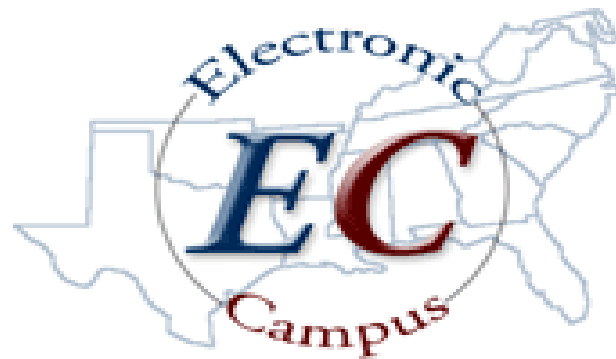


SREB

Southern
Regional
Education
Board

State Authorization and the New Federal Regulations: Renewing SREB's 'Free Trade Zone' Agreement



May 5-6, 2011
Atlanta

Meeting Purposes and Goals

- How our states and SREB should proceed in response to the new federal regulations
- The ‘opportunity’ the new regulations offer for reciprocal agreements
- Reconfirming, renewing, and repurposing our ‘free trade zone’ approach, a regional reciprocal agreement
 - How to proceed
 - The need to create a more formal agreement
- How this ‘fits’ with emerging national efforts

Benefits of the Free Trade Zone

- Benefits today may be even greater than the reasons for a reciprocal arrangement in 1997
 - Expansive growth of online across the region and expectations it will continue to grow
 - Time and expense to your institutions needing approval in 15 states
 - Time and expense to your agencies to review/approve hundreds of institutions
- New federal requirements
- Reaching/serving more students
- It has worked...and can work for the region

Meeting Purposes and Goals

- Not here to debate the federal regulations
 - Those battles are being waged
 - Assume regs will be operable July 1, 2011
 - Even if revoked or changed, the environment in state authorization has changed
- Can discuss/debate interpretations of the regs
 - Provide you with best analysis from different organizations and legal groups
- Key question framing our discussions...how do we leverage and strengthen our existing arrangement for states and institutions

SREB Role and Interest (Tab 1)

- Questions have been raised about our role and 'membership' in the compact
 - Copy of original compact
 - By-laws
- Article 1, Section 2, (c)
 - *Serve as an administrative device for carrying out interstate arrangements for regional educational services and institutions*
- Regional Contract Program, Academic Common Market and the *Electronic Campus* are examples of such arrangements

SREB Role and Interest

- Launched the *Electronic Campus* in 1998 to
 - Expand access via ‘marketplace’
 - Share courses, programs and services
 - Effect policy
- Initial discussions focused on state approval
 - Major impediment to growth
 - Needed a different model
 - Reciprocal ‘free trade zone’ approach agreed upon by the ‘founding mothers and fathers’ (more on this later...)

Here Come the Feds... (Tab 2)

- New federal requirements going into effect July 1, 2011 (600.9)
- Institutions serving students outside their home state must meet all state requirements
 - No consideration for “physical presence”
 - Can’t be exempted from state approval by accreditation
 - Failure to have evidence of approval will make institution ineligible for Title IV funding

Impact/Implications

- State approval/licensure requirements are uneven (at best) and problematic
- Most public institutions have operated in an unfettered way in states, in particular those with a few students and no other presence
- Time-consuming and costly
 - One institution in North Dakota
 - 600+ online students in 40+ states
 - Estimated cost of \$160,000 for approval
 - 8 students in MA--\$28,000; 5 students in TN--\$29,000
- National footprint ~\$400,000

A Short History...

- Impetus
 - (see June 10, 2010 Proposed Rule in tab 2)
- Movement of sub-standard institutions and diploma mills from state to state in search of least oversight
- Concerned that ‘States have not provided adequate oversight, and thus we believe Federal funds and students are at risk.’

A Short History...(2)

- Program Integrity Regulations
- Regs issued in late October, 2010
 - Three major components
 - Gainful Employment
 - Credit Hour Definition
 - State Authorization
- State Authorization
 - Institutions must secure approval in states where they have students enrolled IF the state regulates such activity by July 1, 2011

A Short History...(3)

- Institutions must be able to **document** approved status or show it is not required
- If a state does not regulate, an institution is considered to be legally operating in said state
- ‘Good faith’ efforts to comply for 2011-2012 if
 - Institution had applied for approval
 - Institution could document its application and receipt by state
 - Institution notifies ED when the state issues a decision

DCL's and 'Clarifications...' (Tab 2)

- Two Dear Colleague Letters (DCL) issued to expand and clarify regulations (Tab 2)
 - March 17 and April 20, 2011
- Key elements
 - A 'delay' until July 1, 2014 (but not really)
 - No federal De Minimus Test
 - Institutional complaint procedures must be provided (whether regulated by a state or not)
 - Institution must demonstrate no state approval required
 - 'Good faith' efforts further defined

Where Things Stand...

- Extended the enforcement date to July 1, 2014
- DOE will compile and issue a comprehensive directory of state authorization requirements (likely connected to SHEEO effort)
- No postponements and institutional (and state) action is still mandated
- Clarified that institutions contacting states to initiate the process is considered 'good faith'
 - Institutions may then be required to pursue formal approval based upon a state's response

Where Things Stand...

- *Department will not initiate any action to establish repayment liabilities or limit student eligibility for distance education activities undertaken before July 1, 2014, so long as the institution is making good faith efforts to identify and obtain necessary State authorizations before that date.*

‘Good Faith Efforts...’

- Evidence of good faith efforts by institutions could include anyone or more of the following items:
 - Documentation that an institution is developing a distance education management process for tracking students' place of residence when engaged in distance education.
 - Documentation that an institution has contacted a State directly to discuss programs the institution is providing to students in that State to determine whether authorization is needed.
 - An application to a State, even if it is not yet approved.
 - Documentation from a State that an application is pending.

‘Good Faith Efforts’...But

- **The Department will review carefully instances where an institution may not be acting in good faith, such as where documents show an institution knew of a State requirement and willfully refused to comply with it.**
- **If a State has no applicable regulation or law, then no action on the part of the institution is required. Where States are in the process of establishing new requirements or creating application procedures, institutions acting in good faith would be expected to seek authorization under the new requirements or procedures only after they are established.**

Ongoing National Efforts

- Continued efforts to repeal/rescind regs (tab 3)
- Two major efforts underway (tab 4)
 - SHEEO
 - Directory of state regulators and compendium of state regulations
 - President's Forum
 - Create a common template or model compact on interstate reciprocity
- Undocumented (to date) initiative from the Higher Education Secretariat in Washington to work with DOE on a plan/approach
- One constant theme...**RECIPROCITY**

SREB's Stance and Actions (Tab 5)

- Worked with WCET and others to create a “Starter List...” (tab 6)
- Contacted all Electronic Campus State and Institutional Coordinators following first DCL
 - Recommended institutions to act quickly
 - Suggested institutions ask several questions of states/document overtures and responses
- Indicated we would continue to monitor activities around the new regs and
- Would convene states to discuss SREB's ‘Free Trade Zone’ efforts (and so you are here for the next couple of days)

Reciprocity: The Answer? or The Answer! (We like !!!)

- Since issuance of regs, reciprocal arrangements have been referenced...(tab 2)

We agree with the commenters that further clarification is needed regarding legal authorization across State lines in relation to reciprocity between States and to distance education and correspondence study. In making these clarifications, we are in no way preempting any State laws, regulations, or other requirements established by any State regarding reciprocal agreements, distance education, or correspondence study. To demonstrate that an institution is legally authorized to operate in another State in which it has a physical presence or is otherwise subject to State approval or licensure, the institution must demonstrate that it is legally authorized by the other State in accordance with § 600.9. We continue to believe that we do not need to regulate or specifically authorize reciprocal agreements. **If both States provide authorizations for institutions that comply with § 600.9 and they have an agreement to recognize each other's authorization, we would consider the institution legally authorized in both States as long as the institution provided appropriate documentation of authorization from the home State and of the reciprocal agreement.** In addition, the institution must provide the complaint contact information under 34 CFR 668.43(b) for both States.

Sorry, Some More History... SREB's 'Free Trade Zone' (Tab 7)

- Educational Technology Cooperative 1996-'97
 - Began discussions about the Electronic Common Market
 - Surveyed states and commissioned a paper by some guy from Virginia Tech...
 - *There is also little doubt that SREB member states, working cooperatively and in the spirit that has marked many regional efforts, can create a strategy to facilitate the sharing of programs and services across the 15 states.*
 - *Although there are a number of issues to be discussed and ultimately resolved, there are no barriers sufficient to thwart a concerted and cooperative effort to develop an Electronic Common Market in the region.*

SREB's 'Free Trade Zone' (2)

- Framework developed/approved in October, 1997
 - Mission Statement
 - Common Standards
 - Principles of Good Practice
- Agreed upon a regional reciprocity agreement for courses (at that time and later programs) reviewed and approved by states against the Principles of Good Practice
 - States would recognize the 'signoff' of other states for an institution's delivery of distance learning programming and not apply its regulatory 'machinery'

SREB's 'Free Trade Zone' (3)

- Imbedded this in the Requirements for Participation, item # 8
- *In lieu of other state regulations or policies, participating states agree to accept the decision of the state where the offering institution is located and that the institution meets the Principles of Good Practice.*
- Participants dubbed this the 'Free Trade Zone'
- A study committee in 1998 developed procedures for independent institutions to participate with a 'cantilever' to the state agency (SHEEO entity) in each state.

Other Elements and Functionality

- SHEEO agency signoff was required for all participating institutions against the Principles
- Review of independents managed through third party (often the state's independent association), but signoff was forwarded to the SHEEO agency
- Approval limited to the institutions and programs in (activated) the Electronic Campus
- Available to regionally accredited non-profits only
- The Free Trade Zone has worked well for 13 years...two 'incidents' over that time where the signoff of the home state was questioned

A Changing Environment...

- Few SHEEO's from the 1990's still in office
- Some of our state coordinators from that era are around (most have turned gray or worse...)
- Some questions...
 - How many of you were aware of the 'Free Trade Zone?'
 - Why wouldn't it work in your states now and in the future? (What are our new hurdles?)
 - Will it help your institutions? Your approval efforts?
- What do we need to do to reaffirm, refresh and repurpose the agreement?

Let's Hear from You...

- What actions are underway or are you contemplating relating to state authorization for
 - Your state's public institutions
 - Your state's independent institutions
 - Out-of-state institutions (in the region)
 - Out-of-state institutions (outside the region)
 - Fees/charges
 - New Legislation, regulations or policies
 - Other???

SREB

Southern
Regional
Education
Board

Finding That Nugget Amongst the Rocks of Reciprocity...



Refreshing the Free Trade Zone

- Requirements for Participation
 - Are these still applicable?
 - Build on Common Standards?
- Memorandum of Agreement
 - Format/structure
 - SHEEO agency/head
 - Other approval entities
- Building around the Principles of Good Practice (do we need a 2011 version?)

Strategies and Models

- Legislative/regulatory approach
 - Individual state decision
 - Follow-up survey of states

- Regulatory exemption statement (VA)

The following activities or programs otherwise subject to these regulations shall be exempt from provisions...Courses or programs offered through approved multistate compacts, including but not limited to the Southern Regional Education Board's Electronic Campus.

Strategies and Models

- Memorandum of Agreement
 - ‘Compact within the Compact’
 - Preamble and statement of purpose
 - Reciprocal recognition of authorization across all states participating in the agreement
 - or
 - Exemption from state approval process
 - Applicability and limitations
 - Commitments
 - Complaint process/information
 - Reporting requirements

Issues and Questions

- Continue with Electronic Campus programs only?
- Expand to include activities outside the EC?
- Extension to other regions/states
- Cost or fee considerations
- Proprietary institutions
- Complaint Procedure (regional approach)
- Exemptions (religious, military and ???)
- States not participating/opting out
- Time/Period of reciprocity
- Reporting (data collection?)
- Teachout strategies/options (provisional approval)
- De Minimus triggers?

SREB

Southern
Regional
Education
Board

Where Do We Go From Here?

- Follow-up actions
 - SREB
 - States