

U.S. Department of Education and state of California attempt to reach accord to restore Title IV eligibility to California residents enrolled in distance education courses offered by out-of-state public and nonprofit institutions

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As widely reported in the news and as discussed in our recent [webinar](#), on July 22, 2019, the U.S. Department of Education (ED) [notified](#) institutions that, as a result of the U.S. District Court ruling in *NEA v. DeVos*, [ED's 2016 regulations](#) concerning state authorization and other related matters (2016 Final Regulations) took effect on May 26, 2019.

ED's announcement concerning California's noncompliance

Under the 2016 Final Regulations, Title IV-eligible institutions are not authorized to disburse federal student aid to students enrolled in distance education courses who are residents of states that do not have a state process to review and take appropriate action on complaints from those students (or, in the alternative, do not participate in a state authorization reciprocity agreement that addresses the issue). In the July 22 Electronic Announcement, ED singled out the state of California, which had failed to establish a process to manage complaints concerning out-of-state public and nonprofit institutions offering distance education courses to California residents. (California has a complaint process for out-of-state for-profit institutions that are registered with the state's Bureau for Private Postsecondary Education, which are not impacted by ED's action). California has not joined the [State Authorization Reciprocity Agreement \(SARA\)](#).

Specifically, ED [stated](#) in its official guidance: "[S]tudents residing in California receiving distance education or correspondence courses from out-of-state public or nonprofit institutions are ineligible for Title IV programs until such time as the State of California provides those institutions with an appropriate complaint process or enters into a reciprocity agreement."

ED's guidance has created a serious issue for many public and nonprofit institutions offering programs in California, resulting in the disruption of Title IV aid to approximately 80,000 students enrolled in distance education courses.

California's proposed solution

On Friday, July 26, the state of California responded by establishing a new complaint process allowing students enrolled in out-of-state public and nonprofit institutions to file complaints through the state's [Department of Consumer Affairs](#). While the Department of Consumer Affairs said that it "expects that the ED will find the proposed process satisfactory," ED so far has not indicated whether it believes California's process satisfies the requirements of the 2016 Final Regulations. ED officials have [said](#) they "appreciate California's effort" and "will continue to work with them in order to protect students."

Other options for resolution

If ED and California are unable to reach an agreement regarding the student complaint requirement, there are several other ways forward:

- ED has already [proposed](#) new rules that would eliminate this specific issue, because those proposed rules would not require institutions to document state-level complaint processes for distance education programs as the 2016 Final Regulations do. The proposed rules are currently expected to come into effect in July 2020, but ED potentially could accelerate the implementation of these new rules and allow institutions the discretion to adopt them early, as ED [recently did](#) with the gainful employment regulations.
- The courts could resolve the matter if, for example, they permit the district court's decision to be stayed, and for the 2016 Final Rules not to take effect, pending resolution of ED's [appeal](#) to the Court of Appeals for the Ninth Circuit.
- California could join SARA, as every other state has done, thereby eliminating the problem by allowing institutions to rely on the SARA complaint process.
- Congress could intervene.

What to do in the meantime to comply with the 2016 Final Regulations

Unfortunately, any of these other solutions may take some time. So, if ED and California do not announce a solution soon, what should institutions do?

- First, try not to panic. ED has not indicated that institutions have to return Title IV aid already disbursed for the period of time from when the 2016 Final Rules became effective until the date of ED's announcement (i.e., May 26, 2019-July 22, 2019), nor has ED issued guidance about whether it has concerns about states other than California. Institutions should continue to monitor related developments, including watching for further guidance from ED, as this is a rapidly evolving situation.
- Second, make an operational plan, starting with evaluating how many students are affected at your institution (i.e., How many California residents are enrolled in distance education courses? How many of those are otherwise eligible for Title IV aid?) – including both current students and prospective students in the recruitment and application pipeline.
- Third, until the situation has been resolved, out-of-state public and nonprofit institutions should not disburse any further Title IV aid to California residents implicated by ED's guidance. Institutions should also communicate clearly with current and prospective students to alert them that the institution currently cannot process Title IV aid. While it is still permissible to enroll affected students and, if your institution decides to do so, to allow them to carry a balance on their account in anticipation of restoration of Title IV eligibility at some

point during the academic term, institutions must determine the best way to communicate with students about the risks involved in proceeding with their enrollment when the availability of Title IV aid is uncertain. Moreover, institutions should consider what will happen if Title IV eligibility is not restored by the end of the term (e.g., Will a balance on the student's account be converted to an institutional loan or institutional grant?). Institutions might also work with students to identify temporary or alternate sources of funding, such as private education loans or [income share agreements](#), if available.

- Finally, be aware that the 2016 Final Rules now in effect and the [proposed 2019 rules](#) likely to take effect in 2020 (if not before) are complex and require new consumer disclosures, particularly regarding programs leading to professional licensure. Institutions need to comply with the disclosure requirements under the 2016 Final Rules now and also be prepared to comply with a different set of rules once the proposed 2019 rules are finalized.

We are available to respond to questions.

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