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The U.S. market has space for international online students

Data from National Center for Education Statistics – 2017

- Students taking **at least one** online course
 - Fall 2015: 5,965,813 (29.8% of total student population)
 - Fall 2016: 6,294,801 (31.7% of total student population)
- Students taking online courses **exclusively**
 - Fall 2015: 2,874,870 (14.4% of total student population)
 - Fall 2016: 2,972,615 (15.0% of total student population)
- Students taking online courses exclusively **and** known to be from **outside the U.S.**
 - Fall 2015: 36,443 (0.2% of total student population)
 - Fall 2016: 42,690 (0.2% of total student population)
- Students taking online courses exclusively **and** from an **unknown location**
 - Fall 2015: 30,555 (0.2% of total student population)
 - Fall 2016: 22,548 (0.1% of total student population)

[Link to Source](#)

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What's hot – short courses!

Innovative workforce training, especially in tech, is in high demand both here in the U.S. and abroad

- In the U.S. last week, 2U, Inc. announced its acquisition of Trilogy Education Services (which produces "boot camp" programs offered by traditional universities) for \$750M
 - Overlooked here is that:
 - Trilogy plans to operate in 5–6 additional countries and
 - 2U already owns a short course provider headquartered in South Africa.
- Many countries face the same workforce training issues as we do.
 - *Example:* India has the largest population in the world of adults under 25.

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Factors supporting growth of international online programs

- Crowded competition in domestic online program offerings
- U.S. degrees = perceived economic opportunities
- Widespread access to Internet



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Factors supporting growth of international online programs

- By pursuing online education, foreign students do not have to deal with challenges associated with physically attending U.S. institutions

For International Students, Shifting Choices of Where to Study

With international student enrollments falling or stagnating at the top two study destinations – the U.S. and U.K. – what does the picture look like around the world?
By Elizabeth Rubin // August 24, 2018



International Graduate-Student Enrollments and Applications Drop for 2nd Year in a Row

By Lily Jackson | FEBRUARY 07, 2019 THE CHRONICLE OF HIGHER EDUCATION

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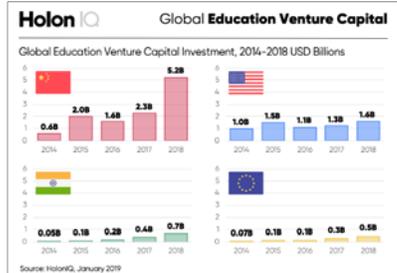
Tech companies have recognized the sector's potential



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Venture Capital companies are on board, too



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What are we covering today?

Significance of international online education	<i>U.S. legal and regulatory considerations</i>
Foreign legal and regulatory considerations	Thoughts on an effective compliance program

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U.S. legal and regulatory considerations

Federal student financial aid (Title IV)

- Title IV regulations sometimes apply to a U.S. institution's international ventures
 - Foreign additional locations must generally be approved by a U.S. institution's accreditor, home state, and the U.S. Department of Education (ED)
- Many foreign schools participate in Title IV and may have different considerations than a Title IV-participating U.S. institution
 - See [Hogan Lovells client advisory](#) on "U.S. regulation of 'foreign schools': Selected considerations for institutions participating in the U.S. Student Assistance Programs"
 - ED updates its public listing of Title IV-participating foreign schools quarterly
- At the state level, foreign schools may market to students in particular states without being aware of state processes. (Just like we do abroad!)

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U.S. legal and regulatory considerations

Federal student financial aid (Title IV)

- For Title IV-participating U.S. institutions that partner with a Title IV-participating foreign school, note that ED regulations contain strict limitations on offering online education as part of the educational program
 - Under 34 C.F.R. § 600.51(d), Title IV-participating foreign institutions
 - May not** provide Title IV-eligible telecommunications (distance education) or correspondence courses or direct assessment programs
 - May** use telecommunications technologies only to supplement and support classroom instruction in foreign country where students and instructor are physically located
 - By extension, the same principle would apply to any foreign institution's participation in a Title IV-eligible program with a U.S. institution
- Future changes to the law or ED regulations are possible

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U.S. legal and regulatory considerations

Trade and export control laws

- Prohibits transaction with specified countries, including Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine
 - “Transactions” would include enrolling online students
- In some instances, the U.S. government has relaxed its requirements to allow for certain types of online courses in certain countries
 - Cuba: online courses at the graduate level or below
 - Iran: online courses at the undergraduate level for humanities, social sciences, law, and business; STEM online undergraduate courses must be at the introductory level only
- U.S. institutions also may not engage in transactions with specified individuals/entities that have been sanctioned

See [U.S. Office of Foreign Assets Control website](#) for more information

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U.S. legal and regulatory considerations

Foreign Corrupt Practices Act (FCPA)

- Prohibits directly or indirectly offering or giving payments or anything of value to foreign government officials in order to gain a business advantage
- “Government official” and “anything of value” are broadly defined
- Actions of partners, vendors, consultants, or the like may be attributed to the U.S. institution itself

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What are we covering today?

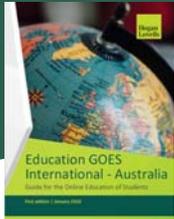
Significance of international online education	U.S. legal and regulatory considerations
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Education GOES International
Guide for the Online Education of Students

- 22 countries
- 7 topics
- 27 questions



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Education GOES International countries



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Education GOES International topics

<p>Statutory and regulatory framework</p> <ul style="list-style-type: none"> • Laws • Agencies • Approval requirements 	<p>Curriculum</p> <ul style="list-style-type: none"> • Degree recognition • Curriculum approval • Professional fields • On-the-ground activity 	<p>Marketing</p> <ul style="list-style-type: none"> • Advertising prerequisites • Types of allowable marketing • On-the-ground representatives 	<p>Admissions and enrollment</p> <ul style="list-style-type: none"> • Applicant qualifications • Enrollment agreement requirements
<p>Data privacy</p> <ul style="list-style-type: none"> • Records • Student consent • Breach notification 	<p>Taxes</p> <ul style="list-style-type: none"> • Triggers for institution • Tuition-related tax obligations 	<p>Other</p> <ul style="list-style-type: none"> • Restrictions on website access • Other helpful information to know 	

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Education GOES International trends and takeaways

- For a 100%-online education program:
 - Many jurisdictions currently do not require prior approval
 - Degree and non-degree programs are often treated the same
- Many countries – including China and India – do not fully recognize credentials earned online, especially those from a foreign university
- Consumer disclosures merit careful consideration
- Many countries have stronger privacy laws than the U.S., which could affect the collection and use of personal data from students participating in online programs
- Sales tax, value added tax (VAT), and taxable physical presence/permanent establishment depend on local law, including whether a tax treaty with the U.S. is in effect
- Regulation of online programs offered from outside a country is an *evolving area*

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What are we covering today?



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Here's the scenario

You – a newly-hired Provost – are charged to “go global” with the university’s online programs. No plans have been made and no instructions have been given on how to take this from concept to reality. You know that you’ll need to work with vendors or other third parties to make this happen. You also know that the university already has some type of international footprint, but you don’t know the details.

- What are some threshold questions you need answered?
- Who should you speak to
 - within Academics?
 - outside Academics?

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Elements of an effective due diligence/compliance program

Current activities

- What programs are already being offered outside the U.S?
- Consider and survey your institution's foreign footprint – what activities and investments is your institution currently considering or engaged in abroad, and in what countries?
 - Foreign locations
 - Affiliations and other arrangements with foreign institutions
 - Faculty exchange or research arrangements
 - Research partnerships
 - Institutional investments

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Elements of an effective due diligence/compliance program

Education regulatory notice or approval requirements

- Is any physical presence created such that foreign registration or other requirements are triggered?
 - In China, for example, a local partner and education ministry approval are generally required for any on-ground instruction
- Are any U.S. approvals or notifications necessary, such as to accreditors?

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Elements of an effective due diligence/compliance program

Student enrollment and foreign country considerations

- Does the institution have a reliable way to track what countries students are enrolling from?
 - Essential for U.S. export control purposes as well as tracking compliance with country authorization requirements
- Does the institution have a means for monitoring applicable law in those countries (e.g., privacy rules, authorization requirements)?
- Have the relevant departments of the university (e.g., Finance, Administration) set up systems to meet applicable U.S. and foreign tax reporting requirements?
- Do enrollment agreements and other operations reflect local requirements and needs, such as student disclosures on validity of degree, tax matters, English language proficiency requirements, or required consents as to use of data and privacy?

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Elements of an effective due diligence/compliance program

Vendors

- Have agreements with vendors (and the vendors themselves) been properly vetted to protect the institution?
 - Compliance with local law, FCPA exposure, adequate insurance, contract enforceability, etc.
- Do vendor agreements allocate respective compliance obligations of the institution and the vendor?
- Have regular communication protocols with vendors been established to share information which may trigger compliance obligations and to share “no fly zones” in which the vendor is prohibited from conducting marketing activities/recruiting prospective students?

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Final thoughts (and wedding bells)

Significance of international online education

U.S. legal and regulatory considerations

Foreign legal and regulatory considerations

Thoughts on an effective compliance program

- **Old** – something you already knew coming into the session
- **New** – something you learned during the session (e.g., something completely new, or a new insight)
- **Borrowed** – something someone else shared that you’re going to take back with you
- **Blue** – something you’re not going to do!

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How can we help?



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