

COMMISSION ON THE REGULATION OF POSTSECONDARY DISTANCE EDUCATION

Frequently Asked Questions about the Commission and its Work

This document is intended to provide answers to frequently asked questions about the Commission and its work. Questions and answers are organized in the following topics:

- I. Background on the Commission
- II. Recommendations
- III. Benefits
- IV. What's Next

I. Background on the Commission

1. How did the idea for the Commission originate?

The Commission was formed in response to the fact that, in 2011, almost seven million students used online technology to access postsecondary courses (a jump of nearly 500,000 students from the previous year) and thirty-two percent of higher education students now take at least one course online.¹ It was convened by Paul Lingenfelter of the State Higher Education Executive Officers (SHEEO) and Peter McPherson of the American Association of Public and Land-Grant Universities (A*P*L*U) and chaired by former U.S. Secretary of Education Richard Riley. The Commission aimed to draft recommendations that can bring coherence to the patchwork system of state laws and regulations of distance education. Replacing this patchwork of conflicting, constantly changing state laws and regulations with a system of interstate reciprocity is the principal motivation for the work of the Commission on Regulation of Postsecondary Distance Education. A full list of commissioners, representing a diverse group of leaders from the full spectrum of stakeholders in postsecondary distance education can be found at the conclusion of this document.

2. Why is the current state of regulation of distance education problematic?

Over the last two decades or more, states have adopted varying approaches to the authorization and regulation of online providers of higher education, with some states requiring institutions to acquire authorization regardless of physical presence in the state and others making no substantive reference to out-of-state providers of distance education at all.² One result is that education providers face a patchwork quilt of individual state regulations with different requirements and varying degrees of complexity and costs. This drains institutional resources and threatens to deprive students of educational opportunities.

3. What was the Commission's timeline and process?

The Commission began work in the summer of 2012 to develop pragmatic and politically feasible recommendations to guide legal and policy action related to the regulation of distance education. To

¹ I. Elaine Allen and Jeff Seaman, *Changing Course: Ten Years of Tracking Online Learning in the U.S.*, Babson Survey Research Group, Pearson, and The Sloan Consortium, Jan. 2013, p. 4.

² Eduventures, "Online Learning Across State Borders: Assessing State Regulation of Out-of-State Schools," available at http://www.accet.org/downloads/program_integrity/state_reg_report_jan11.pdf (Jan. 2011).

work toward solutions, the Commission pursued a consensus-based approach with significant, broad-based stakeholder engagement. Between June 2012 and April 2013, the Commission held three in-person meetings, one remote webinar, and an ongoing process of seeking and providing feedback on the Commission's work from Commissioners and organizations reflective of a vast array of education sectors. Notably, the Commission included individuals with significant expertise and experience regarding the issues addressed, and was comprised of representatives from:

- Public, private, non-profit, and for-profit institutions of higher education,
- State regulators from both higher education- and health and human services departments,
- Accreditors
- National organizations focused on higher education issues, and
- Regional compacts.

Commission staff subsequently engaged with key stakeholders to produce this Report, which represents alignment with the Presidents' Forum/Council of State Government and the Western Interstate Compact on Higher Education recommendations and has been drafted in response to final feedback from Commissioners.

II. Recommendations

4. What does the Commission propose?

The Commission proposes a system of reciprocity whereby states agree to a minimum baseline of oversight and service that aligns to what is currently required through existing state and federal structures. If followed, these recommendations will lead to increased access to higher education opportunities for students, streamline the process of compliance with state regulation, and provide appropriate quality assurance of distance education. The recommendations are structured within the following five topics:

1. Interstate Reciprocity and Physical Presence
2. A Regional Approach for Governing Interstate Reciprocity
3. Accreditation and Institutional Quality
4. Consumer Protection
5. Institutional Financial Responsibility

5. How does the proposed system of interstate reciprocity work?

Under the Commission's plan, the four regional higher education compacts that already exist -- the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE) -- would oversee the implementation of the reciprocity agreements. The three states that do not currently belong to any of the compacts and the District of Columbia would be able to join a compact for the purposes of distance education interstate reciprocity. Additionally, the Commission calls for the implementation of a national coordinating board to assist the compacts and ensure national alignment with the proposed agreement's requirements. David Longanecker, President of WICHE, will lead this early implementation work.

6. If this is not mandatory, how does this really solve the problem?

The voluntary nature of the proposed interstate reciprocity system is necessary given the current state of affairs in distance education. States have a variety of interests and priorities at stake when it comes to regulating distance education, and it is important that each state be able to choose whether

participation in the proposed reciprocity agreement is right for the state, its institutions, and its students. That said, state interest in the recommendations has been very high, and we fully expect a large number of states to move on implementation soon. In fact, 47 states are sending teams to Indianapolis on April 16-17 to discuss the interstate reciprocity system and the Commission's recommendations and start to develop plans for implementation.

7. Why not aim to make this a federal law or regulation?

A core principle of the interstate reciprocity agreement is that it does not create redundant requirements when well established structures and requirements already exist. The Commission's recommendations, therefore, take advantage of the current work of the "triad" of accreditation agencies, state regulators, and the U.S. Department of Education rather than creating a new bureaucracy. Higher education has relied on this triad for decades and leveraging it to respond to new challenges presented by distance education will allow for a more nuanced and responsive system than one that would be created by federal law or regulation alone. It's worth noting here that the U.S. Department of Education has been an observer of the Commission's work throughout the process of developing recommendations, and has supported the collaborative, common sense approach the Commission has pursued.

8. What is "physical presence"? How does the Commission's Report define it?

"Physical presence" refers to the type of institutional activities that constitute a sufficiently robust relationship with the state to warrant a requirement that the institution seek state authorization to operate. The majority of states currently use physical presence as their benchmark for regulating distance education providers, but a wide variation exists between states' definitions. The Commission's Report identifies triggering and non-triggering activities for physical presence, which are summarized in the chart below. As a prerequisite to participation, all states must ensure that their definitions of physical presence align with the definition below.

<p>Activities that Trigger Physical Presence in a State <i>Participating states may require institutions that perform these activities to seek authorization for in-state activities.</i></p>	<p>Activities that <u>Do Not</u> Trigger Physical Presence <i>Participating states may not require institutions that perform only these activities to seek authorization for in-state activities.</i></p>
<ul style="list-style-type: none"> • On-going occupation of physical location for instructional purposes • Maintenance of an administrative office to facilitate instruction 	<ul style="list-style-type: none"> • Offering instruction through pure online format • Advertising • Recruiting (e.g., hosting or attending recruitment fairs) • Contractual agreements • Courses on military installations (limited to active and reserve military personnel, dependents, and civilian employees of the military installation) • Faculty residing in the state • Field trips • Proctored Exams • Operation of server or other electronic service device • Short courses • Courses for which 25 percent or less of class requirements involve instructor and students meeting in a physical location • Experiential learning opportunities (provided certain condition are met, as described above)

9. How would a student actually report fraud, misrepresentation, abuse, or other consumer protection concerns regarding a participating institution?

Students would be able to file a complaint in the state of their choosing, but they would be notified about the default forum for complaints when they register for courses with the distance education provider. One requirement for state participation is that the state agrees to receive and resolve consumer protection complaints filed against institutions that the state authorized for purposes of interstate reciprocity

III. Benefits

10. How will students benefit from the Commission's work?

The Commission Report helps streamline the regulatory structure so that institutions can focus less on compliance and more on educating students. Additionally, students will have increased access to higher education opportunities through distance education than they would have in the current system. Moreover, because students who participate in distance education programs sometimes complete their courses and programs outside the visibility of traditional oversight and monitoring structures, the Commission calls for greater protections against fraud and misrepresentation.

11. How will institutions benefit from the Commission's work?

Institutions will have increased efficiency and clarity in the compliance process afforded by a streamlined structure for expanding educational offerings to students in other states. Moreover, institutions stand to save a significant amount of money. The proposed interstate reciprocity system will involve a reasonable, uniform fee structure for all participating institutions. Participating institutions will pay one annual fee (slated to be much less than the current fees described below to cover qualifying activity for work in all participating states. In contrast, under the current state of affairs, state agencies generally require institutions to pay a fee for authorization to provide distance education courses to students. The current fee structures vary greatly by state (from \$0 to \$10,000+) and may increase if the institution offers multiple programs or degree types. Additional fees include site visits, surety bonds, and renewal fees.³ Cost estimates for institutions to achieve full compliance range from \$76,100 for a public community college to comply with requirements in five states for 257 students to \$5.5 million for a public university system to comply with 49 states.⁴ These estimates do not include the additional expense of staff time which may cost some institutions as much as \$195,000.⁵ State authorization procedures often duplicate those of accrediting agencies creating unnecessary and redundant costs for institutions. For those states where an institution has very few students, the cost of compliance may exceed tuition revenue from that state.

12. How will states benefit from the Commission's work?

In addition to providing for a better system for students and institutions, the Commission's proposals will alleviate the need for states to monitor all institutions offering distance education within their borders. Instead, participating states can focus on their in-state institutions and trust, based on verifiable processes and data, that out-of-state institutions are being monitored by their home state to ensure that they meet the requirements of the reciprocal agreement.

³ WCET, State Authorization - Cost of Compliance Estimates (April 8, 2011), available at <http://wcet.wiche.edu/wcet/docs/state-approval/StateAuthorizationCostsofCompliance04-08-11.pdf>.

⁴ *Id.*

⁵ *Id.*

IV. Next Steps

12. How soon can states, institutions and students start to benefit from this system?

The four regional compacts are preparing to be able to admit states into the interstate reciprocity system now, and plan to start accepting states in fall 2013 or winter 2014. Institutions may apply to their home states for participation once that state has been approved by its regional compact.

In the meantime, interested institutions may start lobbying their states to participate and states may start preparing for applying for admission. To help guide states, the Commission Report identifies five core conditions for state participation:

1. State law includes a reasonable definition of physical presence for purposes of interstate reciprocity that does not materially deviate from the definition offered in the Commission Report.
2. State law allows participation in the reciprocity agreement.
3. The state is prepared to receive applications from home state institutions for participation in the reciprocity agreement and authorize institutions on an annual basis.
4. A state agency (or multiple agencies) has been designated to receive, investigate, and resolve student complaints regarding institutions authorized under the agreement.
5. The state has eliminated fees, requirements for a refund policy unique to that state, requirements for a set curriculum for general education requirements, a mandatory number of hours for a degree or certificate, and/or other such requirements for out-of-state institutions that do not have physical presence in their borders and are participating in the interstate reciprocity agreement.

13. Who are the Commissioners?

Meg Benke, Acting President, State University of New York Empire State College

Hon. James Geringer, Chair, Western Governors University Board of Trustees; Director of Policy and Public Sector Strategies, ESRI; former Governor of Wyoming

Hon. Joseph Garcia, Lieutenant Governor of Colorado

Rufus Glasper, Chancellor, the Maricopa County Community Colleges

Terry Hartle, Senior Vice President, Division of Government and Public Affairs, American Council on Education

Marshall A. Hill, Executive Director, Nebraska Coordinating Commission for Postsecondary Education

Arthur Kirk, President, Saint Leo University

Paul Lingenfelter, President, State Higher Education Executive Officers Association

Sylvia Manning, President, Higher Learning Commission of the North Central Association

M. Peter McPherson, President, Association of Public and Land-grant Universities

Bobby Moser, Chair, American Distance Education Consortium Board of Directors; former Dean, the College of Food, Agricultural and Environmental Sciences, The Ohio State University

Hon. Tad Perry, former Representative, South Dakota House of Representatives; former Chief Executive Officer, South Dakota Board of Regents

George Peterson, Executive Director emeritus, Accreditation Board for Engineering and Technology, ABET

Michael Plater, President, Strayer University

Pamela Quinn, Provost, LeCroy Center, Dallas Community College District

James Petro, former Chancellor, Ohio Board of Regents

Hon. Richard Riley, Senior Partner, EducationCounsel LLC; former U.S. Secretary of Education; former Governor of South Carolina

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George Ross, President, Central Michigan University

Paul Shiffman, Assistant Vice President for Strategic and Governmental Relations and Executive Director
of the Presidents' Forum, Excelsior College

Ronald Taylor, Co-Founder and retired Chief Executive Officer, DeVry Inc.

Belle Wheelan, President, Southern Association of Colleges and Schools Commission on Colleges

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