

State Authorization and Non-Credit Courses and Programs

This paper provides information on how state authorization currently addresses non-credit courses and programs and how an institution might want to proceed with regard to state authorization. The basic characteristics of non-credit courses are that they are not graded, not recorded in a transcript, receive no academic credit, cannot be transferred into a degree program, and cannot be automatically converted to credit at any later date. In some cases students taking non-credit courses and programs can earn continuing education units, certification, information to sit for a certification exam, or other evidence of completion to meet personal or professional requirements.

Students taking non-credit courses or programs do so for personal or professional interest and in most instances are charged a fee for the course or program. Fees or tuition charged for non-credit courses or programs may be substantially less than the institution's normal tuition, but not always. This white paper provides information on how state authorization currently addresses non-credit courses and programs and how an institution might want to proceed with regard to non-credit courses and programs in the light of state authorization.

What if a state's authorization regulations don't seem to make a definitive distinction between non-credit and credit?

The best advice is to contact the state agency directly and talk with them about what courses and programs you are offering in their state.

Federal Versus State Regulations

The Federal Distance Education regulation (34 C.F.R. § 600.9(c)1) issued in December of 2016 only regulates credit bearing courses and programs. However, several individual states have regulations that do and will continue to regulate non-credit courses and programs. The majority of states that claim jurisdiction over at least some non-credit courses and programs require some level of "physical presence" to trigger the need for authorization for non-credit courses and programs. The most common physical presence triggers are: local address/site, local advertising, faculty, externships, and recruiting activities (usually on-ground).

If non-credit courses and programs receive no academic credit, why do institutions need to worry about state authorization?

The short answer is because some states have authorization regulations in which institutions have to get approval or obtain an exemption even for non-credit activities. For example, seven states require even exclusively online non-credit courses and programs must be authorized (Iowa, Michigan, Nebraska, Oklahoma, Texas, Wisconsin, and Wyoming). Furthermore, four states require exclusively online courses and programs to obtain an exemption even for non-credit/degree programs and courses (Alaska, Oregon, Illinois, and Utah).



What is the potential liability for a university that offers non-credit courses and programs without state authorization?

Since the Federal Distance Education regulation does not have oversight on non-credit courses and programs there is no federal penalty at this time. It is unclear what the Department would do if it was found that programs ineligible for financial aid such as non-credit ones were out of compliance, but non-credit programs do not appear to be the main focus of these regulations.

State regulations predated federal regulation 600.9(c) and are unaffected by the rulings on federal regulation and are still in force. Therefore, states still expect institutions to be in compliance before an institution serves the first student in their state. Penalties vary by state but may include anything from a letter demanding that the institution obtain authorization or a cease and desist letter blocking new enrollments from the regulating office to legal action from the state Attorney General's office. Penalties can include fines or even a mandated teach-out. Before taking these severe actions, most states would prefer to work with offending institutions to bring them into compliance and become authorized (although this is not always the case).

If an institution offers NO Federal financial aid how does that change the university's liability?

Even if an institution is not concerned with the loss of its ability to offer Title IV federal financial aid funds to its students, there remains the potential disservice to students who may be unable to be licensed in a state because their non-credit programs were never authorized. States also have the authority to require that institutions refund affected students.

If an institution is part of SARA, does that cover non-credit courses and programs?

Yes, if an institution is participating in the State Authorization Reciprocity Agreement (SARA) then the for-credit and non-credit activities in SARA states are covered by the agreement.

What About MOOCs?

Massive Open Online Courses (MOOC) are typically free and non-credit. As MOOCs become eligible for credit and/or the institutions offering MOOCs begin charging students to enroll, those institutions may need to seek authorization in several states. Remember authorization responsibility lies with individual institutions and usually not with MOOC providers, such as Coursera or Udacity. It is important to remember that non-MOOC activities by an institution (i.e., targeted advertising, requiring local proctored exams, or having a local employee in another state) could trigger the need to be authorized in that state. States expect institutions to follow their laws regarding serving students within their boundaries.

For MOOCs: The authorization responsibility lies with the individual institutions and usually not with the MOOC provider!

Summary

With the shift toward evaluating prior learning, even that which was originally considered "non-credit", and awarding credit for same, institutions may need to evaluate their "non-credit" programs as possibly requiring the same level of authorization as their traditional "for credit" programs. Until more clarity is achieved on differentiating state authorization for credit and non-credit, institutions should err on the side of caution and review

all regulations and rules regarding state authorization in states where an institution is delivering non- credit courses and programs; in the event of ambiguity the best course of action is to contact the state directly.



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