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The 2016 State Authorization Rule includes new disclosure requirements that apply to any institution that offers a program that is provided, or can be completed, solely through distance education (notably, the rule still covers online programs that have an on-ground internship or practicum).¹ The required disclosures are broken into two categories: public disclosures and direct disclosures. The public disclosures must be “made available” to enrolled and prospective students, which means the information need not be distributed directly, but can be disclosed through written and online publications. The individualized disclosures must be disclosed “directly and individually” to enrolled and prospective students. Institutions also must obtain and maintain evidence of receipt from any prospective student who received a direct disclosure and subsequently enrolled in the program. Following, we offer a summary of the disclosure requirements in the 2016 State Authorization Rule, by category.

Public Disclosures

The following information must be made available to the public through written and online publications.

- State Authorization. Whether the institution is authorized by each state in which enrolled students reside and how it is authorized in each state (with an authorization from each specific state agency or as part of a state authorization reciprocity agreement).
- Consequences of Residency Change. The consequences of relocating to a state where the institution does not meet state requirements, or in the case of a gainful employment program, where the program does not meet licensure or certification requirements in the state.
- Description of Complaint Processes. A description of the process for submitting complaints, including contact information to make complaints in the state where the institution has its main campus, contact information to make complaints to the state in which the student resides, and, if applicable, the appropriate contact information for complaints under any state authorization reciprocity agreement the institution has entered into.
- Historic Adverse Actions. Any adverse actions taken by a state or accrediting agency against the institution related to distance or correspondence education and the year that the action was initiated, for the previous five calendar years.
- Refund Policies. Any refund policies that it must comply with in any state in which a student resides.
- Licensure and Certification Prerequisites. Applicable licensure or certification requirements for the occupation the program prepares a student to enter and whether the program meets those requirements, including: (1) the applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in any state in which the program’s enrolled students reside and for any other state for which the institution has made a determination regarding such prerequisites; (2) whether the institution’s distance education program or correspondence course satisfies those applicable educational prerequisites for professional licensure or certification; and (3) for any state for which the institution has not made a determination with respect to the licensure or certification requirement, an institution is required to disclose a statement to that effect.

¹ The disclosure requirements are set forth at [34 C.F.R. § 668.50](#).

Direct Disclosures

The following information must be disclosed “directly and individually” to students.

- Licensure and Certification Determinations. To prospective students, any determination by the institution that the program does not meet licensure or certification prerequisites in the state of the student’s residence. If this is the case, any student who receives the notice and subsequently enrolls must provide acknowledgement to the institution that he or she received the disclosure.
- Licensure and Certification Changes. To prospective and enrolled students, any determination by the institution that the program ceases to meet licensure or certification prerequisites of a state, within 14 calendar days of that determination.
- Notice of New Adverse Actions. To prospective and enrolled students, any adverse action initiated by a state or accrediting agency related to programs offered by the institution solely through distance education or correspondence within 30 days of the institution becoming aware of the action.

In early 2018, as institutions prepared to comply with the 2016 State Authorization Rule, it became clear that operationalizing these disclosure requirements is a significant challenge. We suggest that institutions review the authorization and disclosure requirements carefully, to include the Department’s commentary to the 2016 Rule, and work with academic, admissions, and compliance personnel to ensure that appropriate processes and controls are put into place.

Institutions with questions regarding the State Authorization Rule are welcome to contact [Aaron Lacey](#) or [Katie Wendel](#). Aaron Lacey is the leader of Thompson Coburn’s Higher Education practice, host of the firm’s popular [Higher Education Webinar Series](#), and editorial director of [REGucation](#), the firm’s higher education law and policy blog. He is available at (314) 552-6405 or alacey@thompsoncoburn.com. Katie is a member of the Firm’s Higher Education Practice, and represents higher education clients in a wide range of regulatory and transactional matters. She is available at (202) 585-6917 or kwendel@thompsoncoburn.com.

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