

## Feds Soften Distance Ed Rule

Education Department releases proposed rule on state approval of online programs, cutting a provision that would require states to review all out-of-state colleges.

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<https://www.insidehighered.com/news/2016/07/25/education-department-releases-latest-draft-state-authorization-rule>

The Obama administration on Friday released its latest proposal on how colleges that offer distance education programs to students in other states should be regulated.

The rule requires distance education providers to follow state laws governing how they become authorized to offer courses and programs to students in states other than where they are located. A university in Illinois that wishes to enroll students residing in Wisconsin in its online programs, for example, has to apply to the Wisconsin Educational Approval Board and pay a fee to be approved.

In what observers called a “significant” departure from previous drafts, however, the proposed rule does not require states to conduct an “active review” of out-of-state colleges -- a provision that was in previous drafts that many distance education groups criticized for placing an undue burden on states but consumer protection groups argued was important to prevent fraudulent colleges from taking advantage of students.

The U.S. Department of Education will accept public comment on the rule, which will be published in the Federal Register on Monday, until Aug. 24.

This latest and final attempt from the Obama administration to settle the issue of state authorization follows about six years of on-again, off-again rule making, during which variations of the rule have been proposed, vacated by a federal court, sent to a negotiating committee and put on ice. The department in 2014 paused work on the rule after multiple sessions of negotiated rule making failed to provide a consensus, but surprisingly [restarted its efforts](#) last month.

The department is hurrying to finalize the rule before the next administration takes over. To do so, it faces a deadline at the end of October. If the department issues the final rule before then, it will go into effect July 1, 2017.

In the announcement, the department described the lack of federal regulations governing distance education providers that enroll out-of-state students as a “loophole.” It highlighted provisions that require colleges to document how they handle student complaints and inform students about any negative changes to their distance education accreditation status.

Still, the rule does not take as hard a line on state laws governing oversight of out-of-state colleges as previous versions have.

During the rule-making sessions in 2014, the “active review” provision was one of the central points of contention, said Russell Poulin, director of policy and analysis for the WICHE Cooperative for Educational Technologies. He and several others participating in the sessions argued against the provision, saying the federal government was effectively requiring states to change their laws.

“That was the main sticking point,” Poulin said in an interview. “[The department] just wouldn’t budge on that, and if they had, we would have come to consensus.”

A department official, speaking on background, confirmed that the proposed rule does not require states to review out-of-state colleges. If a state has regulations in place concerning how colleges become authorized to operate in it -- and most do -- colleges have to comply with them; if not, they don’t have to.

“This is a significant change,” Poulin said in an interview.

Since the proposed rule no longer contains that provision, the department has inserted language elsewhere in the rule in an effort to protect consumer rights.

Many critics have said the process of receiving approval in all 50 states is too onerous, particularly for small colleges that may only have a small online student population. The rule therefore recognizes organizations such as the State Authorization Reciprocity Agreement, known as SARA, which grants member institutions the authority to offer programs to students in all of its member states (presently 40 states and the District of Columbia).

Marshall A. Hill, executive director of SARA’s national council, said he was not surprised to see the proposed rule acknowledge reciprocity agreements, but noted that the department’s announcement specified “as long as the agreement does not prevent a state from enforcing its own consumer laws” -- language not seen in previous versions of the rule.

The rule also requires colleges to notify students if their professional programs meet state certification or licensure requirements.

Robert Shireman, a senior fellow at the Century Foundation and former Education Department official, said the rule “doesn’t go as far as it might,” but he added that it “does take important steps forward in terms of consumer protection.”

The department official said the language in the rule is purposely broad at this point, and that the department does not wish to be “too prescriptive” before the public comment period. In the announcement, the department said it expects to issue the finalized rule before the end of the year.