State Authorization for Distance Education: The Future for REGULATIONS

August 14, 2014

- The webcast will begin at the top of the hour.
- There is no audio being broadcast at this time.
- If you need assistance, contact Blackboard Collaborate: 866-388-8674.
- An archive of this webcast will be available on the WCET and partner organization websites next week.
State Authorization for Distance Education: The Future for REGULATIONS

- Welcome.
- Thank you Blackboard Collaborate!
- If you have technical issues:
  - Call 866-388-8674
- Use the chat box for questions.
- Archive, PowerPoint, and Resources available next week.

Megan Raymond, WCET
If you have a question during the presentation, please add your questions to the chat box. We will monitor the chat box and have time for Q&A at the end of each section.
Dr. Laurie G. Hillstock
laurie.hillstock@onlinelearning-c.org
Facilitator, Leadership Series
Online Learning Consortium
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<th>Presenters</th>
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<th>Institutional Progress in Authorization</th>
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<td>Director of Regulatory Compliance</td>
<td>Jim Fong</td>
</tr>
<tr>
<td>Pearson</td>
<td></td>
<td>Center for Research and Consulting</td>
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<td>Jim Fong</td>
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<td>UPCEA - University Professional &amp;</td>
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<td>Continuing Education Association</td>
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<tr>
<td>FEDERAL REGULATIONS</td>
<td>WHAT SHOULD YOUR INSTITUTION DO?</td>
<td></td>
</tr>
<tr>
<td>Russell Poulin</td>
<td></td>
<td>Jeannie Yockey-Fine</td>
</tr>
<tr>
<td>Interim Co-Executive Director</td>
<td></td>
<td>Senior Advisor, State Regulatory Services,</td>
</tr>
<tr>
<td>WCET-WICHE Cooperative for Educational Technologies</td>
<td></td>
<td>Cooley LLP</td>
</tr>
</tbody>
</table>
Existing and Changing State Regulations

- Joan Bouillon, Ph.D.
- Director of Regulatory Compliance
- Pearson
Distance Education Rule

- The Proposed Distance Education Rule
  - 34 C.F.R. § 600.9 (c)
  - requires higher education institutions offering online programs to be authorized in all states where their students reside

- Paused!!
BUT

All institutions still need to comply with STATE laws and regulations!!
100% Online Programs

States Requiring Approval of *Private Non-profit* Degree-granting Institutions:

Alabama
Arkansas
Indiana
**Iowa** (must show financial responsibility)
Maryland
Minnesota
Missouri
Montana
Nebraska
North Dakota
Utah
Wisconsin
Wyoming
100% Online Programs

States Requiring Approval of *Public* Degree-granting Institutions:

Alabama   Missouri
Arkansas   Montana
Indiana    Utah
Maryland   Wyoming
Minnesota
Some states do not require authorization, but exclusively online providers must obtain an exemption:

- **Alaska**
- **Illinois**
- **North Dakota**
Physical Presence

Most states require approval due to some level of “physical presence”

- Local address of a site or office
- Local advertising
- Faculty
- Recruiting activities
- Externships, clinicals, practica, or field experience
State Authorization – Not Just for Online Programs

On-ground institutions must comply with state regulations!!

Institutions should know:

- Program content – externships?
- Student locations
- Advertising and marketing locations
Professional Licensure

Most Common Examples of Professional Licensure Programs

- Nursing
- Teacher Certification
- Psychology
- Social Work
- Allied Health
Professional Licensure

- Professional licensing board requirements are independent of state authorization.

- Some state higher education authorizing agencies will not approve a program until a licensing board approves the program.
Professional Licensure

- Program approvals may be in addition to that of the higher education agency.

- Some states will not allow initial license from another state.

- Certain states will not allow transfer of a license without additional requirements.
Professional Licensure

Licensing board requirements vary greatly from state to state

- Specific professional accreditation.
- Field experience – number of hours and types of practica sites.
- Professional examinations.
- Some boards do not approve online programs.
What Happens to Institutions that Do Not Comply?

- Cease and desist orders.
- Possible fines and institutional sanctions, etc.
- Very unpleasant situations, including lawsuits.
- Domino effect with accreditors and DOE.
- Damaged reputation!!
Resources

State Authorization Information
SHEEO
http://sheeo.org/sheeo_surveys

Nursing Licensure Information
National Council of State Boards of Nursing Licensing
http://www.ncsbn.org/4841.htm
Resources Cont.

Psychology Licensure Information
The Association of State and Provincial Psychology Boards
http://asppb.site-ym.com/

Social Work Licensure Information
Association of Social Work Boards
http://www.aswb.org/licensees
Questions from the Audience
Federal Regulation – State Authorization for Distance Ed.

- Russell Poulin
- *Interim* Co-Executive Director
- *WCET-WICHE Cooperative for Educational Technologies*
Federal Regulation – State Authorization for Distance Ed.

How many students enroll in distance education across state lines?
Federal Regulation – Enrolled Exclusively in Distance Ed.

<table>
<thead>
<tr>
<th>Location</th>
<th>Colleges</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>In another U.S. state</td>
<td>2,129</td>
<td>1,176,009*</td>
</tr>
<tr>
<td>In another country</td>
<td>940</td>
<td>33,561</td>
</tr>
<tr>
<td>In U.S., state unknown</td>
<td></td>
<td>36,779</td>
</tr>
<tr>
<td>Unknown, unreported</td>
<td></td>
<td>55,431</td>
</tr>
</tbody>
</table>

*5.6% of all enrollments

Source: IPEDS Fall Enrollment 2012:
http://wcetblog.wordpress.com/2014/03/19/misconceptions-in-distance-ed-by-sector/
Federal Regulation –
State Authorization for Distance Ed.

Regulation issued in October 2010
“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...”
“...the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document to the Secretary the State’s approval upon request.”
Federal Regulation – Chapter 34, §600.9(c)

“...the institution must meet any State requirements so that it be legally offering distance or correspondence education in that State. An institution must be able to document to the Secretary the State’s approval upon request.”

“Vacated” by the Federal Courts

http://wcetblog.wordpress.com/2012/06/05/state-authorization-appeal/
http://wcetblog.wordpress.com/2012/07/30/usdoe-will-not-enforce/
Federal Regulation –
State Authorization for Distance Ed.

Negotiated Rulemaking
2014
Federal Regulation – Negotiated Rulemaking Committee

- Federal financial aid rules.
- 6 diverse issues.
- 15 negotiators representing diverse interest groups.
- Consensus: All 15 must agree on all 6 issues.
Federal Regulation –
Negotiated Rulemaking Committee

Proposed State Auth. for DE Elements:
- All colleges in compliance by July 2018.
- Support for reciprocity.
- Active duty military and families exempt.
- Notice regarding licensure programs.
- Defined home state for students in foreign countries who receive aid.
Federal Regulation – Negotiated Rulemaking Committee

Deal Breakers:

- Disallow states from ability to exempt institutions, if it wished.
- If lose state authorization, immediate loss of federal aid.

Consensus Not Reached

http://wcetblog.wordpress.com/2014/05/29/state-auth-negreg-what-happened/
Federal Regulation – State Authorization for Distance Ed.

What’s Next?
Federal Regulation – What’s Next?

- Sloan-C (now OLC), UPCEA, and WCET partnered on state authorization recommendations to the Department. (http://wcetblog.wordpress.com/2014/06/16/sloan-c-upcea-and-wcet-partner-on-state-authorization-policy-recommendations/)

- Others weighed in – research universities, APLU, regional compacts, SARA.
Federal Regulation – What’s Next?

- Department “pauses” on state authorization for distance education regulation to “get it right”. (http://wcetblog.wordpress.com/2014/06/26/pause-on-state-auth/)
- The Department of Defense also paused its state authorization requirement. (http://wcetblog.wordpress.com/2014/07/17/state-authorization-pauses-webcast/)

Info on the **two** state authorization regulations: “on ground” and “distance ed”: http://wcetblog.wordpress.com/2014/02/14/untangling-two-state-authorization-rules/)
Federal Regulation – What’s Next?

- There is no official timeline for next steps.
- Unofficially...thinking they will issue new regulation for public comment after the elections and by next Spring.
- New deadline might change.
Federal Regulation – What’s Next?

The Bottom Line

- NO federal regulation.
- NO federal deadline.
- States STILL EXPECT YOU TO COMPLY and their deadline is NOW. \(\text{⇐Have we mentioned this?}\)
- Continue to work together to influence the Department on the regulation.

For more information: http://wcet.wiche.edu/learn/issues/state-authorization and http://wcetblog.wordpress.com/
What are Institutions Doing About State Authorization?

- Jim Fong
- Center for Research and Consulting UPCEA - University Professional & Continuing Education Association
Methodology

- The survey was designed in partnership between the UPCEA, WCET and Midwestern State Authorization Reciprocity Agreement (M-SARA). The survey was implemented during January and February 2014. The sample was created by combining membership and email lists from WCET and UPCEA institutions and removing duplicate responses, as well as using a list from the Higher Education Directory. In addition to this effort, individuals from a few highly targeted email lists and discussion boards were invited.

- Overall, 577 individuals started and 498 qualified. Not all respondents completed every question. The 498 participants was significantly higher than in years past. In 2013, 237 individuals started the survey and 205 completed it.
Size of institution

- Under 5,000: 48%
- 5,001 to 10,000: 18%
- 10,001 to 20,000: 16%
- More than 20,000: 18%

Type of institution

- Under 5,000: 36%
- 5,001 to 10,000: 18%
- 10,001 to 20,000: 16%
- More than 20,000: 18%

- Private, nonprofit, 4-year institution: 30%
- Private, for-profit, 4-year institution: 3%
- Community college: 25%
- Public 4-year institution: 36%
- Trade or technical school: 1%
- Graduate/professional/research institution: 3%
- Other: 2%

n=403
Number of other states/territories/protectorates in which courses are offered

<table>
<thead>
<tr>
<th></th>
<th>N=</th>
<th>Minimum</th>
<th>Mean</th>
<th>Median</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public 4-year</td>
<td>141</td>
<td>2</td>
<td>37</td>
<td>44</td>
<td>58</td>
</tr>
<tr>
<td>Private nonprofit</td>
<td>118</td>
<td>1</td>
<td>29</td>
<td>28</td>
<td>58</td>
</tr>
<tr>
<td>4-year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community college</td>
<td>98</td>
<td>1</td>
<td>21</td>
<td>16</td>
<td>58</td>
</tr>
<tr>
<td>Other</td>
<td>36</td>
<td>1</td>
<td>33</td>
<td>40</td>
<td>58</td>
</tr>
<tr>
<td>&lt;5,000</td>
<td>186</td>
<td>1</td>
<td>24</td>
<td>19</td>
<td>58</td>
</tr>
<tr>
<td>5,001 to 10,000</td>
<td>69</td>
<td>1</td>
<td>26</td>
<td>24</td>
<td>58</td>
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<tr>
<td>10,001 to 20,000</td>
<td>62</td>
<td>3</td>
<td>36</td>
<td>43</td>
<td>58</td>
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<tr>
<td>&gt;20,000</td>
<td>71</td>
<td>4</td>
<td>45</td>
<td>49</td>
<td>58</td>
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<tr>
<td>Overall</td>
<td>446</td>
<td>1</td>
<td>29</td>
<td>30</td>
<td>58</td>
</tr>
</tbody>
</table>
Progress in addressing the state authorization regulations

- **5%** We have applied and/or received approval from all of the states in which we plan to serve students.
- **28%** We have formally applied to one or more states.
- **26%** We have formally contacted some or all states, but have not applied to any state.
- **38%** We have undertaken some initial steps.
- **3%** We have yet to address any state authorization requirements.

Comparison by year:
- **2011**: 5% applied, 28% formally applied, 26% formally contacted, 38% undertaken some initial steps, 3% yet to address.
- **2012**: 15% applied, 52% formally applied, 9% formally contacted, 18% undertaken some initial steps, 5% yet to address.
- **2014**: 25% applied, 44% formally applied, 12% formally contacted, 16% undertaken some initial steps, 3% yet to address.

We have applied and/or received approval from all of the states in which we plan to serve students.
Reasons for not applying for state authorization

- We believe we are exempt from having to apply: 18%
- We believe the regulation will be repealed: 9%
- We have heard about a reciprocity agreement, and we are waiting to see how that will work: 52%
- The cost is too high: 55%
- We have no staff available to file applications: 30%
- It is not an institutional priority: 12%
- We are in the process of collecting information before applying: 49%
- We are awaiting more clarification: 42%
- We will wait until a state learns we are offering instruction in their state before beginning the...: 4%
Estimated compliance costs (excluding staffing costs) for 2012-13 for those with non-zero costs

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>Minimum</th>
<th>Mean</th>
<th>Median</th>
<th>Maximum</th>
</tr>
</thead>
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<tr>
<td>Public 4-year</td>
<td>97</td>
<td>$25</td>
<td>$41,976</td>
<td>$10,000</td>
<td>$400,000</td>
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<tr>
<td>Private nonprofit 4-year</td>
<td>75</td>
<td>$200</td>
<td>$22,499</td>
<td>$10,000</td>
<td>$150,000</td>
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<tr>
<td>Community college</td>
<td>37</td>
<td>$10</td>
<td>$8,527</td>
<td>$1,200</td>
<td>$50,000</td>
</tr>
<tr>
<td>Other</td>
<td>23</td>
<td>$200</td>
<td>$34,939</td>
<td>$15,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>&lt;5,000</td>
<td>108</td>
<td>$10</td>
<td>$18,815</td>
<td>$7,750</td>
<td>$137,000</td>
</tr>
<tr>
<td>5,001 to 10,000</td>
<td>36</td>
<td>$50</td>
<td>$14,806</td>
<td>$5,000</td>
<td>$150,000</td>
</tr>
<tr>
<td>10,001 to 20,000</td>
<td>35</td>
<td>$98</td>
<td>$33,725</td>
<td>$12,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>&gt;20,000</td>
<td>52</td>
<td>$25</td>
<td>$60,160</td>
<td>$15,000</td>
<td>$400,000</td>
</tr>
<tr>
<td>Overall</td>
<td>244</td>
<td>$10</td>
<td>$28,833</td>
<td>$7,750</td>
<td>$400,000</td>
</tr>
</tbody>
</table>
Colleges Planning to Seek Authorization from All States

Percentage that has or will be seeking authorization from all 59 states, territories, and protectorates

<table>
<thead>
<tr>
<th>Category</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public 4-year, n=146</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private nonprofit 4-year, n=120</td>
<td>40%</td>
<td>28%</td>
</tr>
<tr>
<td>Community college, n=100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other, n=35</td>
<td>31%</td>
<td>23%</td>
</tr>
<tr>
<td>&lt;5,000, n=190</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5,001 to 10,000, n=69</td>
<td>28%</td>
<td>34%</td>
</tr>
<tr>
<td>10,001 to 20,000, n=64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;20,000, n=73</td>
<td>56%</td>
<td>32%</td>
</tr>
<tr>
<td>Overall, n=418</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2011 (n=211)
- Yes: 27%
- No: 73%

2012 (n=179)
- Yes: 44%
- No: 56%
States in which you are not seeking authorization

Are there states from which you will not seek authorization or can no longer accept students?

- Yes, 75%
  - 2011, n=122
  - 2012, n=119
  - 2014, n=410

- No, 25%
  - Arkansas: 98
  - Minnesota: 92
  - Massachusetts: 77
  - Alabama: 69
  - Maryland: 63
  - Wisconsin: 34
  - Oregon: 30
  - Kentucky: 28
  - Kansas: 26
  - Iowa: 25
  - Utah: 19
  - North Carolina: 17
  - Tennessee: 16
  - Wyoming: 15
  - Louisiana: 14
  - Indiana: 13
  - DC: 12
  - Nevada: 12
  - Georgia: 11
  - Alaska: 10
  - North Dakota: 9
  - Pennsylvania: 9
  - Washington: 9
  - Florida: 8
  - New Hampshire: 8

- Yes, 59%
  - No, 41%
  - No, 28%
Estimated number of turned-away students in 2012-13 for those who had to turn down at least one student

<table>
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<tr>
<th></th>
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<th>Minimum</th>
<th>Mean</th>
<th>Median</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public 4-year</td>
<td>50</td>
<td>1</td>
<td>21</td>
<td>10</td>
<td>125</td>
</tr>
<tr>
<td>Private nonprofit 4-year</td>
<td>34</td>
<td>1</td>
<td>69</td>
<td>7</td>
<td>1600</td>
</tr>
<tr>
<td>Community college</td>
<td>23</td>
<td>1</td>
<td>13</td>
<td>6</td>
<td>75</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>4</td>
<td>33</td>
<td>10</td>
<td>200</td>
</tr>
<tr>
<td>&lt;5,000</td>
<td>57</td>
<td>1</td>
<td>16</td>
<td>1</td>
<td>100</td>
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<td>5,001 to 10,000</td>
<td>12</td>
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<td>18</td>
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<td>150</td>
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<tr>
<td>10,001 to 20,000</td>
<td>22</td>
<td>1</td>
<td>100</td>
<td>1</td>
<td>1600</td>
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<tr>
<td>&gt;20,000</td>
<td>27</td>
<td>1</td>
<td>28</td>
<td>1</td>
<td>200</td>
</tr>
<tr>
<td>Overall</td>
<td>120</td>
<td>1</td>
<td>34</td>
<td>10</td>
<td>1600</td>
</tr>
</tbody>
</table>
Strategy for addressing state authorization for distance education

We do not really have a state authorization strategy
9%
We are doing nothing or very little and hoping to not get caught
2%
We are doing nothing or very little because we are exempt
3%
We are doing nothing or very little because we are waiting for SARA
24%
We are getting approval to operate only in states where we currently have numbers of students that...
36%
We are getting approval to operate in every state where it is easy and inexpensive to do so
40%
We are getting approval to operate only in states where we intend to market our programs
19%
We are getting approval to operate only in states where we currently have students
32%
We are working to get approval to operate in all the states and territories, whether we currently have...
26%

In Seeking Authorization...
One-quarter Seeking All States, One-quarter are Waiting
Questions from the Audience
What Should Your Institution Do Now?

- Jeannie Yockey-Fine
- Senior Advisor, State Regulatory Services
- Cooley LLP
What Should Your Institution Do Now?
The Next Steps:

- Continue to move forward with necessary state approvals.
- Remember that the federal rules for state authorization of distance education will be back in some form.
- The on-ground rule is only extended until July 1, 2015.
Step 1: Consider Your Distance Education Regulatory Plan

Institutional Strategy Overview

(simple steps)
1. Identify best resources.
2. Consider your operational activity.
3. Identify needed action.

(complex steps)
4. Develop status tracking and reporting.
5. Maintain reporting, renewal, and periodic outreach activity.
Step 2: Institutional activity

- Distance Education
- Local Address
- Local Advertising
- Faculty
- Externships
- Recruiting

This seems relatively straightforward, but can become significantly complex based on your institution's operational, academic, and regulatory structure...

Multiple States + Rules & Law + Program Offerings + Operational Structure + Student Contact Methods = Regulatory Patchwork, OR “It Depends...”
Step 3: Identify Needed Action

- Create an institutional plan to move forward with state authorization where required and/or advisable.
- Don’t wait for state reciprocity agreements or return of the federal rule!
- Be aware of costs and benefits of your efforts.
- Identify necessary campus and outside resources.
- Centralize efforts across campus.

**Note:** Multiple agency contacts and registration efforts will confuse regulators and increase risk of institutional liability; do at institutional level.
Step 4: Research and Information

Information to maintain:

- State education statutes, codes and guidance
- Agency guidance may have already been published on its website
- Additional Statutes, regulations and guidance impacting programs (ex. Board of Nursing; Board of Pharmacy; Massage Therapy)

*It is not enough simply to look up, print, and store in a binder or folder. This information is dynamic and is often modified.*
Step 5: Status Tracking & Reporting

Items to track and report (by state):

- Current Status
- All types of correspondence
- Fees and Bonds Sent
- Critical dates
- Agents and Faculty Changes
- Catalog and Disclosure changes
There is NO:
- “Magic Bullet”
- “One size fits all”
- “3 bullet summary”

This material is nuanced and complicated, and the details matter.

Just because a solution worked for one state, does not mean it will work for the next.

Try to create visual aids to help process.
Step 6: Outreach, Maintenance, and Reporting

Initial Approval

• Once you have made initial contact:
  • Consider the length of time required for your application and approval process in determining when and where to apply
  • Check back with states you haven’t heard from with a friendly follow-up email
  • Try a phone call as a follow-up
  • Single point of contact is best

• Most state regulators are reasonable people.

• Email is the method preferred by most state regulators.
Start thinking in terms of “States” in addition to standard operation

- Required disclosures by state.
- Enrollment tracking to prevent accidental enrollment.
- Multiple refund policy requirements.
- Course enrollment and Program versions by state.
- Externship implications and accreditation standards by program.
- Placement and certification requirements by state based on program.
- Maintaining state outcome standards in addition to accreditor standards.
Outreach, Maintenance, and Reporting (cont.)

Items required to maintain approval:

- Annual renewal.
- Notification of any relevant changes.
- Annual reports.
- Annual bonds.
- Changes to faculty & agents.
Final Questions from the Audience
Thank you to our Presenters

- **Joan Buillion**, Director, Regulatory Compliance, Pearson
  - joan.bouillon@pearson.com
  - 303-658-1564

- **Jim Fong**, Center for Research and Consulting, UPCEA-University Professional & Continuing Education Association
  - JFong@upcea.edu
  - 814-308-8424

- **Laurie Hillstock**, Facilitator, Online Learning Consortium Leadership Series
  - laurie.hillstock@onlinelearning-c.org
  - 864-850-2703

- **Russell Poulin**, Interim Co-Executive Director, WCET-WICHE Cooperative for Educational Technologies,
  - rpoulin@wiche.edu
  - 303-541-0305

- **Jeannie Yockey-Fine**, Senior Advisor, State Regulatory Services, Cooley LLP
  - yockeyfine@cooley.com
  - 202-776-2972
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  - Listservs.
  - Free webcasts.
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