
The States of Online Regulation

January 21, 2011

Online colleges looking to expand their national footprints might have to gird themselves for a regulatory beating from the Sun Belt. And they might get chilly receptions in certain parts of the Upper Midwest, too.

Those regions are home to a number of the least hospitable regulatory environments for online interlopers looking to enroll students from states where they do not have a physical presence, according to a new report from the consulting firm Eduventures. The report, scheduled to be released today, examined the regulatory standards and practices in every U.S. state and the District of Columbia.

It found that Alabama, Arkansas, Louisiana, New Mexico, Indiana, Illinois, Minnesota, Wisconsin, and Wyoming are among the least permissive states as far as requiring online institutions to acquire unique licenses to “operate” inside their borders.

Online education seems to be winning the battle against the initial skepticism about its legitimacy. Online enrollments have grown at nine times the rate of classroom-based education since 2002, [according to the Sloan Consortium](#) (with major buy-in in the public sector). But deep-seated opinions — bolstered by the occasional unmasking of a fly-by-night diploma mill — are not the only obstacles left over from many centuries of campus-bound higher education. As higher education has evolved, state-by-state regulatory standards have remained “inconsistent, complex, and behind [the] online boom,” says the Eduventures report.

This finding is not new to online institutions and the tech companies that have a stake in their unimpeded growth; the President’s Forum, a group of online education leaders, convenes annually to [lament the archaic regulatory environment](#) and [talk about how to fix it](#). In October, the U.S. Department of Education formally recused itself from handing down any federal standard clarifying what it means for an online college to “operate” in a state, in essence telling state regulators and online colleges to work it out among themselves — with the stipulation that institutions found to be out of compliance with state rules might be barred from taking federal student aid.

Richard Garrett, managing director of Eduventures, told *Inside Higher Ed* that the most likely outcome of this new federal mandate — which takes effect in July — is that states will probably take the occasion to bolster their existing positions on what it means for an online college to “operate” inside their borders.

Happily for colleges looking to expand their online footprint without having to jump through regulatory hoops at every turn, the majority of states appear to fall on the more permissive end of the spectrum. In its report, Eduventures defines four categories of regulatory strictness:

- **“Exemption”**: The state does not require online colleges to be licensed by state regulators.
- **“Physical Presence”**: State license is required if the college runs a branch campus or center, in-person recruitment or “some other instructional/marketing activity.” (This does not include employing instructors who live in the state but teach online.)
- **“Online-Ambiguous”**: The state’s regulatory language is not clear on whether online-only programs must be licensed, so requirement varies according to interpretations.
- **“Online-Explicit”**: The state’s regulatory language clearly implies that online colleges must be licensed in order to grant online degrees to its residents.

While the category that exempts online colleges from adhering to the same regulations as place-bound brick-and-mortar institutions includes the fewest states (six), the two least restrictive categories — “exemption” and “physical presence” — encompass a full two-thirds (34 states) of the country.

That means that while there is no real indication that the states that have strict rules will change any time soon, the majority of U.S. states are already comparatively lax, only requiring licensure if an online college also has buildings and/or recruiters in the area (and

could therefore poach potential students from other licensed, in-state institutions).

Alan Contreras, administrator of the Oregon office of degree authorization (which uses a version of the “physical presence” standard), told *Inside Higher Ed* that while for-profit institutions are the ones most affected by the variation across state regulatory environments, they are also the most accustomed to it, since they have been doing it the longest. The institutions that are most vulnerable to running afoul of state regulators are nonprofit institutions that are just beginning to expand their online footprints and might not fully appreciate the elliptical topography of the nation’s regulatory landscape. As of fall 2010, more than 70 percent of public universities say online education is “critical to [their] long-term strategy,” [according to the Sloan Consortium](#).

Both Contreras and Garrett touted the potential advantages of regional alliances among states that might ease the burden on online colleges. Contreras says he is currently part of a Presidents’ Forum working group that is exploring a “reciprocity” model among states, where groups of states would reach a consensus on licensure standards, then permit online colleges that are licensed by other members of the consortium to operate inside their own borders.

The most lenient states — those falling in the “exemption” category — are Alaska, California, Colorado, Delaware, Hawaii, and Utah.

The states in the “physical presence” category are Connecticut, Iowa, Idaho, Kansas, Massachusetts, Maryland, Maine, Michigan, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, Vermont, Washington, West Virginia, and the District of Columbia.

Those in the “online-ambiguous” category are Arizona, Florida, Georgia, Missouri, New York, Tennessee, and Texas.

For the latest technology news and opinion from Inside Higher Ed, [follow @IHEtech on Twitter](#).

— **Steve Kolowich**