

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, a few states still expect you to comply.

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 (see box to right) requiring institutions to document that they have the proper approval to serve students in other states. <http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf> p. 66866

June 2012 – The U.S. Court of Appeals affirms the USED's ability to issue the regulation, which had been contested by the complainant. The Court upholds a District Court's ruling to "vacate" the regulation on procedural grounds.

<https://wcetblog.wordpress.com/2012/06/05/state-authorization-appeal/>

July 2012 – As a result of the Court ruling, USED will "not enforce the requirements of 600.9(c), although institutions continue to be responsible for complying with all State laws as they relate to distance education." **ELIMINATES THE FEDERAL DEADLINE** for compliance. <http://ifap.ed.gov/dpcletters/GEN1213.html>

The (Vacated) Federal Regulation Chapter 34, § 600.9(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, 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."

<http://tinyurl.com/lgzdvel>

May 2014 – USED Negotiated Rulemaking

Committee was unable to reach consensus on a new federal state authorization for distance education regulation. <https://wcetblog.wordpress.com/2014/05/29/state-auth-negreg-what-happened/>

June 2014 – Ted Mitchell, Under Secretary for Postsecondary Education, announces that USED will "pause" on issuing a new state authorization for distance education regulation.

Currently, for distance education, there is **NO FEDERAL REGULATION OR DEADLINE** for state authorization. A new proposed federal regulation is expected in the Spring of 2015.

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

If an institution is only offering education at a distance in a state, there are very few states in which colleges need to apply for authorization as only a few states require almost every institution to apply. In the majority of states, the need to seek authorization depends on the specific combination of that state’s laws and the activities that the institution is conducting in that state. 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 or marketers in that state, conducting internships or practica 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?

The Presidents’ Forum, Council of State Governments, and the Commission on Regulation of Postsecondary Distance Education (a committee formed by SHEEO and APLU) all worked on “model” versions of the State Authorization Reciprocity Agreement (SARA). Through reciprocity, an institution authorized under SARA criteria in its home state would be considered authorized in all other SARA states. With support from Lumina and Gates Foundations, the regional higher education compacts (WICHE, SREB, MHEC, and NEBHE) are implementing SARA. As of January, 2016, thirty six have been accepted into SARA, with projections that SARA will have 45 states by the end of 2016.

National Council for State Authorization Reciprocity Agreements: <http://nc-sara.org/>

What if we do not comply?

States: For state regulations, there are often “cease-and-desist” orders and (rarely) fines. Before punitive action, states try to bring institutions into compliance by: a) becoming authorized, or b) stop serving students in a state. <https://wcetblog.wordpress.com/2015/03/24/what-can-happen/>

Federal: If the USED reinstates the regulation, it is anticipated that institutions found not to be in compliance will be asked to reimburse federal financial aid funds for students in the non-compliant states. USED still requires institutions to notify students on where the institution is authorized and on where a student can file a complaint.

Students: Students have filed (or threatened to file) lawsuits against institutions that have not received the proper local approval and did not notify the student.

<p>WCET Updates on State Authorization Website with updates: http://wcet.wiche.edu/learn/issues/state-authorization WCET blog: http://wcetblog.wordpress.com/ State Authorization Network: http://wcet.wiche.edu/advance/state-authorization-network</p>	<p>Support our work. Join WCET: http://wcet.wiche.edu/contact-us/join-wcet WCET’s State Authorization Team Cheryl Dowd: cdowd@wiche.edu Russ Poulin: rpoulin@wiche.edu Marianne Boeke: marianne@nchems.org</p>
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