Federal Requirements: 
State Responsibility for Distance Education Offered by Institutions in Other States

In October 2010, U.S. Department of Education issued “Program Integrity” rules to clarify that states are responsible for all education offered to their residents, regardless of where the education originated. Today, states regulate or authorize the offering of postsecondary education within their borders with widely varying standards, policies, fees, and enforcement. After an appeals court upheld a lower court’s decision to overturn the rule, the U.S. Department of Education in July 2012 said it would no longer tie Title IV Federal Student Aid eligibility to the requirement that distance education programs obtain permission in every state in which they enroll at least one student. However, regardless of that ruling, institutions are bound by state regulations to seek appropriate authorization. Federal regulation in this area is likely to return as the U.S. Department of Education is now in the negotiated rule-making process and is again considering Program Integrity rules concerning state authorization of distance education programs.

Today, each institution must separately pursue state authorization, or get assurance that authorization is not required, in each state and territory in which it serves students. The cost of compliance can be high for institutions serving students in multiple states, and the process varies widely from state-to-state.


Currently, institutions within the Nevada System of Higher Education (NSHE) are individually in the process of determining where authorization may be required in other states based on out-of-state students who are enrolled in their distance education classes, and then pursuing the required authorizations in those states. This process of reviewing regulation in other states and taking the steps necessary for appropriate authorization is resource intensive in both dollar and staff time. In addition, institutions located in other states who want to serve students in Nevada must seek authorization from the Nevada Commission on Postsecondary Education, the licensing authority responsible for the oversight of private postsecondary educational institutions operating in Nevada.

Commission on the Regulation of Postsecondary Distance Education

The Commission on Regulation of Postsecondary Distance Education was established to develop and provide recommendations that will address the costs and inefficiencies faced by postsecondary institutions that must comply with multiple state laws and regulations as they endeavor to provide educational opportunities to students in multiple state jurisdictions. The Commission’s primary recommendation calls for a system of interstate reciprocity based on the voluntary participation of states through regional compacts like the Western Interstate Commission on Higher Education (WICHE). The four regional compacts (WICHE, the Midwestern Higher Education Compact [MHEC], the New England Board of Higher Education [NEBHE], and the Southern Regional Education Board [SREB]) provide the existing structure by which states can participate in an interstate reciprocity agreement. A national coordinating board made up of the regional compacts and other stakeholders will be established to harmonize the regional reciprocity agreements. Under the regional approach to SARA, the regional compacts will:

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• Inform states of the requirements for joining SARA;

• Accept, or reject, states into the reciprocal agreement;

• Sanction states that fail to meet fully the participation requirements and dismiss those that fail to respond to concerns;

• Develop processes for states to appeal a respective compact’s decision;

• Review on at least a biennial basis each state’s participation to ensure they meet all of the criteria for inclusion.

The SARA will ensure that institutions can easily operate distance education programs in multiple states as long as they meet certain criteria relating to institutional quality, consumer protection, and institutional financial responsibility. Participating institutions must be authorized by their “home state,” though state may also regulate the in-state activity of institutions that have a physical presence in their borders. A definition of physical presence must be adopted by states as a prerequisite for participation in the interstate reciprocity agreement. The home state will have responsibility for authorizing an institution for the purposes of the interstate reciprocity and will be the default forum for consumer complaints. Nevada’s participation in SARA as a state, will allow individual institutions domiciled in Nevada to then decide independently if they want to join SARA or not.

Private institutions that are domiciled in Nevada will continue to be authorized by the Commission on Postsecondary Education (CPE) in the same manner that it authorizes institutions today. The Board of Regents will continue to act as the authorizing entity for Nevada’s public institutions. Reciprocity means that the authorization that occurs in Nevada by either the CPE or Board of Regents will be honored by other states that join the SARA. Therefore, institutions participating in SARA will not have to seek authorization in every state where they serve students, saving time and money.

Regional Compacts – Proposed Reciprocity Agreements

WICHE and the other three regional compacts (MHEC, NEBHE and SREB) have been working with a model agreement originally created by the President’s Forum and the Council of State Governments to develop a voluntary, nationwide reciprocity framework using commonly and consistently applied processes, standards, and fees. In November 2012, the WICHE Commission approved a conceptual version of a WICHE State Authorization Reciprocity Agreement (W-SARA), which:

• Builds on the model agreement created by the President’s Forum and Council of State Governments, but it proposes using the existing higher education compacts for ongoing management and governance, rather than creating a new organization.

• Provides that participation by states, territories, and institutions is entirely voluntary. Institutions that opt not to participate can either choose not to provide education beyond their home state or seek authorization in each of the states in which they wish to offer educational services.

• Shifts principal oversight from the state in which distance learning is being offered to the home state of the institution offering the instruction; and

• Serves all interested states and territories and will accommodate all sectors of higher education: public, independent nonprofit, and for-profit.
The state of Nevada will opt into the SARA through WICHE. When Nevada as a state enters the SARA, doing so does not obligate any institution to participate; rather institutional participation is purely voluntary.

**Benefits for States under SARA** – SARA will:

- Establish common, high-quality, cost-effective, and consistently applied standards and review processes endorsed by participating states;
- Provide consumer protection and a complaint resolution process;
- Foster the uniform collection and sharing of information among participating states about authorized institutions; and
- Over time, enable institutions and states to achieve cost savings by no longer having to engage in the duplicative process of seeking approval to operate on a state-by-state basis.

**Additional Information**

For additional information on this topic, including a copy of the WICHE SARA, please go to the WICHE website at [http://wcet.wiche.edu/advance/state-approval](http://wcet.wiche.edu/advance/state-approval). The final report and recommendations of the Commission on the Regulation of Postsecondary Distance Education can be found at [http://www.sheeo.org/resources/publications/final-report-distance-education-commission-advancing-access-through](http://www.sheeo.org/resources/publications/final-report-distance-education-commission-advancing-access-through).