

Online Learning v. State Regulation
*Navigating New Federal Rules on Distance
Learning Across State Lines*

Member Roundtable

**Continuing & Professional Education Learning
Collaborative**

Online Higher Education Learning Collaborative

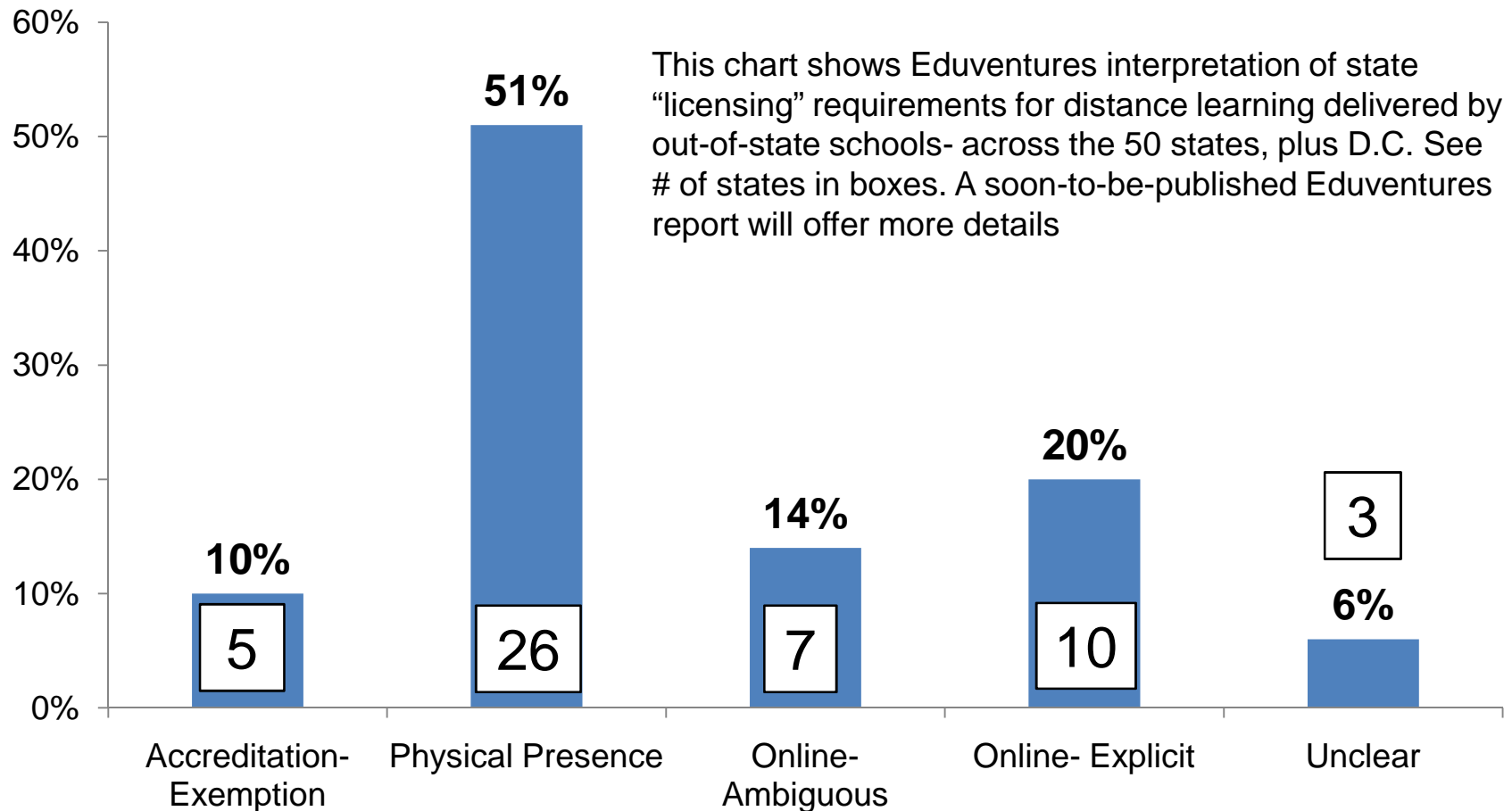
1st December 2010

Final “Program Integrity” Rules- reference to state regulation and distance learning

On 28th October 2010, the federal Department of Education released final “Program Integrity” rules following negotiated rulemaking. An addition to the draft language was the following:

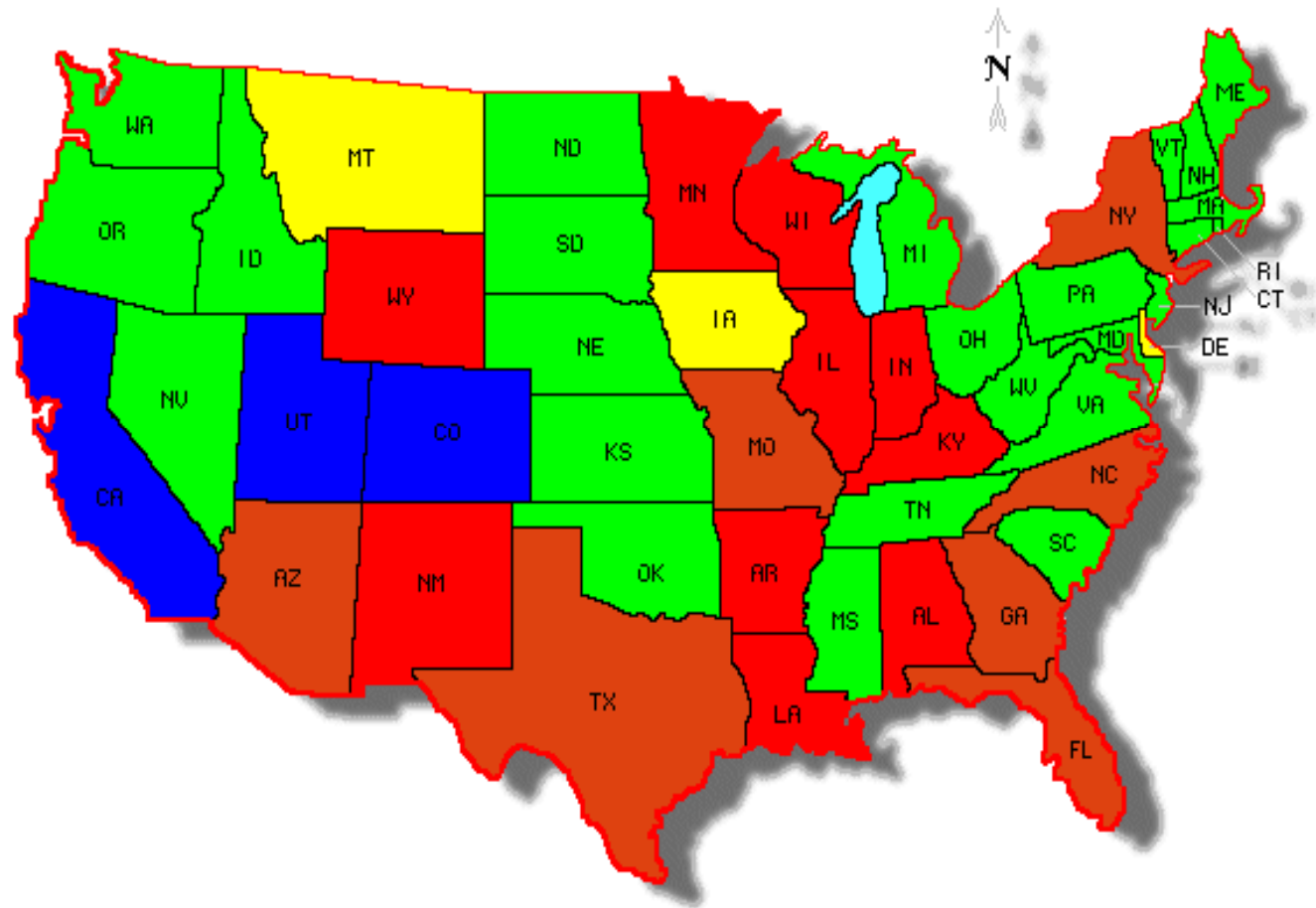
- *“If an institution is offering postsecondary education through distance or correspondence education in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document upon request from the Department that it has such State approval.”* In line with the regulations as a whole, this will go into force July 1, 2011
- The meaning and significance of this statement for universities and colleges, nonprofit and for-profit, that offer distance learning across state lines, is the focus of today’s Roundtable

Categorizing State Regulation- majority of states restricted to physical presence; 20% explicit coverage of online; ambiguity elsewhere



Summary of State Regulation of Out-of-State Online Higher Education

- - Exemptions
- - Physical Presence
- - Online-Ambiguous
- - Online-Explicit
- - Unclear



N.B. Summary based on Eduventures interpretation. The situation in each state, and for each school, should be considered on a case-by-case basis

Key Takeaways

- **Jurisdiction**- The majority of states do not have regulation that explicitly or implicitly takes into account the contemporary scale and reach of online higher education across state borders. Ten states (AL, AR, IL, IN, KY, LA, MN, NM, WI, and WY) explicitly assert jurisdiction over “pure” online, and only MD, PA, RI and VA explicitly disavow jurisdiction
 - Most state regulation of out-of-state higher education assumes forms of physical presence, but aside from branch campuses and in-person recruitment other forms of physical presence are rarely spelt out. Only RI bars for-profits from offering degrees
 - Few states explicitly exempt wholly online delivery, but equally there is little evidence that many states wish to regulate such delivery when no conventional physical presence is involved
- **Coverage**- At present, the scale of cross-border online higher education far exceeds out-of-state licensing volume; and there is no consistent pattern of licensing by state, school type or school activity. Licensing is a revenue source for states, but also raises capacity issues around awareness and enforcement
- Aside from a sub-section of wholly online schools, almost all cross-border online higher education operates without regard to any asserted or implied jurisdiction at state level
 - Where online-related licensing does exist, forms of physical presence that complement wholly online delivery, whether recruitment, instruction, support or other activity, are often where online delivery most clearly triggers state jurisdiction

Our Panelists

- **William Clements**, Associate VP Academic Affairs & Dean of the School of Graduate & Continuing Studies, Norwich University
- **Michael Goldstein**, Co-Practice Leader, Higher Education, Dow Lohnes PLLC
- **Christine Johnson**, Director of Government Relations, Capella University
- **Paul Shiffman**, Assistant VP Strategic & Governmental Relations, Excelsior College, and leader of the Presidents' Forum effort to forge a compact on state regulation

Thank you to our panelists for joining us

Discussion Questions

- In light of the new rule, what, if anything, should universities and colleges now do? In some states, are some schools in fact exempt?
- What are the practical implications of schools having to "document" state approval to the federal government?
- What is the early reaction to the rule from state regulators?
- Are the implications different by school type- e.g. nonprofit v. for-profit institutions, or schools with larger v. smaller online headcount?
- What are the prospects for a state compact? Is there scope to clarify/modify the federal language?

Online Delivery & State Regulation- next steps

- 1) A more detailed Eduventures report on this issue will be available to members later this month (December)
- 2) Schools are encouraged to use their Eduventures membership to raise questions about particular states and circumstances

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