

State and Federal Regulations on ‘State Authorization’ of Distance Education

What is the history of the STATE regulations?

States have long had the authority to regulate institutions offering education within the state’s boundaries, regardless of the modality (face-to-face, distance) being used. The approval process is part of consumer protection for learners in the state. States’ regulations vary from having no regulation to having very strict requirements. Even if an institution teaches only at a distance in a state, many still expect the state process to be followed.

The State Regulations

States expect that your institution obtain the necessary approvals (if any) before advertising or serving students in their state. The state regulations predate the federal regulation and remain in effect. Neither the federal Court orders nor any pending federal action changes the fact that states expect institutions to follow their laws.

What is the history of the FEDERAL regulation?

October 2010 – The U.S. Department of Education (USED) released its regulation requiring institutions to document that they have the proper approval to serve students in other states.

July 2011 – The U.S. District Court struck down the distance education portion of the regulation on procedural grounds (reason: the public was not able to comment period since the distance education language was not included in the June 2010 proposed regulation).

June 2012 – The U.S. Court of Appeals upholds the District Court’s ruling to vacate the distance education portion of the regulation. As a result, there is no enforceable Federal Regulation!

May 2014 – A negotiated rulemaking committee did not come to consensus for a Federal regulation for State Authorization of Distance Education.

July 2016 – The Department released proposed Federal regulations for State Authorization of Distance Education in July for comment.

December 2016 – USED released the new federal regulations for State Authorization of Postsecondary Distance Education, Foreign Locations. Effective date: July 1, 2018.
<https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-29444.pdf>

May 2018 – USED announces proposal to delay effective date and conduct negotiated rulemaking to review and revise the rule.
<https://www.gpo.gov/fdsys/pkg/FR-2018-05-25/pdf/2018-11262.pdf>

The New Federal Regulations (2016) Highlights

Requirements for institution eligibility to participate in Title IV, HEA programs:

Authorization by each State in which the institution enrolls students if authorization is required.

Reciprocity is sufficient authorization.
<http://wcet.wiche.edu/sites/default/files/Ted-Mitchell-Reciprocity-Response.pdf>

Required public and direct notifications and disclosures.

Required authorization for an additional location or branch campus in a foreign location.

What does “operating,” “physically located,” or “physical presence” in a state mean?

If the institution is conducting any one of a list of “trigger” activities (e.g., advertising in local media, using direct advertising, requiring local proctors, employing faculty, marketing, or conducting experiential learning in the state), you could be required to comply. The definition of "presence" and the list of “trigger” activities is at the discretion of each state and varies greatly from state-to-state.

Is there a state-by-state list of regulatory agencies?

The State Higher Education Executive Officers (SHEEO) organization profiles the regulations of more than 70 agencies. Some states have more than one agency. http://sheeo.org/sheeo_surveys/

What about SARA and reciprocal agreements between states?

Through reciprocity, an institution authorized under SARA criteria in its home state would be considered authorized in all other SARA states. As of January 1, 2017, forty-seven states and the District of Columbia have been accepted into SARA. National Council for State Authorization Reciprocity Agreements: <http://nc-sara.org/>

What are the required public and direct notifications and disclosures in the December 2016 federal regulations?

Public Notifications and Disclosures include:

- **Authorizations** in each state where activity is offered if authorization is required.
- **Student Complaint Processes** to the appropriate state agencies.
- **Adverse Actions** by a State or accrediting agency against an institution’s distance or correspondence activities in the past five years.
- **Refund Policies** that the institution is required to comply with in that state.
- **Licensure and Certification Requirements** – whether the program meets the requirements in the students State to allow the student to be licensed or certified or to sit for a qualifying exam.

Direct Notifications and Disclosures include:

- **Program Licensure or Certification Requirements** – the institution must directly notify the student indicating whether the program will or will not meet requirements in the state where the student is located.
- **Adverse Actions** – if a new adverse action is taken, the students must be notified.
- **Cease to meet Licensure or Certification Requirements** – if the program formerly met requirements and now does not, the student must be directly notified.

<https://wcetfrontiers.org/2016/07/22/department-of-education-state-authorization-for-distance-ed-regulations-a-first-look/>

<p>WCET Updates on State Authorization</p> <p>WCET State Authorization Network: https://wcetSAN.wiche.edu WCET Frontiers blog: https://wcetfrontiers.org/ WCET Issue Pages: https://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization</p>	<p>Join SAN!</p> <p>State Authorization Network Team Cheryl Dowd: cdowd@wiche.edu Russ Poulin: rpoulin@wiche.edu</p>
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