State Authorization for Distance Education: The Future for Regulations
M-SARA, OLC, UPCEA, and WCET
Webcast: August 14, 2014

Presenters:
- Laurie Hillstock, Online Learning Consortium (Moderator)
- Joan Bouillon, Pearson
- Jim Fong, University Professional and Continuing Education Association (UPCEA)
- Russ Poulin, WICHE Cooperative for Educational Technologies (WCET)
- Jeannie Yockey-Fine, Cooley, LLP

Existing and Changing State Regulations - Joan Bouillon, Pearson

1. Lesli Terrell-Payne, Georgia Highlands College - Our college (in GA) is only a half hour from Alabama--so if we have an online student that lives in Alabama but may take a class on our campus, do we need approval?

In this case, the online student is taking online courses while located in Alabama and may occasionally drive to Georgia for a course at the campus. Unless there is an agreement between Georgia and Alabama to allow this, the Georgia college will need authorization in Alabama. Authorization is required due to the location of the online student. If the student decides to attend all of the courses at the campus in Georgia, then the student is no longer an online student. And remember that authorization requirements depend on the type of institution and the type of program. - Joan

2. Amy Brandon - Ball State University - On slide 11, why were those states listed as requiring approval? I thought there were more states requiring approval and wasn't sure of the connection with the states listed on that slide.

   Jason Piatt-Kent State University - Also, what about Canadian Provinces

If residents are enrolled in 100% online programs Alabama, Arkansas, Maryland, Minnesota, Montana, Utah, and Wyoming require public degree-granting institutions to obtain authorization. Indiana and Missouri don’t require authorization applications, but public institutions providing online programs to residents must register in Indiana and public institutions must affirm in writing to the Missouri Department of Education that they will follow the Department’s best practices. Alaska, Illinois and North Dakota require this type of institution to apply for an exemption. If there are physical presence triggers such as advertising or field experience, the number of states requiring public institutions to obtain authorization more than doubles.

Just like in the U.S., Canadian provinces have agencies that authorize institutions to offer distance education. Like most states, the provincial agencies require authorization if there are physical presence triggers such as clinicals. - Joan
3. Charlotte @ Antelope Valley College - These issues seem to be more applicable to universities. Do they also apply to community colleges?

Colleges of all types, including community colleges, are subject to these regulations.

4. Jennifer Lackie - Arkansas Tech University: I know that an institution should have state authorization from the 50 states and territories. Our institution is currently working on Puerto Rico and District of Columbia. Does it also include Virgin Islands, Guam, etc.?

First, it is important to remember that it is very rare that an institution will need authorization in all 50 states and territories. In many states you may not have any physical presence triggers. - Jeannie

Yes. You are subject to the regulations of all U.S. territories and protectorates.

5. University of Oregon - I don't follow the threat of a non-distance program advertising in a different state. If a student from Massachusetts chooses to attend an on-campus program in Oregon, for example, they are our student. My understanding was that if they still SIT in Massachusetts while TAKING an online course, that is where the problem lay, not if the student moved to Oregon to take brick and mortar classes in Oregon. Is this not correct?

There are some states that consider local advertising a physical presence. Local advertising is advertising on a local radio station, in a local newspaper, or on a local TV channel. Local advertising can be billboards and mailers to residents, also. Here is an example. A college offers on-ground programs only, but decides to market in a neighboring state and buys a billboard advertisement in that neighboring state. If the neighboring state considers billboards physical presence, the college is out of compliance and must obtain authorization for the billboard advertisement.

Your understanding about the location of the student is absolutely correct. - Joan

6. Kristen Brown (University of Louisville) - Can I infer that states that are yellow or pink on the map mean that these states are concerned with only online programs, not any f2f programs where students might be participating in a learning experience in a non-home state?

The first map provided in the presentation was for public degree-granting institution offering 100% online programs (without field experience) to residents in those states. The red states (Alabama, Arkansas, Maryland, Minnesota, Montana, Utah, and Wyoming) require authorization. The pink states (Indiana and Missouri) require a type of notification and the yellow states (Alaska, Illinois and North Dakota) require this type of institution to apply for an exemption.
If online students participate in a “learning experience” (such as internship, clinicals, field placement, etc.) in a state other than where the institution is located, many states consider this physical presence and require authorization. An important thing to remember is the type of institution. Illinois and North Dakota do not require public degree-granting institutions to obtain authorization if students are participating in a learning experience. Alaska requires authorization if a paid employee (faculty, field liaison, etc.) of the institution resides in Alaska. Indiana does not require authorization for a learning experience unless more than ten students from the institution meet simultaneously at a single site. The Missouri Department of Higher Education determines case by case if authorization is required due to a learning experience. Contact the Missouri’s Department for more information. - Joan

7. Camille Karlson - Can NY participate in SARA?

Yes. It will need to affiliate with one of the regional compacts. There have been a few face-to-face meetings and numerous conversations. All higher education sectors have supported the idea and they are trying to organize to join. - Russ

8. Kristen Brown (University of Louisville) - Can you share what the MA [Massachusetts] changes are? JOAN

Massachusetts changed the regulations governing for-profit institutions, including those offering 100% online programs, enrolling Massachusetts residents and advertising to Massachusetts residents. The regulations can be found by searching on the internet for Massachusetts 940 cmr 31.00. - Joan

9. Kathleen Rund-Fordham University - Would you contact state licensing board in a certain state before attempting to apply for state authorization...this is for social work? JEANNIE

Absolutely! An institution may find that the licensing board educational requirements may be so different from the professional licensure program offered by the institution that the institution decides not to pursue state authorization in that state. – Joan

Some boards will expect you to apply with them before the higher ed agency, some are fine if you do it at the same time. The most important thing is to know what is required at the Board level as well as for the higher ed agency. - Jeannie

11. Scott Schneider - Clarke University - Do hybrid programs require authorization in states requiring online programs to register?

Typically no. Check with the state.

12. Lynn Bernardi - If the student lives on campus but came from another state, do we need to be authorized in the state that they came from?
State authorization is not necessary for “residential” students. If students are in a program with externship/practica and students want to complete that work in their home states, then the institution must check to determine if authorization is required. - Joan

12. Jessica Kelly-Shaieb (MEAC) - In re: consequences for noncompliance, how common is it for schools to be "caught?" Are certain states more likely than others do enforcement?

Colleges that are "caught" are often not publicized as they work with the state to come into compliance. - Russ

13. Elizabeth Hagovsky (University of Delaware) - Is there a resource for the education licensure boards among all states?

NASDTEC has information to help. [http://www.nasdtec.net/](http://www.nasdtec.net/)

Cooley LLP also provides a subscription service for information on teacher education programs and advice re same. - Jeannie

Check with the national association of boards that oversee each profession. They often have helpful information. The best is the information from the National State Boards of Nursing with state by state distance education for the undergraduate level: [https://www.ncsbn.org/4841.htm](https://www.ncsbn.org/4841.htm) - Russ

14. Jo Ann Mattson - Fontbonne University - Do you have links to the canadian prov. like Sheeo to check with each prov regulations?

I don’t know of a SHEEO like resource for Canada. Here is a list of contact information I received from WCET and Cooley, LLC. - Joan

**Alberta**
Agencies and Contact Information:
Ministry of Enterprise and Advanced Education
Website: [http://eae.alberta.ca/ministry/about.aspx](http://eae.alberta.ca/ministry/about.aspx)
Phone: 780-422-5400

**British Columbia**
Agencies and Contact Information:
BC Ministry of Advanced Education (AVED)
Website: [http://www.gov.bc.ca/aved/](http://www.gov.bc.ca/aved/)
Phone: 250-356-2498
Private Career Training Institutions Agency (Private Institutions – Degree Granting)
Website: http://www.pctia.bc.ca/
Phone: 1-800-661-7441

**Manitoba**

Agencies and Contact Information:
Department of Advanced Education and Literacy
Council on Postsecondary Education
Website: http://www.copse.mb.ca
Phone: 204-945-1833

Private Vocational Institutions Office
Website: http://www.edu.gov.mb.ca/ael/pvs/index.html?
Phone: 204-945-8507
email: pvioffice@gov.mb.ca

**Newfoundland and Labrador**

Agencies and Contact Information:
Department of Advanced Education and Skills
Website: http://www.aes.gov.nl.ca/
Lynette Hann
Manager - Private Training Institutions
Phone: 1-709-729-3102
Email: lynettehann@gov.nl.ca

**Ontario**

Agencies and Contact Information:
Ministry of Training, Colleges, and Universities
Website: http://www.tcu.gov.on.ca/eng/postsecondary/schoolsprograms/pcc/
Phone: 1-800-387-5514

**Quebec**

Agencies and Contact Information:
Private Career Training Institutions Agency (Private Institutions – Degree Granting)
Website: http://www.ceec.gouv.qc.ca/Default_en.htm
Phone: 1-800-661-7441

**U.S. Department of Education and Department of Defense Regulations - Russ Poulin, WCET**

1. Barbara Zirkin, Stevenson University - Are there any alternatives to SARA if your state won’t join?

The only real alternatives are to obtain authorization in each state on your own or to decide not to serve students in a state. - Russ
2. Barbara Zirkin, Stevenson University - Didn’t vacated mean vacated for Federal purposes but state rules still apply?

That is exactly correct. The FEDERAL rule has been "vacated" (deemed by the Courts as unenforceable) and there currently is no federal regulation. Nor is there a federal deadline for compliance. We hear people through around lots of dates for federal compliance - there is no compliance date. Meanwhile, states expect you to follow their regulations and they expect you to do so NOW! There laws are still intact and being enforced. - Russ

3. Ashley Stettler - "Active Duty military and families exempt" should institutions be turning down military students who are stationed in states where we are not authorized?

There are a few states that exempt military students taking courses on military reservations. The states expect you to follow their laws and some would require you to be authorized for serving military students stationed in their state. Not seeking authorization or turning students away is the decision left to the institution based upon their willingness to obtain authorization in that state. - Russ

4. Al Lind - KYVC - Was there consensus on slide 35 issues? RUSS

The Negotiated Rulemaking Committee voted only yes or no only to the entire proposed regulation and not on each issue. Even so, it was my impression that there was great consensus around the issues of: a) a July 2018 compliance date; b) support for reciprocity; c) exempting active duty military and their families, d) requiring colleges to provide more extensive notification about the program’s ability to meet licensure requirements in each state; and e) defining the home state for students in foreign countries. NOTE: Since consensus was not reached, these remain ideas and are not part of any regulation. I presented them because there was agreement on them and I’d expect to see many of these (with the possible exception of the compliance date) in any subsequent regulation coming from the Department of Education. On the compliance date, it could be sooner. 2018 was selected because of one of the “deal breaker” provisions that would have required many states to change their laws. If that offending provision is removed, they might suggest an earlier date. That would not be surprising. - Russ

5. Kate Lenert, MUSC - Knowing where a student lives is challenging. When? When they enroll? What if they move 3 weeks or 2 years into a program to a state you are not authorized in?

You don’t need to track a student every minute of the day. Develop logical, defensible procedures for determining the location of your students. Typically these are tied to benchmark events such as determining eligibility for Title IV financial aid, determining eligibility for Tuition Assistance for the military, admissions, or enrollment. Having a "defensible"
practice will serve you well in conversations with state regulators who learn that a student is in their state. If a student is in a program, you will need to check more than once.

If a student moves to another state, I highly suggest picking up the phone (not e-mail) and calling the regulators in that state. Be very clear about what happened. Be ready to inform the regulator about how far along the student is in his/her program. Let the regulator know your intentions (if any) about seeking full authorization in the state. Many, not all, state regulators will work with you, especially in situations in which you have just one student who is trying to complete and you have no other intentions of enrolling students in that state. In such cases, the state may place some reporting or other requirements on you, but it should be at a level less than full authorization. - Russ

6. Jason Piatt-Kent State University #2 - Russ will change in administration after the 2016 national election really change the whole State Auth landscape or will feds be feds and this will just keep moving ahead.

It might, but only slightly. I’ve heard people say that it would change drastically, but I don’t see it. The regulation is in the hands of the Department of Education. Even if both houses of Congress are in the hands of the Republicans, they would still be hard-pressed to do anything about it. While they would have the votes in the House, they would still need 60 votes in the Senate. Even if that happened, the President could veto it.

My guess is that the Department will wait until after the election to issue the next regulation because there are bigger fish to fry prior to the election and they may soften the requirements a bit if the election goes against the Administration. It would also help if the Republicans would actually develop an alternative and not just suggest repealing the regulation. The repeal would undercut the basis of the federal financial aid triad and cause unintended consequences by hamstringing the Department’s ability to oversee aid funds. If they developed a reasonable alternative (I have no idea what that would be), they might actually get some support from across the aisle. - Russ

7. Hang Pham-National University - So as of right now we have to be in compliance by July 2018?

There is currently NO FEDERAL deadline for state authorization compliance for distance education. The only regulation there was has been vacated by the federal courts. We are waiting on the Department of Education to release new regulations that will include a new proposed deadline.

Meanwhile, state laws and regulations are still in effect. The states expect you to be in compliance NOW! - Russ
**General Questions (Everyone)**

1. Susan Hampson #2 - What about students who have an out of state address, but are in my state, yet still taking an online class in addition to oncampus classes?

   State authorization is based on where students are *located* when they are taking online courses. Authorization, therefore, is not necessary for “residential” students even if they are taking online courses. If students are located in another state when they are taking the online courses, then authorization may be required by the other state. - Joan

2. Al Lind - KYVC - Does anyone know of any institution that has been penalized for non-compliance?

   Yes. Such actions are rarely publicized.

3. Laura 1 - My question, is that now that we have applied to all states and received authorization in most. What steps or processes need to be taken to ensure that our authorization is still current with any changes? It seems to be a very passize process and changes are never communicated to the institution from the state.

   In general state agencies will notify approved institutions of any changes in the requirements. It is the responsibility of institutions to track the authorization expirations and renew in a timely manner. During the renewal process, institutions will be notified of changes. - Joan

4. Teresa - Because of the costs, we have made the decision to not pursue authorization in some states. Does that make us not in compliance? JEANNIE

   You are not in compliance if you are teaching online to students in a state that requires authorization for purely online programs. Or if you are operating in a state with one of the physical presence triggers that we discussed –such as a student participating in an externship in a state where that requires authorization. - Jeannie

   As Jeannie says, if you continue to serve students (or do other activities that state regulates) without authorization, then you are not in compliance. However, you can chose not to seek authorization and not serve students. In that case, you are in compliance because you are not doing anything outside that state's regulations. - Russ

5. Janet Staderman - UC - Iowa passed a SARA law but it includes an Iowa-resident financial protection enforcement provision that is a violation of SARA policies. How will states that have similar refund policies; specific Gen Ed requirements; financial responsibility policies (MD, KY, NC, etc.) become compliant with SARA? Or will they simply not be able to join?

   If a state wishes to join SARA, it will need to follow SARA policy. Therefore, the state would have to follow SARA policies for institutions from other SARA states. A state cannot unilaterally decide to impose conditions, such as its own financial protection enforcement provision.
This issue was raised in the SARA webcast. SARA officials are working with Iowa to resolve the issue. - Russ

6. Cara Cochran - Based on what I am reading, we may need clarification between authorization and exemption. It is one thing to seek authorization, but to do due diligence, it is wise for the university to determine from which states it is exempt from seeking authorization.

An institution must know in which states the institution is exempt.

There is confusion about “exemptions.” Exemptions may mean the institution does nothing and in other cases the institution must apply for exemption. And to add to the confusion, some states will “exempt” certain types of institutions. For example, the state agency in Wisconsin does not approve public universities offering distance education programs to Wisconsin residents; no exemption process exists for public universities. There are several other states like Wisconsin. Public universities offering 100% online programs must submit an application for an exemption in Alaska, Illinois and North Dakota. These states will provide a letter indicating that the institution is exempt.

State authorization allows institutions to enroll residents, advertise, recruit, etc. Like exemptions, authorization requirements depend on the type of institution. The need for authorization depends on physical presence triggers, also. - Joan

7. Mary Nicholson - Bloomsburg University - Has anyone addressed "virtual internships" - where students residing in a state complete a virtual internship with a company in another state. All communications are electronic and there are no physical site visits.

If the institution is in one state and the student is in another, then the institution is expected to follow the laws and regulations of the state in which the student is located. That seems to be the case in the example cited. If the student crosses state lines and takes the courses in the state in which the institution is located, then the institution needs to follow the laws of its own state vis-a-vis that student. - Russ

8. Susan Hampson - What about competency based programs, are they considered "distance Education"?

Some competency-based programs are offered at a distance. If this is the case and the student taking the program in a state other than where the institution is located, then the institution is expected to be compliant with the regulations of that state. - Russ

9. lisa_rosenberg@rush.edu - Does anyone have an idea of an average timeframe from when a state bill has been signed to institute SARA and subsequent SARA approval for that state?
Once the bill has been signed, then the next step is for the state to develop a plan for how it will authorize institutions to eligible to participate in SARA. Given the higher education structure of some states, this becomes a bit complex as to which agency or agencies will perform this task. Most have come to reasonable accommodations quickly. SARA staff work with the states to make sure that the submitted plan is something that will be acceptable to the regional compacts. To date, this has been a very quick process...usually only a few months. As long as state follows the SARA policies, this is speedy. If they try to renegotiate the SARA agreement, the process will be slowed. - Russ

10. Barbara Zirkin, Stevenson University - I think I know the answer, but do marketing activities at national association meeting count as an in-state activity for authorization purposes? This question comes up often.

The answer is “it depends” on the state. A few states consider periodic recruiting a physical presence. You should check with the state agency before recruiting at a meeting. - Joan

11. Camille Karlson - If a college is exempt, are we authorized if there are no trigger activities?

Exemption is not authorization. There are states that “exempt” certain types of institutions meaning that the institutions need not do anything, but they can still enroll residents in these states. There are other states that require institutions to apply for an exemption. - Joan

The main idea is that you need to be "compliant" with state laws and regulations. Sometimes you can be exempted and other times you need to seek authorization (or registration or whatever they call it in that state). - Russ

12. lisa_rosenberg@rush.edu - If a state is in the process of creating a portal and applying to SARA for approval, how should an institution proceed with applying for approval in that state?

There will be a specific form for your institution to use once your state is approved into SARA. But nothing can be submitted prior to the approval from the regional compact for that state. - Jeannie

Until that State becomes a SARA member, if you want to move ahead with being authorized in that state, you will need to follow the state's procedures. - Russ

13. Tom Dolan - Texas Tech University - Could SHEEO include "Disclosure by State" in their annual survey?

This question was forwarded to Sharmila Basu Mann and SHEEO. The question was about which state require disclosure for professional programs. Since the SHEEO list focuses on state authorization of the institution, this is outside of their scope. It would also require canvassing
numerous agencies in each state, which would be a large amount of work. Dr. Mann is sending a query out to the SHEEO list and will share the results with us. - Russ

15. Sue Ann Hochbert - Doesn't SARA take care of much of this??

SARA will help with many of the state authorization issues, but will not help with obtaining approvals (if needed) for the licensed professions. See the SARA website for more details on the licensed professions: http://nc-sara.org/content/sara-and-licensed-professions - Russ

16. Karmen McNeil-NCCCS - Does State Auth. require non-credit online courses to be approved?

This varies by state, but some states do have that expectation. The U.S. Department of Education will not track authorization for non-credit courses as it is unrelated to federal financial aid. For more information: - Russ
http://wcet.wiche.edu/wcet/docs/talking-points/WCETTalkingPoints-NonCreditCoursesPrograms-04-17-2014.pdf

17. Maureen Breed - Syr Univ 1 - A related question re. military. If the student has an APO address, my understanding is that they are living out of the country. So we don't need to figure out a way to count them in a particular state -- correct?

You need to use a method that you think is defensible to determine where the student is located. If you think APO address is adequate, then you should have that documented in your procedures for determining student location. - Russ

18. Kelly - Is there a list of states that require authorization for for-profit schools? The initial slides addressed private/ non-for profit.

The vast majority of states require authorization for for-profit colleges. See the SHEEO list: http://sheeo.org/projects/state-authorization-postsecondary-education

19. Rhet Cantrell - Air Associates of Kansas - I know there are just a few SARA approved states as of yet; however, is there an average time it is appearing to take for a state to move from State legislature/Governor approval to full SARA approval? Just to give us a general idea of when we might see approvals occur in target states. Thanks.

This is highly variable by state and is quite dependent on local politics. If the higher education leadership and political leadership (such as a governor or high-ranking legislators) are in favor of SARA, it can move quickly. SARA published its requirements early in 2014 and they may soon be to 10 states that have been accepted. The keys are getting ALL institutional sectors in agreement, developing an implementation plan within the state, and finding political champions. - Russ
20. Kate Lenert, MUSC - Practicums are not always the same as clinical internships, such that they may be similar to the work you would do for PhD disseration. How do states make that distinction or (I expect) you need to ask each state?

If the student is in another state and the activity (regardless of what you call it) is part of the academic requirement, then you need to check if authorization is required. Some states will require authorization. - Russ

21. Jane - Seattle University - Is there a list anywhere of states that have said they definitely will not be a part of SARA?

There are none that are definitely out. There are state officials in some states who said that they will never join, but the same state has a bill pending in the legislature. To see an update SARA state status, go to: http://nc-sara.org/content/sara-state-status

22. James Andrew - WTAMU 1 - Does a physical presence for one program serve as a trigger for all programs or just the program that contains the trigger?
23. Joel Tobin - Franklin University #2 - State authorization is about the institution, James - not programs.

When applying for authorization some states approve programs as part of the authorization process. For example, a state does not require any action on the part of an institution offering 100% online programs, but when the institution applies for authorization due to one program with a clinical, the institution must include all the online programs in the application. - Joan

24. Texas State University - For clarification, if an out-of-state student from a state that requires authorization for programs with a practicum is enrolled in an online program, is that student not allowed to travel to the state of the institution offering the program for the practicum, for the purpose of maintaining compliance with state authorization?

The student can move to the state of the institution offering the online program for the purposes of completing the field experience. The institution would not need authorization in this case. Remember, authorization is based on the location of the student. - Joan

25. lisa_rosenberg@rush.edu - There have been a few questions that I believe are seeking guidance on a strategy of whether to wait for states that have passed SARA legislation but have to be approved vs. seeking the individual state authorization in the interim

We all stressed the importance of moving ahead with your required state authorizations and not waiting for SARA or the federal rules to come back. - Jeannie
26. Julie Coltharp - Drury University- Can marketing and recruiting of students (think athletes) outside of the home state constitute a physical presence trigger

Yes, marketing to and recruiting athletes can constitute physical presence in some states. Check with the state agency before these activities take place. State agencies are generally pretty liberal about these activities. - Joan

27. Avi Silterra, Instructional Designer at Mount St. Mary's Online - Will there be standards or recommendations on how long to keep full student data (e.g. assignments, discussion posts, small assignment grades) in addition to final course grade data?

a. Or, is that planned to be left to the institution to decide?

That is more of a financial aid "last day of attendance" question. We are hoping that clearer guidelines from the Department regarding the expectations you list will be provided as part of their response regarding how institutions should handle financial aid fraud. The fraud guidance has yet to be released. The best guidance that I have seen is from financial aid audits. See this blog post: - Russ  http://wcetblog.wordpress.com/2010/08/27/ldaaudit/