Today the U.S. Department of Education (the “Department”) published proposed regulations (the “Proposed Rule”) regarding state authorization of postsecondary distance education and foreign locations of domestic institutions. The Proposed Rule also includes a number of new related disclosure requirements. View a copy of the Proposed Rule.

The Proposed Rule establishes a 30-day notice and comment period, with comments due on or before August 24, 2016. Following the comment period, the Department must publish its final regulations by November 1, 2016 in order to take effect on July 1, 2017. This alert provides a high-level summary of the various components of the Proposed Rule, which remains subject to our continued review.

State Authorization of Distance Education

The Proposed Rule would require that an institution participating in the Title IV federal student aid programs and offering postsecondary education through distance education or correspondence courses be authorized by each State in which the institution enrolls students, if such authorization is required by the State.
If an institution offers distance education or correspondence courses in a State that participates in a state authorization reciprocity agreement and the institution is located in a state that is covered by that reciprocity agreement, that institution would be deemed by the Department to be legally authorized in the state where enrolled students reside, subject to limitations in the agreement. The Department would further require, however, that the reciprocity agreement not prevent any state from enforcing its own consumer laws. An institution must be able to document to the Department, upon request, its coverage under a reciprocity agreement. The Proposed Rule would create, for Title IV federal student aid purposes, a definition for the term “State authorization reciprocity agreement.”

In addition, institutions offering postsecondary education through distance education or correspondence courses must document that there is a State process in each State in which enrolled students reside to review and take appropriate action on student complaints. Alternatively, an institution could document that an applicable reciprocity agreement addresses such a process, in either the States in which the students reside or in which the institution’s main campus is located.

State Authorization of Foreign Locations

The Proposed Rule also specifies the state authorization requirements for foreign additional locations and branch campuses of domestic institutions. That is, a foreign additional location at which a student can complete 50 percent or more of an educational program, or a foreign branch campus, must be able to demonstrate to the Department that it is legally authorized to operate by an appropriate government authority in the country where the location/branch is physically located. The Department proposed to except from this requirement any institutional location/branch located on a U.S. military base that is exempt from obtaining such authorization from the foreign country. However, these additional locations/branches would need to be approved as additional locations/branches by the institution’s accrediting agency.

The Proposed Rule also would require that an institution report the establishment or operation of a foreign additional location or branch campus to the state in which the main campus is located at least annually, or more frequently if required by the state. It would also require the institution to comply with any limitations on the establishment or operation of a foreign additional location or branch set by that state (but such additional locations/branches would not need to be authorized by such state).

The Proposed Rule also would require an institution to disclose to enrolled and prospective students the information regarding the student complaint process described in 34 C.F.R. § 668.43(b) (which requirement would be satisfied by posting this information on the institution’s website). This requirement would apply to all foreign additional locations and branch campuses where students are attending and receiving Title IV federal student aid funds.

Required Disclosures

The Proposed Rule would require institutions to disclose to all enrolled and
prospective students certain information about their distance education programs or correspondence courses. The Department proposes to require certain information be publicly disclosed and that other information be disclosed directly to enrolled and prospective students.

Specifically, for distance education programs and correspondence courses, an institution would be required to publicly disclose:

- Whether the distance education program or correspondence course is specifically authorized by the state in which enrolled students reside, or through a state authorization reciprocity agreement;
- The process and contact information for submitting complaints to the appropriate State authorities in the State in which the institution’s main campus is located or, if applicable, through the process established by a state authorization reciprocity agreement;
- How to submit complaints to the applicable State agency in the student’s state of residence;
- For the previous five calendar years, any adverse actions taken by a state or accrediting agency against an institution’s distance education program or correspondence course and the year that the action was initiated;
- Refund policies with which the institution is required to comply by any State in which the enrolled students reside; and
- The applicable licensure/certification requirements for the occupation for which the educational program prepares students to enter – for each State in which enrolled students reside and any other State for which the institution has made a determination regarding such requirements – and whether the program meets those requirements.

Additionally, institutions must individually disclose:

- To all prospective students, when a distance education program or correspondence course does not meet the licensure or certification requirements for the State of the student’s residence, prior to the student’s enrollment (and the institution must further obtain an acknowledgement of this disclosure from the student);
- To each enrolled and prospective student, when an adverse action is taken by a State or accrediting agency against an institution’s programs offered by the institution solely through distance education or correspondence, within 30 days of such action; and
- To each enrolled and prospective student, any determination that a program ceases to meet licensure or certification requirements of a State, within seven days of such determination.

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