

## ED proposes two-year delay of state authorization rule

June 1, 2018

As anticipated in our [education alert](#) last month, the U.S. Department of Education (ED) now has published its [proposed rule](#) to delay by two years the [state authorization final regulations](#) that were set to become effective July 1, 2018. The delay would affect both the [distance education](#) and [foreign location authorization](#) portions of the rule, although the proposed rule focuses on the distance education portion. ED will accept comments on its proposed delay of the rule through June 11, 2018.

### Rationale

ED noted “concerns recently raised by regulated parties related to implementation of the final regulations” as its reason for proposing a delayed effective date of July 1, 2020. *See* 83 Fed. Reg. 24250, 24251 (May 25, 2018). ED also indicated that the delay would allow time to “consider, through negotiated rulemaking, possible revisions to the final regulations.” *Id.* ED proposed a delayed effective date instead of clarifying the rule’s requirements through guidance because it “does not believe guidance would be sufficient to address the complexities institutions have encountered, even prior to the rule’s effective date.” *Id.*

ED specifically referred to two letters it received in February 2018 as the prompts for the delay – [one](#) from the American Council on Education; and [the other](#) from the Western Interstate Commission for Higher Education (WICHE) Cooperative for Educational Technologies, the National Council for State Authorization Reciprocity Agreements (NC-SARA), and the Distance Education Accrediting Commission. Both letters identified concerns regarding the final regulations, largely with respect to the requirements related to distance education. ED summarized and expounded upon those concerns in the proposed rule. In particular:

- **Complaint processes.** The state authorization rule would have required institutions to disclose state complaint processes for all online programs. Some states – notably, California (which does not participate in NC-SARA) – do not have clear, formalized complaint processes for out-of-state institutions.
- **Definition of “residence.”** A student’s “residence” as described in the preamble of the state authorization rule may conflict with state definitions of “residence” or common practices for establishing residency, which is a necessary basis for complying with the new disclosure requirements.

- **Disclosures.** Neither the state authorization rule nor the preamble to the rule provide clear expectations regarding disclosures, particularly in response to student changes during the school year (e.g., how moving to another state may affect a student’s ability to meet professional licensure requirements).

Although the proposed delay encompasses the final regulation’s requirements related to foreign locations, the proposed rule identified no specific concerns with respect to those requirements.

### Looking ahead

Consistent with the proposed rule, the Office of Management and Budget’s Spring 2018 Agency Rule List indicated ED’s intention to conduct a **further negotiated rulemaking** on state authorization issues in 2018. The timeline is as yet unclear, but we echo what we have previously advised: maintaining compliance with state law is the cost of doing business in the online education field, whether or not ED requires it by regulation. In addition, a country’s requirements for on-the-ground activity in its borders – which was the focus of the foreign locations component of the final regulations – still warrant careful attention. Notwithstanding any foreign country requirements, ED still may require separate ED approval for any additional locations for federal student financial aid purposes.

We are available to respond to questions.

### Contacts

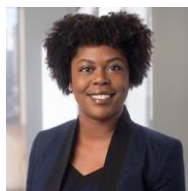


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