

U. S. Department of Education
34 CFR Parts 600 and 668
Docket ID ED-2018-OPE-0041
RIN 1840-AD39
Program Integrity and Improvement
Comments on Notice of Proposed Rulemaking
Submitted via regulations.gov

June 1, 2018

Dear Education Department Colleagues:

We were pleased to see the U.S. Department of Education's (ED) recent notice of proposed rulemaking for 34 CFR Parts 600 and 668 (Docket ID ED-2018-OPE-0041) rules affecting state authorization of distance education and related matters. Thank you for responding to our concerns. As we stated in our joint letter of February 7, 2018, there is widespread confusion in the higher education community about several aspects of the December 2016 regulations set to go into effect July 1, 2018 but which you now propose to delay. We agree that non-regulatory guidance from ED is unlikely to address the current gap between institutional understanding of those rules and the Department's expectations for compliance. We therefore believe the Department's plan to refer these rules to the review and consideration afforded by the negotiated rulemaking process is a wise one.

As the NPRM document acknowledges, these issues are indeed complex. Dealing with the complications of determining student location, and providing appropriate notifications regarding programs intended to prepare students for professional licensure, are real challenges faced by institutions that offer distance education programs. We agree that additional consideration of rules relating to those topics is warranted, as is consideration of a more straightforward definition of a state authorization reciprocity agreement.

We have two comments in response to requests set forth in the NPRM. First, institutions can more directly provide estimates of their costs to comply with state authorization of distance education rules, but we believe ED substantially underestimated those costs in developing the December 2016 rules. Since ensuring compliance is an expensive activity, institutional personnel need to have a good understanding of federal compliance requirements to avoid unnecessary expenses. Nevertheless, we believe that cost of compliance should not be used as the sole reason to remove a requirement necessary to support program quality and consumer

protection. We point out that institutions must comply with relevant state laws, and incur attendant compliance costs, whether or not ED has its own rules in place.

Second, with regard to your request for comments on “the distribution of small entities offering distance education,” as of April 2018, 45 percent (810) of the 1,800 institutions that participate in the SARA initiative are institutions that enroll less than 2,500 FTE students. Presumably, the overwhelming majority of these institutions participate in SARA because they carry out distance education.

We look forward to working with ED throughout the forthcoming negotiated rulemaking process to develop rules that support distance education as an important way for students to increase their educational attainment, while ensuring high quality and effective consumer protection.

Sincerely,



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