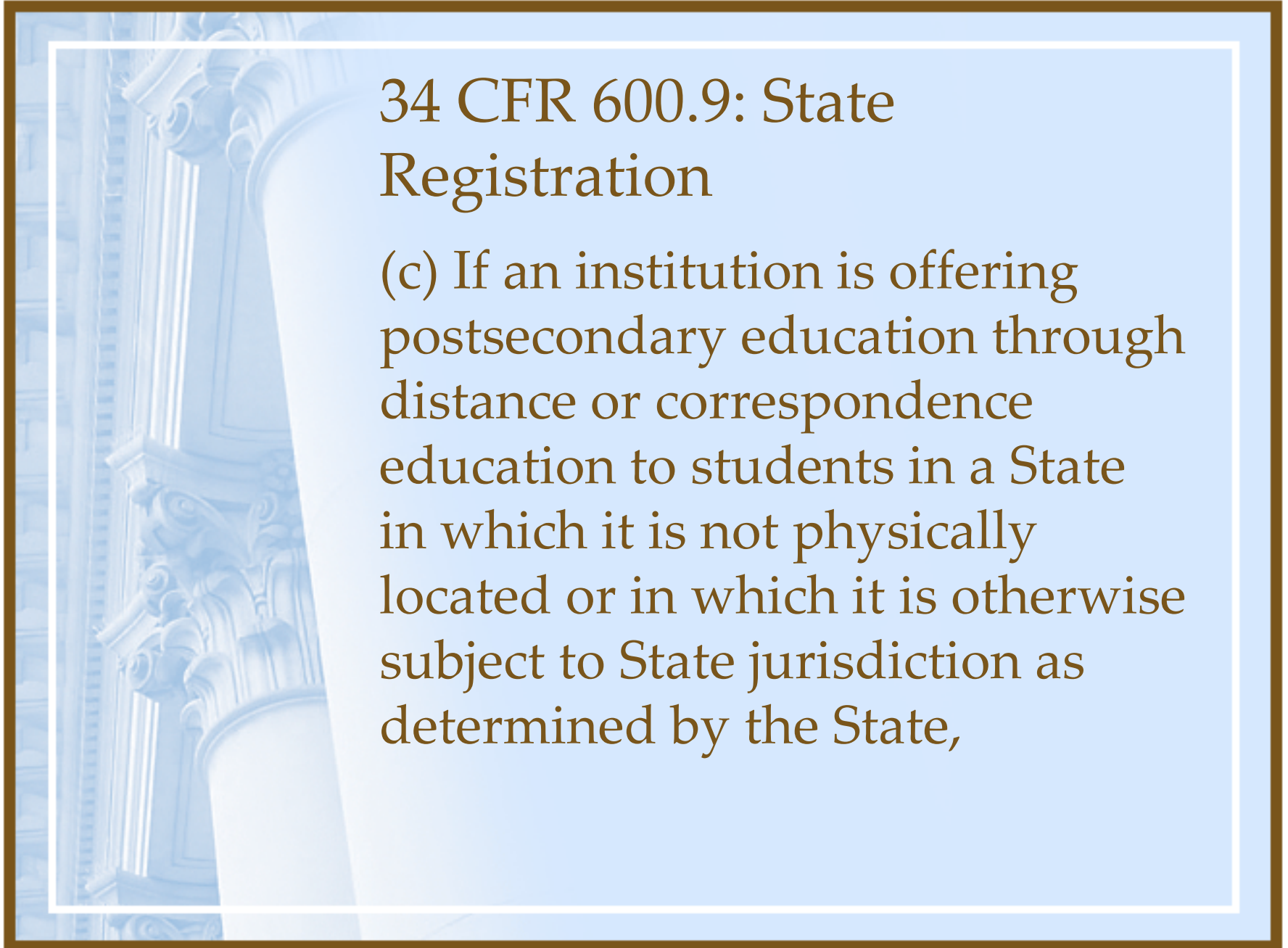
State Registration Issues

- Registration is an issue determined by state law
- Where a state regulates distance education, institutions are expected to register
- Some question whether state registration of an entity without a physical presence is constitutional, including Maine

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State Registration Issues

- The US Department of Education determined that state regulation should be an element in Title IV access
- With a federal regulation linking a federal benefit to state registration, constitutionality is no longer an issue

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34 CFR 600.9: State Registration

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State,

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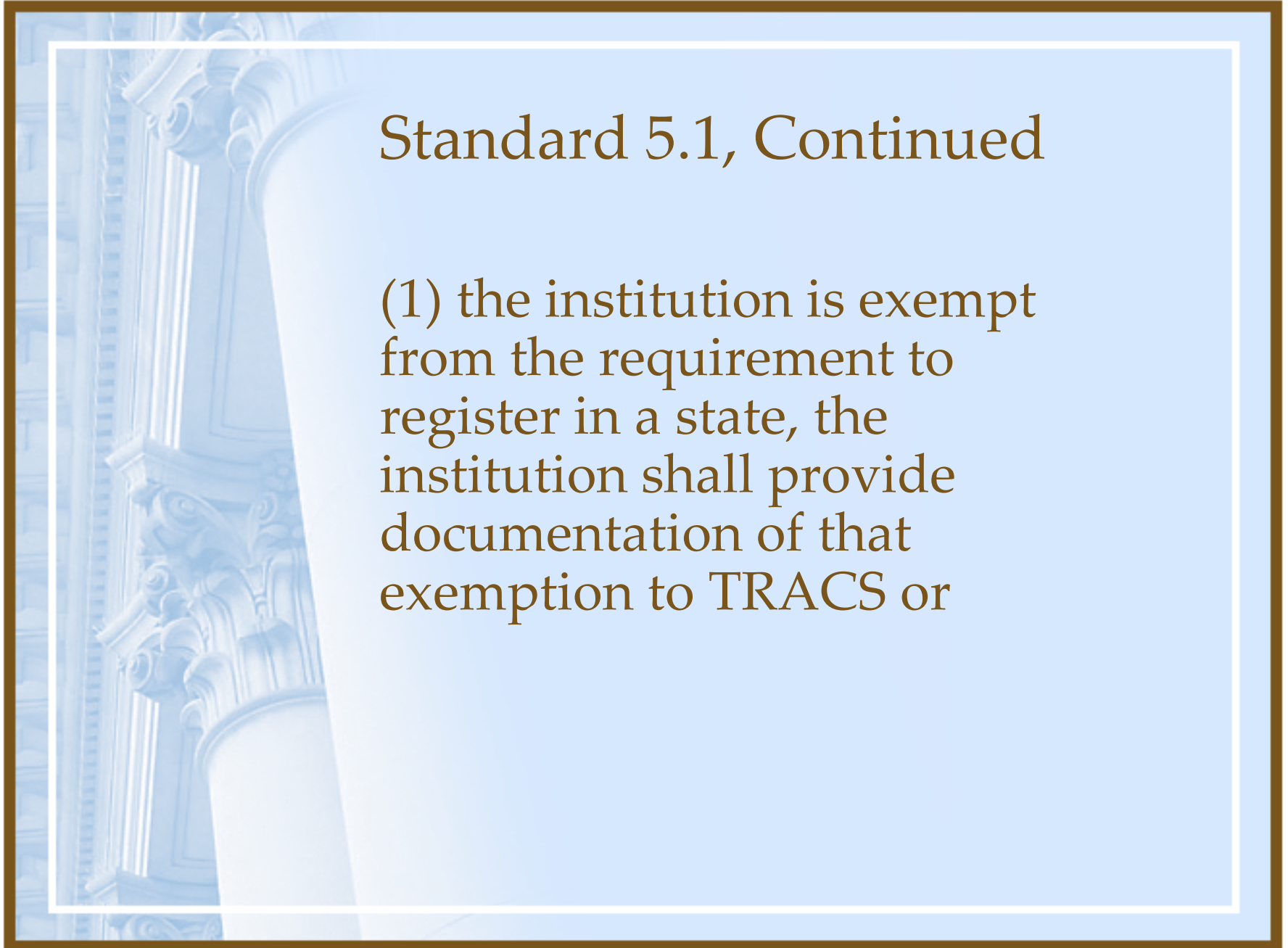
34 CFR 600.9, Continued

the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

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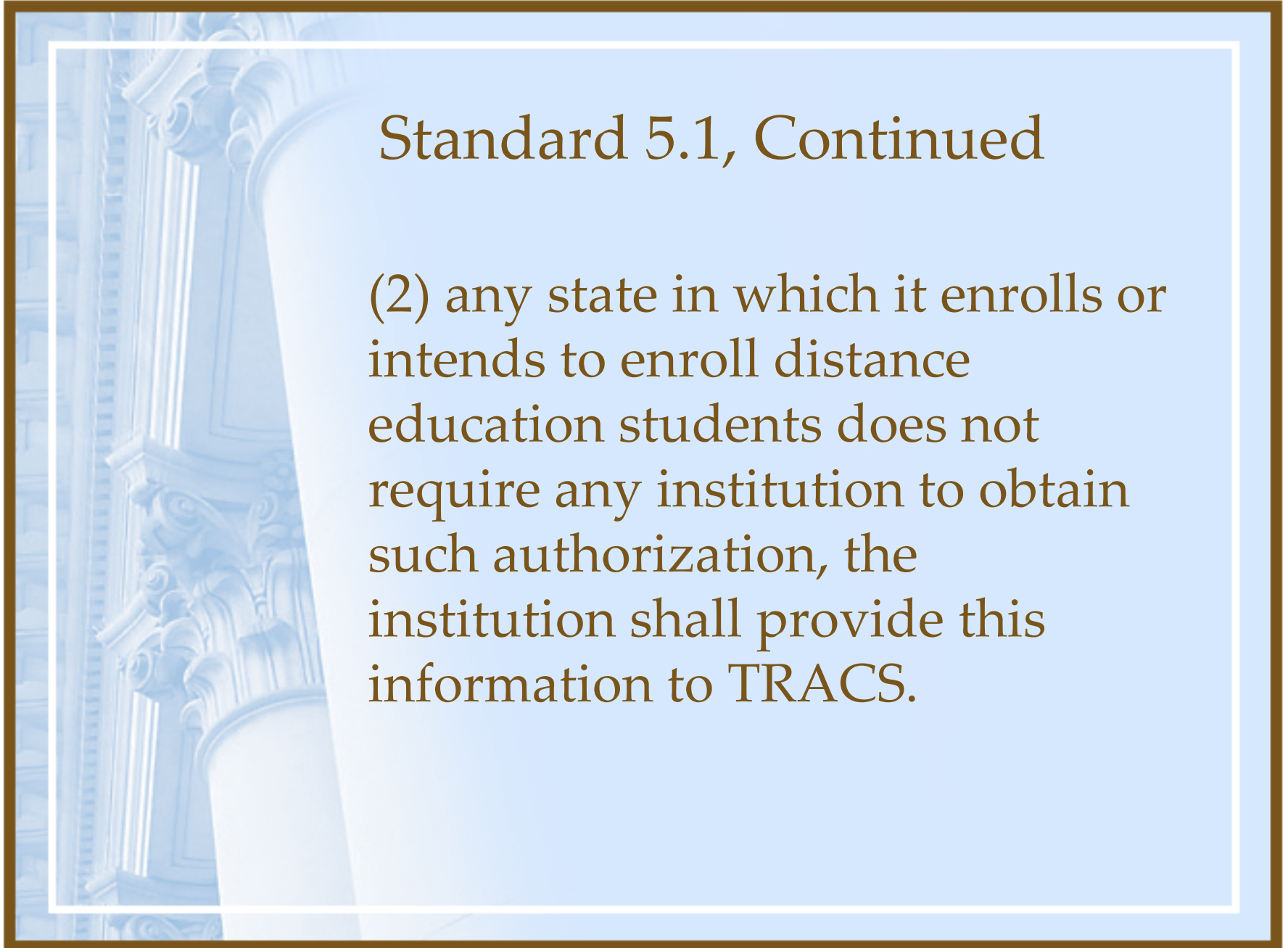
Standard 5.1

The institution has legal authorization to operate from the government of all states or territories where the institution enrolls or intends to enroll distance education students and has filed copies of the authorizations with TRACS, except if

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Standard 5.1, Continued

(1) the institution is exempt from the requirement to register in a state, the institution shall provide documentation of that exemption to TRACS or

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Standard 5.1, Continued

(2) any state in which it enrolls or intends to enroll distance education students does not require any institution to obtain such authorization, the institution shall provide this information to TRACS.

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Career College Association v. Arne Duncan, Secretary

- This case challenged 3 regulations
- Compensation, 34 C.F.R. § 668.14(b)(22)
- Misrepresentation, 34 C.F.R. § 668.71(c)
- State authorization, 34 C.F.R. § 600.9(a)(1)

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Legal Standard

The Administrative Procedure Act requires a reviewing court to set aside an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).



Legal Standard, Continued

A reviewing court “must consider whether the [agency’s] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.”

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Legal Standard, Continued

At a minimum, the agency must have considered relevant data and articulated a satisfactory explanation establishing a “rational connection between the facts found and the choice made.”

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Legal Standard, Continued

The Supreme Court has instructed that “[a]n agency action will usually be found to be arbitrary or capricious if:



Legal Standard, Continued

the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

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Legal Analysis

The regulation was proposed as “approval from the States where they operate” and made final as “offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located”

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Decision

The Court said the Department did not give fair notice of the regulation; the final regulation was not a logical outgrowth of the draft regulation and the Department did not provide an opportunity for comment on the change. It vacated the regulation on State Registration.

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Decision Continued

The Court upheld the regulations on Compensation and Misrepresentation.

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Effect of the Decision

This was a summary judgment, so there was no decision on the merits of the regulation.

The Department has appealed.

The Department can reissue the regulation after following the appropriate procedures.

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TRACS' Responsibilities

Although registration is not required by federal regulation; TRACS must still determine compliance with state laws.

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12 States Require Registration

Alabama, Alaska, Arkansas,
Kansas, Massachusetts,
Minnesota, Montana, New
Mexico, North Dakota, Oregon,
Wisconsin, Wyoming

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11 States or Territories May Require Registration

California, District of Columbia, Georgia, Indiana, Michigan, Mississippi, Nebraska, New Jersey, Pennsylvania, Washington; Puerto Rico considering law requiring registration

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Impact Cited in Survey of 215 Institutions

Not accept distance education students from some states (e.g., MA, MN, AR)

Greater effect on smaller institutions

Institutions of 5,000 and less likely to limit enrollment to 20 or fewer states



Respondents' Actions

3% Authorized in all states or all selected states

28% Applied to one or more states

26% Contacted states but have not applied

40% Some planning, no contact

3% Have not addressed regulation



Institutional Cost Estimates, 67 Institutions

15% \$10,000 or less

23% \$10,001 to \$50,000

22% \$50,001 to \$100,000

22% \$100,001 to \$250,000

18% \$250,001 or more

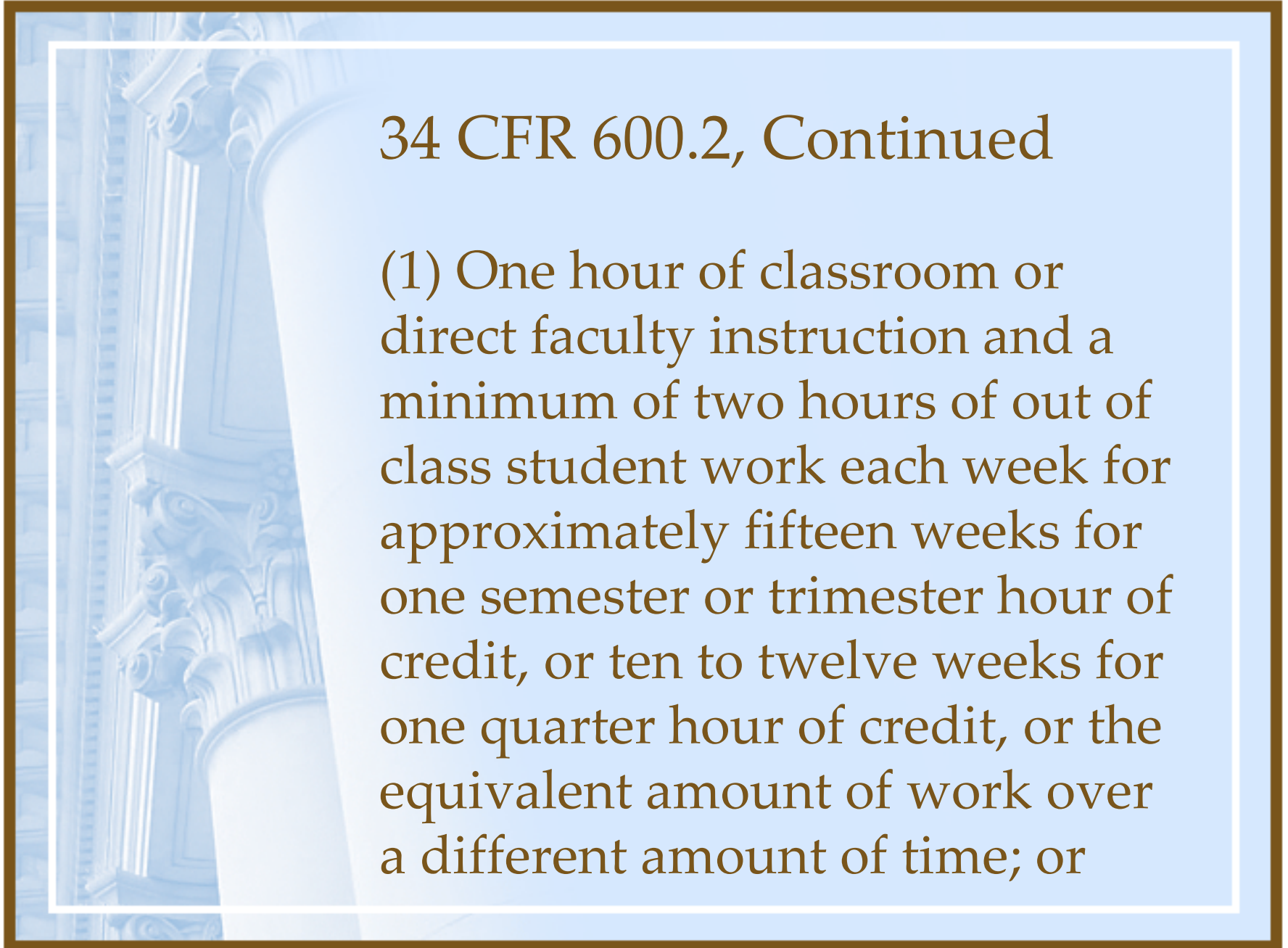
The estimates of \$250,000 or less
do not include staff time.

44% will seek approval in all
states and territories



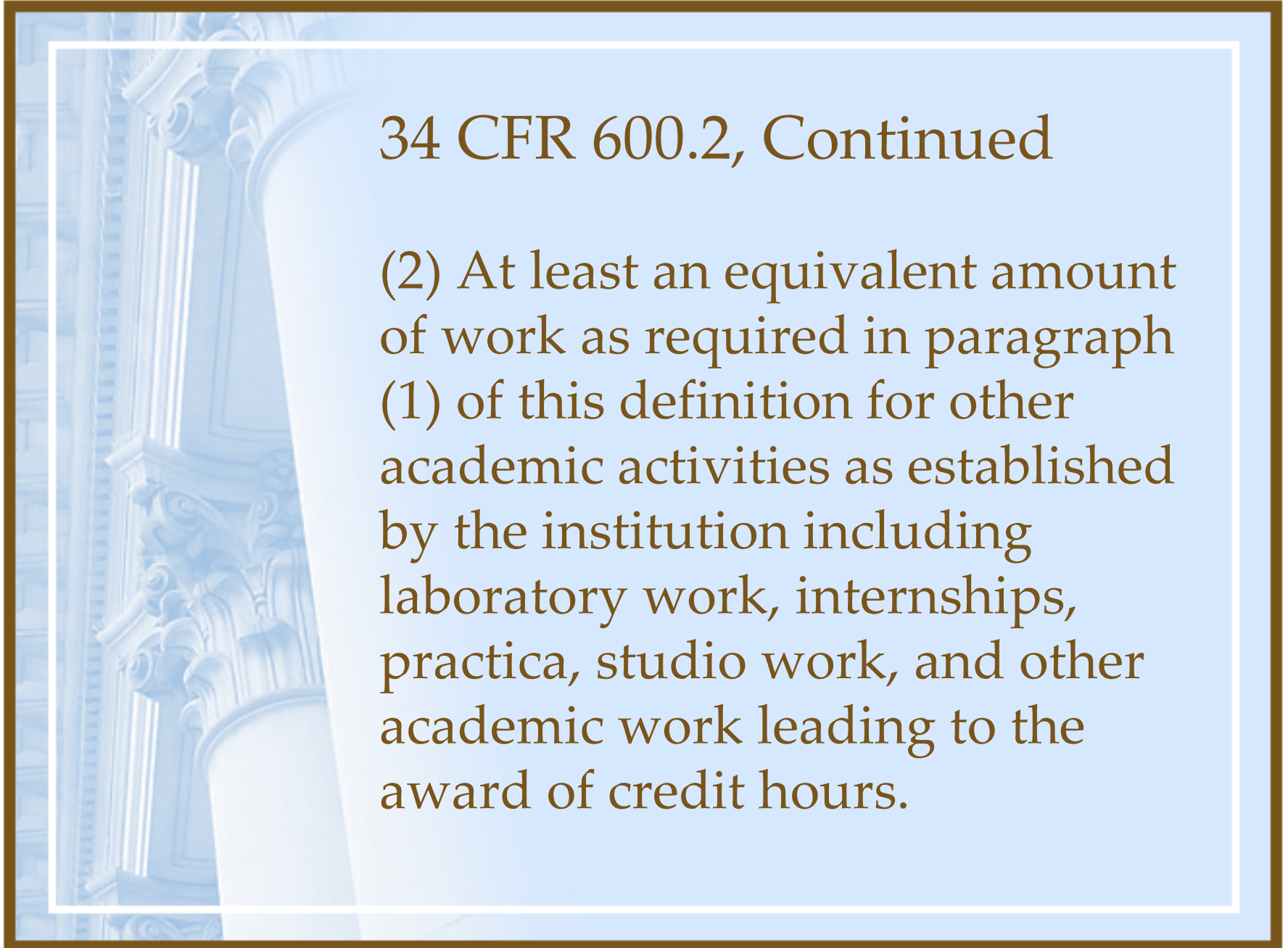
34 CFR 600.2: Credit Hour

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—

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34 CFR 600.2, Continued

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

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34 CFR 600.2, Continued

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

“Dear Colleague”

A credit hour for Federal purposes is an institutionally established equivalency that reasonably approximates some minimum amount of student work reflective of the amount of work expected in a Carnegie unit: key phrases being "institutionally established," "equivalency," "reasonably approximates," and "minimum amount."

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“Dear Colleague” Continued

At its most basic, a credit hour is a proxy measure of a quantity of student learning.

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“Dear Colleague” Continued

In keeping with the original purpose of providing a consistent measure of at least a minimum quantity of a student's academic engagement, the definition of a credit hour will establish a basis for measuring eligibility for Federal funding.

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“Dear Colleague” Continued

We recognize, however, that other measures of educational content are being developed by institutions, and we do not intend to limit the methods by which an institution may measure a student's work in his or her educational activities.

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“Dear Colleague” Continued

The institution determines the amount of credit awarded for student work.

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“Dear Colleague” Continued

A credit hour is expected to be a reasonable approximation of a minimum amount of student work in a Carnegie unit in accordance with commonly accepted practice in higher education.

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“Dear Colleague” Continued

The credit hour definition is a minimum standard that does not restrict an institution from setting a higher standard that requires more student work per credit hour.

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“Dear Colleague” Continued

The definition does not dictate particular amounts of classroom time versus out-of-class student work.

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“Dear Colleague” Continued

In determining the amount of work the institution's learning outcomes will entail, as under current practice, the institution may take into consideration alternative delivery methods, measurements of student work, academic calendars, disciplines, and degree levels.

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“Dear Colleague” Continued

To the extent an institution believes that complying with the Federal definition of a credit hour would not be appropriate for academic and other institutional needs, it may adopt a separate measure for those purposes.

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“Dear Colleague” Continued

Institutions may assign credit hours to courses for an amount of work represented by verifiable student achievement of institutionally established learning outcomes.

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“Dear Colleague” Continued

Must an institution use the Federal definition of a credit hour as a starting point for making academic judgments about the credits associated with courses and programs if the institution is to continue to be eligible for Federal funding such as student aid?

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“Dear Colleague” Continued

Can an institution comply using a measure of student progress and learning outcomes other than a credit hour?

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“Dear Colleague” Continued

Does the definition of a credit hour mean that all 3-credit courses will have to meet for 3 hours per week or the equivalent of 37.5 clock hours for a semester hour?

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“Dear Colleague” Continued

How would an institution apply the definition of a credit hour if the institution offers asynchronous online courses that are not also offered in a classroom setting?

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“Dear Colleague” Continued

What is the relationship of a defined credit hour to a "week of instructional time" as defined under §668.3(b)(2) and used in determining the weeks of instructional time for purposes of an educational program and student eligibility?

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“Dear Colleague” Continued

Must an institution have a single policy and procedures related to the credit hour that applies to all disciplines, degree levels, teaching/learning formats, and delivery modes?

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“Dear Colleague” Continued

Can you provide an example of an institution using different credits for title IV purposes and for academic purposes?

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“Dear Colleague” Continued

If an institution measures student progress in courses or in units, rather than in credits, is the institution required to change its practices and offer 3-credit courses?

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Department's Enforcement

The Department has indicated it will consider good faith efforts as compliance for 2011-12.

It will likely begin full enforcement in July of 2012.