



Comments submitted by
The National Consumer Law Center
to the U.S. Department of Education

**Re: Proposed Delay of Program Integrity and
Improvement, State Authorization of Distance
Education Regulations (83 Fed. Reg. 24,250)**



Docket: ED-2018-OPE-0041

June 11, 2018

The National Consumer Law Center (NCLC) submits these comments on behalf of its low-income clients regarding the Department of Education's proposed two-year delay of the state authorization of distance education regulations.¹ We urge the Department not to delay, but to move forward with prompt implementation of the state authorization of distance education regulations finalized in 2016.²

NCLC is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC has nationally recognized expertise in student loan law and publishes a widely-used treatise, *Student Loan Law* (5th ed. 2015), updated at www.nclc.org/library. NCLC's Student Loan Borrower Assistance Project provides information about student borrowers' rights and seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education and lessen student debt burdens.³ It also provides direct representation to low-income student loan borrowers, many of whom are struggling with unaffordable federal student loan debt after enrolling in career education programs that failed to provide valuable training, credentials or opportunities. NCLC's Student Loan Borrower Assistance Project consults with civil legal services organizations across the country that represent borrowers in their local communities.

Importance of the Rule to Low-Income Students

The 2016 State Authorization of Distance Education Rule ("the 2016 Rule" or "the Rule") is of significant importance to our low-income clients and to low-income consumers served by legal services providers across the country. In addition to being of limited economic means, our clients are often the first in their families to pursue higher education. They include people of color, immigrants, non-native English speakers, single mothers and veterans. They are too often targeted by unscrupulous and predatory out-of-state schools that encourage individuals to take out federal student loans to enroll in distance education programs without regard to

¹ Proposed Delay of Program Integrity and Improvement Regulations, 83 Fed. Reg. 24,250 (May 25, 2018).

² Program Integrity and Improvement, 81 Fed. Reg. 92,232 (Dec. 19, 2016).

³ The Project's website includes more information; see www.studentloanborrowerassistance.org.

whether the programs are worthwhile investments or will qualify students for licensure in their states.

These students are among the “5.5 million distance education students at degree-granting institutions” that the 2016 Rule was designed to protect.⁴ The 2016 Rule was created to close a loophole that left online students attending schools without an in-state physical location unprotected by the federal and state higher education supervisory plan. As the Department explained when it announced the rules:

State authorization is a longstanding requirement in the Higher Education Act that requires institutions to be authorized in the state in which they are located as a condition for eligibility to receive Title IV Federal student aid. While all higher education institutions must have state authorization in the states in which they are physically located, there are no federal regulations for distance education providers in states where the institutions are not located.⁵

The 2016 Rule corrects that oversight and restores important state protections to online students. Under the Rule, the Department requires all providers of distance education that wish to participate in the Title IV program to obtain state authorization in each state where they enroll students and where the state requires authorization to operate. This ensures that states have the opportunity to conduct a review of out-of-state education providers just as they do for in-state providers. It also prevents the federal government from working at cross-purposes with states, by funding entities to offer services in states where they are not authorized to operate.

Additionally, the Rule strengthens consumer protections for students in two key ways. First, the Rule requires schools to disclose basic but critical information about the quality and value of their programs. Specifically, the Rule requires schools to disclose information about adverse actions taken by state agencies and accreditors and to disclose where career programs do not meet programmatic accreditation requirements necessary for the student to attain a professional license in her home state. This latter requirement was designed to address the devastating problem of students wasting their time and money to attend job-specific programs, such as nursing or teaching, without realizing or being told that the programs will not actually qualify them for licensure in that occupation in their state. These disclosures will not resolve the problems of predatory enrollment, but are basic, common sense steps toward reducing the risk of students unwittingly enrolling in predatory or worthless programs.

⁴ Press Release, Education Department: Education Department Announces Final Rule on State Authorization of Postsecondary Distance Education, Foreign Locations (Dec. 16, 2016), *available at* <https://www.ed.gov/news/press-releases/education-department-announces-final-rule-state-authorization-postsecondary-distance-education-foreign-locations>.

⁵ *Id.*

Second, the Rule defines and sets parameters around use of state authorization agreements, which nearly all states now use as part of their framework for overseeing distance education. Importantly, the Rule requires these agreements to be consistent with enforcement of state consumer protection laws for them to provide valid state authorization for the purposes of Title IV eligibility. The Rule clarifies that states must be able to enforce their own consumer protection laws, including those designed to protect against abuses in the higher education industry, under state authorization agreements. This addresses a critical consumer protection deficiency in current state authorization practices identified by NCLC in a 2015 report.⁶

There is No Time to Delay in Protecting Online Students

There is no time to delay in closing this loophole: distance education is the fastest growing segment of higher education,⁷ and more students are obtaining their education online every year. These students deserve the same legal protections as students attending traditional brick-and-mortar schools in the same state, and have already waited far too long.

Additionally, as detailed in an NCLC report, a majority of the largest online education schools are owned and operated by the same for-profit companies that have been the subject of multiple law enforcement investigations and actions.⁸ Bringing online schools into the Title IV framework and subjecting them to state oversight now is critical to deterring and preventing abusive conduct that wastes students' and taxpayers' dollars.

In announcing the proposed delay, the Department said delay was needed “based on concerns recently raised by regulated parties” and to consider possible revisions to the rules through a new rulemaking. But the requests for clarification raised by industry were on issues long known to the Department and to participants in the rulemaking process, and can and should be addressed through guidance without any need to delay protections for students or pursue further rulemaking. Indeed, NCLC and other advocates for students have specifically urged the Department to move forward with implementing the rules and cited information from the preamble of the 2016 rule to describe how ED can easily clarify the scope of the rules.⁹

⁶ National Consumer Law Center, Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud (Dec. 2015), available at <http://www.nclc.org/images/pdf/pr-reports/brief-ensure-ed-integrity-2015.pdf>.

⁷ Office of the Inspector General, Dep't of Educ., “Title IV of the Higher Education Act Programs: Additional Safeguards are Needed to Help Mitigate the Risks That are Unique to the Distance Education Environment,” ED-OIG/A07L0001 at 4, 6 (Feb. 2014).

⁸ National Consumer Law Center, Wake-Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud (Dec. 2015), available at <http://www.nclc.org/images/pdf/pr-reports/brief-ensure-ed-integrity-2015.pdf>.

⁹ Letter to Sec. DeVos Requesting Guidance and Implementation of State Authorization of Distance Education Rule (March 26, 2018), available at https://na-production.s3.amazonaws.com/documents/03262018_State_Authorization_Letter_Final.pdf.

Announcing plans to delay the rule barely a month before its implementation and almost a year-and-a-half after it was first published is not only unnecessary, but also unfair to institutions, to states, and most importantly, to students. If the 2016 Rule is delayed, online students will be left out of the federal and state regulatory framework and thus exposed to continued abuses for another two years. Additionally, the lateness of the notice is unfair to the student borrowers who were the intended beneficiaries of the Rule. The late notice necessitated an unusually short period for the public to provide comments (15 days inclusive of only 10 business days). While industry lobbyists may be able to respond to notices during such a brief window, most busy students and borrowers cannot, and we fear their voices will be left out of the process.

Conclusion

The 2016 state authorization rules can and should be implemented as scheduled this summer as an important step toward protecting online students.

Thank you for considering these comments. Please feel free to contact Abby Shafroth at ashafroth@nclc.org or 617-542-8010 with any questions or to discuss.