Dear Dr. McArdle:

The WICHE Cooperative for Education Technologies (WCET) and WCET/State Authorization Network (SAN) are dedicated to serving their member institutions by providing guidance, support, and facilitation of member collaboration to understand and apply state and federal regulations requirements for the institutions’ out of state activities. We appreciate this opportunity to comment and seek clarification on the Department of Education’s most recent proposed regulations on “state authorization of postsecondary distance education, foreign locations” that was released on July 22, 2016.

A joint letter from WCET, SAN, six other non-profit organizations (representing distance education, information technology, and financial aid professionals) and a technology services vendor was also submitted to address the following key issues:

- Appreciation for a return to the original 2010 regulatory intent for institutions offering distance and correspondence education in other states follow the existing laws of those states.
- Appreciation for the support of reciprocity as a means to be compliant with laws of the states other than the institution’s home state where the institution offer distance and correspondence education.
- Request for clarification of the term “consumer protection” so that it is narrowly tailored to issues of fraud, misrepresentation, and abuse laws that are applied to any business operating in a state.
- Request for the Department to specifically identify states that lack a complaint process that meets federal requirements. Additionally, the Department should work with those states to expand their oversight to assure students will have access to a robust complaint process.
- Request that the Department delay enforcement of required licensure notifications so that institutions and professional licensure bodies can coordinate accurate institutional authorizations.
- Request for clarification of the term “adverse action” and review whether the “adverse action” must be publicly disclosed when “initiated” or only when action is “taken” against an institution.

Upon release of the recent proposed regulations, the members of WCET and SAN were encouraged to carefully review and analyze the implications of implementation of the proposed regulations.
Additionally, the members were encouraged to share their thoughts to be compiled and shared with The Department. In addition to the previously discussed key issues, the following are questions, requests for clarification, and comments as communicated to WCET and SAN by their member institutions and agencies:

Notifications and Disclosures

1. Do the proposed regulations about disclosure apply just to institutions that offer distance education to students in a state other than the home state of the institution or to all institutions that offer distance education including institutions in the domicile state?

2. Please review the amount of time necessary for institutions to communicate with the wide variety of professional licensure boards in each state, complete necessary research, and implement the requirements for notification of licensure and certificate programs. The estimated time described by the Department appears to be significantly underestimated and fails to take into account the lack of staffing at the state professional licensing agencies in many states.

3. Please delay enforcement for implementation of individual notifications to be provided to enrolled and prospective students regarding professional licensure notifications so that institutions can put a process in place and obtain the proper approvals in each state.

4. What type of acknowledgements is required by a student to demonstrate that the student understands when the institution does not meet licensure requirements for the state where the student is located? Please advise if this is to be a simple acknowledgment. There is concern that a complex acknowledgement may confuse and discourage students.

5. Is there required language that must be stated for current students and prospective students regarding the institution’s compliance status in a particular state? Since different states use different processes for institutional oversight and may define the same term differently, must an institution identify and distinguish between the compliance classifications in the states? For example, must the institution indicate precisely whether it is authorized, approved, exempt, not regulated, registered, and no action required in a state? The concern is that the current and prospective students may become more confused by the differing terminology across states.

Foreign Locations

1. Upon review of the compliance requirements for institutions with any foreign additional locations where students can complete 50 percent or more of a program, there has been some concern that the language may be opaque. We request guidance of some examples of what is or is not required by the institution for compliance.

2. Do the proposed regulations apply to institutions that have programs coordinated with foreign institutions, but the US institution does not have a foreign location of its own?
General questions

1. Do the proposed regulations apply to hybrid programs? For example, what about a technical associates degree program that is offered at a distance except for a semester required in-residence at the home campus to work on specialized equipment? Another example would be a program that is primarily at a distance, but there are face-to-face components in the state where the student is residing that comprises less than 50% of the program, but is more than an internship? Finally, how will an internship/field experience be considered under the proposed regulations?

2. Is institutional eligibility or programmatic eligibility for federal financial aid at risk for non-compliance in a particular state? Or is the institution at risk only for the aid granted to students in a state in which it is not in compliance?

3. Because the proposed regulations state that institutions must follow the existing laws of each state in which they enroll students, please provide guidance as to the frequency with which an institution must affirm the student’s location.

We thank the Department for the opportunity to share the questions and comments of the WCET and SAN members. These member institutions and agencies are committed to providing high quality learning opportunities to students and ensuring that the students as consumers are provided with sufficient protections for their investment in higher education. The member institutions and agencies are also committed to achieving and maintaining required compliance for the activities of their institutions.

WCET and SAN intend to provide guidance and support to implement the Department’s finalized state authorization regulations. We would be very pleased to offer further assistance to the Department and to assist with communication to institutions.

WCET (WICHE Cooperative for Educational Technologies)

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