

Is Early Implementation of ED's New State Authorization for Distance Rule Right for Your Institution?

November 11, 2019

As we reported earlier this week, on November 1, the Department of Education published its final state authorization for distance education regulations in the [Federal Register](#), culminating nearly a decade-long effort to adapt its authorization regulations to online education.

As outlined in our [full blog on the new rule](#), the regulations impose two key requirements: institutions must obtain any required state authorizations for distance education programs as a condition of eligibility to offer federal student aid to students located in those states and revised consumer disclosure requirements, particularly for professional licensure programs. The new rule also contains important differences from the 2016 version of the distance education rule currently in effect. The new rule imposes fewer types of disclosures, abandons the requirement that schools be subject to a student complaint process in every state they enroll students, and allows schools to track students by location rather than residency. But importantly, the new rule expands licensure disclosure requirements for professional licensure programs to include both online and on-ground. So while the rules are similar, the 2016 and new rule may impact schools very differently.

Pursuant to ED's rulemaking calendar, the final rule's official effective date is July 1, 2020. However, ED is allowing institutions to opt for early implementation as of November 1, 2019, and bypass compliance with the 2016 rules currently in effect.

ED exercised its authority to offer the early implementation option primarily to resolve questions that arose earlier this year when a court forced the 2016 version of the rules into effect. The 2016 rule requires that institutions be able to demonstrate that each state in which it operates has a process in place to resolve student complaints. In July, ED determined that California did not have a sufficient complaint process required under the rule, jeopardizing the Title IV eligibility of distance education students in California. California rushed to implement a student complaint process, which ED ultimately determined was sufficient to restore Title IV eligibility to impacted students, but the episode raised questions about whether other states have adequate student complaint processes that clearly covered distance education programs offered within their jurisdictions.

In practical terms, institutions can choose to comply with the 2020 rule rather than the 2016 rule at any point between now and July 1, 2020. It is an important decision, and we encourage all institutions to weigh their individual circumstances to determine whether early implementation is in their best interests. An institution's case may depend on a number of variables, but generally speaking, institutions that offer numerous on-ground professional licensure programs may benefit from additional time to put in place the proper procedures and disclosures under the newly expanded 2020 rule, and forego early implementation. In contrast, institutions with a significant number of distance education programs in states without clear student complaint processes may benefit from fewer disclosures and clearer student tracking based on location rather than residency status and may decide early implementation is the safer route.

Importantly, ED has not provided specific instructions or guidance regarding how to adopt early implementation. Observers hoped that the final rule would address that issue. But ED's prior rules with an earlier implementation option are instructive. When ED allowed for early implementation of the revised gainful employment regulations earlier this summer, it announced that institutions electing to implement early should document their decision internally and make that documentation available to ED upon request. That approach is likely best practice here as well. We suggest drafting an internal memorandum signed by an appropriate institution official, noting the formal decision to immediately adopt the 2020 rule pursuant to the final regulations issued on November 1, 2019. Institutions should retain the memorandum in their records in order to provide it to their auditors, or ED, if necessary.

If you have questions about the new rule or would like guidance on whether early implementation is best for your institution, 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.

Caitlyn Shelby advises postsecondary institutions, K-12 schools and education companies on matters involving accreditation, state authorization and the provision of online education, and monitors legislative and regulatory developments in these areas.

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

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#). Copyright © 2026