**Updated version by Sara Appel and Cheryl Dowd, February 2021**

Talking Points -

# State Authorization and Military Students

## Introduction

Ever since the U.S. Department of Education issued the original 2010 federal state authorization regulation for distance education, which tied institutional compliance to state laws and regulations with participate in Title IV, HEA programs, many institutions have taken a closer look at the relevant laws in states where they operate to determine if they are in compliance with those laws. Note that after an unpredictable history of revisions[1], the currently effective Federal Regulation for State Authorization for Distance Education became effective on July 1, 2020.[2] However, state laws have been continuously effective during that ten-year unpredictable history of the federal regulation.

Sorting through all of the variables that impact whether an institution needs to obtain state institutional approval in a state is daunting. After figuring out what activities your institution is doing in each state (facilities, student location for online learning or experiential learning, faculty location, recruiting, advertising, etc.), the next step is to figure out what that means in each state in terms of the state institutional approval requirements.

One of the generalizations that have become "common knowledge" in the field is that if the institution confines its activities to military bases in a state, it is not subject to the jurisdiction of that state. Unfortunately, like most generalizations about state regulation of distance education, this "fact" is a myth.

> **Myth: My institution does not need to obtain state institutional approval in states where we only enroll or recruit students on military bases.**
>
> **Fact: Most states do not distinguish between enrolling or recruiting students on military bases versus enrolling or recruiting other students residing in a state.**

The truth is, whether an institution must obtain institutional approval in a state to enroll military students or recruit on a military base is a question of state law and will vary from state to state. Questions have been asked about an exemption if the U.S Military installation is on a federal enclave. There is long standing federal policy that provides that states have concurrent jurisdiction on all federal enclaves (i.e., state laws are also applicable).[3] Therefore, state laws and regulations for oversight or exemption are applicable on a federal enclave.

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[1] https://wcetsan.wiche.edu/resources/history; History

[2] https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=9b0be01839ad274bc33fe014604ea2de&rgn=div8&view=text&node=34:3.1.3.1.1.1.23.9&idno=34;34 CFR 600.9(c).

[3] https://publiclandjurisdiction.com/wp-content/uploads/2019/10/1956-Part-1-Jurisdiction-over-Federal-areas-within-the-States.pdf

Currently, only about a dozen states appear through state laws and regulations or through the state higher education agency guidance to exempt institutions operating exclusively on military bases. An example of state exemptions through state law or regulation includes Georgia that specifically identifies in its regulations, " Nonpublic postsecondary educational institutions conducting postsecondary activity on the premises of military installations located in this state which are solely for military personnel stationed on active duty at such military installations, their dependents, or Department of Defense employees and other civilian employees of that installation;"[4] Another state with a specific exemption includes Maryland where state regulations indicate the following: "the requirements for a Certificate of Approval do not apply to an out-of-state institution offering a course or a program on a military installation if:

(1) The recruitment and enrollment of students is limited to active-duty military personnel, dependents of active-duty military personnel, or civilians employed at the installation; "[5]

In some states, while no state law or regulation is available on point, there has been guidance from the higher education agency in a few states to interpret that the oversight does not extend to activity on a military installation.

The majority of states and territories do not provide a specific exemption for activities confined to a military base. Thus, the question of whether an institution must obtain state institutional approval in those states does not depend on whether its activities are confined to a military base. Instead, the analysis will be the same as if enrollment is open to all state residents – it will depend on the activities the institution conducts in the state.

Institutions may begin their research of state laws and regulations for state institutional approval by review of the state surveys found in The State Authorization Guide.[6]

## Military Students Move Around the Country – What Does That Mean for State Authorization?

What should an institution do if its military students are transferred to another state? This is a common occurrence for military students. Does that mean the institution needs to obtain state institutional approval in the student's new state every time he or she is transferred? The answer, as it usually is for state authorization questions, is "it depends." Most states will not make an exception for military students who move into their state on military orders – just as they would not make an exception for a civilian student who moved for other reasons. Institutions must comply with the new state's laws and regulations, if any. Institutions must track the movement of military students to the extent possible. It is generally considered best practice to determine where the student plans to be located every term for all students – including military students.

## What About State of Residence?

There has been confusion over the definition of "resident of a state" in terms of military students because of the agreement between states that allows military personnel to maintain their official residency (voting, paying taxes, car registration, driver's license, etc.). However, for the purposes of state institutional approval, where the student is actually located (not their state of residence) is the important factor.

Institutions are subject to the state laws and regulations of the state in which their activities take place or students are located. The student's state of official residence is not relevant for the purpose of state institutional approval.

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[4] https://gnpec.georgia.gov/ss-20-3-2503-educational-institutions-exempted-application-part; Georgia code section 20-3-250-.3

[5] https://mhec.maryland.gov/institutions_training/Documents/acadaff/acadproginstitapprovals/COMAR_CH_01_Web.PDF; Code of Maryland Regulations COMAR 13B.02.01.04 p.8.

[6] https://nc-sara.org/guide/state-authorization-guide; The State Authorization Guide

The institution must comply with the state laws and regulations where the military student is located. Additionally, if a student moves to another state, the institution should be in compliance with that state's laws and regulations prior to serving that student.

## What about SARA?

SARA (The State Authorization Reciprocity Agreements) is a voluntary, regional approach to state oversight of postsecondary distance education. Reciprocity through SARA is a compliance alternative for institutions rather than seeking state by state institutional approval for activities that occur in a state other than where the institution is located. Distance education related activities, as described in the SARA Manual, that are provided interstate by a SARA participating institution to active and reserve military personnel, their dependents, and civilian employees of the installation located on a U.S. military facility or vessel in another SARA member state are subject to SARA policy.[7] This means that the institution is subject to a single set of requirements for institutional approval to offer the specified activities.

## Military Students are Sometimes Posted Outside the United States – What Does That Mean for State Authorization?

For purposes of compliance to participate in Title IV, HEA Programs, out-of-country military student location was specifically addressed in a 2012 "Dear Colleague" letter from the Department of Education[8]. Question 13 of the FAQ's of this "Dear Colleague" letter indicated the following: "a student who is taking distance education and is in the military, the contact information for the institution's main location is considered sufficient contact information when the student is given an assignment outside of the United States."[9]

However, compliance for purposes of Title IV, HEA programs does not mean that the institution is in compliance with the country itself where the student is located. This is a complicated topic area. Generally speaking, military students located outside of the United States may be subject to the laws of the country for which they are located. Distance Education may be regulated in some countries. Institutions should understand the many nuances of tax laws and institution oversight when the institution wishes to provide online courses to students located outside of the United States. SARA does not address authorization outside of the United States as the reciprocity agreement is an agreement among states.

Institutions often believe that a Status of Forces Agreement (SOFA) means that the institutions may have blanket approval to offer online courses to students at an out of country military facility. A SOFA is an agreement between a host country and the foreign nation that may have military forces in that country. The agreement can vary per country to be for a specific activity or purpose or for more broad purposes.[10] An institution may not simply consider that online education provided by a postsecondary institution in the United States is approved by a Status of Forces Agreement. Institutions must confirm any possible applicability by a SOFA for postsecondary education generally and institution activities specifically.

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[7] https://nc-sara.org/resources/guides; Manuals and Handbooks

[8] https://cdn.ymaws.com/www.ncher.us/resource/collection/9243F7D2-0FA5-4FE4-AF49-68FBF3013D3F/GEN-12-13.pdf ; IFAP- Dear Colleague Letter GEN-12-13, 2012

[9] https://cdn.ymaws.com/www.ncher.us/resource/collection/9243F7D2-0FA5-4FE4-AF49-68FBF3013D3F/GEN1213Attach.pdf ; IFAP Dear Colleague Letter GEN-12-13 attachment, 2012

[10] https://fas.org/sgp/crs/natsec/RL34531.pdf ; Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?

## Military Education Benefits

There are numerous educational benefits available to military-connected students. The two most popular are the Post-9/11 GI Bill® (Chapter 33)[11] available through the Department of Veterans Affairs and the Department of Defense's Tuition Assistance Program.

The Post-9/11 GI Bill®(Chapter 33)[12] helps military-connected students pay for postsecondary education, apprenticeships or job training if they, or a member of their family, served on active duty. Payments are made to both the recipient and the institution (if there is a tuition cost associated with the training) from the Department of Veterans Affairs. Eligibility to use the Post-9/11 GI Bill® military-connected students must have at least one of the following.

- Served at least 90 days on active duty (either all at once or with breaks in service) on or after September 11, 2001, or
- Received a Purple Heart on or after September 11, 2001, and were honorably discharged after any amount of service, or
- Served for at least 30 continuous days (all at once, without a break in service) on or after September 11, 2001, and were honorably discharged with a service-connected disability, and/or
- Are a family member listed as a dependent in the Defense Enrollment Eligibility Reporting System using benefits transferred by a qualifying veteran or service member.

The Department of Defense's (DoD) Tuition Assistance (TA)[13] is a program that active duty members, National Guard, and some mobilized Selected Reservists can use to pursue a postsecondary degree through the master's level. Service members must go through their respective branch in order to apply for the benefit. Each branch has a time-in-service obligation before TA will be approved for use as well as an application process per term to complete. Payments, in whole or part, are made by the branch of service to the educational institution up to the maximum amount per federal fiscal year. For example, the Army will pay up to $4000 per fiscal year or $250 per semester hour on behalf of the service member to an educational institution that has an approved DOD MOU on file.

The difference between the Post-9/11 GI Bill® (Chapter 33) and TA is that the Post-9/11 GI Bill® (Chapter 33) can be utilized any time once the benefit is available. Service member can use the benefit while on active duty or after they discharge from the military. Tuition Assistance can only be used while actively serving/drilling and cannot be used once military-connected students have retired or separated from the service. Although DoD publications recommend using the Post 9/11 GI Bill® to pay for education costs that TA does not cover, however, educational institutions suggest that the service member look at the highest level of education that the service wishes to attain before deciding to use their Post 9/11 for undergraduate work. Service members with educational goals of Graduate or Doctoral level education, such as a lawyer, dentist, or doctor, should save their Post 9/11 for that higher level of education so that they do not have to take out loans to complete their educational goals. Using Post 9/11 for higher levels of education helps decrease the financial burden on the student in the long run.

Postsecondary institutions that receive federal funding for military-connected students' educational benefit programs must adhere to strict guidelines and regulations. On April, 27, 2012, former President Barack Obama signed the Executive Order -- Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans,

[11] In 2017, the Harry W. Colmery Veterans Educational Assistance Act, also referred to as the Forever GI Bill® was signed into law (Public Law No: 115-48) amending the GI Bill® which improved benefits to veterans, service members, dependents, and survivors.
[12] https://www.va.gov/education/
[13] https://www.militaryonesource.mil/education-employment/for-service-members/preparing-for-higher-education/how-to-use-the-military-tuition-assistance-program/

Spouses, and Other Family Members.[14] The Principles of Excellence (POE) requires colleges and universities that receive federal funding through programs such as the Post-9/11 GI Bill® to follow certain guidelines. They must

- Provide a written personal summary of the total cost of an educational program, including:
  - Costs covered by benefits.
  - Financial aid for which students may qualify.
  - Expected student-loan debt after graduation.
  - Additional information to assist students when comparing aid packages offered by different institutions.
- Give students an educational plan with a timeline showing how and when they can fulfill everything required for graduation.
- Assign a point of contact who will provide ongoing academic and financial advice (including access to disability counseling).
- Allow for military-connected students to be gone for both long and short periods of time to complete required service obligations that must be fulfilled for active-duty service members and Reservists.
- Ensure all new and/or current programs are accredited and approved before enrolling students.
- Make sure institutional refund policies follow Title IV rules.
- End deceptive and aggressive methods of enrollment.

On July 7, 2014, the DoD published[15] an enhanced MOU[16] with educational institutions which increased protections to military-connected students and their families. Enrichments included additional regulations to strengthen existing procedures for access to military installations by educational institutions and for institutions to follow all Department of Education "program integrity issues, including State authorization." DoD policy requires educational institutions that wish to participate in the DoD TA must sign and submit the MOU conveying the commitments and agreements between the educational institution and DoD prior to an educational institution receiving funds from a service's TA program.

If questions arise about the Post-9/11 GI Bill®, TA, or all the other VA educational benefits available please check with your institution's School Certifying Official(s) (SCOs). The SCO is a representative who is authorized to submit enrollment certification to the VA for VA education benefits and probably can answer any related questions.

## Complaints[17]

A military-connected student who receives military related federal educational benefit(s) and have found that their institution failed to follow all, or part of the POE should submit their complaint through the VA GI Bill Feedback Tool[18]. The VA reviews complaints related to the following:

- Accreditation
- Change in Degree Plan/Requirements
- Financial Issues (e.g., Tuition/Fee charges)[19]
- Grade Policy
- Post-Graduation Job Opportunities
- Quality of Education
- Recruiting/Marketing Practices

[14] The White House. Executive Order -- Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members (2012). Retrieved from: https://obamawhitehouse.archives.gov/the-pressoffice/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti.

[15] https://www.federalregister.gov/documents/2014/05/15/2014-11044/voluntary-education-programs

[16] https://www.dodmou.com/

[17] The use of "service member" in this section not only refers to all service members but includes military-connected students as related to postsecondary education.

[18] https://www.benefits.va.gov/gibill/feedback.asp

[19] Financial issues do not include the amount of education benefits the service member is eligible for but refers to what the school may be charging erroneously (E.g., charging the service member more than they do non-service members, etc.)

Refund Issues[20]

- Release of transcripts
- Student Loans
- Transfer of Credits.
- Other

Submission Process

1. Complaint submission: Service member submits a complaint about an issue with a school or employer. The student will receive status updates via the email address provided, if one was utilized to submit the complaint.
2. VA reviews and forwards to school/employer: Complaints will be sent to the service member's school or employer for their evaluation and to provide a response to the complaint. If the VA determines another government agency is better suited to assist, they will forward the complaint to them and provide the service member an update. Complaints presented anonymously will not be sent to the school or employer for them to prepare a response but submitted for the record to the Federal Trade Commission's Consumer Sentinel Network[21].
3. Response from school/employer: After review of the complaint, they will communicate with the service member, as needed, and prepare a response to the complaint then send it back to the VA.
4. Response review: The VA will provide the service member with the response of the school/employer. The VA follows-up with the service member to inquire if the response received is satisfactory for tracking purposes only.
5. Data Collection by VA: Complaint data is shared with state and federal law enforcement agencies, as necessary. Complaints inform them about practices that may pose risks to service members. If additional information is needed, someone from the appropriate agency will contact the service member.

Visit the Post-9/11 GI Bill® Frequently Asked Questions page[22] for additional information.

## Summary

State authorization creates a number of issues for institutions enrolling military students into distance education programs. A few summary points:

- Most states do not differentiate between military and non-military students.
- Know what your institution is doing and where! The determination on whether an institution needs to obtain institutional approval remains on the institution's activities, not the type of students they recruit or enroll.
- Institutional approval may be achieved by reciprocity for distance education offerings as directed in the SARA Manual by SARA participating institutions in SARA members states.
- Military students located outside of the United States may be subject to the laws of the country for which they are located.
- The Department of Defense expects institutions receiving TA funding to be in compliance with all state laws including state authorization as specified through signing the MOU.
- If you have questions regarding the military-connected student, check with your institution's School Certifying Official(s) (SCOs).

[20] Refund Issues refers to ensuring that institutions' refund policies follow the Title IV rules that provides guidance on federal student financial aid.
[21] The Consumer Sentinel is a unique investigative cyber tool that gives its member agencies access to millions of complaint reports.
[22] https://gibill.custhelp.va.gov/app/answers/list

# Acknowledgements

The authors of this updated document are grateful to Marianne Boeke, Jeannie Yockey-Fine, and Matt Johnson for their work on the prior versions of this guidance.

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*Note: The information presented is offered as considerations when an institution wishes to develop a process to manage out-of-state activity compliance when supporting military affiliated students. The information should not be considered legal advice. Legal questions should be directed to legal counsel.*

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