

Department Announces California Residents at Out-of-State Public and Nonprofit Institutions Ineligible for Federal Student Aid

July 23, 2019

The Department of Education [issued guidance yesterday](#) that ED's regulations prohibit California residents enrolled in distance education programs at out-of-state public and nonprofit institutions from receiving federal student aid funds.

In 2016, the department under the Obama administration issued [state authorization regulations](#) that require, as a matter of institutional eligibility to participate in the Title IV programs, institutions offering distance education courses to students in any state in which they are not physically located demonstrate that each state has a process for reviewing and acting on student complaints. If a state has no such process that applies to a particular institution, then that institution cannot satisfy the requirement and cannot disburse federal student aid in that state.

As we've [covered previously](#), the 2016 distance education regulations were scheduled to take effect on July 1, 2018, but the department delayed implementation of the rule to 2020 and began another negotiated rulemaking that included new revisions to the distance education regulations. Consumer advocacy groups sued the department, improperly delaying the rule, and earlier this year the court ordered ED to implement the 2016 rules, with an effective date of May 26, 2019. While the suit was pending, ED unexpectedly [reached consensus on and proposed a new distance education rule](#) eliminating the complaint process requirement. The new distance education rule is likely to take effect on July 1, 2020.

In its guidance Monday, the department is now warning that the practical impact of the court's decision to reject the DOE delay and reinstate the rule's effective date to May 2019 could have a substantial impact on Title IV eligibility for certain California students. California Bureau for Private Postsecondary Education (BPPE) rules require out-of-state institutions enrolling California residents in distance education programs to register with the state, and once registered, BPPE accepts and reviews complaints from students at registered institutions. However, out-of-state accredited public and nonprofit institutions are not subject to the registration requirement and do not need to obtain any other license or approval to enroll California residents. As a result of this exemption, out-of-state accredited public and nonprofit institutions are not covered by the BPPE complaint process. The practical impact is that such institutions are out of compliance with the federal rule, and California residents enrolled in their programs are, according to the ED announcement, ineligible for federal student aid.

The announcement says ED plans to work with the court to limit the adverse effects on students and notes that its proposed rule set to take effect in 2020 eliminates this concern. In the meantime, the 2016 rules remain in effect as written, and therefore California students at affected institutions are technically ineligible. It is possible California will work out a solution on its own in the near future: it may authorize BPPE accepting complaints from institutions with students in California regardless of whether they are required to register, or could affirm that such complaints would be received and processed by the attorney general or another consumer protection agency. Were California to take the steps necessary to participate in the State Authorization Reciprocity Agreement (SARA), the complaint process requirement from the 2016 federal rule would be satisfied. But California remains the lone holdout on nationwide reciprocity, and there is no sign that the state has changed its position.

Assuming this situation will be resolved in the near term, affected institutions may consider deferring disbursements of federal student aid funds to California residents enrolled in online programs until their eligibility is established. However, if such an approach is used, it is essential that students be fully informed in advance of the conditional nature of their award.

We will continue to monitor developments and issue a more detailed analysis of possible ramifications of the rule change as more information becomes available.

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