

Federal Program Integrity Rules for Distance Education: Must Colleges Be Approved in EVERY State?

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Objectives:

- Differentiate between federal integrity rules and state authorization
- Plan an approach to one's own distance learning courses and programs.
- Determine what “physical presence” means or the various states where your courses or programs are located or serving students.

- ▶ Federal Program Integrity Rules
- ▶ 14 Areas Including

- Gainful employment (certificate programs)
- Incentive compensation
- Satisfactory academic progress
- Definition of a credit hour
- State authorization requirements for distance education

...and others



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Program Integrity Information - Questions and Answers

In order to ensure questions coming into the Department of Education about the Program Integrity Regulations are consolidated and easily accessible to interested parties, we have created this Web site containing questions and answers. We will update this list on a regular basis, therefore be sure to check back for any new information. You will also find links to various resources with additional guidance pertaining to the Program Integrity Issues.

- [State Authorization](#)
- [Retaking Coursework](#)
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Online Learning Across State Borders: July 2011 Update

“The "Program Integrity" rules from the U.S. DoE, which went into force July 1, 2011, originally required all Title IV-eligible schools to be able to demonstrate, upon request, that they have or are actively seeking any necessary approval in every U.S. state in which they operate, including by distance learning. Subsequently, the DoE extended the deadline for this aspect of the rules to July 1, 2014, but required "good faith" compliance efforts from July 2011.”

Source: <http://www.eduventures.com/>

- ▶ **Current Status:**
- ▶ July 12th 2011 vacated by a DC court, based on a procedural challenge
- ▶ However, the state rules still exist, the federal rule only required colleges to make sure that they comply with what is currently in force in each state.
- ▶ Now that everyone knows about the state rules, they can no longer claim ignorance. Whether or not a state enforces cannot be answered right now. The future of the DoE rule may be irrelevant.



SURPRISE!

- ▶ **Distance Learning Generally includes:**
- ▶ A single course or
- ▶ An entire program
- ▶ One student or many students



What are the relevant issues?

- ▶ Each state has different rules
- ▶ Most states' requirements center on two issues:
 - Does the state require authorization for distance learning?
 - Does the state require permission for advertising?

Many states specifically use the concept of “physical presence”, the definition of which varies widely. It may include:

- Faculty
- Students
- Telephone
- Advisors
- Paid or unpaid
- PO Box
- Physical mailing address
- Tutors
- Recruiters
- Proctored exam administration

Physical presence is defined in some states, not in others



A program may have no physical presence in the normal sense, but the state may specifically address clinicals or practica and include those as having a physical presence. (OR, PA)



Ex. Oregon

Editor's Note: With the changes in the noted below, we would now categorize Oregon as a RED state since every institution needs to undergo a review, even if it is likely to be exempted. Also, Jennifer Diallo (who responded for Oregon) will soon be the person in charge of Oregon's degree authorization processes

“Do They Regulate Distance Education?”

It depends. Purely online programs with no practicum or other on-the-ground learning/credit-bearing activity are exempt from ODA authorization; however, this exemption must be established and verified before it is effective. Any program that requires students to self-arrange practicum-type experiences would not qualify as exempt from ODA regulation. Determination of exempt status requires a review and verification by ODA to confirm the school's legal status as a degree-granting institution and the validity of their degrees for use in Oregon.”

Is There an Application Fee Y/N? Yes

What is the application fee? Associate Degree: \$2,815 per degree title (A, AA, AAS, AOS, etc.)

Advertising may include:

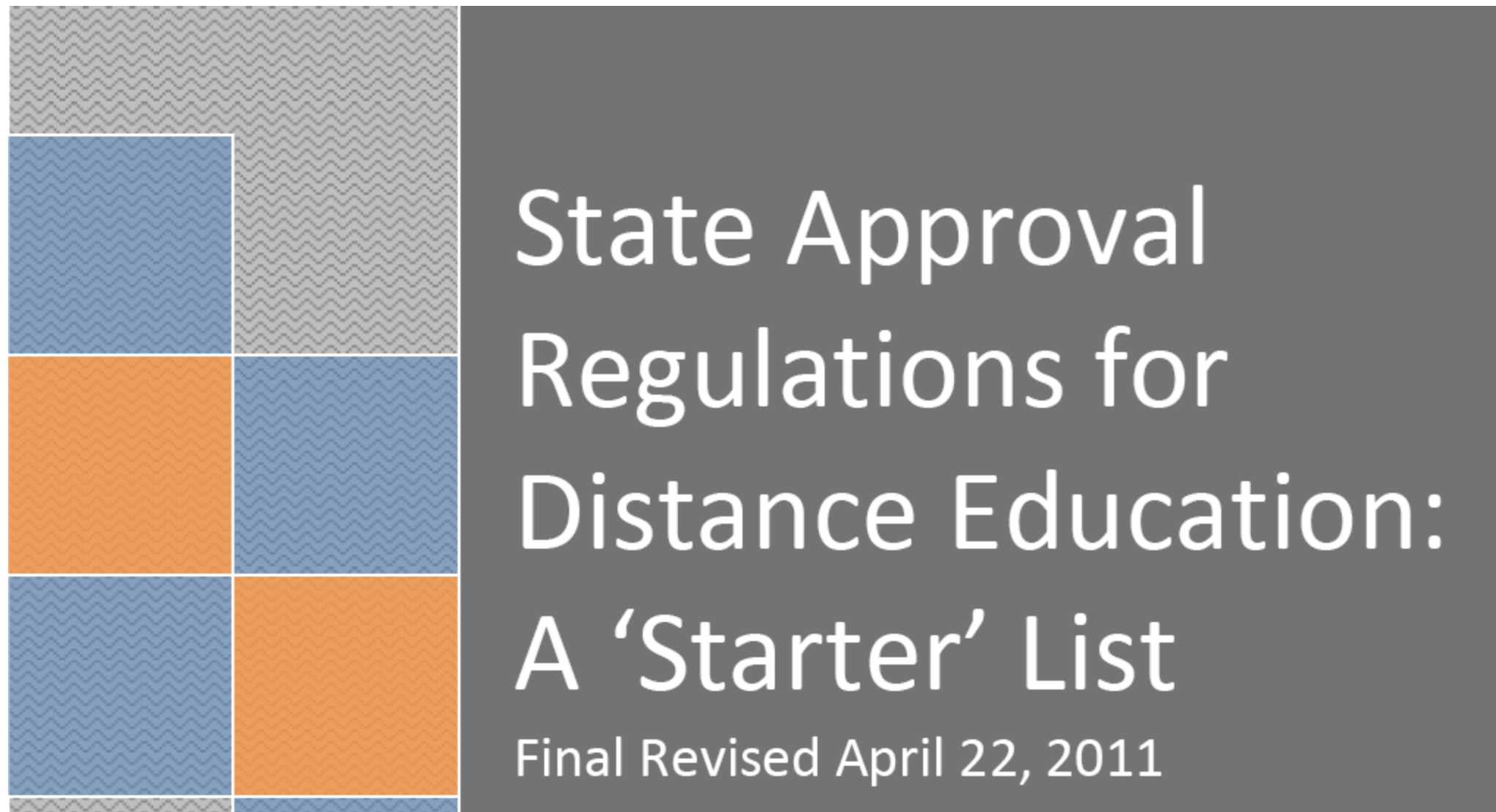
- anything physically mailed to a student
- TV, radio or print advertising in the specific state
- anything sent directly to a student
- Recruitment fairs
- any solicitation of a student

What does this all mean?

- A college may need to apply to a state for authorization
- This will likely cost \$
- Each college with distance programs or courses MUST determine which states those students are from
- May only need to only request an exemption to operate
- May need to state that the college cannot accept students from a particular state

Exemptions may specifically include:

- Military students
- Military colleges / programs
- Tribal students or organization
- Accreditation (regional or DoE)



<http://wcet.wiche.edu/wcet/docs/state-approval/FinalStateApprovalRegulationsforDistanceEducationAStarterListwithAddendum2.pdf>

Eduventures Official Statement on the July 12th 2011 DC Court Judgment

Eduventures is continuing its work with clients on compliance with state regulations pertaining to delivery of distance education across state borders, even in light of the recent announcement that the DOE's requirement in this area was vacated by a DC court. As WCET and several schools have also pointed out, state enforcement remains a significant business risk to school's online operations, even if federal action and prospective loss of Title IV eligibility are now in question. Many states have explicit requirements that distance education providers enrolling students or otherwise judged present in their state must first obtain authorization, and states have had these requirements for several years. Although many schools were unaware of these requirements, and others did not pay heed to them, states have the right to enforce their regulations at any time.

cont. →

When the Department of Education's Program Integrity rules required school compliance with respect to this rule by 2014, and a good faith effort in the meantime, it was reasonable for states to sit back and be patient while schools worked to comply with the state's regulations. There is the possibility, with DOE enforcement now uncertain, that states might feel obligated to pursue enhanced enforcement on their own, knowing that ignorance among the schools is no longer an excuse for noncompliance, and concerned that lack of enforcement could be perceived by schools as a free pass.

It is also important to note that the DC court ruled against the DOE on lack of due process, and did not address the substance of the DOE's position on state regulation and distance learning. The DOE may appeal the ruling, either making a case for its responsiveness to sector concerns, or establishing a formal consultation. The fact that the court upheld the DOE's stance on incentive compensation, misrepresentation and other aspects of state authorization, suggests that the DOE is in a strong position to reassert its case. This court ruling is unlikely to be the end of federal involvement on this issue.

cont. →

Eduventures is still advising its clients to carefully assess their regulatory exposure in states where they enroll students through distance education, or engage in related activities under state jurisdiction, and to take the necessary action to come into compliance. It is most important for schools to come into compliance in those states where directives are very clear, and where penalties for noncompliance are significant. Not all states require action/approvals, others have requirements but minimal penalties, and some cite penalties of \$500/day per violation. Regardless of the next step in resolving the role of the DOE in requiring compliance with state regulations, schools with a significant investment in distance learning, and in particular states, should still move quickly to come into compliance in those states where the need for authorization is clear. Eduventures has developed expertise and economies of scale in this area, and can help schools achieve compliance quickly and cost-effectively.

Resources:

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-qa.html>

<http://wcetblog.wordpress.com/2011/09/22/no-deus-ex-machina/>

<http://www.eduventures.com/>

<http://www.tgslc.org/policy/integrity-rules.cfm>

<http://wcet.wiche.edu/wcet/docs/state-approval/FinalStateApprovalRegulationsforDistanceEducationAStarterListwithAddendum2.pdf>