

## State and Federal Regulations on ‘State Authorization’ of Distance Education

### What is the history of the state regulations?

States have long had the authority to regulate institutions offering education within the state’s boundaries, regardless of the modality (face-to-face, distance) being used. The approval process is part of consumer protection for learners in the state. States’ regulations vary from having no regulation to having very strict requirements. Even if an institution teaches only at a distance in a state, many still expect the state process to be followed.

### The State Regulations

States expect that your institution obtain the necessary approvals (if any) before advertising or serving students in their state. The state regulations predate the federal regulation and remain in effect. Neither the federal Court orders nor any pending federal action changes the fact that states expect institutions to follow their laws.

### What is the history of the federal regulation?

**October 2010** – The U.S. Department of Education (USED) released its regulation requiring institutions to document that they have the proper approval to serve students in other states.

**July 2011** – The U.S. District Court struck down the distance education portion of the regulation on procedural grounds (reason: the public was not able to comment period since the distance education language was not included in the June 2010 proposed regulation).

**June 2012** – The U.S. Court of Appeals upholds the District Court’s ruling to vacate the distance education portion of the regulation. As a result, there is no enforceable Federal Regulation!

**May 2014** – A negotiated rulemaking committee did not come to consensus for a Federal regulation for State Authorization of Distance Education.

**July 2016** – The Department released proposed Federal regulations for State Authorization of Distance Education in July for comment.

**December 2016** – USED released the new federal regulations for State Authorization of Postsecondary Distance Education, Foreign Locations. Effective date: July 1, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-29444.pdf>

**February 2018** – WCET, NC-SARA, and DEAC submit a letter to USED requesting clarification on important topics.

**July 3, 2018** – USED announces two-year delay in effective date for regulations proposed in December 2016. <https://www.federalregister.gov/documents/2018/07/03/2018-14373/program-integrity-and-improvement>

**July 31, 2018** -- USED announces intent to establish a negotiated rulemaking to cover 11 important areas of higher education regulation, including state authorization.

<https://www.federalregister.gov/documents/2018/07/31/2018-15929/negotiated-rulemaking-committee-public-hearings>

**August 2018** -- NEA sues USED regarding delay of December 2016 regulations. <http://www.nea.org/assets/docs/1-main.pdf>

**September 2018** – WCET staff testifies at USED public hearing.

## State Authorization FAQ

### What does “operating,” “physically located,” or “physical presence” in a state mean?

If the institution is conducting any one of a list of “trigger” activities (e.g., advertising in local media, using direct advertising, requiring local proctors, employing faculty, marketing, or conducting experiential learning in the state), you could be required to comply. The definition of "presence" and the list of “trigger” activities is at the discretion of each state and varies greatly from state-to-state.

### What about SARA and reciprocal agreements between states?

Through reciprocity, an institution authorized under SARA criteria in its home state are considered authorized in all other SARA states for SARA related activities per the SARA Manual <http://nc-sara.org/content/sara-manual>. As of September 2018, 49 states, Puerto Rico, U.S. Virgin Islands, and the District of Columbia are members of SARA. National Council for State Authorization Reciprocity Agreements: <http://nc-sara.org/>

### What is an example of requirements that NC-SARA and existing laws impose?

Institutions offering courses and/or programs out-of-state that lead to professional licensure or certification have an additional responsibility. Institutions must determine whether the courses and/or programs meet the prerequisites for licensure or certification in the states where they are being offered and provide notification of these findings. There are a variety of reasons for this additional responsibility. Institutions must be aware of SARA requirements (for SARA participating institutions), both state and federal regulatory obligations, and concern for institutional liability exposure.

<https://wcetfrontiers.org/2018/02/07/professional-licensure-notifications-disclosures/>

<p><b>WCET Updates on State Authorization</b></p> <p><b>WCET State Authorization Network:</b>  <a href="https://wcetSAN.wiche.edu">https://wcetSAN.wiche.edu</a>  <b>WCET Frontiers blog:</b> <a href="https://wcetfrontiers.org/">https://wcetfrontiers.org/</a>  <b>WCET Issue Pages:</b> <a href="https://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization">https://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization</a></p>	<p><b>Join SAN!</b></p> <p><b>State Authorization Network Team</b></p> <p>Cheryl Dowd: <a href="mailto:cdowd@wiche.edu">cdowd@wiche.edu</a>            Russ Poulin: <a href="mailto:rpoulin@wiche.edu">rpoulin@wiche.edu</a>            Dan Silverman: <a href="mailto:dsilverman@wiche.edu">dsilverman@wiche.edu</a></p>
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