

Division of Government & Public Affairs

Talking Points in Support of H.R. 2117—Repeal of Federal Credit Hour and State Authorization Regulations

STATE AUTHORIZATION

The Department of Education (ED) has issued new regulations that give state bureaucrats more authority and control over colleges and universities. While these rules subject all colleges and universities, including private institutions, to more federally mandated oversight, they will have an especially big impact on colleges and universities that offer distance education.

Under current regulations, schools are required by federal law to be “authorized” (or permitted to operate) in any state where they have a “physical presence.” Under the new regulations, institutions will need state authorization to operate in any state where a student resides. So an online education program with even one student in a state will be required to seek approval.

We oppose this regulation for a number of reasons, including:

- It is often time consuming and costly to get state approval. Since the regulation has been announced, several states have raised the price of getting state approval because they see this as a revenue generating activity—something that will directly increase the cost of the education.
- There is no list of the requirements imposed by states. In some states, institutions have provided incomplete or inconsistent information regarding state requirements. Institutions will have no way to know what states require, who to petition for approval and may have no assurance that they are in compliance.
- The new mandate requires states to have a “complaint procedure” for students. (Accreditors and institutions are already required to have and to advertise a complaint process.) This will give state bureaucrats authority to meddle in academic decisions involving students, including curricular decisions. From the state vantage point, it is an unfunded mandate from the federal government to create and staff a compliance initiative.
- If there are no state requirements, institutions are required to demonstrate that no state approval is required—a requirement (proving a negative) that is almost impossible to satisfy.
- State officials report that they are fielding thousands of calls and request for information and acknowledge that they will be unable to respond to all inquiries by July 1 when the regulation takes effect.
- ED imposed this regulation without any change in law that made it necessary and approved it with no public comment.
- Because of the regulations, institutions may be forced to discontinue distance education programs in certain states, limiting student access to higher education.

CREDIT HOUR

The Department of Education (ED) has published regulations that, for the first time, create a federal definition of “credit hour” and require accreditors to ensure institutional policies and the assignment of academic credit in individual courses meet the federal standard. This is a huge expansion of federal authority over the academic affairs of colleges and universities and is being done entirely through regulations—there is no new statutory requirement that mandates this action. It is quite simply, a dramatic increase in federal regulation of postsecondary institutions.

We oppose this regulation for multiple reasons:

- A credit hour is the most basic building block of almost every academic program, and it is fundamentally linked to the credentials that institutions confer.
- This is not a matter for regulatory action. Federal law explicitly prohibits ED from interfering in academic programs or curricula. If that restriction is to be changed, it should be in response to new legislation, not a power grab by the department.
- If a federal definition of credit hour is established by regulation, it will open the door to perpetual federal interference in core academic decisions and will substitute judgments made by federal bureaucrats for those made by academic experts.
- A federal definition will become a national definition and will dramatically reduce the ability of campuses to design academic programs related to their individual purpose and mission.
- Accrediting agencies are required to have credit hour policies and to ensure all institutions of higher education follow those policies. What they do NOT have is a “one size fits all, Washington knows best” policy. Such a policy is neither desirable nor necessary.
- This is, as Rep. Rob Andrews (D-NJ) noted in a House Education and the Workforce hearing on this regulation, “a solution in search of a problem.” ED’s Office of Inspector General has identified only one concrete example of a problem involving inappropriate assignment of credit. In that case, it was the accreditors who spotted the problem and required it to be corrected—the Inspector General only learned of it from reviewing the accreditors’ files.