

Dear UPCEA Institutional Representatives,

In October 2010, as part of the Higher Education Reauthorization Act, the U.S. Department of Education (USDOE) issued a new regulation (§ 600.9 State authorization) that will have far-reaching implications for higher education institutions offering online courses to students in other states. By July 1, 2011, institutions must comply with the following regulation:

"If an institution is offering postsecondary education through distance or correspondence education to students in a State in 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."

This new regulation imposes extraordinary logistical and financial burdens upon the higher education community as well as threatens access to higher education for hundreds of thousands of students. Depending on the extent of online or Independent Study programs, institutions could face registration fees totally over \$200,000 annually. USDOE has also required the regional accrediting agencies to report institutions which do not comply and the Department has tied federal aid to non-compliance.

Until recently there was very little awareness of this major issue, and no coordinated efforts to delay or rescind this draconian regulation. That has changed. UPCEA has joined 60 higher education associations and accrediting bodies in submitting a letter to Secretary Arne Duncan. The letter (http://www.upcea.edu/pdfs/state_authorization_3-2-11_Final.pdf) asks that the rules be rescinded. Momentum is building but the final outcome is uncertain. Given that uncertainty, it is imperative that institutions with online programs crossing state lines begin the process of complying with the new regulations.

If your institution is delivering online programming and enrolling students outside of your home state (where the institution is chartered), we recommend preparing a letter to the appropriate state agency in all states. For in-depth coverage and a wealth of valuable state-by-state information on this subject, consult the website of WCET/WICHE at <http://wcet.wiche.edu/>. In the letter, indicate that you are preparing to respond to the new 'state authorization' federal regulations that go into effect July 1, 2011. You must document both your inquiry and their response to meet requirements. We suggest that you indicate that you may, now or in the future, enroll students from their state in online programming from your institution. Accordingly, ask that the state agency representative respond to the following:

1. Specific state authorization/licensure/approval requirements for an out-of-state institution delivering online programming into the state, including any definitions of 'physical presence' in the state;

2. Specific reference to the law and regulations governing authorization/licensing/approval (copies or url);
3. Application and materials required to be submitted (copies or url);
4. The time and/or any calendar requirements for submission;
5. The length of time before the agency will act on a completed application, once submitted;
6. The process that is employed for reviewing the application, including site visits or external review processes;
7. The cost to apply and any ongoing costs to the institution;
8. Whether any exemptions (religious, military, contractual) are allowable. If so, what are the procedures and costs for requesting such an exemption;
9. Whether any reciprocal or consortial arrangements are allowed/approved to meet state authorization/licensure/approval requirements; and
10. The period of time covered by the authorization/licensure/approval if granted.

If the state does not require your institution to go through an authorization/licensure/approval process, ask that the state provide that 'waiver' in writing.

Finally, I urge you in the strongest possible terms to educate your provost, president, government affairs officers, legal counsel, and deans about this crucial issue. While there is a strong effort to rescind this federal over-reach into state policy, or at least to secure a delay to provide time for institutions, and states, to budget for and comply with this new rule, the rule presently goes into effect on July 1, 2011.

Bob Hansen
CEO
University Professional & Continuing Education Association