



## State Authorization Background Information

### **Midwest Higher Education Compact (MHEC)**

The MHEC is one of four regional higher education compacts working on a national initiative to reduce costs and provide access to interstate distance education programs. MHEC has hired a SARA Director - Jennifer Parks - who will work with states that want to be part of the SARA. More information about the MHEC-SARA can be found at: <http://www.mhec.org/sara>. The site provides links to the full SARA agreement, an FAQ and other documents such as state application forms, etc.

**Commission on Regulation of Post Secondary Distance Education** - This commission, chaired by former US Secretary of Education Richard Riley, and funded by the Lumina Foundation, was charged with codifying several reciprocity initiatives into a comprehensive state authorization reciprocity agreement (SARA) and implementation plan for moving forward. The new SARA, builds on previous work done by the Presidents' Forum as well as the western regional compact WICHE. It seeks to create uniformity among varying state regulations, reduce the burden of institutions to receive authorizations in all states, ensures quality and preserves consumer protections for students. States that wish to adopt the SARA will be responsible for authorizing their own institutions online operations. The SARA will be implemented through the regional higher education compacts as a member service for the states. Institutions who wish to be part of the SARA will need to be authorized by only one state, the one that they reside in, and will be authorized in all other states that adopt the SARA. It is important to note that this reciprocity agreement is voluntary, both for states to adopt and for institutions to be members of.

- [Advancing Access through Regulatory Reform: Findings, Principles, and Recommendations for the State Authorization Reciprocity Agreement \(SARA\)](#)

## State Authorization for Institutions Offering Distance Education to Out-of-State Students

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Jan. 24, 2011

“If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. We are further providing that an institution must be able to document upon request by the Department that it has the applicable State approval.”

—Oct. 29, 2010 Amendments to the Higher Education Act, Program Integrity Issues, State Authorization, Section §600.9. See: <http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf> .

According to this federal regulation, in-state and out-of-state institutions that offer post-secondary education to a state’s residents (face-to-face or online) must comply with applicable state approval and/or licensure requirements and be “authorized by name.”

Full article at: <http://www.itcnetwork.org/component/content/article/48-library-articles-abstracts-research/90-state-authorization-for-institutions-offering-distance-education-to-out-of-state-students.html>

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### UPDATES

April 12, 2011

As mentioned in our last Advisory Council meeting, we have been spending quite a bit of time developing our plan to address the Department of Education’s regulation on state authorization. Working at the national level, I heard last Friday (yet unconfirmed) that the DoE is planning to extend the deadline for two years. While that is welcomed news, it does not absolve us of this task.

In our continuing effort to prepare for the implementation of the U.S. Dept of Education’s new Program Integrity rules, we are working to quantify the impact the rules will have on member institutions. To do this, we are compiling a state list of the states where we are serving out-of-state students and identify those states that we need to address first.

It is essential that we get feedback from each institution. I originally requested a list of your out-of-state students, but we would like to quantify that list a bit further. Please forward to me

both the number of students and those states where you enroll students that are out of state who meet the following qualifiers:

- Pay out-of-state tuition;
- Have out-of-state permanent addresses; and
- Are only enrolled in online or distance education courses at your institution.

I would ask the VLC Advisory Council representative at each institution to work with your Registrar and Financial Aid officer in this process. Making sure that everyone knows the activities undertaken by the MCCA and the MCCVLC is very important. We appreciate your help! Please contact myself or Luke Pickelman (luke@mcca.org) with any questions.

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April 22, 2011

Some of you may have already seen this, but I wanted to make everyone aware of the latest “Dear Colleague” letter from the US Department of Education. (<http://ifap.ed.gov/dpcletters/GEN1111.html>)

In this latest letter there are several items of significance:

1. The extension of the timeline to July 1, 2014. We now have some breathing room, but this means that we must show evidence of good faith efforts to obtain State authorizations before that date if asked by DoFE.
2. The Department now IS committed to developing a comprehensive directory of State requirements. This is big – because up until this point, the Department didn’t realize how big of an issue this was for institutions to find the right authority in each State to make a request to. Upon hearing of some of the problems – from multiple institutions – the Department has now decided it will assist with a directory.
3. The Department is now willing to work with us in the development of reciprocal agreements. This is something that will benefit us greatly. The Instructional Technology Council and AACC are working on language that could be utilized in reciprocal agreements. If this language is agreed to by the Department of Education, it can go a long way to establishing these agreements between States.

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May 17, 2011

The latest publication from the National Conference of State Legislatures highlighted online programs and the new federal regs. The Presidents Forum is currently surveying all state regulations governing online higher ed and they are drafting a model interstate compact under which states would agree to accept one another’s authorization of online institutions...a preliminary draft of this compact is going to be issued in October. Here’s the link: <http://presidentsforum.excelsior.edu/projects/multi-state-reciprocity.html>

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## State Authorization Resources

On May 19, 2011, the State Higher Education Executive Officers (SHEEO) released its updated state-by-state summary of regulations and fees, and a state-by-state contact list of state regulators to obtain approval from states in which your out-of-state online students reside.

Here are the links on the SHEEO Web site:

[State Authorization Resources and Directory](#)

[State Authorization - State Agency Responses](#) - Version 1.0 Released Sept. 2, 2011

[Distance Education and State Regulation - Fees Summary, by State](#) (PDF) Updated June 9, 2011

[Links to Student Complaint Process, by State](#) (PDF) Updated May 24, 2011

[Preliminary Contact List of State Regulators](#) (PDF) Updated June 9, 2011

Several states (and statewide distance learning organizations) are looking to establish reciprocity agreements – so each will recognize the distance educational courses/programs in each other’s states. In October 2010, the Lumina Foundation awarded a \$300,000 grant to the President's Forum, which based at Excelsior College in Albany, NY, to lead a task force of regulators and regionally accredited institutions offering online degree programs to explore the potential for reciprocal agreements that lead to greater acceptance of other states’ regulatory decisions. The terms of the grant are through September 2012. See the [press release](#).

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July 18, 2011

**State Authorization Rule Voided:** Last week the US District Court for the District of Columbia struck down the US Department of Education rule that required colleges to acquire approval from any state where they enroll online students. A federal judge found that the Department of Education changed the rule – included online courses/programs – between the initial Notice of Proposed Rulemaking and the final regulations. Because of the Department did not expressly ask for comments regarding the online courses and programs, the rule is invalid. For the article, please go to <http://tinyurl.com/6l2fhgs>

**So what does this mean for colleges that enroll students from other states?** It means that nothing has changed. Despite the fact that the Department of Education cannot enforce state laws with the threat of repealing federal financial aid, some states still do require authorization if a college intends to enroll a student from that state. Colleges must continue with the approval processes in place – and seek approvals from other states. This is not always an easy process, some states require nothing and other states charge fees to secure approval.

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August 8, 2011

The Michigan Community College Virtual Learning Collaborative (MCCVLC) is working with AACC and the Instructional Technology Council to develop policy language with plans to share with state governors soon. The intent is to provide an avenue for publicly funded not-for-profit institutions to acquire state authorizations through a reciprocity agreement. This activity proceeds in tandem with a couple of other activities, outlined below:

- The Lumina Foundation for Education and the Bill & Melinda Gates Foundation hosted an event last month that looked at efforts currently in process to maintain integrity of the state regulatory process and ease the burden on institutions in complying. Representatives from a wide variety of institutions, national higher education organization, regional compacts, and the U.S. Department of Education participated. The consensus of that event was that state regulations are still relevant even after the federal regulation was struck down by the courts.
- As reported by WICHE, the Presidents' Forum of Excelsior College and the Council of State Governments received funding from the Lumina Foundation to create model language for a proposed interstate compact. It is hoped that such an agreement would meet the needs of regulators while easing the burden on institutions. The first round of work has been completed and the next stage is to convene a 'drafting team' to turn the research outcomes into language for the compact. The Council of State Governments received much input on the process from the participants. The final compact language is probably about a year away. States would then have to decide whether or not to join the compact.
- Finally, the State Higher Education Executive Officers (SHEEO) organization is working on a listing of state regulators and their regulations. They indicate that their survey is out and they plan to publish their results this fall, or sooner if possible.

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August 15, 2011

**Institutions Must Make Documents and Student Complaint Process Available:** As you may be aware section § 668.43 (b) of the new Department of Education's regulation requires that institutions make their accreditation status and their state, federal or tribal approval or licensing available to students on request. This is part of the regulation issued on Oct. 29, 2010 pertaining to student financial aid and the reauthorization of the Higher Education Act. This regulation was not "vacated" or over-ruled by the U.S. District Court's on July 12, 2011. This section of the regulation also directs institutions to "provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint." Institutions must make these documents available to current and prospective students, whether they are taking -- or plan to take -- courses that are offered face-to-face or at a distance.

For online/distance education programs, providing this information on your program website will achieve compliance with the regulation. Here is an example of how Loraine County Community College is providing this information to their out-of-state students: <http://www.lorainccc.edu/Distance+Learning/Out-of-State+Students.htm>

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September 8, 2011

Department of Education Appeals Court Ruling to Vacate State Authorization Regulation: On September 8, 2011 the U.S. Department of Education submitted paperwork in U.S. Court of Appeals to appeal the decision made on July 12, 2011 in the District of Columbia District Circuit Court to vacate the U.S. Department of Education regulation requiring higher education institutions obtain state authorization to legally offer distance and/or correspondence courses to students in a state where they are not physically located. According to Michael Goldstein from the Washington DC law firm Dow, Lohnes and Albertson, “even if [the Department of Education] loses the appeal, the Secretary could re-promulgate the rule, and as long as that occurs before November 1st it could still go into effect [on July 1, 2012].”

Whatever the outcome of the appeal or subsequent efforts by the Department of Education, colleges must still abide by any state regulations requiring authorization to teach students who reside in those states. The court decision pertained only to the Department of Education’s ability to enforce state rules by withholding federal financial aid for out-of-state students.

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May 31, 2012

State Authorization Reciprocity Agreement Draft Released: The first draft of the State Authorization Reciprocity Agreement was released last week along with a request for comments. MCCA Legal Counsel is reviewing the document on behalf of the MCCVLC initiative to seek authorization for all members. This agreement, which was crafted by the Presidents’ Forum and the Council of State Governments and funded by the Lumina Foundation, is intended to be a “model state reciprocity agreement” that each state could adopt – providing acknowledgment that other states are involved in quality assurance and consumer protection. The goal statement in the draft document states: “SARA offers a process that could make state authorization more efficient, more uniform in regard to necessary and reasonable standards of practice that could span states, and more effective in dealing with quality and integrity issues that have arisen in some online/distance education offerings. It could also be less costly for states and institutions and, thereby, the students they serve.” In brief, SARA seeks to accomplish this goal by:

- Assuring that states in the agreement have authorization processes that meet minimal standards.

- Shifting the responsibility for authorization to the “home state” of the institution. Once an institution receives approval in its home state, it will not need to seek approval in the reciprocating states.”

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## **SHEEO State Authorization Survey - Spring 2012 Compendium of State Regulations Update Now Available**

July 11, 2012, State Higher Education Executive Officers

<http://www.sheeo.org/stateauth/stateauth-agency.htm>

"In response to our Spring 2012 update request, we have received either confirmation of or updates to the October 2011 survey responses from 50 of the 77 entities that administer state laws regulating the provision of postsecondary education in the 50 US states, the District of Columbia, and eight US Territories. Each survey is now marked clearly at the top with the date of the latest update for that survey. In addition, for all surveys that have been updated since the October 2011 administration, all changes have been highlighted in yellow so you may easily locate what information has changed."

"Additionally, these responses have been used to create an updated directory to the field, which can be found at our home page on this issue at: <http://www.sheeo.org/stateauth/stateauth-home.htm>"

"This compendium will be updated biennially through a formal update request, as well as continuously updated as additional or updated survey responses are received. The next formal update request will be sent to agencies in October; responses will be compiled for the Fall 2012 edition of the compendium. We encourage state agencies who have not yet completed or updated their surveys to do so as quickly as possible. We ask those whose responses are on the website to review the information posted and to provide any necessary corrections and to inform us of any changes as they occur. Until further notice, changes or corrections should be reported to Sharmila Mann at [smann@sheeo.org](mailto:smann@sheeo.org)."

More information about State Authorization can be found on our Additional Resources page at: <http://www.sheeo.org/stateauth/stateauth-other.htm>