

Hogan
Lovells



Federal Regulations Update

Distance education rule – DELAYED

Foreign locations rule – EFFECTIVE

Megan Mason, Associate

July 24, 2018



HL Client Alerts

- *Distance education rule appears on schedule for July 1 effective date*
(Mar. 6, 2018) ([link](#))
- *Foreign location rule appears on schedule for July 1 effective date*
(Mar. 15, 2018) ([link](#))
- *Third time's the charm? ED delays distance education rule*
(May 14, 2018) ([link](#))
- *ED proposes two-year delay of state authorization rule*
(June 1, 2018) ([link](#))

Timeline

- 2010 – Distance education rules first promulgated
- 2011 – Original distance education rule struck down
- 2014 – Negotiated rulemaking fails to reach consensus
- 2016 – Obama administration publishes new distance education and foreign locations rule (to become effective July 1, 2018)
- 2018
 - May 9: OMB Spring 2018 Agency Rule List indicates ED’s proposed two-year delay
 - May 25: Proposed rule published in Federal Register (two-year delay of both distance education and foreign locations rules)
 - July 3: Final rule published in Federal Register (two-year delay of distance education rule only)
- 2019 – New rule?

New rule on foreign additional locations/branch campuses

- New rule on foreign additional locations and branch campuses (34 C.F.R. § 600.9(d))
 - Effective July 1, 2018, Title IV-participating institutions must have legal authorization from foreign country for foreign additional locations and branch campuses for purposes of Title IV eligibility
 - Does NOT apply to:
 - Study abroad or other arrangements whereby students attend less than half of program at separate foreign institution
 - Enrollment of distance education students in foreign countries
 - Programs for which institution does not seek Title IV program eligibility

As of May 2016, 80 U.S. universities operated foreign locations in 60 other countries

81 Fed. Reg. 48598, 48607
(2016)

New rule on foreign additional locations/branch campuses

- If institution offers less than 50% of educational program at additional location in foreign country, institution must “meet the requirements for legal authorization in that foreign country as the foreign country may establish”
- If institution offers educational program at branch campus in foreign country or 50% or more of educational program at additional location in foreign country,
 - Additional location or branch campus must:
 - Be “legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located” (except U.S. military bases, facilities, or areas exempt from such authorization)
 - Meet any additional requirements for legal authorization in foreign country
 - Institution must:
 - Provide documentation of such legal authorization, upon ED’s request
 - Obtain approval from institution’s accrediting agency for additional location or branch campus, as applicable
 - Report foreign additional location or branch campus to institution’s home state and comply with any limitations the state places on such locations/campuses
- Institution must disclose its home-state complaint process to enrolled and prospective students
- If home state limits authorization of institution to exclude foreign additional location or branch campus, ED will not consider the additional location or branch campus to be legally authorized

Your presenter



Megan Mason

Associate, Washington, D.C.

T 202 637 7565

megan.mason@hoganlovells.com



www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.