

*Fred:*

I'm Fred Sellers, I'm with the Office of Post Secondary Education. With me is Sophia McArdle, also with the Office of Post Secondary Education. We'll be trading off a bit in the session, a little bit like the general session that just happened. We're going to be covering the requirements for the new program integrity regulations on state legal authorization. This, of course, is a fundamental requirement for institutional eligibility. Any eligible institution needs to be legally authorized which it's located. Although, that statement may even raise some questions.

We're going to be going over what we did with state authorization during the rulemaking process. Fred will demonstrate how incompetent he is – ah, it advanced. All right. If you all watched me before, you know I will screw this up at some point. So, as you know, these are part of program integrity that we just concluded last October. You saw some of the dates up in the general session. We were pursuing these regulations to ensure a proper oversight of the programs.

You heard part of the rationale in just the dollar amounts of student aid coming available. That's created concerns at the department and elsewhere, about making sure our use of funds is the best we can do. You can see it now in that [pellis](#), a potential source of savings, up on Capitol Hill. So using the funds the best way we can really matters. That was a lot of the background to the program integrity regs, including the state authorization requirements.

So we went in to negotiate a rulemaking, and I've given you some things on these slides that you didn't get elsewhere, particularly preamble discussion page numbers, in addition to the regulatory language in the documents. I was the Federal Negotiator for this particular issue during negotiated rulemaking. We had really good non-Federal, good negotiators, at the table. We did our best to reach consensus and almost did. Had a tentative, almost a tentative agreement on this, but this was one of the issues on which consensus failed on the overall package.

Because of that, the department goes forward with what it feels is the most appropriate way to handle those issues that were being negotiated. In this case, a lot of what we put forward in the proposal was pretty much what was on the table at the end of the negotiations. So it should've looked a lot like what we'd done before. We received over 1,200 comments, I think, or nearly. A significant number of them dealt with state authorization. They lead to changes in the final regulations. Too many places to look.

The final regulations we published on October 29<sup>th</sup>, and again, you have preamble language here. There were technical corrections. In the case of state authorization, there are a couple of important technical corrections that were done in the technical corrections package, so you need to pay attention to that. As I think you know, public comment is an important part of the process. This is something I always say when I'm discussing these things: You should always review a proposed rule and provide your comment to the department.

You should always tell us not only what you don't like, but what you do like, so we don't make the mistake of only listening to a bunch of negative comments, not realizing a lot of other people liked something. Otherwise, we can find ourselves doing the wrong thing during the public comment. The other thing I want to point out right here, before we advance any further, is particularly in these program integrity regs, but in any regulation, the preamble of the proposed rule can matter just as much as the preamble discussion in the final rule in providing guidance.

You will see – If we don't amend something in the final rule, and it's pretty much the language that stands from the proposed rule, that preamble discussion from the proposed rule will matter, cause that will explain more about the reg, cause we won't address it again in the final rule. So you need to always pay attention to preambles of both proposed and final rules. I'm seeing some questions around state authorization that could be answered if you went to the preamble for some folks.

I know there are questions that aren't there, the answers aren't there for you, but there are a good number of them. We tried to provide the best guidance we could in the preamble about what was expected for the regulations. Okay, in terms of the general requirements, we went into this. You heard a little bit of what the environment was, when we went into developing these regs, but we're also having **GAO** investigations. There were congressional hearings about our oversight.

In the case of state authorization, there was a particular event – the California State Licensing Agency lapsed. California ceased to have a licensing agency, and that created a great deal of concern at the department. It's why we went back and looked at what our legal authorization requirements might be. The policy had been up to the point of these regs that if a state had no requirements, we would consider an institution legally authorized.

That was the debacle for California. That policy came into play, and that was viewed as unacceptable. We expected the state to be doing something. That's why we ended up getting into these regulations. As I noted earlier, the statute provides that an institution must be legally authorized by a state to offer post-secondary education if it is to be eligible for federal programs. Notice, I said federal programs, not just student aid programs, because these provisions are in the institutional eligibility regs, which apply to more than the federal student aid programs.

But for purposes of this conference, we can focus on student aid. So what we did to the final rules, proposed and final rules, was try and assure a direct role of the state in authorizing post-secondary programs, because we weren't seeing that in some places and we wanted to know the state had done some way of at least blessing the existence of this post-secondary institution. We also wanted to clarify what was required for an institution to be considered legally authorized. What we did not do was require the creation of state licensing agencies.

Some folks initially reacted to the proposed rules saying that's what we were doing – that's one of the technical corrections. I think we left a 'not' out, or a 'no'. I think a 'not' out in the preamble discussion about not requiring the creation of state agencies. But basically, that's what we were up to here. We wanted to assure a direct state role. One other thing I will point out right here, these regulations do not regulate states, they regulate institutions. It's about what we expect an institution to present to show that a state has legally authorized it for purposes of establishing eligibility.

That's an important point. It's quite different from – Some of y'all will remember something I don't even like to mention, cause it's kind of a dirty word: sprees. (*laughter*) One association head out there keeps bringing it up and driving me crazy, but it's nothing like that. These regs are still contingent on what the state decides to do for itself. There's nothing that regulates the state. Now, the requirements can be found in several places that affect state authorization or are related to them.

The basic state authorization requirements are in 600.9 of the institutional eligibility regs. So that's going to contain most of what we're going to talk about, but we also amended the student consumer information requirements in terms of dealing with complaints – so that's another piece we're going to talk about,

since it's related. Then, finally, we made some conforming changes in the definitions of eligible institutions for our programs under the Higher Education Act, so they would conform with the creation of 600.9.

The regulations, in terms of actual legal authorization, contain two major points to them. One of them is about a state authorization, and the other is about student complaints. Those both have to be met for you to be considered legally authorized. We would look first at the school's basis for operating. What is the legal basis for its existence? Depending on that, what are any required approval or license requirements the state may have? Then, we would expect there to be a student complaint process, which we'll talk about a bit more.

One thing I'm going to mention right here – it's not a good spot to mention this – In terms of – You need to be authorized at every location, including when you cross state lines. For many years, we've had a policy, and you only have to report locations where more than 50 percent or more of a program is offered at that location. Anything less than 50 percent was considered to be the main campus, that student was still enrolled back at the main campus and we didn't expect you to report that.

That policy continues, so if you're updating your e-app, you're going to be just reporting those kinds of locations. However, I want to point out to you, that doesn't mean you still might not be subject to some state authorization requirements or licensure in that state, just because we don't ask for it. This should also help with a number of questions we've had around internships and small classroom sites, where a couple of classes are being offered at some site across the state line.

We live in Washington, with three state jurisdictions around us, and some of those institutions may offer a class or two. They live – They're in district school, but they offer a class or two in Virginia. We wouldn't expect that to be reported. Those students would be considered enrolled at the D.C. campus, however, I happen to know, because my colleague Sophia had to deal with it when she was at American University, Virginia would expect you to get licensed for those two or three classes and submit a whole bunch of stuff to Richmond.

So you still need to pay attention to that, even if we're not asking for it. In terms of distance education, as most of you are probably

aware, we're in litigation, and we're going to discuss a bit more about that later. Now...

*Sophia:*

As we go through the next few slides, you may want to look at them in conjunction with slide number 11, which is the big chart. We'll get to that in a moment, but in case you printed that out as a full page, like we asked you to, it's much easier to follow, cause it's kind of small writing. There are basically three categories of operative authority that we distinguish under the regulation based on the institution's legal basis for existence.

We identify these categories as a way to address public comment and to provide a clear set of expectations for institutions under the rule. No category is good or bad, per se, but they are intended to identify the minimums necessary to assure that the state has acknowledged the authority of an institution to offer post-secondary education. So, keeping that in mind, the first category, which you – Row A of the big chart. In fact, if you look at the big chart, what you'll notice, just to give you a sense of what's in it – In fact, I'll just forward this up one slide. I think it is.

You can see what I'm talking about. The top columns are labeled Legal Entity, Entity Description, and Approval or Licensure Process. They have the rows coming down the side. So when you look down, for instance, under Legal Entity, you'll see that under row A, we have Educational Institutions. This would be the first type of institutional entity that we'll be talking about. Just, also, as a reminder, these are specific to brick and mortar.

We will be discussing the distance education part of this in a little bit. So, the first category, again, row A – I can take it back – are institutions established by name as an educational institution. They may be established, for example, by charter, state law, or articles of incorporation that establish the institution. These institutions include all state institutions, including community colleges. In the other two, which would be on the next slide, on rows B and C, are institutions that are either established as a business or a charitable organization. I'm sorry, I'm missing the –

*Audience:*

The chart wasn't available for download!

*Fred:*

All I can say is we're sorry for that. I thought it was supposed to have been posted, cause I was told it was.

*Sophia:*

Thirty-four and thirty-five weren't on it?

*Fred:* Is it still not on it? Okay, we'll check. Thank you for letting us know.

*Sophia:* Yeah, thanks for letting us know. We had no idea. We thought you all knew what (*laughing*) we were talking about. I'm just going to carry on. Take good notes, I guess. Okay. Getting back to the B and C, these are, again, the categories of institutions that are not established as educational institutions, but as businesses or a charity. For instance, a state may have an institution that is allowed to operate based solely on a business license. For those of you that were involved in negotiated rulemaking, you saw this as an example with the State of Hawaii, where only a business license was necessary for an institution to operate. Maybe I should keep this. Can you all see this well? No?

*Fred:* That's what we knew. The next slide's cool. A lot of information.

*Sophia:* Okay. I will try to go slowly. How's that? What you'll see, when you look at your actual Power Point – when we make sure that it's up there – We're going to start with this discussion looking at institutions which are established as educational institutions. As I mentioned earlier, all state institutions and community colleges will fall under this. So the institution must comply with all applicable state approval or licensure requirements, and must be approved by name, which is very critical.

When I use this phrase 'approval or licensure', we're talking here in the broadest sense of the word. It could be an approval by a state legislative act. This principle goes throughout the entire regulation. Fred had mentioned earlier that there is no mandate for states to have approval or licensure requirements for these entities, since they're already established as post-secondary institutions, educational institutions, however, if the state has further requirements, the institution must comply with them.

A state may exempt an institution from a licensure or approval process based on the institution's accreditation or being in operation for at least 20 years. That will be appearing, also, in the Power Point slide, when you take a look at that. For those institutions that are established as business or charitable non-profit organizations, these would be defined – a business would be defined as a for-profit entity established by the state on the basis of an authorization or a license to conduct commerce or provide services.

The non-profit charitable organization would be defined as a non-profit entity established by the state on the basis of authorization or license for public interest or common good. The state must approve or license these institutions by name as post-secondary institutions, and if there is not such a process, the institution would not be considered legally authorized by a state. Furthermore, these entities may not be exempted for state approval or licensure based on accreditation, years of operation, or a comparable exception.

One of the things that did occur, as part of the final regulation, was that we removed the adverse action requirement, because we found it not to be helpful. Inherent in any authorization process that a state might have is a potential for the removal of authorization, which is obviously the adverse action. There are some exceptions that you will note, when you finally see your chart on slide 11, for federal and tribal institutions, as well as religious institutions.

Federal institutions are considered to meet provisions if they're authorized by name by the federal government. Tribal institutions are considered to meet our provisions if they're authorized by name by the tribal government. The tribal institution must be located on tribal lands, and the tribal government must have a process to review and appropriately act on complaints concerning the institution and enforce applicable tribal requirements or laws. We also have the religious institution exception, which we kind of provided there based on a lot of the public comment.

The regulations provide that a religious institution, which we define as an institution that is owned, controlled, operated, and maintained by a religious organization lawfully operating as a non-profit religious corporation, and rewarding only religious degrees or certificates, which would include, but is not limited to, for instance, certificate of Talmudic studies, bachelor of religious study, a masters of divinity, a doctorate of divinity. The institutions may be exempt from the state authorization under the state law or state constitution.

Again, these are minimum standards for us, for the federal regulations. In the case where a state law has a stricter requirement, we would expect that the institution meet the stricter standard of the state, and we would not consider it exempt if it does not. I guess, now, I'll turn it over to Fred for discussion of the complaints process.

*Fred:*

Okay. What Sophia just went over – One of the two core requirements for legal authorization, under the regs. The other

core requirement is the need for a state to have a process that's applicable to all institutions to review and address complaints. This was a really important piece of this, from the view of certain people in the department when the regs were developed. So, if you're an institution established as a post-secondary institution by name, by your charter, and you meet the state approval or licensure requirements, if you don't have this, you're still not legally authorized.

So this piece is just as essential as the other part of it, the way the reg is constructed. As noted in the preamble, the state is expected not only to handle complaints under their licensure or approval, but other laws, such as those related to fraud or false advertising. One thing that we have taken a position on is it does not necessarily have to be a state agency that has direct oversight of the institution. So the Attorney General's office may be handling complaints in a state.

An educational agency may be handling them, even though it doesn't have oversight over a particular category of institutions. As long as the agency is meeting our expectations, that's fine. We also have pointed out that it's okay for a state to refer complaints if it's appropriate. There's two that really come to my attention the most. One is, "Can we refer it to the accrediting agency?" The answer is, "If it's appropriate, yes, but the state would be expected to follow up on the resolution of the complaint with the accrediting agency."

Another case concerned – actually, \_\_\_ \_\_\_, which, because of the litigation, is less important, but I'll mention it. It's that some states, if they have a resident taking course from a school in another state, may refer that student to some other – that complaint to some other state where that institution has its main location. As long as that other state's willing to take that complaint and deal with it, that will be fine, as a referral. This piece applies to religious institutions. While they were exempt from the other portion of the requirements, they're not exempt from the complaints – having a complaints process at the state level that covers them.

It does not apply to the tribal or federal institutions. In the case of tribal colleges, we specifically expect the tribal government to provide for complaints process for the tribal institution to be considered legally authorized. If an institution has additional locations, including a tribal institution off tribal land, it must have a complaint process for the additional location state. So if you've



got a campus – You're a D.C. school. You got a campus in Virginia.

You need to have a complaints process in Virginia for that location to be covered. I forgot to advance the slides, didn't I? All right. Implementation. We sorta had a little bit of this discussion in the general session, but the state authorization requirements have some special provisions. In general, the regulations were effective July 1<sup>st</sup>, 2011. All of you were supposed to have this in place, at least have documented, at your school – not necessarily having submitted it to FSA.

Now then, we did provide though, in the preamble, there's a discussion in the final rule preamble – a provision for two one-year extensions. If your state is having to make changes so your institution can meet these regulations, you need to get a letter from the state, basically saying that they're making the adjustments and that they will be making the changes so you can come into compliance with these regulations. Those were for the '11-'12 award years, and the 2012-13 award years.

As I said, you should get something in writing from the state. You don't need to submit it, you just need to have it there in case there's a program review or an audit or something, if you don't meet the requirements of the regs, so that you're covered. An example I know of actually involved complaints. We had a letter from Wyoming, from the governor, and they were looking at setting up the complaints process. But for Wyoming institutions, we would say they should get a letter from the state pointing out they're working on this and that they will be coming into compliance.

All right. Oh, I forgot to mention, we did have an old electronic announcement about this, so you should go look at that for some more detail around it, cause there were questions we were getting. Consumer information. Let's talk about this a little bit. This is, technically, not a part of the state legal authorization requirements. It's kind of a coordinate thing we did, cause we thought – We're looking at complaints.

How are students going to know what to do? So we amended our consumer information requirements, 668.43b. Basically, an institution must provide its students or prospective students with contact information on filing complaints with the **accreditor**, and now with the state approval, a licensing entity that's handling complaints in the state, and any other relevant state official agency

that would appropriately handle the students' complaints. In some states, you might have more than one entity that would be handling things.

You'd be expected to list them. These provisions were effective July 1<sup>st</sup>, 2011. Unless your state hadn't been able to identify a consumer complaint office yet, you'd be expected to have been in compliance since July 1<sup>st</sup> on this. Couple of questions have come up around this. One of them is, "Can you just do a link to another site?" The answer is, "No, you have to list the state contact information for your institution at your site."

Linking to some general site – like [Shios](#) got some information out there now. That's not okay. You have to be listing the states where you're operating, and the consumer information for those states. It needs to be provided for all students, including distance education. So it must be for every state the institution's located in, including every state in which you're enrolling distance education students. All right. It's your turn.

*Sophia:*

Let's talk a little bit about some examples of what legally authorized institutions might look like. First, college with the royal charter from the colonial period, recognized by the state as authorizing the institution by name – there's that critical thing again, by name – to offer post-secondary education. An example of this would be Dartmouth. A community college, based upon its status, is a public institution.

A non-profit with state constitutional authorization, again, by name, as a post-secondary institution. A non-profit with a state charter in which it is named as a post-secondary institution, or, additionally, in lieu of the state licensure to operate, the institution is authorized to operate in the state based on accreditation by a regional accrediting agency. An individual institution owned by a publically traded corporation, incorporated in a different state from where the school is located, that is licensed to provide educational programs beyond a secondary level in a state where it is located – Explain this a little bit more.

For instance, if you have institution ABC that's located in Virginia, and is owned by XYZ publically traded corporation in Maryland, the XYZ corporation is not a post-secondary school, but owns the Virginia school. The state of Virginia authorizes ABC institution, so it is legally authorized there in Virginia, even though it is owned by a corporation that is located in another state. An individual institution that is owned by a publically traded corporation

established as a business without articles of the corporation specifying that the institution is authorized to offer post-secondary legislation, but the institution is licensed by the state to operate post-secondary education programs.

Next, an individual institution with articles of incorporation as a business that specify the institution is established by name to offer post-secondary education, and the institution is exempt from state licensure to offer post-secondary education programs based on its accreditation by a nationally recognized accrediting agency. These will all be in the Power Point that you will be able to see later. A rabbinical school awarding only a certificate of Talmudic studies that is exempted on the basis of being a religious institution offering only religious programs.

And lastly, a tribal institution located on tribal lands, chartered by a tribal government. Those would all be considered legally authorized. Let's look at some we would not consider to be legally authorized. A publically traded corporation established as a business without the articles of incorporation specifying that it is authorized to offer post-secondary education and the state has no process to license or approve the institution to offer post secondary education.

So remember, as a publically traded corporation, without articles incorporation specifying that it is authorized to offer post-secondary education, the institution must be approved, by name or a license in the state, to offer programs beyond secondary education, including programs leading to a degree. This would be in that little chart. And is not exempt from the state's approval or licensure requirements based on accreditation, years of operation, or other comparable exemption.

So, in this case, it is not legally authorized because it is a business that is not authorized to offer post-secondary education, and it cannot get the state approval or licensing because the state has no process. So it just cannot get there. Now, the state could then choose to do something at a different point, but at that point, it is not.

Another example: a non-profit, without specific authorization to offer post-secondary education, where the state law considers the institution to be authorized based on it being in operation for over 30 years, and issues a certificate of good standing to the institution, naming it as authorized to offer post-secondary education based on its years of operation. Why is this not legally authorized?

This institution has no specific authorization to offer post-secondary education, and it needs this. The 30 years of operation don't matter here and they don't qualify the institution for an exception, because they are not sufficient, because the institution is not recognized as a post-secondary entity. Another example of not legally authorized is a Bible college chartered as a religious institution offering liberal arts and business programs as well as Bible studies.

While it may be exempt from state law, from state licensure requirements, it does not meet the definition of a religious institution, which we went over earlier, exempt from state licensure for federal purposes, because it offers other programs in addition to religious programs. In our last example, we have an institution authorized based solely on a business license and the state considers the institution to be authorized to offer post-secondary education based on regional accreditation.

This institution must have an approval or licensure from the state to offer post-secondary programs. It does not have this, in this case, so it cannot have an exemption based on regional accreditation. Let's just briefly discuss the Dear Colleague letters, so you know that they exist. We've been over them, I think, in the federal update, and as well, a little bit here. We published an 1105 back in March of this year, and these are the implementation of the program integrity regulations, which include Q&A's on state authorization and someone had said the common misrepresentation – the state authorization stuff is there, too.

Then, we also have GEN-11-11, which related to state distance education and state authorization and the timely enforcement and what constitutes a good-faith effort by the institution. We'll expand on this distance education topic a little bit later in the presentation. But just so you have the websites and the information – Fred also briefly touched on the fact that we published an electronic announcement in August, which concerned the two one-year extensions of the effective date for '11, '12, and '13 award years.

He also mentioned that this discussion about this was included in the preamble to October 29, 2010 final regulations and provide that an institution state has until July 1, 2013 to make any needed adjustments for institutions in the state to meet the state authorization requirements. So any electronic announcement – We

discuss the process of what the institution must do to document the extension or extensions.

What it must do, again, is obtain, from the state, an explanation, in writing, of how a one-year extension will permit the state to modify its procedures so that it is able to comply. Then, the written explanation from the state, it can be specific to multiple institutions, specific to the one institution. It doesn't really matter. It just needs to have something in writing. Some acceptable basis for this one-year extension would include a delay in the institution obtaining any necessary authorization or approvals, due to an increase in state workload.

We had that brought up several times. It does apply to the establishing of the complaints process by the state, as was mentioned earlier. Institutions would not – We don't want them to submit their requests for the extension or the documentation of this extensions to us, to the department, but, again, they should have them on file, and, if requested, be able to produce them upon request. In addition, we may request the information why the institution is seeking certification, re-certification, or if a question arises as to their complaints process – complaint program review or audit process. Now, I will turn the conversation over to Fred, who will discuss distance ed.

*Fred:*

All right. Now, for something fun. We're going to talk a little bit about distance ed here. As I'm sure many of you are aware, we got sued over the program integrity regs by the Association of Private Sector Colleges and Universities. The district court ruled in our favor. They sued us, basically, over three issues: misrepresentation, incentive compensation, and state authorization. The district court found for the department and supported our regs in all cases except the one paragraph in state auth about distance ed.

Basically, the court vacated 600.9c – that's where the distance ed was done. We put that in there in the final rule in response to public comment, because the public had commented that we didn't address distance ed. The court ruled that the department should have included distance education in some proposed rule, and sought public comment on it.

Then, since then, what I can point out is all the litigation is under appeal. \_\_\_ is appealing the courts findings for us, and we're appealing the court finding for **Apscue**. I understand our brief was filed yesterday. One of the things to point out here that's really

important, the court ruling doesn't apply to whether institutions need to comply with state laws or regulations regarding distance education.

I can tell you, I spoke at a state conference back in the Spring – they're very much aware of schools now operating in their states. If you're offering distance education, you should be sure to check and determine whether you need to be complying with any requirements within a state. It's not a federal issue, based on the way we stand in the litigation, but it's clearly an institution-state issue that you need to worry about.

I would just advise you to pay attention to that. Some states regulate much more on this than others. About half the states do not regulate at all on distance ed. About half do, and then there are gradations of that regulation. One of the things to note is the court ruling had nothing to do with 668.43b, right? Student consumer information. Those regs -

*[Audio drops from 41:45 to 42:06]*

*Fred:* - students in a state, you need to worry about that. Now then, let's talk a little bit about additional resources. I think this slide is basically like one that was up in the general session. In state authorization, the questions and answers are in there. One thing that's not there – One of our Dear Colleague letters did address a number of Qs and As on distance ed, and we have not posted them on the website yet because of the pending litigation.

But you can go here, and this gives you, as was noted, sort of a topical reference to the Qs and As we did on state authorization. Procedurally, we have some issues around your e-app. An institution should include, in its e-app, re-certification application, the information showing its legal authorization based on these regs or, upon request, during an audit or program review. What that's really saying is you don't really need to go in and update it immediately, you just need to make sure you're in compliance if someone asks you.

It doesn't mean you can't, but I just wanted to point that out. One area that we're sort of having some questions arising, and we're reviewing stuff on, is limited liability companies as entities establishing post-secondary institutions. Your FSA school participation team will be working with an institution that's such an entity to identify any relevant information, cause we've had some questions arise around these.

The website there is where you can find where your school participation team is – you probably know them already, but that's there. One thing I will mention right there, I know you all have questions and stuff like that, and we've developed a work group within the department that's dealing with state authorization issues between OPE and FSA – a joint group. We're trying to address questions as they arise around state authorization. The way to come into that is to come through the school participation team.

Your school participation team can elevate it to that work group. It's a process for us to kind of create a better way of moving questions. I know I have an incredible backlog, and I apologize, of questions from folks and I just can't get to them all. This will be especially important, because I'm retiring December 31<sup>st</sup>. Sophia will still be here, but I'll be gone (*laughter*).

In terms of other resources, questions about state authorizing agencies – the state higher education executive officers organization did a survey of the states and did come up with a kind of directory of state agencies and complaints contacts. However, it's incomplete, and I was hoping it would be a little more than it is. We're going to have to look at that. It only picks up the actual Shio of the state, plus a proprietary school, a for-profit school licensure agency.

It doesn't pick up things like the Cosmetology Board in the state is also licensed as institutions, or the State Department of Transportation licenses a truck driving school – things like that. So in that sense, it's incomplete, but it's one of the best resources out there, which is why I cited it. They took it over from WCET, which is part of the Western Interstate Commission on Higher Ed, which actually really started this collection as a self-reported kind of thing back in the last winter or so. Speaking of that, there are a number of initiatives going on out there.

A lot of this is in relation to distance ed, right here, that are non-departmental initiatives. We're monitoring them, though. Because the state authorization issues have raised a number of questions around how the difference states rely on each other, and whether they can. You already have a couple of pretty strong regional compacts out there, with WICHE and with the Southern Regional Education Board. But there are issues there. The Southern Regional Education Board only deals with public schools, so it leaves out the private side of things, and that's a problem.

We need something more than that. There's a group called the President's Forum that's looking at this as well as the Gates and Lumina Foundations have been involved. Probably what may be one of the more important initiatives is the Council of State Government is looking at coming up with some kind of interstate reciprocity compact. There's a drafting team working on that.

As I said, we're watching it to see if it will meet what we need, and consider it a way of saying institutions are authorized in a state based on such a compact. Okay. With that said, that's the end of our formal part of this session, in terms of – Now, we can open it to questions. It looks like we have mics in the middle of the room.

*Audience:* Hey Fred, this is **Tom Dalton**, I'm at Excelsior College – online distance learning education school. My question is – Could you elaborate a little more on the program participation agreement? Is there a section, in the program participation agreement, where you can update, if you're authorized in states? I wasn't clear on that.

*Fred:* Okay. Let me see if I remember this right. Remember, I'm not an operations person. I think in question 69 that you can stick just general stuff into – that's one part. I know the agreement, the e-app, doesn't quite – It isn't structured yet for this reg. That's in the future. But normally, there's a place you put all sorts of miscellaneous stuff. In my recollection, it's number 69. Am I remembering right?

*Audience:* [Inaudible]

*Audience:* Yeah, there is that, too. But we're going through the process of getting authorized in all 54 entities.

*Fred:* Well, I would advise you, basically, to go talk to your school participation team in the regional office, because they'll give you better advice than I can on that. That's why I listed them. I just wanted – This is more just a tripwire so you're aware of it. They're the folks you should be working with on this, anyway. All right.

*Audience:* Apparently, the other mic wasn't on and I couldn't get it on. I'm Sally with \_\_\_\_\_. You mentioned cosmetology, truck driving, some of those schools that currently are licensed, but it certainly doesn't mention post-secondary in a lot of different states. Now, some states, they are actually licensed by somebody that's post-secondary group.



So I guess my big concern is not – I think a lot of those entities are already working in the states to get something done, but what's going to happen on a re-cert or something if a school submits it – they're not asked for the additional information. They don't supply additional information. At some point, are they going to be determined that they wouldn't have been eligible?

*Fred:* Okay, I think I know what you're talking about. Seems like Washington State – I kind of remember it's one of the exact states. There are some states where the licensure of a cosmetology school is rather vague.

*Audience:* It's done by a state licensing board.

*Fred:* You can't tell whether it's a secondary program or a post-secondary program. That's a problem. First of all, we have two years to fix the problem. Remember.

*Audience:* I think most of those say they're working on fixing it.

*Fred:* Right? Now, they do need to do something to address it. I know, in one state, we looked at it and you could actually make a distinction. It was a New England state – I can't remember the name of it. New Hampshire, I think? But we're going to have to look at some of these things case by case, cause it's going to depend on state law.

But if you can't tell us – If you don't demonstrate it's a license for post-secondary ed, you can't demonstrate that, there is an issue there, and you need to work with the state to get it fixed and to get a letter from the state saying you're working on that for now. Because – That actually could be a question even without these rules in place, which is an interesting thing to have come up.

*Audience:* My big concern is we're going to have schools that are just coming into Title IV that may submit something on an application, and the e-app doesn't ask for the information.

*Fred:* Sally, we'll have to work through the school participation teams on those.

*Audience:* \_\_\_\_ you get eligible and then –

*Fred:* Yeah, cause I want to make sure we get the right answer for everyone. That's a kind of issue we have to treat almost as a special case, and we'll need to look at it. I know it has broader

implications, but you should refer that up through the case team or the participation team, so we can have that documented properly and then get it into our work group.

*Audience:* All right. Okay. Thanks.

*Audience:* You mentioned distance education students from different states attending the online – how about states where we just have faculty presence? An online instructor. Would you need state approval for that as well? Does that constitute a presence in the state?

*Fred:* I hate to say this, but I almost can't hear you. The echo in here. It's –

*Audience:* So if – You mentioned distance education and having students from other states constituting a presence. How about a faculty?

*Fred:* Faculty? Okay, I see where you're headed now. All right. The question arises that different states have different requirements when they do regulate distance ed. I think Texas, my home state, is one that has a thing where if there's a faculty member in the state, you're considered to be there. That's an example. It depends on the state, what those requirements are. There are – Shio did try to document those, building on what WCET did, and there will be some information there about it.

But if that's the case, it's not an issue for us right now, cause we're sort of in limbo, depending on the litigation. But if the state asserted that you needed to be doing something, it might be wise for you to do it. The states are aware, now, of schools operating in their jurisdictions in ways they care about. That's a school state issue right now, not a federal issue.

*Audience:* Hi, I'm in a small school in Boston. We are starting in January an online program for graduate students. So we have no current distance education at all right now. We're going to be starting a program in January, so we've been having meetings for months and months, getting ready. I keep mentioning the state authorization and needing to start that process and I keep getting pushed back that it's in litigation, it's not federally required.

So then, my boss went to our auditor who comes in and do our A-133 audit every year – Cause I went to NASFA this summer, and I felt like they said, "You know, you still have to follow the state authorization requirements." They went to our auditor, and our

auditor came back and was like, “No, it’s all on hold, so you don’t have to do anything right now.” So I wasn’t sure.

*Fred:* All right. There’s two levels to this question, and you’re bringing up – He’s, I think, responding to what federal requirements you have to meet to participate. That doesn’t mean a state may not view you as needing to do something if your program goes into that state. Like Minnesota, which is one of the states that regulates a lot, if you have students in Minnesota, Minnesota’s going to care.

*Audience:* So you’re saying that my auditor doesn’t care about that.

*Fred:* He’s not caring right now because of the litigation, right? But, it doesn’t mean Minnesota won’t care if you have some students there.

*Audience:* Okay, so the school should still care and still be moving forward with state authorization?

*Fred:* I can’t say there’s a federal requirement here, but it would be wise for a school to still pay attention to this.

*Audience:* All right. Okay. Thank you.

*Audience:* I have a question about the re-certification process and the state authorization. We’re a two-year public school. When I submitted my approval information, which was the state law in Tennessee 42 years ago, authorizing the building of the institution and some documents certifying that we were \_\_\_ approved by SACs for the next several years. I keep getting back requests for more information, and I don’t know what else to provide. Can you kind of clue me in?

*Fred:* I’m not sure. I would have to look at the specifics of it, and probably talk to the school participation team about why they’re asking for things. That’s who you’re getting the requests from, right?

*Audience:* Right. I guess it’s the school participation – I guess it – I’m not sure, it’s someone in Washington who’s working on our final approval process.

*Fred:* You’re a public community college, right?

*Audience:* Yes.

*Fred:* I don't think we can answer that right here. We'll have to talk offline or something, cause I have to know more specifics. All right?

*Audience:* Okay. Thank you.

*Audience:* My school's new to distance education, and we're wondering what you do if you have a student who applies and provides a military address. What state do you have to have approval in for military personnel?

*Fred:* Well, for us, it doesn't matter right now, right? I can (*laughter*) jump out of that one, right? But assuming our regs still were enforced, we had a Q and A about that in the Dear Colleague letter we put out. We answered some distance ed questions, and we said you'd be expected to treat that student as being located where their military base is.

*Audience:* And if they're deployed?

*Fred:* If they're deployed, that's another question we'd have to look at. We haven't answered that one yet. There are a whole bunch of these you could go down to, and I know we're going to be issuing a further Dear Colleague letter around some of this. I've been collecting them. It's my last project before I retire. It's one of them. This one, and Credit Hour.

Cause I know these are issues we do need to address more specifically, and I'm not really prepared to say that right now, but I do know we did address if they're on a base, in a state, you may be considered to be in that state. But some of this will depend on state law, too, remember.

*Audience:* Okay, so, for now, there's really no answer then as far as what we need to provide for consumer information?

*Fred:* Yeah. For now, you need to make sure if the state says you need to be doing something, you're doing it. But it's really a school state issue right now.

*Audience:* Okay. Thank you.

*Audience:* I just want to clarify, with the consumer information, cause we have a small distance learning population. So even if we have one student in Washington state, we would need to have the contact information for that student in Washington state. So realistically,

the smartest thing to do, cause our kids are kind of all over the country, would just be to publish as many as we can possibly find or as many as are out there at this point?

*Fred:* I hate – I’m sorry. I’m trying to listen, but it’s very difficult.

*Audience:* So basically, what I’m asking is. So with this, would the smartest thing to do would be to publish as many as the contact information as we can find at this point, instead of looking like – Student A is here, just say, here’s a list of all 50 states.

*Fred:* You could do that as a way to make sure you’ve covered all your bases. That would be fine by us.

*Audience:* But we can’t link to an external site. We’d have to have a list on our internal site of all –

*Fred:* On your site, yes. Not putting it somewhere else. Not just for sending them to somewhere else.

*Audience:* Hi, I’m with a distance education school. I know, a little while ago, we were having some difficulty with some states actually responding and telling us that we’re doing all of the appropriate work that we need to be doing at this juncture. If we’re unable to get the state to respond to us, will the department not necessarily care at this point until things are taken care of? I want to make sure that we’re doing everything that we need to be doing.

*Fred:* I’d do two things, and this is just Fred talking now, all right? Based on what I’ve seen. One is document that you’ve tried to contact them and stuff. Then, talk to your school participation team about it so they’re aware you have been making the effort and you’ve gotten no response. That would cover your bases, I think. But it may be a state that doesn’t regulate. Is it a state that regulates?

*Audience:* Well, we have so many students and so many states, we’re pretty much all over the country. So there are some states that, yes, they’re very good at responding. Then, others that I don’t really think care, so they don’t care to respond to us.

*Fred:* It’s really strange what states regulate and don’t. New York, which, generally, is very regulated – heavy duty regulation state – doesn’t regulate distance ed. California doesn’t. We wouldn’t expect to see anything there. You could do some things that might

make New York react, but generally, I've been told they don't regulate distance.

But I think the best thing you could do is document you're making the effort and the state's not getting back to you. We're going to know, over time, which states really are regulating and don't. You pretty much have a lot of that information already. So the people would only be asking about where there may be authorizations, but we're not asking for that right now.

*Audience:* Right, but I wanted to be sure that in two years, if something does happens, that we have done everything we have tried to do.

*Fred:* Yeah, it's only if you have a physical location in a state, right now, we would ask for anything anyway. But assume the distance ed reg got upheld. That might be my advice, but right now, you don't need to, if it's just distance ed you're doing in the state.

*Audience:* Thank you.

*Audience:* Hi, I'm from a four-year public and we are expanding our distance ed. I just have a couple issues. We're looking at students who are enrolled only in distance ed courses. If they're taking regular courses and distance ed, we don't care what state they're from, right?

*Fred:* Now, are they taking distance ed...

*Audience:* While they're on our campus.

*Fred:* Well, yeah, they're within your state, where your main campus is, right?

*Audience:* So, somebody from Nebraska, which isn't one of the states we've gotten approval from, let's say, they live on campus, in the dorm, and one semester, they take all their courses through distance ed. They're still living –

*Fred:* Okay, and this is the question. And they're back in Nebraska while they're doing this?

*Audience:* No, no.

*Fred:* Oh, they're still on campus doing it? I don't think there would be an issue, but as I said, we're not regulated that right now, pending

the litigation. There are questions like that that I have seen that I know we're going to need to respond to if the regulation is upheld.

*Audience:* Cause what we've done is we've just run some reports to look at the students who are all distance ed and what states they're from, and those are the states we're trying to get the approval on.

*Fred:* Yeah. One of the classic ones – if we were to assume the reg was enforced, one of the classic ones is a school in New Orleans, but their student is taking distant courses from them while they go home to Minnesota for the summer. That raises the issue. Minnesota regulates. Would they be eligible for student aid if the regulation were upheld? That would be a question we would have to look at. Any more questions? Oh, thank you very much.

*[Applause]*