



By Bill Ferreira, Stephanie Gold, and Megan Wilson  
February 2021

Talking Points -

# Military-Affiliated Students: Managing International Compliance When Duty Calls

## Introduction

When colleges and universities offer online programs internationally, often it's within the framework of expansion – attracting non-U.S. students and increasing global footprint. However, U.S.-based students already enrolled at the institution may move to locations abroad for various reasons, prompting the school to consider how best to facilitate the transition. This is especially true for military-affiliated students who are posted to U.S. military bases and other installations outside the United States.

While federal law allows U.S. service members to return to an institution without penalty if their education has been disrupted by service obligations, some students may want to continue their education program abroad through the school's online education platform. Individuals who are partners or dependents of service members similarly may want to leverage synchronous and asynchronous course offerings to avoid disruption to their studies. How, then, can institutions ensure that military-affiliated students are suitably supported while also balancing legal requirements associated with international online programs?

The challenge is that U.S. schools generally remain subject to country-specific regulation even when making online programs available to students involved with U.S. defense operations in that country. An effective compliance strategy typically depends on the specific circumstances of the online offering and the country in which the student is located. As a result, country-by-country diligence is hard to avoid. We offer below three considerations for institutions faced with military-affiliated students who relocate abroad for service obligations and want to continue their education program online.

## 1. Recognize that non-U.S. law may affect obligations.

It's tempting to assume that military-affiliated students operate in a "magic" bubble that liberates institutions from foreign regulation of education provided to such students. But reality doesn't align with this assumption. Unless an exception applies (discussed in #2 below), non-U.S. regulatory considerations may affect whether and how an online education program operates in the host country. What this means is that, in addition to requirements driven by the U.S. Department of Education, accrediting bodies, and state agencies, the non-U.S. regime also may regulate the online program.

Typical areas of foreign regulation may include, for example, the following:

- *Foreign education regulation:* Historically, many foreign jurisdictions have not required prior authorizations or licenses to offer a wholly-online degree program into the foreign country from another country. However, given the surge of digital services during the COVID-19 pandemic, there is renewed worldwide focus on regulation of all manner of virtual services – including education. Country-specific inquiry is necessary.
- *Foreign tax obligations:* U.S. institutions may have non-U.S. sales tax or value added tax obligations associated with tuition or fees for online programs offered abroad to military-affiliated students. More and more countries have been looking for ways to tax the "digital economy," and university online programs increasingly are caught in the mix. Digital services taxes (DSTs) have been adopted or are under consideration by such countries as Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. Given the complexity and nuances of international tax regimes – including double taxation treaties and recent guidance from the Organization for Economic Co-operation and Development (OECD) – a "one size fits all" approach to tax compliance is elusive.

Other important considerations include application of non-U.S. privacy and data security law; consumer protection rules; and internet and telecommunication regulations. As is obvious, there is some homework to do before diving into an international online offering, even where the student is located at, or affiliated with, a U.S. military installation.

## 2. Appreciate the complexity of U.S. military relationships with foreign countries.

The nuanced relationship between U.S. service members and the host country is beyond the scope of this article. Suffice to say that an intricate web of international law, intergovernmental agreements, foreign policy considerations, and even case law governs the legal status of American forces stationed outside the United States. Exactly how this affects online education delivered across borders to uniformed men and women – and their partners and dependents – can be difficult to decipher.

A centerpiece of the legal relationship between military-affiliated individuals and the host nation often is a Status of Forces Agreement, or SOFA, between the U.S. government and the foreign country. The U.S. government maintains these agreements with many countries that host U.S. defense personnel and supporting civilians. SOFAs generally recognize the principle that active-duty U.S. military members and their accompanying non-active duty dependents are subject to the foreign country's laws while residing in the foreign country. But SOFAs further illuminate the terms, conditions,

rights, privileges, and exemptions that apply to U.S. Department of Defense personnel, associated civilians and contractors, and property in the territory of the host nation.

SOFAs govern a range of issues, including local school and education for military members and their accompanying family. Some SOFAs specifically permit establishment of educational facilities and programs on U.S. bases; others allude to specialized training programs or privileges for dependents for service members, making no distinction between “on-base” or “off-base” residence. Some privileges and exemptions extend to education providers supporting U.S. forces and their dependents. Although a SOFA generally does not answer the question – Which, if any, foreign laws apply to a U.S. institution’s online education program for service members? – they are nevertheless an important piece of the puzzle because they inform the legal context within which military support services, including education, may operate.

Even where a SOFA could help to guide the international compliance strategy or exempt a U.S. institution from certain host country obligations, there are some important limitations. For instance, SOFAs can be difficult to track down. They are not always public documents or readily available to legal advisors. And when they are available, they can be long and dense documents to wade through. Also, the U.S. government and host nations don’t always agree on how to apply a SOFA’s terms. Differences in interpretation have led to ambiguity across many areas addressed in the agreements, and education is no exception. Questions have arisen about whether, for example, U.S. institutions must “register” in the host country or fulfill foreign tax obligations under the SOFA while providing programs into the country.

### 3. Gauge the international compliance infrastructure and support framework.

The events of 2020 drove many programs to virtual models with students flung across the world. Already many schools have started to build an international compliance playbook to advance and sustain global online accessibility. Institutions can leverage these efforts for programs focused on military-affiliated students, with tweaks to accommodate the unique relationship between U.S. uniformed services and the countries in which they operate. The compliance strategy may vary based on the institution’s capacity to provide online programs, pursue the appropriate legal diligence, and support military-affiliated students who relocate abroad. Considerations include, for example:

- *The number of potentially affected students:* Institutions with large percentages of military-affiliated students may incline to build a more robust program to efficiently address circumstances where students move abroad due to service obligations. On the other hand, institutions with a small percentage of military-affiliated students may deal with such issues on a much smaller scale or case-by-case.
- *The institution’s current online offerings:* In order to continue their education programs, military-affiliated students must have access to a course sequence comparable to what was available when they were located in the United States. For example, if a student took courses on campus, the institution must have comparable courses online for the student to continue the education program. And even if a student already was enrolled in an online program, accommodations may need to account for the time difference and the student’s service responsibilities.

- *The institution's ability to fill in gaps where needed:* To the extent the school itself cannot meet a military-affiliated student's needs, it may wish to consider whether collaborations with other institutions (e.g., articulation agreements) may help provide educational continuity.

The Hogan Lovells team is guiding many university international initiatives, including online programs. We are available to respond to questions and to assist as your institution thinks through these and other implications of offering online programs internationally.

Hogan Lovells offers an [award-winning](#) resource, *Education GOES International*, which is a country-specific guide to offering online education programs in many countries. Further information may be found [here](#).

---

**Authors:** Generously provided by our colleagues at [Hogan Lovells](#).

Please review their individual biographies shared in the links below.



William F. Ferreira  
Partner  
Washington DC  
Phone: 202 637 5596  
Email: [william.ferreira@hoganlovells.com](mailto:william.ferreira@hoganlovells.com)  
[Biography: William F. Ferreira](#)



Stephanie Gold  
Partner  
Washington DC  
Phone: 202 637 5496  
Email: [stephanie.gold@hoganlovells.com](mailto:stephanie.gold@hoganlovells.com)  
[Biography: Stephanie J. Gold](#)



Megan Wilson  
Senior Associate  
Washington DC  
Phone: 202 637 7565  
Email: [megan.wilson@hoganlovells.com](mailto:megan.wilson@hoganlovells.com)  
[Biography: Megan Wilson](#)