

March 26, 2018

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, D.C. 20202

Dear Secretary DeVos:

We respectfully ask that you issue guidance clarifying aspects of the 2016 State Authorization of Distance Education and Foreign Locations final rule, namely to address the preferred format for consumer disclosures and residency determinations. These were the same issues identified by three representatives of the distance education community (WCET, NC-SARA, and DEAC) in a letter to the Acting Assistant Secretary of Postsecondary Education, Frank Brogan, earlier this month.

As you know, state authorization is a vital part of the program integrity triad. At its heart, the state authorization requirement recognizes and respects the sovereignty of States. It builds on the foundations of our democratic structure in ensuring a partnership between States and the Federal Government in the oversight of higher education.

The United States Department of Education strengthened this partnership through its state authorization regulations. Essentially, these regulations stated that the Department of Education would not provide taxpayer funding to an institution of higher education that was not approved by a State and ensured that a State would have a way to act on the complaints of its denizens. Given the expanding role of technology in higher education, the Department further clarified the state authorization requirements for institutions seeking to offer programs through distance education. That regulation simply said that an institution offering programs through distance education would only have to obtain state authorization where any State required it. The Department also provided for reciprocity agreements, in which nearly all States participate, and required institutions to provide basic information to States, students, and their families in certain situations.

The final rule was published in the Federal Register nearly fifteen months ago. For more than a year, the distance education community has spent valuable time and resources preparing for compliance with this important rule. Awards have even been given to model programs and institutions.<sup>1</sup> With less than five months until the rule takes effect on July 1, 2018, the Department should do all it can to ensure that those efforts were not in vain, that State sovereignty and students still matter. Departmental guidance clarifying the agency's expectations for institutions on small areas of confusion identified in the letter will help accomplish that goal.

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<sup>1</sup> <https://wcet.wiche.edu/SANsational%202017>

As noted above, the letter to Acting Assistant Secretary Brogan only sought clarification on two administrative issues, which should in no way impede the implementation of this rule. For instance, concerning the residency issue, the Preamble to the final rule states that “an institution may rely on a student’s self- determination of the State in which he or she resides unless the institution has information to the contrary.” The Department can use this and other language to provide further guidance to institutions seeking to comply with the rule. Additionally, concerning consumer disclosures, the Department should provide guidance to the community that the disclosures should, at a minimum, be prominently posted on program websites in a manner that ensures visibility to both enrolled students and potential students. This guidance will provide flexibility for the community as it presents vital information to students. On the subject of providing such information to students, one of the authors of the recent letter to the Department has stated that it is “the right thing to do.”<sup>2</sup> We agree.

Departmental guidance will pave the way for successful implementation of this rule and send a clear message that the Department will not stand in the way of States, nor will it impede efforts to bolster and strengthen consumer protections for students. It is the right thing to do.

Sincerely,

Amy Laitinen  
Director, Higher Education Initiative, New America

Yan Cao  
Fellow, The Century Foundation

National Consumer Law Center (on behalf of its low-income clients)

Service Employees International Union (SEIU)

CC: Mr. Frank Brogan  
Mr. James Manning

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<sup>2</sup> <https://wcetfrontiers.org/2017/12/04/house-hea/>