

State Authorization Just the Facts



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Disclaimer



The Government Relations Committee cannot provide legal guidance or recommendations on the regulations in over 50 states and the District of Columbia

State Authorization Just the Facts



Objectives:

- Briefly review the Higher Education Opportunity Act (HEOA)
- Define State Authorization and State Authorization Reciprocity Agreements (SARA)
- Review one PA Program's experience
- Review potential next steps

Higher Education Opportunity Act



The Higher Education Opportunity Act was
enacted into law in 2008

Amended the HEA of 1965

Higher Education Opportunity Act



So What is HEOA?

Higher Education Opportunity Act



Origin: Higher Education Act of 1965

- Part of LBJ's 'Great Society' Initiatives
 - Strengthen resources (\$) to colleges/universities
 - Scholarships
 - Low interest loans/grants (Pell, Perkins, Stafford, et al.)
 - Established the National Teachers Corps
 - Nine Reauthorizations since 1965—amended at each time
 - 2008 HEOA enacted—reauthorized and amended the HEA

Higher Education Opportunity Act 2008



- Included *Regulations* requiring Online and distance learning institutions to receive approval from states where they “operate”.
- Focus has been on internet-based education programs
- Protect the integrity of financial aid programs

2011 U.S. District Court for the District of Columbia strikes down
“State Authorization”

However

“State regulators are newly aware that there are many institutions
operating in their states without approval”

-Russell Poulin, WICHE

Higher Education Opportunity Act 2008



- Nothing new about State Authorization
- Education Department (ED) requires state approval to receive federal student aid
- Many colleges ignored the law, or assumed it applied only to brick-and-mortar campuses
- ED has generally looked the other way, allowing colleges to receive federal aid from students living in states where the institutions weren't authorized.
- States have done little to enforce their own rules.
- However, HEOA sets a national standard (and got everyone's attention)

Higher Education Opportunity Act 2008 State Authorization



Primary Justification is to protect students (and the taxpayer) from fraud and abuse

- Diploma mills
- For-Profit vs. Not-for-Profit
- Collateral damage?
 - Documentation of a business license vs. hundreds of pages of documentation (e.g., lists of textbooks)
 - Fees for State Authorization vary between \$100 (AK, WY) to \$10,000/ application (MA)
 - States may view this as a revenue opportunity (with little overhead)

State Authorization Reciprocity Agreement (SARA)



Higher Education Compacts:

- Western Interstate Commission for Higher Education (WICHE)
- Midwestern Higher Education Compact (MHEC)
- New England Board of Higher Education (NEBHE)
- Southern Regional Education Board (SREB)

Goal is to:

- “. . . provide affordable, consistent, transparent way for accredited, degree-granting institutions to achieve authorization to provide education beyond the state in which they are based.”

<http://www.wiche.edu/sara>

State Authorization Reciprocity Agreement (SARA)



Reciprocity Agreements:

- Voluntary
- All institutions in a state can be covered but there must be a lead authorizing agency
- Procedures in place—policies, laws, accounting, etc.
- State representative serves on the Regional Steering Committee
- Fees enrollment-based
 - Average fees \$2,000-\$6,000

<http://www.wiche.edu/sara>



**Department of
Education
October 29, 2009**

On October 29, 2009, the Department published in the Federal Register [final regulations](#) amending the regulations for Institutional Eligibility Under the Higher Education Act of 1965.

- The amended regulations affected institutions that were not named in state statute.



Department of Education

Federal Register

October 29th of 2010

Final Regulations were published to **clarify** requirements for an institution of higher education to be considered legally authorized by a State to offer an educational program in that State.

Reference

<https://www.federalregister.gov/articles/2013/04/16/2013-08891/negotiated-rulemaking-committee-public-hearings>

- **The regulations:** if an institution is offering post secondary education through distance or correspondence education to students in a State in which the institution is not physically located or in which is otherwise subject to State jurisdiction as determined by the State the institution would be required to meet **any State requirements . . .**
- Institutions are also required to document the States approval upon the Secretary's request.



Department of Education

Federal Register

October 29, 2010

An institution is legally authorized by the State if the State establishes the institution by name as an educational institution through a charter, statute, constitutional provision or other action to operate educational programs.

<https://www.federalregister.gov/articles/2013/04/16/2013-08891/negotiated-rulemaking-committee-public-hearings>

- If the State has an applicable State approval or licensure process the institution must comply with that process to be considered legally authorized.
- An institution created by the State may be exempted **by name** from any State approval or licensure requirements based on the institutions accreditation by an accrediting agency recognized by the Secretary or based upon the institution being in operation for at least 20 years.



US District Court

July 2011

The regulation is vacated on procedural grounds and the USDOE appeals

June 2012

The US court of appeals affirms the USDOE's ability to issue the regulation and upholds the district courts ruling to vacate the regulation on procedural grounds.

<https://www.federalregister.gov/articles/2013/04/16/2013-08891/negotiated-rulemaking-committee-public-hearings>

July 2012

USDOE announces it will not enforce the requirements of 600.9(c), **although institutions continue to be responsible for complying with all State laws as they relate to distance education.**

State Authorization for Program Offered Through Distance Education or Correspondence Education



- How many of you consider clinical training using volunteer preceptors from other states to meet the definition of distance education or correspondence education ?
- How many of you consider clinical training using paid preceptors from other states to meet the definition of distance education or correspondence education ?

Best Answer



It depends on **THE INDIVIDUAL State !**

MANY states require almost no institutions to **APPLY** for
Authorization

Others Require almost all Institutions to **APPLY**



Trigger Activities Vary

Advertising in local
media

Using direct advertising

Requiring local proctors

Employing faculty

Conducting internships
or practica in the state

- What if we do not comply ?
 - ARC- PA (Feb 2013)
 - Cease and Desist
 - Fines
 - Financial Aid Consequences

- Is there a list of state by state regulatory agencies ?
 - <http://sheeo.org/projects/state-authorization-postsecondary-education>

- Are there solutions to accomplish state authorization compliance on a institutional and national level ?
 - SARA- State Authorization Reciprocity Agreement

GRC Recommendations



- Clear chain of documentation that is internal to the organization showing that the PA program and leadership were and are aware of HEOA and the DOE regulations.
- Document efforts to assure compliance with all federal and state regulations. Save documentation that shows the program is receiving institutional support and guidance.
- For out of state rotations, be able to show that steps are being taken to investigate and demonstrate compliance to state or federal officials and regional or program accreditors.

One Program's Experience



Anne Arundel Community College PA Program

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Anne Arundel Community College

Arnold Maryland

Anne Arundel Community College PA Program



- The HEOA 2008 legislation and DOE regulations regarding institutional authorization presented a problem. Our institution was established in 1961 and was not specifically listed in statute. Fortunately for issues related to financial aid this issue was already on the radar of our leadership.
- In 2009 we began our ARC-PA site visit preparation (2011). Part of that preparation included a comprehensive faculty review of each standard and identifying means to verify and validate our compliance.
- Standard A1.03f: PA personnel comply with all state and federal laws

Anne Arundel Community College PA Program



- While our leadership was working to address the institutional authorization issue it sparked other conversations regarding the guidance on state authorization, trigger events and definitions of distance education.
- Dear colleague letters sent in 2009 provided guidance regarding new regulations and potential impact for institutions with an educational presence outside of their states.
- 2010 an internal audit was performed by the deans council of the college. All programs were asked to identify location of faculty teaching for the college and students taking classes, types of instruction and length of instruction.

Anne Arundel Community College PA Program



- Enrollment data showed the states in closest proximity to Maryland were the first states where authorization was needed.
 - The Delaware process took 2 months just to gather the required data to submit for authorization.

Anne Arundel Community College PA Program



- Using the SHEEO state directory in 2011 a letter was sent by the Dean of the virtual campus to each state where students were receiving instruction to inquire about the process of receiving state authorization, definitions of institutional presence and associated fees related to operating in that state.
- For our PA program, all 8 required clerkships are conducted within a 100 mile radius of our campus as we continue didactic instruction and testing on site, very few are conducted outside Maryland.
- For each state that we were currently operating in applications were submitted and approvals sought.

Anne Arundel Community College PA Program



- 2012 discussions occurred regarding the impact of limiting clerkship elective locations.
- 2013 all elective rotations for July 1 and forward were curtailed to within a 5 state radius.
 - Appeals were directed to the Dean
 - One appeal was received for a clerkship in New York due to process, fee and student program status, it was denied.

Anne Arundel Community College PA Program



- Currently as of Aug 28, 2013 authorization is in process or pending in 9 states. Some of these states the college may choose not to operate in due to cost.
- For accreditation purposes I am able to point to a process, a responsible college official and a documentation trail showing continued compliance with state and federal law.

Moving Target



- HEA is up for reauthorization in 2013.
- We are unsure of what the future will bring.
- Despite the vacated ruling some anticipate that the Department of Education will revise and restate regulations in the future.
- State authorization is still the law of the land.

Questions ???



THANK YOU FOR ATTENDING