

# New Regulations for State Authorization - Reactions on a First Read

Published on December 21, 2016 at <https://www.linkedin.com/pulse/new-regulations-state-authorization-reactions-first-hoffman-sr-?trk=prof-post>

## Introduction

Source of all quotes: <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/pii-stateauth-unofficial-nfr.pdf>

Quotes do not necessarily appear in order and are excerpts, wholly out of context and interspaced with snarky commentary. You are encouraged to read the entire 181-page document linked above and draw your own conclusions. I am not a lawyer nor am I a political analyst. Nothing here is intended to be legal advice and your reliance on it as such would be foolish. It is simply a fast scan of the document for areas that appear to pertain to my institution so that we can make a good faith effort to remain fully compliant with Federal regulations, as we have always done.

First, let's start with the Department of Education's (ED's) wonderful attitude that indicates they don't care how much this costs students financially, or burdens institutions, and they're not willing to lift a finger to provide assistance, despite all of the tax money they absorb. They think, in their opinion, that this is a good thing, so they're doing it despite all of the objections they received, so we have no choice but to suck it up and pass the costs on to students. Besides, they say, we should have been doing it anyway!

"We believe that each individual institution is in a better position to identify and obtain the necessary approvals from the States where it provides educational programs to students, since the institution would need to establish and maintain a working relationship with those State agencies."

"Some commenters did note that students could bear the costs of compliance with the regulations through increased tuition and fees or through reduced options for pursuing their education. The Department recognizes that some colleges may choose to pass some costs through to students, but we believe that the increased value of a program that is legally authorized to operate in a State, has a clear complaints process, and lets students know if it leads to valid licensure opportunities, if applicable, is worth the potential cost increase." Note that they don't mention if they care whether students believe this. They believe it and that's enough for them.

"Commenters representing small colleges expressed concern that the costs of compliance with the regulations would favor larger and better resourced institutions, potentially reducing competition and options for students. The Department appreciates these comments and acknowledges that the burden will vary for different types of institutions, but we believe that requiring institutions to comply with State standards is a minimum expectation to operate a program." Note that they don't say if they care if institutions believe this.

"We appreciate the cost information provided by the commenters. These comments demonstrate that the costs of establishing distance education programs could vary significantly, but, as stated earlier, we assume that institutions are already operating programs with appropriate authorizations." And you should have been doing this all along, anyway, neener-neener, phbttttt.

“The Department does not plan on developing a centralized Federal Web site to house information on the licensure or certification requirements of each State for those professions that States have implemented licensure or certification requirements.” Nor do they intend to provide any of the other centralized information repositories requested by commenters. We’re on our own because...see the first quote above.

## Timeline

How long do we have to conquer State Authorization? “These regulations are effective July 1, 2018.”

## Impact

Next, let’s look at who this impacts. The amendments “require an institution to obtain any required State approval for distance education programs by each and every State in which its enrolled students reside.” But how do we now where our students reside?

“For purposes of this rulemaking, a student is considered to reside in a State if the student meets the requirements for residency under that State’s law. In general, when determining the State in which a student resides, an institution may rely on a student’s self-determination unless the institution has information that conflicts with that determination.” But what if a student meets the residency requirements for multiple states? Is that even possible? No mention.

“With respect to military personnel, just as with nonmilitary personnel, we treat the student’s State of residence to be the State for which the student meets the requirements for residency under State law. Further, similar to non-military personnel, when determining the State in which the military student resides, the institution may rely on the student’s self-determination unless the institution has information that conflicts with that determination.”

“The student’s State of legal residence is the residency or domicile of a student’s true, fixed, and permanent home of a student, usually where their domicile is located. As noted above, a student is considered to reside in a State if the student meets the requirements for residency under State law, and an institution may rely on a student’s self-determination of the State in which he or she resides unless the institution has information to the contrary.”

So, it seems that if a student has a permanent residence in North Dakota, but is staying with grandma at the Jersey shore all summer long and taking an online course from a legally licensed and accredited New Jersey institution, the NJ institution would have to be authorized in ND even though *100% of the education was received, conducted and consumed in NJ*? This appears to be in direct contradiction with previous direction that indicated it was the location where the education was received that determined state authorization. Oh, well.

But wait! What if the state of residence doesn’t require authorization for fully online courses or programs? Again ED appears to have reversed their direction. The phrase "if such authorization is required by the State" appears prominently throughout the document. In fact, “a State has discretion as to whether it has any State authorization requirements with respect to an institution offering postsecondary education through distance education in that State and that discretion includes how the State defines distance education.” So it appears that ED is starting to treat the States like grownups with some level of self-direction, even though the Department continues to treat institutions of higher education like naughty little children that must be told what to do.

## General Requirements

Finally, what do we have to do? That's pretty involved. But it seems to fall into three major areas.

1. Get authorized in each state (or foreign country) that requires authorization. You may do so by going individually, state to state, or by means of reciprocity agreements (NC-SARA for example). Along with authorization comes following regulations in each state (or foreign country), including refund policies.
2. Disclose the complaint process for each state (or foreign country? – I skipped much of the “foreign country” stuff as it doesn't apply to my institution at this time) to students.
3. Notify students of any and all ramifications of taking distance duration courses from your institution as an out-of-state student.

I've tried to arrange the following quotes in some sort of logical order, but then, what I consider “logic” my wife tells me is “weird.”

As noted above, becoming authorized is required for states that require authorization and varies, so it will not be covered here. As I mentioned, I mostly ignored the stuff about foreign countries except for this little beauty: “The exemption to obtaining foreign authorization in §600.9(d)(1)(i) has been altered to include facilities and areas in which the foreign country has granted the U.S. military usage.”

Let's move on to disclosure.

“We are requiring an institution to determine whether a program it offers meets State requirements in each State where the students enrolled in that program reside, and to publicly disclose that information to students.”

Seems pretty straightforward, right? But they also “require that an institution provide public and individualized disclosures to enrolled and prospective students regarding its programs offered solely through distance education or correspondence courses.” Whoa! What's that about individualized disclosures? I'm calling those notifications and will get to them later. So what must we disclose? This list is extensive and includes, but is not limited to:

- Whether or not the program is authorized by each State in which enrolled students reside
- Whether or not the institution is authorized through a State authorization reciprocity agreement
- Adverse actions against the programs such as any adverse actions a State entity has initiated and/or any adverse actions an accreditor has initiated
- Refund policies for each State
- The consequences of moving to a State in which the program does not meet requirements
- Any potential loss of Title IV eligibility
- Any applicable educational prerequisites for professional licensure or certification and whether the program does or does not satisfy such prerequisites or that no determination was made regarding satisfaction of prerequisites

Most importantly however, based solely on the number of times it is mentioned, the institution **must disclose complaint procedures and contact information** for any and all of the following, as applicable:

- The state where the student resides
- The institution's home state
- The reciprocity agreement under which the institution is operating

Specifically “an institution authorized by a State agency will be required to disclose the process for submitting complaints to the appropriate State agency in the State in which the main campus of the institution is located, including contact information for the appropriate State agencies that handle consumer complaints ... an institution authorized by a State authorization reciprocity agreement will be required to disclose the complaint process established by the reciprocity agreement, if the agreement established such a process. An institution will be required to provide contact information for receipt of such complaints, as set out in the State authorization reciprocity agreement ... institution will be required to disclose the process for submitting complaints to the appropriate State agency in the State in which enrolled students reside, including contact information for those State agencies that handle consumer complaints.”

But you can probably slap most of this information on your college website somewhere because “This information does not require an individualized disclosure, but should provide students with generalized information on where the program meets requirements and the consequences if the student relocates to a State not on that list and will give the student information about how their choice of residence and program interact with respect to eligibility for title IV funding.”

It is important to note, however, that you must place this on your website in a prominent position: “we expect that institutions of higher education will collect and disclose this information for students and not put the onus of discovering the information on the student. Institutions should not try to hide this information deep on their Web sites, but should instead make these disclosures easily accessible for students.”

There is no *caveat emptor* here! Nor, unfortunately, is the Department treating our students like responsible adults, which many of our students are! Instead we have to assume that they have no accountability for their own choices, but will instead consume anything disguised as education, just as Constable Parrot in [a famous Monty Python sketch](#) will eat anything covered in chocolate. I don't know if I'm more offended at the government's implication that colleges are dishonorable or that they think we should be *in loco parentis* over responsible adults.

But it's not really that bad. In fact, much of the information may already be disclosed because we are honorable and already believe in transparency. But probably not all of it. For instance, do you have the refund procedures listed for every state in the nation? You may need it!

“The Department believes that an institution of higher education is required to follow the laws in the State in which it operates or enrolls students, including any refund policies that the State enacts. While there may be a lack of efficiency in each institution providing a disclosure related to the refund policies in each State it enrolls students, an institution of higher education would still need to know those refund policies in order to follow them.”

“Even in cases where an institution participates in a State authorization reciprocity agreement, the institution must follow the individualized State refund policies.”

### Specific Requirements (Programs Leading to Licensure and Certification)

Individualized disclosures with documented acknowledgements are required for some types of information. I’m calling these “notifications” to differentiate, but that’s just my terminology, not ED’s.

“Additionally, institutions have to provide an individualized disclosure to enrolled and prospective students of adverse actions against the institution and when programs offered solely through distance education or correspondence courses do not meet licensure or certification prerequisites in the student’s State of residence.”

“The licensure disclosure requires acknowledgment by the student before enrollment, which emphasizes the importance of ensuring students receive that information.”

And “an institution will be required to disclose the applicable educational prerequisites for professional licensure or certification which the program offered through distance education or correspondence course prepares the student to enter for each State in which students reside. The institution must also make this disclosure for any other State which the institution has made a determination regarding such prerequisites as well as if the institution’s program meets those requirements. For any State for which an institution has not made a determination with respect to the licensure or certification requirement, an institution will be required to disclose a statement to that effect.”

But the good news is that you only have to do this for enrolled students because “it would be unrealistic for an institution to be able to provide certification or licensure prerequisites to prospective students across the country. However, by the time a student enrolls, the institution should know what the prerequisites for that student’s State of residence is and whether the program fulfills those requirements. The Department expects institutions to have provided this disclosure by the time the student enrolls.”

Even better: “the Department does not believe that this information must necessarily be collected by each and every institution independently. Rather, an institution can be in compliance with this requirement by referring to a non-institutional Web site, including relevant State professional licensure board Web sites, which contains such information. Institutions that link to a non-institutional Web site should follow the guidance issued in Dear Colleague Letter GEN-12-13, and make the link accessible from the institution’s Web site and have the link prominently displayed and accurately described. The institution is also responsible for ensuring that the link is functioning and accurate.”

To clarify what is meant by licensure: “The Department believes that if graduates of a program are able to sit for any type of licensure or certification examination, then the distance education program they were enrolled in meets State requirements for licensure or certification. If a program does not meet State requirements for licensure or certification, the Department believes that graduates of that program will be denied the ability to sit for licensure or certification. We agree that an institution of higher education is only responsible for how their programs meet or do not meet the requirements for licensure or certification in a State and are not responsible for student-level qualifications to sit for licensure or certification.”

## Are Any Other Notifications Required?

We have already established that notification (with acknowledgement) is required for licensure, but it is also required for adverse actions: “an institution will be required to provide an individualized disclosure to both enrolled and prospective students within 30 days of when it becomes aware of any adverse action initiated by a State or an accrediting agency related to the institution’s programs offered through distance education or correspondence courses; or within seven days of the institution’s determination that a program ceases to meet licensure or certification prerequisites of a State. For prospective students who receive any individualized disclosure and subsequently enroll” and both “will require an institution to obtain an acknowledgment from the student that the communication was received prior to the student’s enrollment in the program.”

How do we get the acknowledgement? Well, “the Department believes that an institution could simply add in a paragraph to their enrollment agreement, a process that takes place electronically for many distance education programs already, that addresses receiving this disclosure. This disclosure does not require a separate, stand-alone affirmation and can be combined with other acknowledgments that the student may have to provide to an institution during the enrollment process.”

## Clinical Rotations, Field Trips Et Cetera

Are there any exceptions to these regulations? Sure, there are always exceptions. “Dear Colleague Letter GEN-12-13 states that, for State authorization purposes, in the case of an additional location of an institution where a student cannot complete more than 50 percent of a program, the student is considered to be enrolled at the main campus of the institution, and thus, no additional State authorization would be required.”

## Relocation

What about students who relocate? “an institution must explain to students the consequences of relocating to a State where the institution does not meet State requirements or where one of the institution’s GE programs does not meet licensure or certification requirements in the State”

And “an institution should be providing the student with information about its State authorization status and should be informing the student that, if the student relocates to a State where the institution is not authorized, the institution cannot disburse Federal student aid to the student as long as the student continues to reside in that State.”

## Penalties for Violations

So, what happens if I violate these rules, perhaps inadvertently? That’s easy, you lose the ability to award Title IV funds! But only in the states where you are not compliant “if an institution does not obtain or maintain State authorization for distance education or correspondence courses in any particular State that has such requirements, such programs would only lose eligibility for HEA title IV funding for students residing in that State. An institution’s inadvertent or unintentional failure to obtain State authorization for distance education or correspondence courses in a State where its enrolled students reside would not jeopardize the entire institution’s eligibility if the institution otherwise met eligibility requirements.”

But this should not be considered to mean that we have no obligation beyond states where our students live. The document says “is offered, or will be offered” many times, and mentions recruitment efforts in

various places. Because online courses are basically *offered* everywhere, this means that our institutions must specifically and categorically deny access to Title IV funds in certain places, and disclose that publicly, or we must comply with the regulations globally, at every location on Earth.

I have also been informed that multiple violation of various regulations (not specifically but possibly including State Authorization) add up over time and enough black marks on your record may impact the entire institution's ability to award Title IV funds.

### Closing

This is what I took away from a first, quick read of the regulations amendments document linked above. All errors and omissions in this document are mine, and you are cautioned not to rely on it. Instead I wrote it mainly for my own use and it consists of my notes and commentary. I have decided to share it in the hope that others may use it as a starting point for their own analysis.

The source document I used was an unofficial version of the regulations. The official version was published in the *Federal Register* on December 19, 2016. If you do take the time to read the official document, which I recommend, I'd be interested in your feedback.

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