

Recent Developments in State Authorization

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As outlined in our previous posts on proposed regulations in California, we are also tracking newly proposed laws introduced in Washington State, Oregon and New York, all part of a growing trend in which state (or in one case, municipal) agencies are moving to fill perceived gaps in enforcement of federal regulations by the US Department of Education.

Washington State

The Washington legislature is considering [a state "gainful employment rule"](#) for degree-granting and private vocational schools operating in the state. Much like the federal GE rule, the law would require covered schools to demonstrate that their programs prepare students for gainful employment in a recognized occupation, based on a debt-to-earnings rate. The law would defer to the Washington Student Achievement Council (WSAC) to establish an acceptable debt-to-earnings metric. The statute would also require WSAC to develop an "interagency agreement" with the agency that regulates nondegree-granting institutions, the Workforce Training and Education Coordinating Board (WTECB), to develop similar metrics for certificate programs and schools licensed by the WTECB.

This is the state legislature's second effort at enacting a GE statute, and the bill has momentum in a state in which Democrats control the House, Senate and governor's office. In 2015-2016, a similar measure passed the House but failed to pass the Senate. If enacted, it is likely that more than a year will pass before WSAC develops regulations to support the new debt-to-earnings metrics. We will be closely tracking these developments.

Oregon

A [proposed law](#) applicable only to nondegree schools is under review by the Oregon legislature. The current draft would require that nondegree a school receiving \$10 million or more in annual revenue (or that is a subsidiary of a parent company regardless of revenue) receive at least 20% of its annual revenue from a source other than a federal or state government or from loans guaranteed by the school, with at least half of all tuition revenue used for direct instruction and without using any government-derived funds to advertise or to recruit students.

As in Washington, Democrats control the Oregon House, Senate and governor's office. The bill is currently in the House Education Committee, which held a hearing on March 20. No action was reported from the hearing.

New York

As part of the 2019-2020 budget plan, Governor Andrew Cuomo [proposed increasing regulation on for-profit institutions](#), including an 80/20 rule (like Oregon), a requirement to use at least 50% of budget on instruction, mandatory reporting on funding sources and salaries and bonuses for school presidents and leadership and a prohibition on school leaders serving on the board of an accrediting agency to which the school applies. While the budget discussions are still ongoing, the higher ed section was [dropped in the latest draft](#).

The New York City Department of Consumer Affairs [is also considering rules](#) intended to prevent deceptive practices by degree-granting institutions, including misrepresentations regarding the school's programs, its graduates' potential earnings, employment opportunities or licensure or certification, among other requirements.

As currently drafted, the rules are broad, and it is not clear what categories of institutions NYC DCA is seeking to regulate. The current draft is written broadly enough to apply to any degree-granting institution enrolling students in New York City – including out-of-state institutions and even those that are SARA-participants. DCA's written basis for the rules note that the agency is seeking to regulate a subset of for-profit schools that are "subject to no direct oversight or regulation by the government." But as degree-granting institutions operating in New York are well aware, all degree-granting schools are already heavily regulated at the state level by divisions of the New York State Education Department. We expect this to be a point of contention in the comments and at the public hearing, and we encourage schools to submit comments seeking clarity on this point. The department is accepting [comments](#) on the proposed until

Thursday with a public hearing scheduled for 10:00 am. Comments can be submitted [through the DCA website](#).

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