

## Enforcement of State Authorization Requirements Delayed Again

In 2010, following 18 months of negotiations with the higher education community, the Department of Education (the Department) issued a set of proposed regulations focusing on 14 specific issues designed to strengthen the integrity of the federal student aid program. These regulations became known as the Program Integrity Rules (the Rules). The stated purpose of the regulations was as follows: “to strengthen federal student aid programs at for-profit, nonprofit and public institutions by protecting students from aggressive or misleading recruiting practices, providing consumers with better information about the effectiveness of career college and training programs, and ensuring that only eligible students or programs receive aid to strengthen federal student aid programs at for-profit, nonprofit and public institutions by protecting students from aggressive or misleading recruiting practices, providing consumers with better information about the effectiveness of career college and training programs, and ensuring that only eligible students or programs receive aid.”

The most controversial of the Rules soon proved to be the requirement for State authorization of education activity in order for a post-secondary institution to participate in federal student aid and other federal funding programs. This requirement is particularly problematic with respect to post-secondary educational institutions offering courses through distance learning to students in States other than the State in which the institution is located. The original effective date for meeting State authorization requirements was July 1, 2011. Subsequently, the effective date was extended to July 1, 2012 and, if certain conditions were met, to July 1, 2013. Meanwhile, enforcement of the State authorization requirement was stayed after the U.S. Court of Appeals (DC) upheld a District Court finding that the section of the rule applying it to distance education was not validly promulgated because of lack of notice and opportunity to comment. This is a technical shortcoming that can be readily remedied, and remedial action is currently under consideration. Most recently, on May 17, 2013, the Department announced a further delay in enforcement of the State authorization requirement, if certain conditions are met.

Surveys reflect that compliance with the State authorization requirement is progressing slowly and is proving to be costly. Complaints have been made about the difficulty and the direct and indirect costs of complying with the State authorization requirements of the Rules. The Department has responded that compliance with existing state laws has always been a condition of Title IV eligibility. The Rules merely call attention to the need for institutions to be sure that they have legal authority to operate in all the states where they are providing instruction. Additionally, the Department is now considering amending the State authorization regulations to establish authorization requirements for foreign locations.

A national meeting was held in Indianapolis on April 16 and 17 that focused on a report: *Advancing Access through Regulatory Reform: Findings, Principles, and Recommendations for the State Authorization Reciprocity Agreement (SARA)*, that was recently released by the Commission on the Regulation of Postsecondary Distance Education. The meeting attendees included representatives from 47 states. Only Delaware, Hawaii, and New York were not represented. Under SARA a set of basic standards for accreditation would be used by all of the

states, and accreditation awarded in an institution's "home state" would be honored by other states where education is delivered through distance learning. The UA System is working to resolve the matter of State authorizations through reciprocity.