

ED Begins Authorization for Foreign Locations of Domestic Institutions

July 2, 2018

In a surprise move on Friday, the Department of Education announced the portion of the proposed distance education rule relating to authorization of foreign locations of domestic institutions went into effect on July 1, 2018. As previously announced [in May](#), the department officially delayed the effective date of the Obama administration's distance education rule to July 1, 2020, but only with regard to state authorization for purely online programs.

The provision requiring formal approval of foreign locations has received little attention since the rule was first proposed in 2016. That provision requires institutions to be able to show they hold approval from the relevant foreign government to operate any physical campus abroad at which students are eligible to receive Title IV funding and can complete at least half of a program at such location. Institutions must also be able to document that the program as offered at the foreign location has been approved by the institution's accrediting agency, reported to the state authorizing agency where the school's main campus is located, and are in compliance with any requirements in their home state that apply to the operation of their foreign locations. Failure to maintain the required authorizations and approvals could result in a loss of Title IV eligibility for programs offered at a foreign location.

There are important limitations to the scope of the rule. Most importantly, the rule only applies to an institution's overseas physical campuses; it does not apply to online programs offered abroad or to students enrolled in such programs. The rule also does not apply to study abroad arrangements with foreign institutions whereby a student attends less than half of a program at the foreign institution. And the rule specifically exempts foreign locations and branch campuses located on an overseas US military installation.

While it remains unclear how the Department of Education will enforce these new requirements, schools need to promptly determine that their foreign locations where students can complete more than 50% of a program are properly authorized. The department has provided limited guidance as to what documentation is required. The most extensive discussion of appropriate documentation is available in the preamble to the final rule from [December 19, 2016](#). The department declined to provide specific requirements for such authorization documentation, stating only that any authorization given by a foreign government should show that "the foreign government is aware of what it is authorizing and that it has given approval to an institution that is offering educational programs in its jurisdiction," leaving to the schools responsibility for determining if and what authorization requirements exist. Importantly, the department expects institutions operating covered foreign campuses to be able to show that they have some form of approval to operate, even if the foreign government doesn't have a formal authorization process. Where the foreign jurisdiction has no such mechanism, institutions should document their efforts to obtain authorization.

The Department of Education plans to conduct a negotiated rulemaking on the subjects covered by the portions of the state authorization for distance education rule that will be delayed, including authorization for online programs and the disclosure requirements. We expect that negotiated rulemaking to commence over the next year.

If you have any questions about the new rule, please do not hesitate to contact us.

Nancy Anderson focuses on regulatory issues affecting higher education institutions, including compliance with federal, state and accrediting agency requirements.

Paul Thompson counsels schools and technology companies that provide services to schools on regulatory challenges in the education sector.

Mike Goldstein has been a pioneer in the development of new and more effective and efficient approaches to education in general and eLearning in particular through the creation of innovative approaches to combining the resources and interests of the various sectors of the education, technology, financial and governmental communities.

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