

AMERICAN COUNCIL ON EDUCATION



DIVISION OF GOVERNMENT & PUBLIC AFFAIRS

May 10, 2011

Mr. James R. Kvaal  
Deputy Under Secretary  
Office of the Under Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

**Subject: New federal regulation on state authorization and distance education**

Dear James,

Thank you for the opportunity to discuss the department's April 20 Dear Colleague letter regarding the new state authorization and distance education regulation scheduled to take effect July 1. We appreciated the chance to learn more about the Department's efforts to provide additional flexibility for institutions during the initial implementation phase and your views regarding some of the more detailed compliance questions arising under the regulation. We also appreciate the department's recent amendment to the second paragraph of the April 20 letter clarifying some of the questions we previously raised.

Following our call, I have had conversations with colleagues from several higher education associations and accreditation organizations and we have identified several areas where we would appreciate additional clarification regarding the requirements of the regulation. My colleagues and I are happy to have further discussions with the department regarding these and other questions and to provide suggestions for your consideration.

1. Monitoring compliance

Given the text of the regulation, it is our understanding that the department intends to monitor institutional compliance with the new distance education requirements solely through its own recertification process.

It is also our understanding that accreditors are not required to monitor or assess institutional compliance with new state authorization requirements in 600.9, nor would this be an appropriate role for accreditors to assume.

Can you please confirm that both of our understandings are correct?

## 2. Students who relocate

A student receiving Title IV (T4) aid enrolls in a distance education program of study while located in a state in which the institution has state approval to provide distance education, or in which state approval is not required. Subsequently, the student relocates to a second state in which the institution lacks state approval and where the institution does not intend to seek such approval due to cost concerns or other reasons. Please clarify what steps the institution must take with respect to this student to ensure compliance with the federal requirements of section 600.9(c).

a. It is our understanding that once the student relocates, 600.9(c) would prohibit the institution from distributing T4 aid to the student. Assuming this is correct, would 600.9(c) also require the institution to terminate the student's participation in the program?

b. Would the department's interpretation change in any respect if the relocated student is the only student participating in the program in the second state?

c. If the student relocates after T4 funds for the term have been distributed, is the institution liable for the portion of the T4 funds that applied while the student was located in the second state?

d. Would the department's interpretation change in any respect if the student's relocation to a state where the institution lacks approval to provide distance education was temporary (*e.g.*, a military student who is sent mid-program to a two-month military training program, or a student who returns home for the summer)?

## 3. Good faith exception

If an institution makes a good faith determination that they are not required to be authorized to provide distance education in the state, and subsequently, the institution is informed by the state that authorization is in fact required, is an institution liable for T4 disbursements made prior to this notification?

If an institution has made a good faith effort to determine the location of its students, but subsequently learns that a student had relocated to a state in which the institution is not authorized, is the institution liable for T4 aid disbursements previously made to the student?

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If an institution is making a good faith effort to become authorized in a state, and subsequently, the state denies its application for authorization, is the institution liable for T4 aid disbursements made prior to the denial of its application?

4. Authorization based on accreditation

It is our understanding that a state may decide to approve an institution offering distance education programs to students in that state based solely on the institution's accreditation status.

Can you confirm that our understanding is correct?

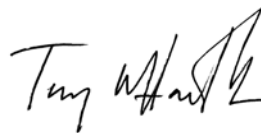
5. Process for addressing additional questions

When may we and our institutions expect to have information concerning the department's answers to these specific questions?

When will the department announce the process for addressing and answering other such questions in a fair, consistent and timely manner?

Thank you for your attention to these matters and for considering our views. Please let me know if I, or my colleagues, can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hartle". The signature is written in a cursive, somewhat stylized font.

Terry W. Hartle  
Senior Vice President  
Government and Public Affairs

TWH/ldw

cc: Fred Sellers