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**MICHAEL A. OLIVAS**  
William B. Bates  
Distinguished Chair in Law  
Director, IHELG  
molivas@uh.edu  
713.743.2078

**DEBORAH Y. JONES**  
Program Manager  
dyjones@uh.edu

**Interstate Regulation of Public  
Cross-Border Higher Education Entities**

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Jason E. Lane, Kevin Kinser, Dan Knox  
Institute for Global Education Policy Studies  
Department of Educational Administration & Policy Studies  
University at Albany, SUNY  
344 Education Bdg  
1400 Washington Ave.  
Albany, NY 12222  
[jlane@albany.edu](mailto:jlane@albany.edu)  
<http://www.albany.edu/eaps>  
518.442.5095

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# Interstate Regulation of Public Cross-Border Higher Education Entities

Jason E. Lane, Kevin Kinser, and Dan Knox  
University at Albany  
State University of New York

In an apparent shift of mission, some public colleges and universities, funded and chartered to serve a specific geopolitical region, are now moving across state borders operating campuses and centers in other states. Our preliminary research has identified at least 60 public institutions with multi-state locations in 46 of the 50 states. These cross-border educational entities (CBEEs) exist outside of the traditional administrative, policy, and regulatory frameworks and are not included in extant studies about educational access or delivery. Unlike the academic activities on main campuses, scholars do not know how domestic cross-border education affects issues of student success or degree completion. In addition, there is a lack information about the students being served by these activities, and limited information on how educational quality is being assured. Moreover, there is no data on academic outcomes.

As a first step in addressing this information deficiency, we explain in this paper the regulatory environment for public colleges and universities that establish educational entities outside of their home state. Specifically, we identify comprehensive state level regulations for both importing and exporting CBEEs, compare and contrast the regulation of each type of institutional behavior, and develop a framework for understanding the policy interests of state regulatory bodies. To that end, we focus on the following questions:

- 1) What is the scope of cross-border state regulations for each state?
- 2) Do states operate under a common regulatory framework or are there significant differences between states?
- 3) Is there a difference in state regulation of CBEE's with respect to importing and exporting activities?

## Background and Context

With relatively few exceptions within the United States, state governments charter and fund public colleges and universities to serve the needs of a specific geopolitical region (Duryea, 2000). Some institutions have a mission to serve the entire state, while others have more limited missions focusing on specific cities or counties. Most prominently, public colleges and universities are expected to educate the citizens of the state, and all states subsidize the cost (at varying levels) of higher education for in-state residents. From an access perspective, the public sector serves nearly four out of five students in the U.S. (NCES, 2007). If the public system is changing to include significant examples of CBEEs, it will have an outsized impact on the ability of students to enroll and be successful in postsecondary education<sup>1</sup>.

Public higher education is changing. Funding for higher education in many states has diminished as a proportion of institutional revenue and as a proportion of state expenditure (NCES, 2009), as well as a proportion of state appropriations (Longanecker, 2006). As a result, the public sector has been undergoing a privatization transformation, most notably evident in annual tuition increases. Between 1996–97 and 2006–07, for

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<sup>1</sup> Whether or not the impact will be positive is a separate question.

example, tuition and fees at public institutions increased an inflation-adjusted 32 percent (NCES, 2007). An access crisis is developing, provoking concern that higher education is becoming unaffordable to the middle class (Immerwahr, 2002), placing the issue on the agenda at the higher levels of government (Middle Class Task Force, 2009).

Concomitantly, a degree production crisis threatens the nation's global competitiveness. The United States has lost its status as the most educated nation in the world. In fact, the National Center for Higher Education Management Systems (NCHEMS) calculates that the United States has to produce an additional 150,528 degrees (bachelors and associates) per year to regain the most-educated nation status by 2020 (Jones, 2009).

Much of this growth will come from students of color and non-traditional students in the south and southwest, where most of the nation's population increase has been occurring (WICHE, 2003), but where the fewest numbers of postsecondary institutions are located. This suggests an imbalance between where the nation's educational capacity exists and where demand for access is growing. Moreover, extant geopolitical and public policy constraints make it difficult to make national or regional adjustments to higher education capacity. Historically, demand within a state has been met by expanding or building new local institutions, rather than redirecting capacity from one part of the country to another.

The private for-profit sector, on the other hand, claims a beneficial role in this access dilemma by serving a nontraditional student body with a career-specific academic model (Imagine America Foundation, 2009). In terms of enrollment, many of the most successful for-profit institutions have adopted a multi-state branching strategy through the establishment of many small locations distributed throughout the country (Kinser,

2007). Given that these institutions have seen their undergraduate enrollment grow exponentially since 1996 (NCES, 2007), as many as a million new students may now be taking advantage of the convenient access supplied by the for-profit CBEE model.

Cross-border activity, although on not nearly the same scale as for-profit institutions, does occur in the public sector. As noted, at least 60 public sector institutions with campus locations outside of their home state are known to exist. Public cross-border activity could become an explicit market-driven function, seeking student enrollment—like the for-profit sector—in underserved areas by shifting excess capacity from one region to another. Because states provide significant subsidies to their public colleges and universities, it may be possible for their out-of-state locations to provide educational opportunities at a lower cost than the private institutions in the importing state. Moreover, because states subsidize their public institutions differently, the out-of-state locations may be able to provide less costly education than the local public sector institutions<sup>2</sup>. In areas where existing institutions of higher education are not meeting the demand, CBEEs can enter the marketplace and serve students that might otherwise not enroll. Or, public institutions could take advantage of their strong brand image to engage in active market competition with local providers for a share of the existing market. Either way CBEE activity could disrupt the status-quo of the local educational marketplace. Without knowing more about this activity, however, we cannot say whether the disruption would be positive or negative for the students' educational access.

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<sup>2</sup> Evidence from the international cross-border literature (McBurnie & Ziguras, 2007; Green, 2007) suggests that the public subsidies may be indirect—in the form of general infrastructure and administrative support from the home campus—rather than direct support for out-of-state activities.

## Organizational Endemism

As a conceptual frame for this study, we proffer *endemism* as a way to understand CBEE expansion among organizations that are inextricably linked to a specific geopolitical location. Endemism, an ecological concept, defines an organism as native to and dependent upon a particular geographically defined ecosystem. Endemic organisms evolve in balance with their surroundings, with structures designed to take advantage of unique environmental circumstances. If the environment changes, existing structures may prove maladaptive to the new setting. Under certain circumstances, the organism may prove resilient to novel environments and thrive far outside its native range due to its response to endemic environmental conditions. We believe the ecological metaphor serves well to explain the CBEE phenomenon.

As a frame for organizational analysis, endemism suggests an intimate relationship between the geopolitical environment and the organization (Lane & Kinser, 2008). Certain organizations are particularly dependent upon specific structures, associations, and economic conditions connected with a particular region. They are embedded in a physical location and uniquely situated to thrive within and serve its context. Conceptually, endemism draws on some principles derived from systems perspectives such as contingency theory and resource-dependency theory. Although developments in this organizational school of thought seek to understand how organizations interact with their environment, they do not fully address why and how an organization endemic to and thriving in one environment begins operating in an environment in which it is not endemic and how the non-endemic initiatives affects the performance of the organization in its endemic environment.

Endemism argues, however, that environmentally constrained organizations cannot simply expand their activities beyond their home region without experiencing conflict (e.g., resistance from local stakeholders). Non-endemic activities will have more or less coherence with the overall organization, and expansion necessarily involves organizational adaptation to the new environment. At the same time, the environment adapts to the arrival of a new entity. The system may become unbalanced as existing elements strain to accommodate the interloper. Alternatively, if a niche is available, balance may be quickly restored.

### Higher Education as an Endemic Organization

Higher education is well-described by this notion of endemism. For a variety of reasons, historical and contemporary, colleges and universities are tied to a particular geopolitical region. From their origins in the Middle Ages, universities have been identified with a particular place. Medieval universities drew students to their host cities -- Bologna, Paris, Salerno -- where instruction occurred with resident faculty skilled in the original disciplines of law, medicine, and theology (Pepper, Perkins, & Youngs, 1984). The evolution of the modern nation-state incorporated the university as an element of the national identity and instrument of state action. Geographic location in a city was intimately tied to political location within a state. Demands of the state became the imperative of the university organization, with patronage from the political leadership of the state developing into a formal funding mechanism, creating what we now know as public higher education.

The earliest colonial colleges in the United States followed this model. They were

commissioned by local governments to serve the needs of the population, often with grants of land becoming the first college endowment. Though we now think of Harvard, Princeton, and Yale as private institutions, there is little doubt that in their founding they were community institutions directly responsible to the Massachusetts, New Jersey, and Connecticut colonies (Boorstin, 1973). As such, up until the time of the Revolution, these universities retained exclusive authority over collegiate instruction within the borders of their sponsoring colony. Although the sons of Virginia may have traveled north to the college in Cambridge, it would have been unthinkable for Harvard to move from its Massachusetts home to compete directly for resident students with the College of William and Mary.

The connection of higher education institutions to their local geopolitical unit continued after independence. Given that control of education was constitutionally reserved for the states, each state developed a unique set of regulatory, funding, and governance characteristics for their higher education systems (Duryea, 2000). Shortly after the Revolution, states, like the colonies before them, began to found and fund higher education institutions to serve their citizens. Since the Morrill Land Grant Act of 1863, sponsorship of higher education has been assumed to be the prerogative of the states, with ownership branded on the university masthead. From the University of Alabama to the University of Wyoming, every state has such an institution. Universities such as these, along with their state college peers and community college siblings, constitute the dominant form of higher education in the U.S., with nearly four out of five students attending a publicly supported institution of higher education (NCES, 2007).

Historically, then, the context for public higher education has been geographically

focused and state supported. Borders have been important, both as defining the boundary of institutional service and the scope of political sponsorship. Regardless of how prominent their national or international reputations become, these institutions are legally, economically, and culturally linked to their geopolitical environment.

The structure of public colleges and universities evolved to reflect their endemic environment. Organizational activity is intricately tied to this connection. Enormous financial and cultural commitments are made to a permanent physical campus, with a host of offices devoted to negotiating the spider web of geopolitical regulation and control (Lane, 2007). Building organizational capacity involves expanding infrastructure. Governments manipulate institutional activities to match the state agenda. Efficiency relies on fulfilling politically determined outcomes, with service to the state and its citizens more significant than growing the bottom line.

In the U.S. (and increasingly in the rest of the world [Levy 2006]) there is a robust private higher education sector that is not as connected to the state. Even here, though, there is a geographically focused tradition that ties the university to a place. Harvard is synonymous with Cambridge; University of Chicago is a Hyde Park institution; the University of Southern California is embedded in Los Angeles. There are, in fact, relatively few national universities, public or private, which have projected their teaching much beyond a single physical campus location. Even for those institutions with large distance education programs, the majority of students are actually located in proximity to a physical campus and are simply taking advantage of the temporal convenience—rather than geographic convenience—of on-line courses (Eduventures, 2007; Kinser & Lansing, 2005). In short, higher education in the U.S. has historically remained close to home,

responsive to the local community, and reliant on patronage by local or national political elites to sustain their operations.

Financially, at least, the historical model has been eroding. As a result, the public sector has been undergoing a privatization transformation, with tuition and private fundraising increasingly important to their performance (Johnstone, 2002). This phenomenon is not just limited to the U.S. Globally, higher education institutions have seen the introductions of fees and nongovernmental support as new sources of revenue. An expanding private sector has developed to meet the burgeoning demand for higher education in many countries that had formerly relied almost exclusively on the public provision of education (Levy, 2006). The public good argument for higher education is now more likely to be framed as an economic good. Private benefits accrue to students and the public gains a trained, competitive workforce (Kezar, 2004).

In this environment, there is a diminishing rationale for public higher education to maintain an exclusive relationship with its sponsoring state. Privatization imperatives encourage the pursuit of additional revenue streams. As the for-profit sector has shown, geographic expansion is a direct path to increasing revenue through economies of scale (Kinser, 2007). But, as endemic organizations, a critical component of the relationship between public institutions and their geopolitical base is the regulatory infrastructure which forms the boundaries and structures of control necessary for the institution to function. In the case of CBEEs, institutions are bounded both by exporting regulations within their home state as well as importing regulations within the host state. These regulations form the legal ecosystem within which endemic adaptations take place. As a result, in order to understand CBEEs, we must first examine the underlying regulatory

structures.

## Educational Significance

This paper provides an enhanced understanding and the first systematic inquiry of the regulatory forces which both constrain and enable public colleges and universities as they expand beyond their traditional service area and into other states. Policy makers in local and state governments, as well as faculty and administrators who work in CBEEs and in public colleges and universities in general will be significant beneficiaries of the findings. Quite simply, while our research has identified approximately 60 of these CBEEs, our evidence suggests that few policy makers, legislators, or accreditors are even aware that public institutions in one state are setting up shop in another state.

In addition, there is currently no comprehensive database of state level importing and exporting regulations within the United States. By tracking what these regulatory structures are and their effect on public colleges and universities, this paper addresses key policy issues, particularly in the areas of global trade liberalization and higher education reform. This paper begins to lay the theoretical framework that is relevant not only to organizational analysis, but also to understanding the policy levers involved in making the transition to cross-border environments. In other words, this policy analysis of cross-border activity within the United States provides a unique model to assess the challenges of regulating transnational educational activity on a regional or global scale.

## Data & Methods

Since there is currently no comprehensive, publicly available database of state level regulations regarding CBEE activity, our initial step was to create this database. First,

using the State Higher Education Executive Officers' list of state agencies (SHEEO, 2008) and our contacts in the states, we identified the appropriate regulatory agency for each state. Next, we contacted agents of the regulatory bodies for public colleges and universities in each state in order to determine which department holds regulatory power over both incoming and outgoing cross border activities, what the regulations are, and, when available, to obtain copies of the appropriate regulatory documents. We then identified exporting regulations for all fifty states, and importing regulations for every state except North Dakota<sup>3</sup>.

One of the researchers used open coding to identify 17 sub-components for exporting regulations, and 22 categories for importing regulations (see tables one and two in the appendix). As a reliability check, two additional coders were trained about the preexisting code categories and asked to independently code each of the regulatory documents. These individuals reviewed all of the documents to identify evidence of the existence of the sub-categories. The three sets of coding were compared and when disagreements arose over the presence or absence of a particular regulation, each reviewer located supporting text in the original regulatory documents, and these discrepancies were resolved in a face to face meeting. When all three reviewers agreed, the particular regulation was accepted as present, and when disagreements remained, the regulation was rejected and marked as absent.

The particular subcategories can be grouped into four general areas of inquiry: *procedures*, which identifies the range of institutional activity covered under the policy; *comparability*, which specifies CBEE institutional measures that must be equivalent to

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<sup>3</sup> North Dakota may not have importing regulations, its regulations may be administered through a separate agency, or it may have more obscure references to importing higher education as compared to other states.

the home state/institution; *competition*, which indicates a concern with the educational market and existing institutions in the host state; and *attributes*, which are organizational or academic requirements. Tables one and two (presented in the appendix) list the subcategories of regulations grouped under these four categories along with a description of each code.

## Results

The results of this project provide the first comprehensive look at the regulatory environment for public institutions with locations in multiple states. Most states seek to regulate both the importing and exporting of public higher education, and all states regulate at least one direction of cross border activities. Five states do not regulate higher education institutions being imported into their state (CA, HI, NM, SD, UT), and four states do not regulate their public institutions regulating to other states (AL, LA, MS, WY). It is important to note that for importing activities, lack of regulation does not imply no oversight whatsoever. Four of the five states that do not regulate importing higher education require the out-of-state institution is appropriately accredited, while the fifth (UT) only requires state registration. On the other hand, three of four states that do not regulate exporting higher education have no policies at all; only Alabama adds a basic restriction against the use of state funds.

For those that do regulate, the number of regulations implemented by each state varies widely with as many as ten different regulations dealing with exporting and 16 dealing with importing. The average number of regulations, though, suggests state governments are more concerned with the institutions trying to set up shop within their borders than state-supported institutions attempting to move into another state. States had

a mean of 10.2 regulations for importing institutions as opposed to 4.4 regulations governing their own institution's engaging in cross-border activities. Whether the difference is based on lack of interest or lack of knowledge about their institutions moving into other states or some other reason is not known.

The breadth of regulations focused on importing institution varies widely. First, 49 states regulate institutional attributes (Figure 1), and these states mostly ensure that the institution is appropriately accredited, financed, and staffed (e.g., having quality faculty). Comparability is a concern in 38 states (Figure 2), most often expressed in terms of the institution needing to provide program of comparable quality, and second most often limiting activities to those that fall within its home mission. Only ten states, on the other hand, adopted regulations regarding the competitive aspect of a proposed institution (Figure 3). Under competition, six states are solely concerned that the institution wanting to move into the state meets an existing educational need in the state. Three additional states require an institution both to meet an unmet educational need (without duplicating existing program offerings) and increase the availability of educational access. Alaska was unique in that it explicitly allows out-of-state institutions to partner with in-state institutions to avoid extra regulatory oversight.

For exporting institutions, almost all states (46) provide procedural regulations, identifying the scope and form of out-of-state activity, or they explicitly decline to regulate out-of-state activity (Figure 4). In addition to providing a specific process, most exporting regulations also covered the areas of comparability (n=31), attributes (n=29), and competition (n=25) (Figures 5-7). Funding restrictions were the most common regulatory focus, with 26 states specifically limiting how state funds could (or could not)

be used in out-of-state initiatives. Financial concern carried over into attribute regulations, with 18 states also establishing regulations governing the overall cost of the exporting activity even when no state money is used in the initiative. Beyond funding, states seem most concerned with ensuring mission (n=16) and quality (n=17) comparability of between the out-of-state and home locations.

Across the nation, regulation of importing institutions is more extensive than the regulations pertaining to in-state institutions moving out of state. In all but five states (CA, IA, MT, SD, UT) the number of importing regulations exceeds the number of exporting regulations. Figure 8 (presented in the appendix) shows a graphical comparison of the importing and exporting regulations by state. Our analysis suggests no relationship between the extensiveness or orientation of exporting and importing regulations. This suggests to us that policy makers are siloed in their regulatory approach. They approach importing and exporting regulations separately, rather than in tandem, perhaps dealing with the issue in response to specific events rather than in advance of them. This is an issue in need of further investigation.

State regulatory policies were cross-referenced with the policies from the regional accreditation agencies. All regional accreditation agencies had comparable policies among themselves regarding cross border activities, primarily requiring the exporting institution to notify the agency of a substantive change and requiring an initial site visit to verify compliance with established standards. Since the states had much more variation than this, it seems reasonable to expect that the accreditation and state regulation proceed on parallel and independent tracks, with limited if any influence between the policy makers at the state and accreditation arenas. Our analysis suggests no connection between

state exporting regulations and their association with a specific regional accreditation agency. This was not true for importing regulations, however. States in the Western Association region had fewer than the average number of regulations, while states in New England and Southern associations' regions had more than the average number of regulations. The more extensive regulations in New England and Southern states may be the result of greater familiarity with cross-border activity coordinated through regional boards<sup>4</sup>. The Western result may be an artifact of the small size of the region, with only California and Hawaii included. Nevertheless, the regional differences in importing regulations as opposed to exporting regulations contradicts the similarity in accreditation policies, and deserves attention in future research.

## Discussion

In general, the results suggest that, overall, states are more concerned with regulating incoming CBEE's than in regulating the exporting behavior of their own public higher education institutions. First, this trend was evident in the number of states that had explicit policies for exporting institutions (15) as compared to importing institutions (41). Next, states tended to have more complex regulations with a greater number of regulatory categories for importing institutions (22) than for exporting institutions (17). Third, states tend to have on average a greater number of criteria for importing institutions to meet (10.2) as compared to their requirements for exporting institutions (4.4).

Examining the content of the regulations shows that states are relatively

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<sup>4</sup> The Southern Regional Education Board and the New England Board of Higher Education sponsor regional arrangements in postsecondary education to facilitate cross-border student mobility and recognition of cross-border distance education models. Regional compacts that exist in other regions (e.g., Midwestern Higher Education Compact), may not have the same level of visibility.

unconcerned with competition with existing institutions when regulating importing CBEE's. Most states listed attributes (49), procedures (47), and comparability (36) as regulatory foci for CBEE's, while a minority of the states included regulatory concerns with competition (10). The focus on attributes, in particular, indicates that most states are concerned with quality indicators and consumer protection issues. Furthermore, the attributes required of imported institutions varies by state, suggesting a difficulty for institutions that wish to expand using a standardized program.

In addition, the results show that, while states tend to operate under a more uniform regulatory framework for importing activities, there was more variability among state regulations for exporting institutions. Nearly all the states shared regulations for incoming CBEEs across the categories of attributes and procedures (48), and two-thirds of the states also added comparability as a third regulatory category. In contrast, no more than half the states shared any two regulatory categories for exporting their own CBEEs.

Interestingly, several states had policies that recognized out-of-state exporting by their institutions, but specifically stated that out-of-state campuses were not subject to the same state laws as their in-state parent campus. Moreover, some states identify entire categories of CBEEs that are allowed to enter at will with little or no oversight. For example, four states considered accreditation as a single, definitive criterion for CBEEs entering their states; if the institution is accredited by an agency recognized by the US Department of Education, the state has no other regulatory demand. Without accreditation, the state categorically refuses to consider the CBEE. This demonstrates the strength of accreditation in the regulatory triad, such that states would concede their authority to regulate institutions moving into their state to another entity. However,

while 40 states specifically mention accreditation as an importing regulation, only 12 mention accreditation as a requirement for their exporting institutions. It appears that state officials are generally more concerned about the importance of accreditation for imported programs than they are in ensuring the programs that are exported meet local accreditation rules. In any case, with cross-border traffic likely to continue to increase in the future, accreditation will continue to play an important role in the regulation of quality across borders.

### Policy Implications

Public sector cross-border higher education may be a more efficient way (from a national vantage point) to meet increases in educational demand by redistributing extant educational capacity, rather than creating new capacity. As noted by a wide range of sources from the U.S. Census Bureau to WICHE's Knocking at the College Door report, the United States is experiencing a significant shift in its population base. For example, the Northeast, which has the highest concentration of postsecondary institutions, is experiencing the most significant decline in population. The South and Southwest, however, which have among the lowest number of institutions (many of which have been historically under-funded), are experiencing expansive increases in population, particularly in the traditional college-going age cohort. In sum, the regions experiencing the most significant access concerns have the fewest number of institutions.

Quality assurance mechanisms and regulation for cross-border educational entities are almost non-existent.

Neither state governments nor postsecondary systems appear concerned about how the cross-border operation could affect the quality, reputation, or resources of the

home campus. Depending on the size and nature of the infrastructure investment for out-of-state extensions, it is reasonable to assume that sustainability of such entities could draw on resources that would otherwise be used to support the main campus. Even if adequate firewalls exist to limit the use of home-campus resources, these locations benefit from the administrative infrastructure and reputation of the home campus. It is foreseeable that the actions (e.g., providing a poor quality education) or closings of an out-of state location could negatively affect the reputation of the home campus.

Few importing states regulate the quality of CBEEs serving their local population. While importing states have more regulation than exporting states related to CBEEs, actual quality assurance remains limited. An expectation of most importing states is that these public CBEEs meet the standards of an approved accrediting body. For public sector institutions, this means the relevant regional accreditation agency. However, an initial review of CBEE locations included in our database suggests that some entities are opened without appropriate approval of the regional accreditation bodies; thus, the CBEEs may fall through the cracks of quality assurance.

A larger constitutional issue may serve to temper the regulatory urges of the states in this area. Because cross-border higher education deals with a purchasable service moving across state lines, it is possible that the out-of-state locations may be protected by the Commerce Clause from regulation by the importing state or some accrediting bodies. The recent case law on this is skimpy, but does include a judgment from California that found that the activities of DeVry University (a private for-profit institution based in Illinois) constituted interstate commerce and invalidated laws that treated it differently than similar in-state institutions (*Daghlian v. DeVry U., Inc.*, 2007). Similar logic may

apply to the public sector<sup>5</sup>, though no court has explicitly addressed the issue.

Importantly, the motivation to move across state borders appears to be driven by institutional priorities rather than public policy. As opposed to the similar phenomenon at the international level (Lane, in press), we have found no evidence that the movement of public universities across state borders is guided (or inhibited) by any type of state policy. In other words, states do not seem to encourage educational cross-border activity within the United States, and provide few, if any, incentives for those institutions that decide to move into other jurisdictions. Anecdotal evidence suggests that the decision to move across borders is made by institutional decision makers, with little consultation with policy-makers. In some circumstances, this results in degrees being awarded at unapproved locations, overlooked not only by regulators but also institutional governance, causing problems with financial aid and accreditation status (Jaschik, 2008). The fact that regulations exist does not mean that they are followed.

Additional evidence supporting the institutionally driven nature of cross-border higher education comes from a preliminary review of locations where public institutions set up out-of-state educational programs. These seem to be demand-driven activities, serving students in cities with large populations or in need of specialized programs (e.g., rural nursing) for which there is not a local provider. In contrast, many of the home campuses are in locations where there is a declining student population. As tuition becomes an increasingly important part of the revenue mix for public sector institutions, new students and new markets will be pursued, irrespective of traditional geographic

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<sup>5</sup> The DeVry case arose out of an odd set of circumstances where the state of California failed to reauthorize legislation that regulated proprietary institutions. At issue in the case were a set of stop gap measures that based state approval on approval by a regional accreditation agency, Western Association of Schools and Colleges (WASC). Since WASC approval was unavailable outside of California and Hawaii, the court found that the regulations discriminated against institutions from other states.

constraints.

The regulatory constraints on expansion, though, may make it more difficult to expand in-state as compared to out-of-state. States have an interest, honed through decades of experience with coordinating boards and centralized governance models, in developing non-duplicative public higher education systems. Typical models distinguish and delimit institutions both by level of service (i.e., two-year, four-year, and graduate) and by geography. Expansion within the state must comply with master plans and recognize political barriers to encroaching on another's territory. The relative invisibility of out-of-state activity to in-state competitors opens up the possibility of operating across the country with less regulatory resistance than offering a new program in the next town. And, because cross-border activity is geographically removed from standard oversight structures, it can fly under the radar of regulators more attuned to in-state activity. It's like a variant on the old saying: Out of state, out of mind.

## Summary

Other researchers have sought to identify regulatory issues at the state level for the delivery of distance education (WICHE, 1995; Goldstein, Lacey, & Janiga, 2006). These efforts have primarily been concerned with identifying how and why state regulation would be triggered for online programs entering a state. The most recent study by Goldstein and his colleagues (2006) suggests there is a "crazy-quilt" of rules governing online education, but actually only looks at the narrow question of how states define "physical presence" in order to regulate out-of state entities with no investigation at all about regulations that limit or control how physical presence is established. The current

study suggests that state regulation is a two-way street, with importing and exporting regulations presenting different, even conflicting, requirements on CBEEs.

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## Appendix

Table 1: Exporting Regulations

Category	Code	Description
Procedures	Explicit Policy	The policy explicitly mentions out of state activities.
	Funding	The policy restricts sources of funding. Most often, policies demand that out of state or other off-campus programs be self-supporting, meaning no state funds may be used.
	Process	The policy is concerned with the approval or review process. The processes are detailed within the policy.
	Does Not Regulate	The policy explicitly mentions out of state instruction, and explicitly does not regulate these activities.
Attributes	Cost	The policy mentions overall cost of the program or course as a top concern.
	Faculty	The policy has specific requirements for faculty origination or quality (e.g. no more than 1/3 part time, etc.).
	Research	The new program must produce knowledge.
	Infrastructure	The policy specifies levels of infrastructure for the destination site (e.g., library resources, etc.).
	Accreditation	The new instruction must meet accreditation requirements.
Competition	Host Agreement	The home institutions must obtain explicit approval from host states and institutions within the geographic area of the new program.
	Duplication	The new instruction must not duplicate existing instruction within a certain geographic region.
	Cooperation	The home institution must actively seek cooperation/collaboration with institutions in the geographic destination region.
	Access	The policy is concerned with access and equity issues for students in the geographic region of the new instruction.
	Need	There is a demonstrated need for the new program.
Comparability	Quality	The policy mentions overall quality of the program or course as a top concern. Most often, these policies stipulate that the quality of the new instruction be comparable to the home campus.
	Mission	The new instruction must be in accord with the institutional mission of the home campus.
	State Statutes	The new instruction must be in accord with home state statutes.

Table 2: Importing Regulations

Category	Code	Description
Procedures	Explicit Policy Process	The policy explicitly mentions out of state institutions. The policy is concerned with the approval or review process. The processes are detailed within the policy.
	Does Not Regulate	The policy explicitly mentions out-of-state institutions, and explicitly does not regulate the activities of out-of-state institutions.
Competition	Duplication	The new instruction must not duplicate existing instruction within a certain geographic region.
	Cooperation	The out-of-state institution is allowed to satisfy regulations through partnership with an in-state institution.
	Access	The policy is concerned with access and equity issues for students in the geographic region of the new instruction.
	Need	There is a demonstrated need for the new program.
Comparability	Quality	The policy mentions overall quality of the program or course as a top concern.
	Mission	The new instruction must be in accord with the institutional mission of the home campus.
Attributes	Cost	The policy mentions overall cost of the program or course as a top concern.
	Funding/Finance	The institution must demonstrate adequate funding to perform its objectives, and may be required to issue a surety bond or other proof of credit as proof of this capacity.
	Faculty	The policy has specific requirements for faculty origination or quality (e.g. no more than 1/3 part time, etc.).
	Assessment	The incoming institution must have procedures for measuring student outcomes and/or institutional level performance.
	Infrastructure	The policy specifies levels of infrastructure and/or student resources for the destination site (e.g. library resources, etc.).
	Accreditation	The incoming institution must meet specified accreditation requirements, or the policy states which accreditation agencies requirements will be accepted.
	Registration	The incoming institution must register with the appropriate state agency.
	Governance	The policy mentions explicit governance structures or other administrative requirements for the incoming institution.
	Credit Requirements	The policy specifies the numbers and/or types of credit hours, and/or minimum performance standards (e.g. GPA), necessary to earn a credential.
	Records	The policy contains provisions for keeping financial and/or student records.
	Admissions Fees	The institution must establish admission requirements. The policy specifies a fee structure to be paid by incoming institutions.
	Publications	The policy specifies requirements for publications (e.g. student handbooks, etc.) and/or regulates advertising within the state. These generally include the publication of a refund policy.

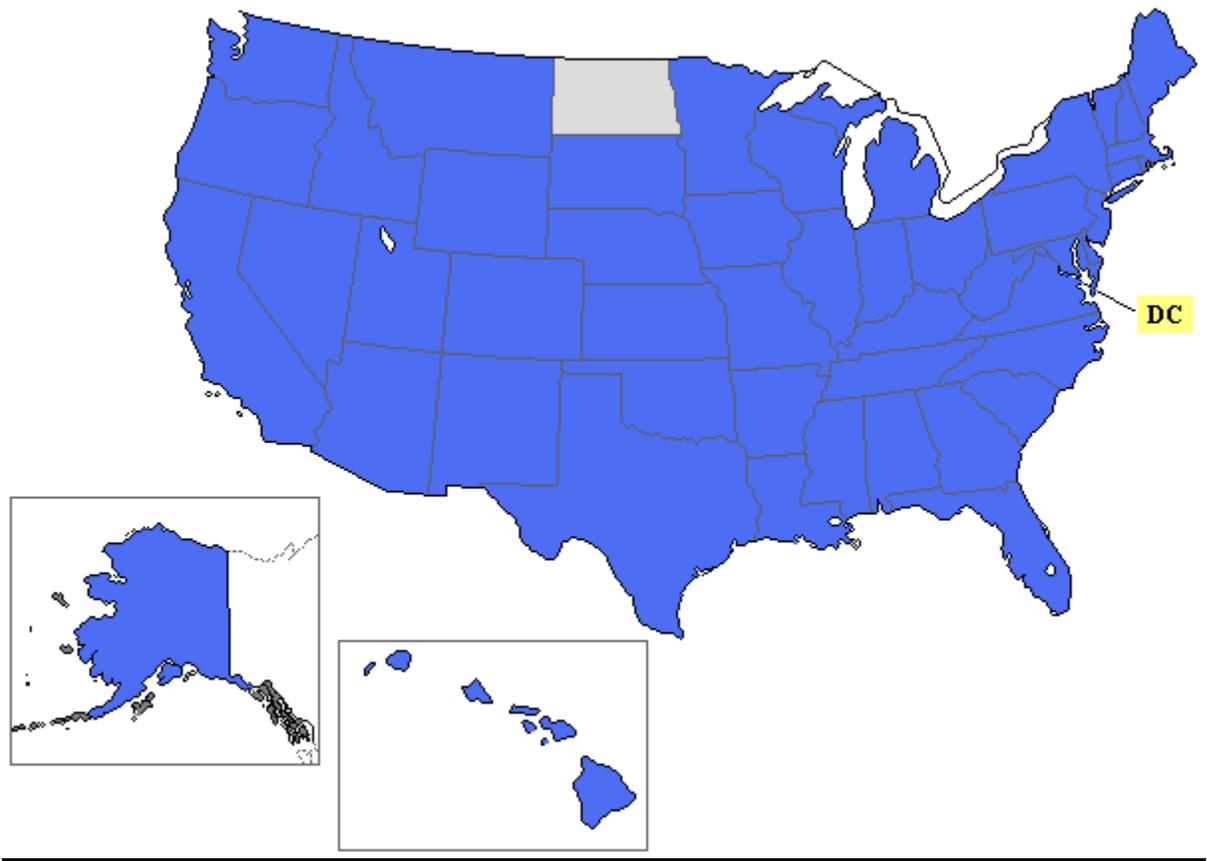
**Table 3: Importing Regulations by State**

State	Procedures	Comparability	Competition	Attributes	State	Procedures	Comparability	Competition	Attributes
Alabama	x	x		x	Nebraska	x	x	x	x
Alaska	x	x	x	x	Nevada		x		x
Arizona	x	x	x	x	New Hampshire	x	x		x
Arkansas	x		x	x	New Jersey	x	x	x	x
California	x			x	New Mexico	x	x		x
Colorado	x	x		x	New York	x	x		x
Connecticut	x	x		x	N. Carolina	x	x		x
Delaware	x	x		x	N. Dakota	n/a	n/a	n/a	n/a
Florida	x	x	x	x	Ohio	x	x		x
Georgia	x	x		x	Oklahoma	x	x		x
Hawaii	x			x	Oregon	x			x
Idaho	x	x		x	Pennsylvania	x	x		x
Illinois	x	x	x	x	Rhode Island	x	x	x	x
Indiana					S. Carolina	x			x
Iowa	x			x	S. Dakota	x			x
Kansas	x			x	Tennessee	x	x		x
Kentucky	x			x	Texas	x	x		x
Louisiana	x	x		x	Utah	x			x
Maine	x	x		x	Vermont	x	x		x
Maryland	x		x	x	Virginia	x	x	x	x
Massachusetts	x	x		x	Washington	x	x		x
Michigan					West Virginia	x	x		x
Minnesota	x	x		x	Wisconsin	x	x		x
Mississippi	x	x		x	Wyoming				
Missouri	x	x		X					
Montana				X					

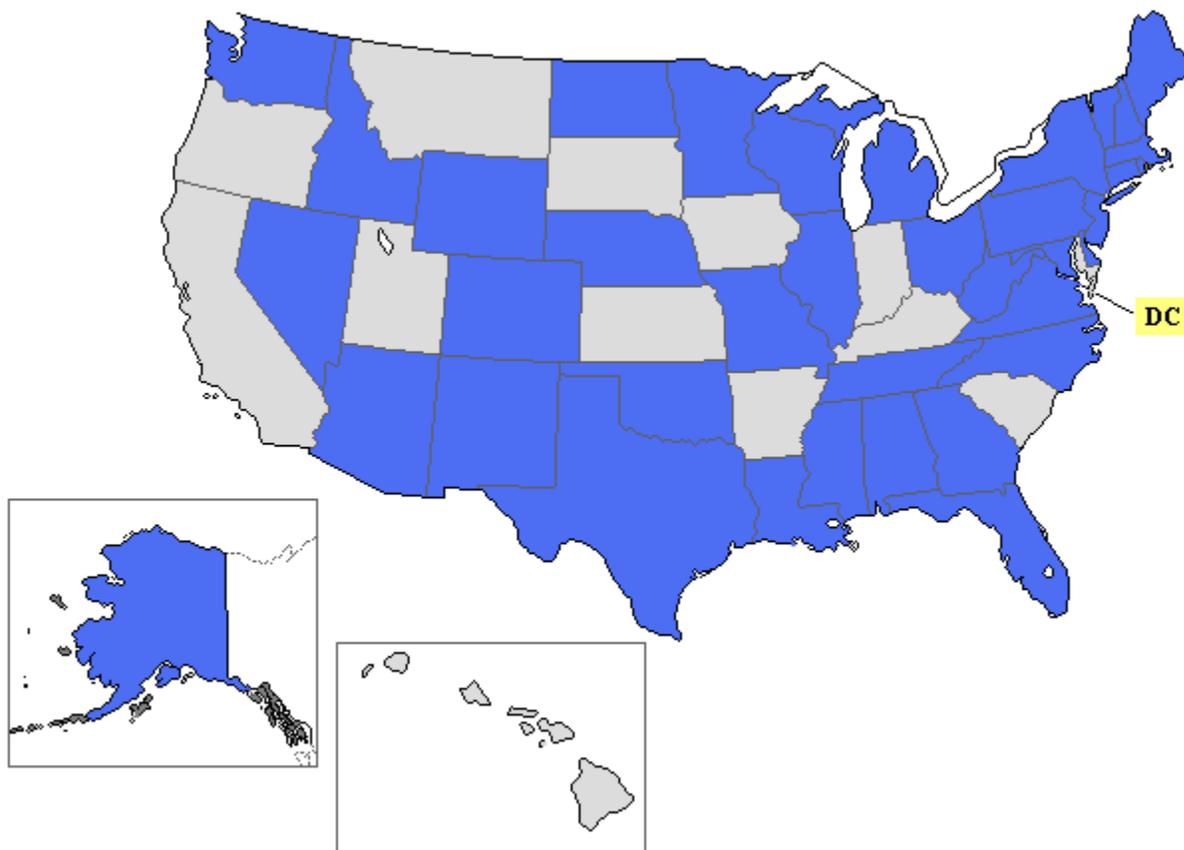
**Table 4: Exporting Regulations by State**

State	Procedures	Comparability	Competition	Attributes	State	Procedures	Comparability	Competition	Attributes
Alabama	x	x		x	Nebraska	x	x	x	x
Alaska	x	x	x	x	Nevada		x		x
Arizona	x	x	x	x	New Hampshire	x	x		x
Arkansas	x		x	x	New Jersey	x	x	x	x
California	x			x	New Mexico	x	x		x
Colorado	x	x		x	New York	x	x		x
Connecticut	x	x		x	N. Carolina	x	x		x
Delaware	x	x		x	N. Dakota				
Florida	x	x	x	x	Ohio	x	x		x
Georgia	x	x		x	Oklahoma	x	x		x
Hawaii	x			x	Oregon	x			x
Idaho	x	x		x	Pennsylvania	x	x		x
Illinois	x	x	x	x	Rhode Island	x	x	x	x
Indiana	x			x	S. Carolina	x			x
Iowa	x			x	S. Dakota	x			x
Kansas	x			x	Tennessee	x	x		x
Kentucky	x			x	Texas	x	x		x
Louisiana	x	x		x	Utah	x			x
Maine	x	x		x	Vermont	x	x		x
Maryland	x		x	x	Virginia	x	x	x	x
Massachusetts	x	x		x	Washington	x	x		x
Michigan	x	x		x	West Virginia	x	x		x
Minnesota	x	x		x	Wisconsin	x	x		x
Mississippi	x	x		x	Wyoming	x	x		x
Missouri	x	x		x					
Montana				x					

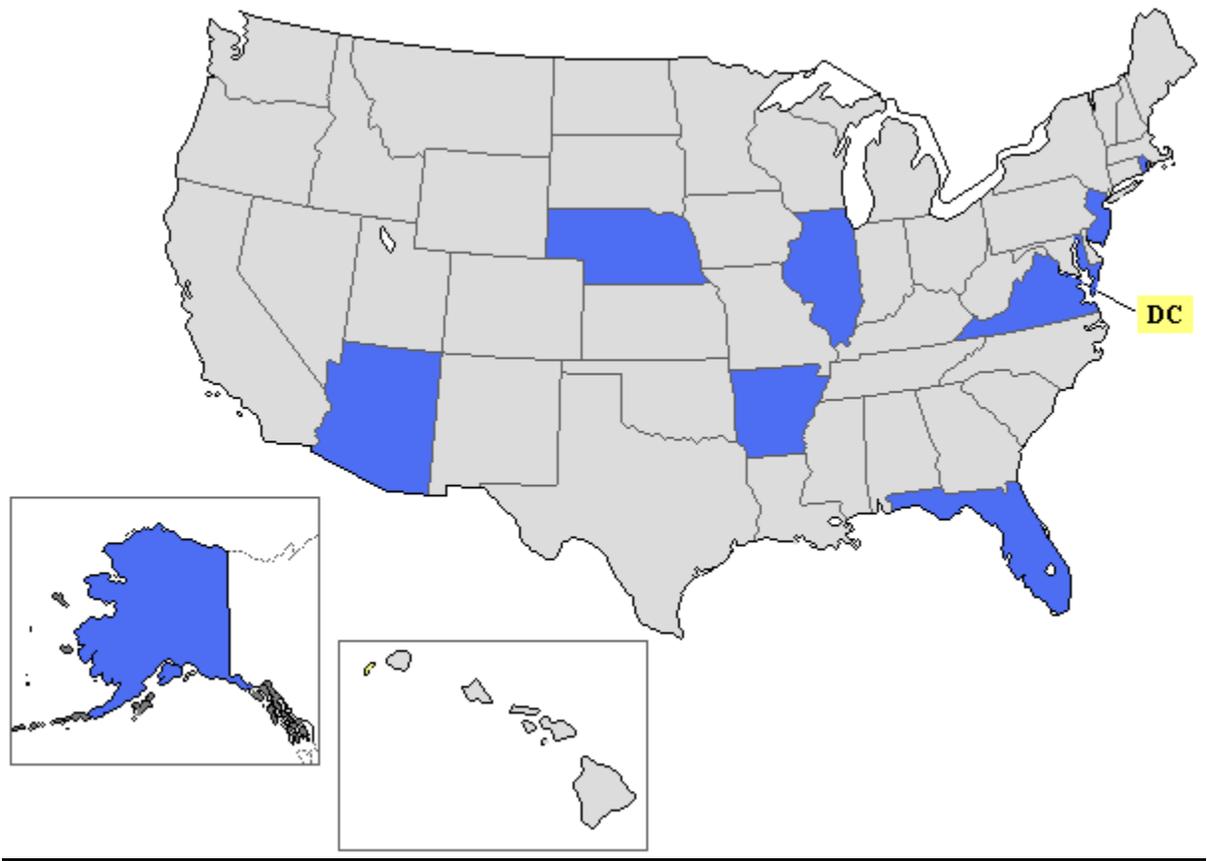
**Figure 1: States regulating importing attributes, n=49**



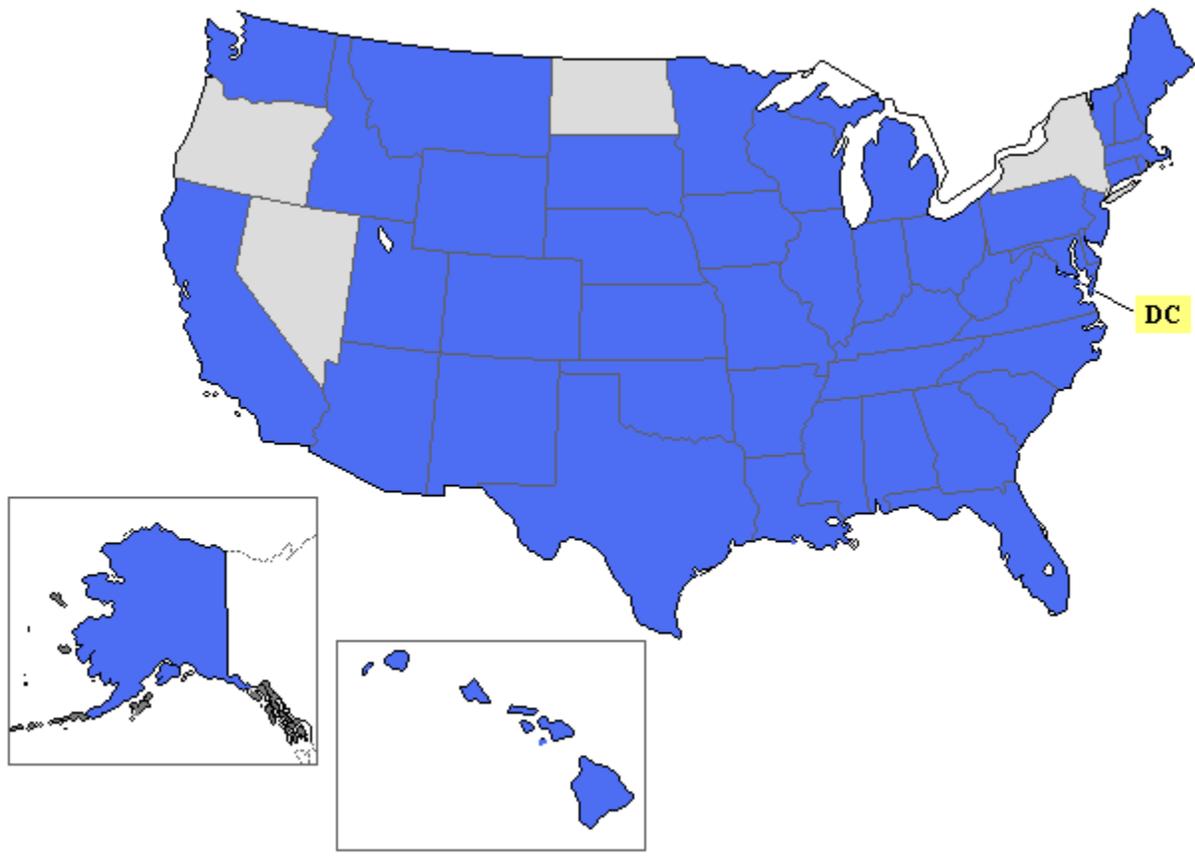
**Figure 2: States regulating importing comparability, n=38**



**Figure 3: States regulating importing competition, n=10**

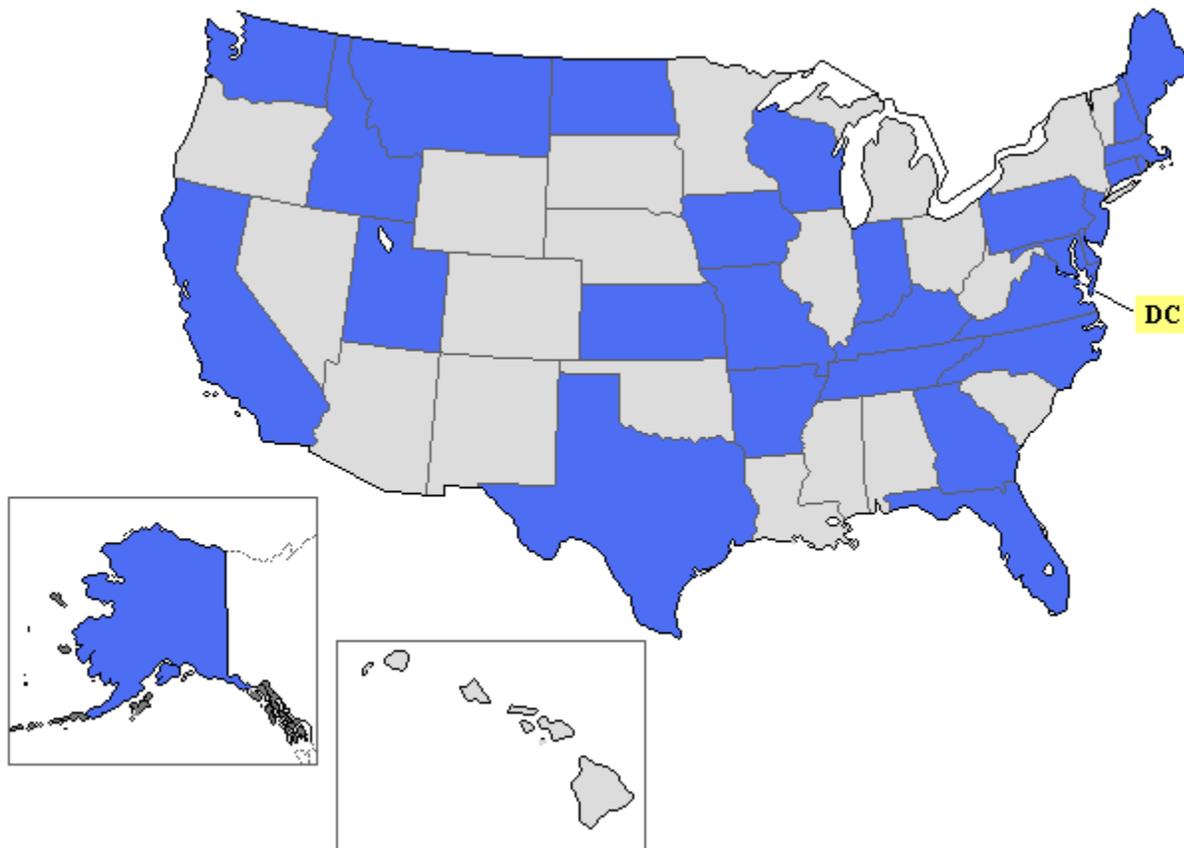


**Figure 4: States regulating exporting procedures, n=46**

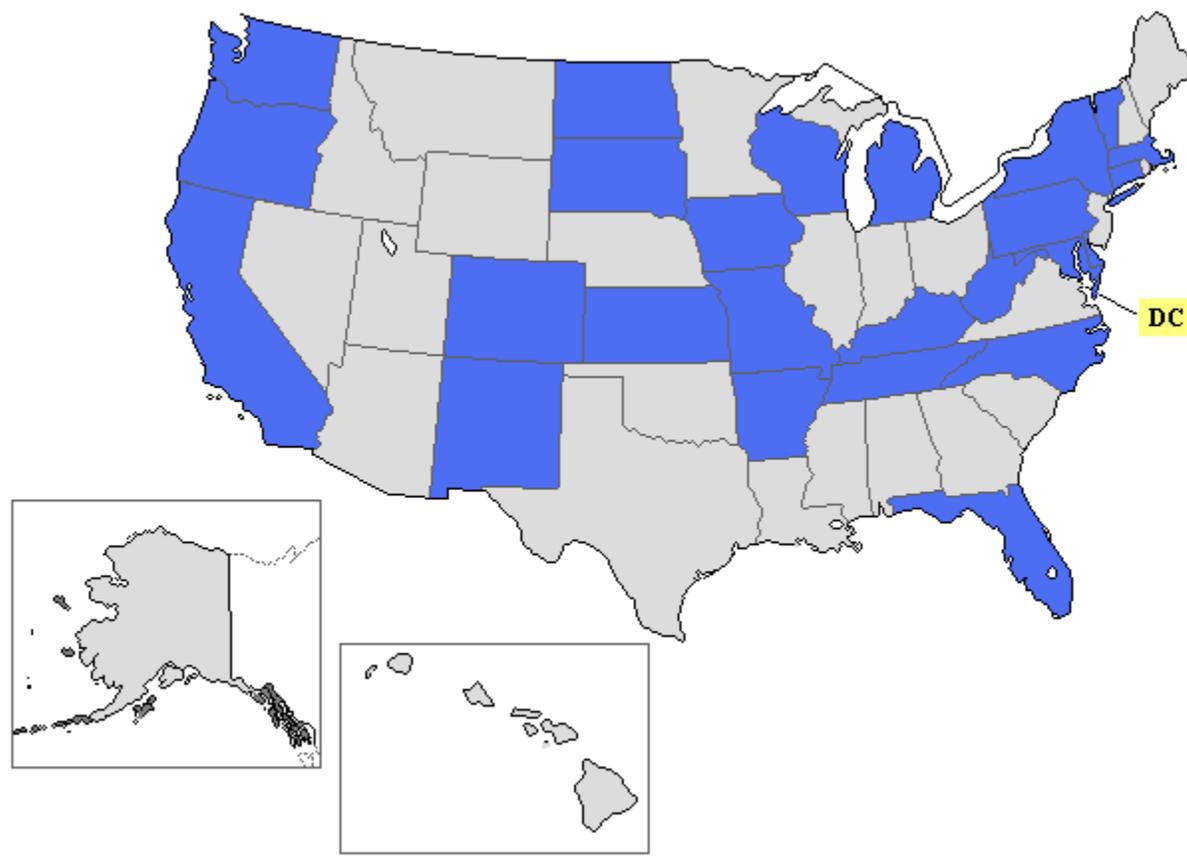




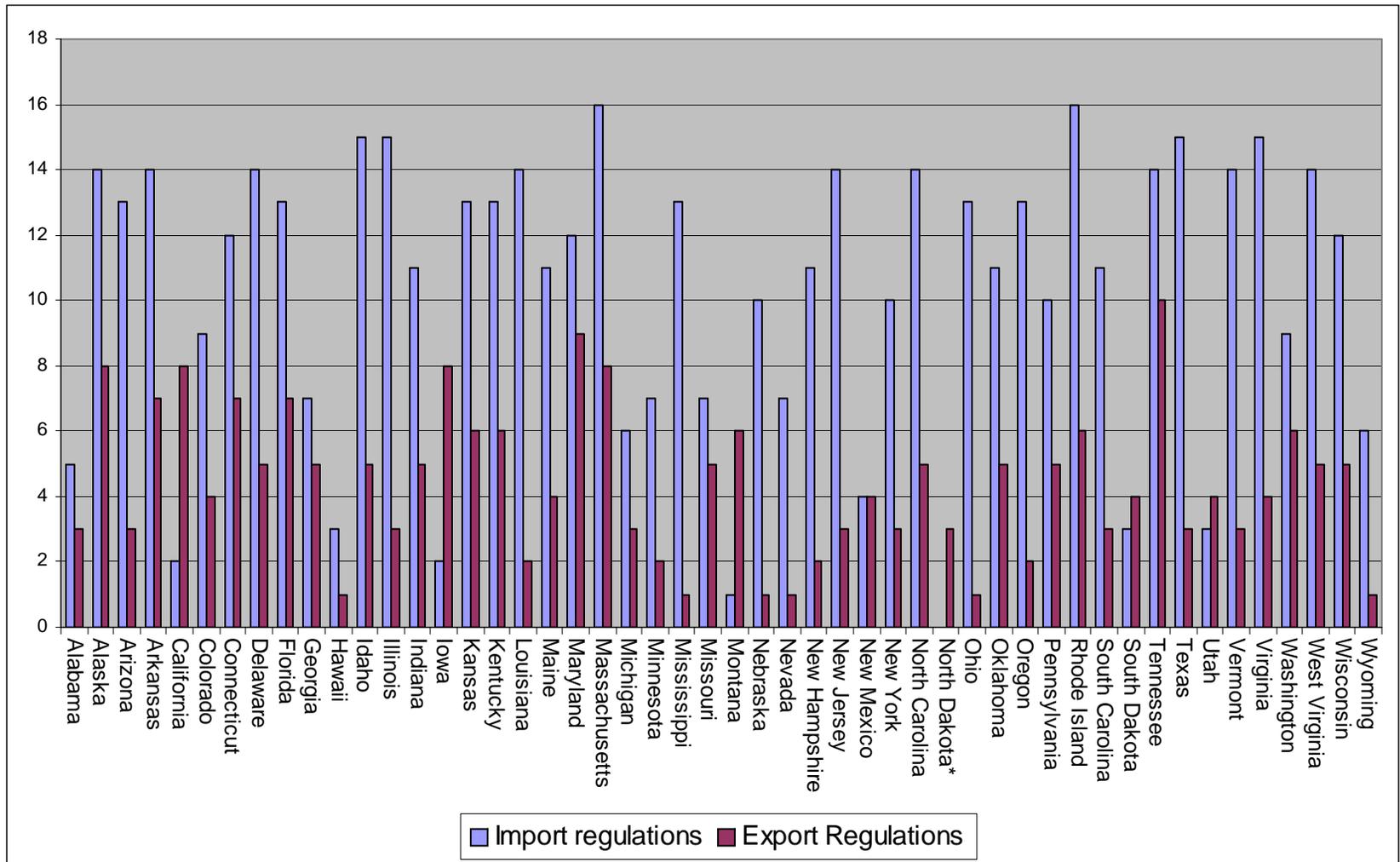
**Figure 6: States regulating exporting attributes, n=29**



**Figure 7: States regulating exporting competition, n=25**



**Figure 8: Total number of import and export regulations by state**



\* Importing regulations for North Dakota were not available for this analysis