

Federal Review of State Authorization

MoKanSAN Workshop
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Presenting



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Agenda

- Quick Review
- Compliance Requirements not covered by SARA
- Current Federal Regulations
- Released Federal Regulations for State Authorization of Distance Education
- HEA Reauthorization
- Questions

Quick Review

Who is SAN?

- State Regulatory Support
*(authorization, licensure,
Secretary of State)*
- Federal Regulatory Support
(authorization, notifications)
- Reciprocity Advice & Advocacy



Quick Review

Who is SAN?

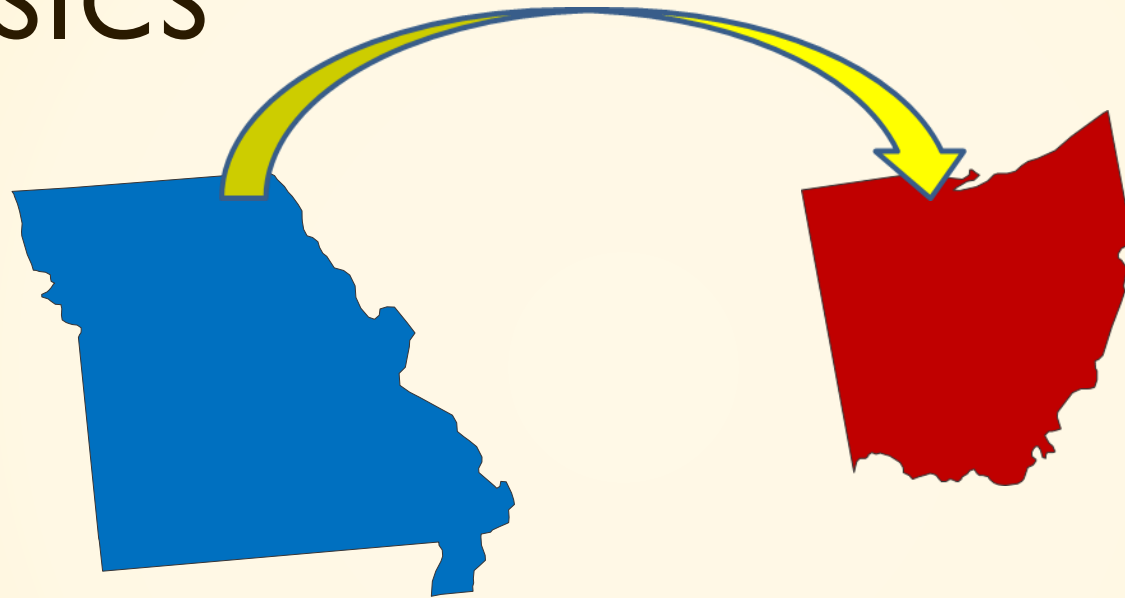


Basics Compliance Workshop – Boulder, CO

- Research
- Email lists for discussion
- Monthly calls for Coordinators
- Webinars
- Face to face meetings
- Access to experts
- Training workshops

QUICK REVIEW

THE BASICS



State authorization...
is something you should check if you are crossing
a state line to perform ANY activity.

QUICK REVIEW

THE BASICS

Secondary Sources

SHEEO State Authorization Surveys

- Surveys of information for each state



State Agency Websites

- Most links found in the SHEEO Surveys

WCET - State Authorization Network

- Support Organization – research, Laexperts, networking



Paid Services

- Consultants and Legal Services

QUICK REVIEW

THE BASICS

Primary Sources

State Statutes

State administrative
code/regulations

Laws and Regulations

State agency rules

*how the agency implements statutes and regulations - quasi primary authority

For a Prize!

Q: True or false – and why?

State Compliance with the state higher education agency or SARA participation avoids the need for any additional approval by any licensure boards (nursing, social work, or teaching, for example) for activities in programs leading to professional licensure.

For a Prize!

Q: True or false – and why?

State Compliance with the state higher education agency or SARA participation avoids the need for any additional approval by any licensure boards (nursing, social work, or teaching, for example) for activities in programs leading to professional licensure.

A: False - In addition to state authorization compliance, an institution must determine if the program meets the requirements from the state licensing board to allow the student to sit for a professional license or certification.

Also, in some states, the state law requires a school of nursing to be licensed by both that state's education agency and its board of nursing, compliance may dictate that the institution seek review and approval from both entities before enrolling students.

Compliance Requirements not covered by SARA

- Professional licensure board requirements.
- Secretary of State registration.
- Agent for Service of Process applications.
- Physical locations to offer instruction.
- Providing office space for faculty or staff.
- Workers Compensation Insurance (Colorado).
- Rule of 10.
- Requiring students to physically meet more than twice per term for more than 6 hours total.



Please review the [NC-SARA Manual](#)

Current Federal Regulations

Affecting eligibility to participate in Title IV, HEA programs

Misrepresentation - 34 CFR 668.71 & 668.72

- Misleading statements or omissions.
- To enrolled or prospective student.
- On which they could reasonably be expected to rely.



<https://openclipart.org/detail/7869/us-capitol-building>

Current Federal Regulations

Affecting eligibility to participate in Title IV, HEA programs

Institutional Information – 34 CFR 668.43

- Contact information for filing complaints.
- Provided to students:
 - prospective and enrolled.
 - distance and face-to-face.

See information on WCET Frontiers: <https://wcetfrontiers.org/2017/08/15/federal-student-complaint-requirement/>



<https://openclipart.org/detail/7869/us-capitol-building>

Released Federal Regulations

Q. What is the Federal Regulation deadline for institutions to be compliant with state regulations on distance education and notification requirements?

Released Federal Regulations

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A. July 1, 2018

The old version of 34 CFR 600.9 (c) which was a key section of the October 2010, program integrity regulations was struck down by two federal courts in 2011 and 2012, due to a procedural error in the rule-making process. The Negotiated Rule Making Committee failed to arrive at a consensus to institute new regulations in 2014. The new version was released in December 2016.

Released Federal Regulations

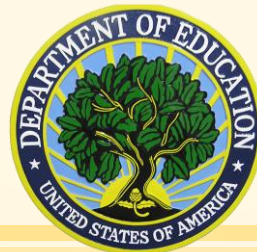
The New Federal Regulations for State Authorization(2016)

For Title IV programs...for each State in which the institution enrolls students:

- Authorization by each State. (where authorization is required)
 - A reciprocity agreement is sufficient for authorization.

<http://wcet.wiche.edu/sites/default/files/Ted-Mitchell-Reciprocity-Response.pdf>

Effective date: July 1, 2018



Released Federal Regulations

The New Federal Regulations for State Authorization(2016)

Public Notifications and Disclosures

- **Authorizations** in each state with students (as req'd by the state).
- **Adverse actions** by a State or accrediting agency.
- **Refund policies** in a state.
- **Licensure and certification requirements** are met for each student's State. (residency for feds/ activity location for state)
- **Student complaint processes** in each state.



Released Federal Regulations

The New Federal Regulations for State Authorization(2016)

Direct Notifications and Disclosures

- If the Program doesn't meet licensure/certification requirements.
- New adverse actions.
- Program ceases to meet licensure or certification requirements.

Acknowledgement from the Student

Additional information on WCET *Frontiers*:

<https://wcetfrontiers.org/2016/07/22/departments-of-education-state-authorization-for-distance-ed-regulations-a-first-look/>

<https://wcetfrontiers.org/2016/12/16/a-lump-of-coal-for-sara-and-other-goodies-in-the-state-authorization-regulations/>



HEA Reauthorization



COMMITTEE ON
EDUCATION AND
THE WORKFORCE



Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act

HEA Reauthorization

PROSPER *Act*

Q. What effect does the release of the PROSPER Act have on the compliance requirements of the institution as of today?

HEA Reauthorization

PROSPER *Act*

Q. What effect does the release of the PROSPER Act have on the compliance requirements of the institution as of today?

A: Merely a glimpse into the possible future as provided by the House of Representatives.

See the following slides for more details.....

HEA Reauthorization

PROSPER *Act*



Basic foundation points:

1. The PROSPER ACT is the House version for the reauthorization of the Higher Education Act and will be subject to revisions.
2. The Senate has yet to release their version of a bill.
3. Final passage of the reauthorization of the Higher Education Act will likely take at least a year.
4. Institutions must continue following state laws and regulations.
5. SARA institutions must continue to follow SARA requirements.

HEA Reauthorization

PROSPER *Act*



Points proposed related to State Authorization:

1. State Authorization regulations published in 2010 would be repealed.
2. State Authorization regulations published in 2016 would be repealed.
3. Federal law will require institutions to provide evidence of authority to operate within each State in which it maintains a *physical location* at the time it is certified under Subpart 3 (referring to accreditation). Unfortunately *physical location* is not defined.
4. Prohibition of enforcement or promulgation of any state authorization regulation not in effect on the date of the enactment of the PROSPER Act.
5. Rules of construction state that the PROSPER Act does not cause any impediment to how states authorize out of state institutions AND does not limit states from collaborating or participating in a reciprocity agreement to meet any other State's authorization requirements for out of state institutions.

HEA Reauthorization

PROSPER *Act*



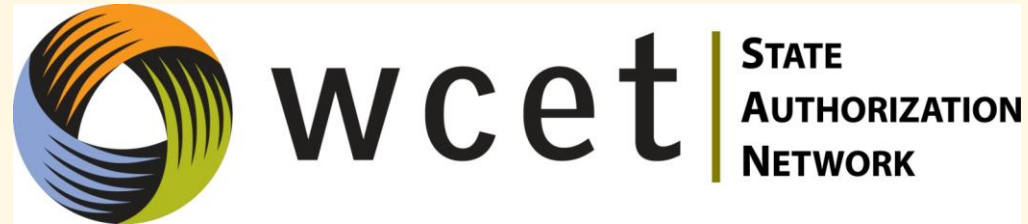
Points for compliance staff to consider:

1. Regardless of the final version of the reauthorization of the HEA, the States have the right and ability to enforce their own laws to authorize out of state institutions.
2. Regardless of the final version of the reauthorization of the HEA, institutions participating in SARA will continue to be responsible for following SARA requirements in order to be compliant in the states where the institutions participate in SARA related activities. *this includes notifications for professional licensure
3. It appears that 34 CFR 664.43 (Institutional Information) and 34 CFR 668.71 & .72 (Misrepresentation) would remain good law requiring compliance by the institutions.
4. As of today, the 2016 Federal Regulations for State Authorization of Distance Education are still slated to be enforceable on July 1, 2018.
5. As of today, the Department of Defense requires state authorization compliance for institutions participating in Tuition Assistance Programs for activity duty military students.

Questions



THANK YOU!



<http://wcet.wiche.edu/initiatives/state-authorization-network>

WCET State Authorization Issues Webpage

<http://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization>

WCET Frontiers Blog

<https://wcetfrontiers.org/>