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Distance Education Authorization Requirements in Tennessee

On October 29, 2010, the U.S. Department of Education released its final program integrity regulations regarding postsecondary educational institutions, including state authorization requirements in 34 C.F.R. § 600.9. The Tennessee Higher Education Commission (THEC or Commission) offers the following information regarding authorization requirements for providers of distance education in order to assist institutions in their efforts to comply with the new federal requirements.

If after reviewing the following explanation, you believe that your institution does not engage in any activity requiring authorization, no further action by your institution is required. However, if you believe that your institution should obtain authorization, you must submit an Initial Authorization Application. The application process is described in the "Obtaining Authorization" section of this document. Questions concerning this information should be directed in writing to Julie Woodruff, Director of Regulatory Affairs, at julie.woodruff@tn.gov or Nicholas Cook, Assistant Director of Regulatory Affairs, at nicholas.cook@tn.gov.

Statutes and Rules: The text of Tennessee's statutes and rules governing postsecondary educational institutions may be obtained by clicking on the appropriate link at the top of the webpage located at: <http://state.tn.us/thec/Divisions/LRA/PostsecondaryAuth/psa.html>.

Rule 1540-01-02-.04(1) prohibits non-exempt postsecondary educational institutions from advertising, soliciting, recruiting, enrolling, or operating in Tennessee without authorization from THEC. The exemptions are listed in Tenn. Code Ann. § 49-7-2004 and Rules 1540-01-02-.05 and .08(8) and (10); however, Tennessee does not specifically exempt distance education providers.

A distance education provider engages in the activities described in Rule 1540-01-02-.04(1) if it establishes a physical presence. The definition of physical presence as found in Rule 1540-01-02-.03(1)(ii) provides:

"Physical presence" means actual presence within the state of Tennessee for the purpose of conducting activity related to: a postsecondary educational institution; an educational service; dissemination of educational credentials; enrollment; solicitation; or, advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:

1. An instructional site within the state;
2. Instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors, etc., or computer resources, or computer linking (e.g. Internet), or any form of electronic telecommunications;
3. Dissemination of an educational credential from a location within the state;
4. An agent, recruiter, institution or business that solicits for enrollment or credits or for the award of an educational credential;
5. Advertising, promotional material or public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding or required to hold a certificate of authorization.

THEC interprets the definition of physical presence to:

- include having an instructor lead a distance education course from within the state;
- include advertisements that appear on the webpage of a local newspaper;
- include facilitating and/or entering into an arrangement with any business, organization, or similar entity located in Tennessee for the purpose of providing an internship, externship, practicum, clinical, student teaching, or similar opportunity; and
- not include enrolling a Tennessee student if the recruitment of the student did not involve any of the prohibited activities.

If an institution engages in any of the activities listed in the definition of physical presence, it must obtain authorization by filing an Initial Authorization Application with THEC. Otherwise, an institution that does not engage in any of the listed activities does not have to take any action.

Obtaining “Authorization Not Needed” Letter: On March 17, 2011, the U.S. Department of Education (USDOE) released a Dear Colleague Letter, GEN-11-05, regarding implementation of the program integrity regulations. Pursuant to GEN-11-05, the USDOE does not require an institution to obtain a document from the appropriate state agency stating that authorization is not required. An institution is only required to demonstrate upon request from the USDOE that state authorization is not required. As a result, THEC will not issue “Authorization Not Needed” letters at this time. Instead, THEC will consider whether issuance of such a letter is appropriate at such time that the USDOE requests that an institution demonstrate that state authorization is not required. If your institution receives a request from the USDOE, you may request that THEC issue an “Authorization Not Needed” letter by submitting a written request, along with the request from the USDOE, to:

**Tennessee Higher Education Commission
Attn: Director of Regulatory Affairs, DPSA
404 James Robertson Parkway, Suite 1900
Nashville, TN 37243-0830**

Obtaining Authorization: The first step to obtaining authorization in Tennessee is to file an Initial Authorization Application. If you determine that your institution is required to be authorized, you should contact Teresa Warren at teresa.warren@tn.gov to obtain an electronic version of the Initial Authorization Application.

Once your application and fee are received, the application will be reviewed by a staff member of the Division of Postsecondary School Authorization (DPSA). If the application is incomplete, DPSA will defer it with instructions that corrections be filed by the next due date (see below).

If the application is complete, DPSA will refer the application to the Committee on Postsecondary Educational Institutions. The Committee will review the application and determine whether to make a recommendation to the Commission that your institution be approved. If the Committee makes a favorable recommendation, the application is placed on the agenda for the next Commission meeting for approval.

The relevant dates for 2011 are as follows:

Deadline for Application	Committee Meeting	Commission Meeting
1/14/2011	4/7/2011	4/28/2011
4/8/2011	7/7/2011	7/28/2011
8/12/2011	10/27/2011	11/17/2011
11/4/2011	TBA	TBA