

The Pending Implementation of the Federal Regulations Impacting Distance Education and State Authorization: SREB's Response, Activities and Proposed Steps Moving Forward

As the broader higher education community is aware, particularly those engaged in the delivery of online programming, new federal regulations, scheduled to go into effect July 1, 2011, have caused great concern. While part of a broader package focusing on "program integrity," our major focus has been on state authorization regulations pertaining to distance education (the fed's term). The significant statement in 600.9 of the October 29, 2010 rules follows:

"If an institution is offering postsecondary education through distance or correspondence education for students in a State 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 postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request."

Through discussions with representatives from the Department, we have some clarification and but still lots of uncertainty about the new regulations. As of March 15, 2011, this is our understanding:

1. Any institution enrolling students in online programming outside its home state must be either be approved to deliver such programming in accordance with state requirements or have taken steps to seek approval by July 1, 2011. There are, as of today, no options to either delay or avoid meeting the federal regulations.
2. There are several efforts underway to either rescind or delay implementation of the regulations, the most significant effort being a March 2, 2011 letter (attached) from the American Council on Education (ACE) to Secretary Duncan. This was supported and co-signed by some 60 organizations, including SREB. We have not heard of any response, either formally or informally to the letter, as of today.
3. The issue was the subject of a hearing of the House Committee on Education and the Work Force March 12, 2011. We are unaware of any final action emanating from the Committee. ACE submitted a letter (copy attached) co-signed by over 60 organizations, including SREB, encouraging the Committee to delay implementation for one year.
4. While the Department has indicated that existing state 'reciprocity' agreements are acceptable and could meet requirements, we have no clear understanding of how or if any such arrangements will be approved. This impacts SREB's longstanding (13 years) effort we dubbed our 'free trade zone' which was created, implemented and has been operational since the launch of the *Electronic Campus* in 1997. We have sought to have our 16-state reciprocal agreement confirmed and submitted documents to the Department with the request. They have indicated they would review the materials, but would not (could not) comment on the approach because of pending legal action.

Over the past several months, SREB staff have worked with other regional and national groups to make the Department aware of the potential negative impact on the growth of online programming, our institutions and the states. While those efforts continue and we still hope for a rescission or delay in implementation, we believe SREB states and institutions must be prepared to respond to the requirements by July 1. Toward that end, we worked closely with our 'sister' regional, the Western Interstate Commission on Higher Education, to collect information about licensing practices in all 50 states. The latest, and we believe, final version of the report "State Approval Regulations for Distance Education" A 'Starter' List" was posted March 8. It provides information about state contacts and practices and is designed to help institutions pursue initial steps with state approval agencies. An 'executive' summary of the document is attached. Links to the entire report and additional resources can be found at the end of this document.

SREB's recommendation to institutions, as of today and absent any action that alters implementation of the new federal requirements, is to contact all states in which you have online students enrolled or may enroll students in the next year. We suggest asking several questions that should clarify what you need to do and when you need to do it (see attached list). We understand the impact on our state agencies, but institutions must have, by July 1, clarification and some form of documentation, that it does not need to pursue authorization/approval or, if it must, has at least initiated the process. Our assumption is that no institution, even if it started the process today, could secure formal approval from a state, processes that take months and even up to a year based upon our research.

Finally, SREB believes that our 'free trade zone' is a real solution to a real problem. We have made it work for 13 years. Interestingly, the initial issue that was addressed by the 'founding mothers and fathers' of the *Electronic Campus* was focused specifically on the state authorization/approval challenge. The process we devised and the agreement among the then 15 SREB states, essentially placed the onus on the home state to 'certify' or approve the participation of its institutions. We required, and still require, states to sign-off that institutions met the 'Principles of Good Practice,' and, in turn, that sign-off would be recognized by other SREB states (see the original framework). In essence, we created a 15 (and then 16) state reciprocal agreement and, to this day, it has continued to serve institutions and states across the region. Two critical caveats: first, the agreement applied only to those courses and programs that were included in the *Electronic Campus* (so other online programming could require additional approval in a state); and secondly, the agreement covered only the 16 SREB states. Institutions delivering programming outside the region are, or could be, subject to any non-SREB state requirements.

As noted earlier, we have sought a federal review and approval of our existing arrangements, but do not expect an immediate response. We still believe it's the best path, at least for our states and institutions, to respond to the new requirements. But while we believe this to be the case, absent formal recognition or approval by the Department, SREB believes the risk of assuming the existing agreement is acceptable is too great for institutions, thus our recommendation that institutions prepare to take action as noted earlier.

SREB will soon begin a process to reaffirm with our states and institutions our 'free trade zone' strategy, revising or updating our 'rules' and promoting our model as a reasonable, efficient and effective strategy that benefits institutions, states and, most importantly, students we are and seek to serve. Our plan is to have this in place by the July 1 implementation of the new regulations. Whether the regulations are rescinded or delayed, we will push to have our regional affirmed anew, providing institutions with a clear pathway for continuing online efforts across the region.

We ask states and institutions to contact us with questions, comments or concerns. We remain dedicated to ensuring that our collective online learning initiatives in the South, by far outstripping growth in any other part of the country, continue.

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Additional Resources

The complete 'State Authorization' (Title 34, § 600.9) regulation in the Code of Federal Regulations:
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=422e8e1e4276e7662af45f2cd8f09d1e;rgn=div2;view=text;node=20101029%3A1.25;idno=34;cc=ecfr;start=1;size=25>

Changes to the 'State Authorization' section of federal regulations as originally proposed at the start of the Negotiated Rule Making Process by the USDOE on June 18, 2010:
<http://edocket.access.gpo.gov/2010/pdf/2010-14107.pdf> (page 34812)

'State Authorization' final regulations released on October 29, 2010:
<http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf> (page 66858)

"State Approval Regulations for Distance Education: A Starter List" as of March 8, 2011
<http://wcet.wiche.edu/advance/starter-list>

WCET *Frontiers* Blog is located at <http://wcetblog.wordpress.com/>