



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper 2: State Authorization
Session 1: January 8-11, 2024

Issue: Complaint System and Governance in State Authorization

Statutory cites: § 101(a) of the Higher Education Act of 1965, as amended (HEA)

Regulatory cites: 34 CFR 600.2 and 600.9

Summary of issues:

States, along with accreditors and the Department of Education (Department), play a critical role in the higher education program integrity triad. Under the HEA, for an institution in any State to be eligible to participate in Federal programs, it must be legally authorized by the State to provide postsecondary education. State oversight, through the initial approval to offer postsecondary education and through the ongoing activities of State regulatory agencies, plays an important role in protecting students. The Department proposes changes to the current regulations regarding State approval and licensure and State authorization reciprocity agreements.

State Approval and Licensure (600.2)

The Department is concerned that existing State authorization regulations, which allow States to exempt certain institutions from State approval and licensure requirements if the institution is accredited by an accrediting agency recognized by the Secretary or if the institution has been in operation for 20 years, do not ensure sufficient State oversight of those institutions. State exemptions of certain categories of institutions from approval could weaken the program integrity triad for institutions that want to participate in the Federal student aid programs, making students and taxpayers vulnerable. The Department is also concerned that States may have limited complaint processes that rely upon other entities without adequate monitoring by the applicable State.

State authorization reciprocity agreements (600.2 and 600.9)

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States may participate in reciprocity agreements, where two or more States enter into an agreement that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States that are covered by the agreement. However, the Department is concerned that these agreements have shortcomings that fail to protect students and taxpayers and that reduce States' oversight of institutions. Additionally, we are concerned that some States are deferring all, or nearly all, of their oversight responsibilities to other States and the governing bodies that oversee these agreements for approval of educational institutions. The Department's concerns are primarily related to two areas: complaints and governance.

Current State authorization regulations require that States in which institutions are located have a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws. However, this means that States that have entered into a reciprocity agreement likely do not know about such complaints related to students in their State and do not monitor if their students are protected by the agreement in which the State is participating. This makes it difficult for States to make informed decisions when entering into or renewing agreements.

The Department is also concerned that the current reciprocity system is influenced by regulated entities, allows manipulation to evade State rules, and prioritizes administrative convenience over student and taxpayer protection. For example, the National Council for State Authorization Reciprocity Agreements (NC-SARA), in partnership with regional compacts made up of States, oversees the State authorization reciprocity agreements. However, the NC-SARA Board is composed not just of States and regional compacts of States, but also of representatives of accrediting agencies, and other stakeholders, including even institutions themselves. Furthermore, NC-SARA's Board, under current policy, has veto power over any proposed changes to SARA policy – potentially further stifling States' ability to improve consumer protections for SARA institutions. This means that the State role in the program integrity triad is being overseen by entities other than just States, including the regulated institutions the agreements are supposed to govern.

Proposal:

We propose to amend regulations related to State authorization reciprocity agreements (§§ 600.2 and 600.9) in two ways:

1. **We propose requiring reciprocity agreements to require institutions to have a system to report student complaints to the State in which the student resides.** Such a system could be

operated by the administrators of the reciprocity agreement, but the institution would ultimately be responsible for ensuring that the complaints reach their students' States. The Department is also interested in feedback on how to improve compliance and complaint reporting, including reporting to NC-SARA or a similar entity overseeing a reciprocity agreement, the Department, the State where the institution is located, and the institution's accreditor.

2. **We propose that Department regulations governing State authorization reciprocity agreements require that the governing board of any entity that oversees a State authorization reciprocity agreement only include representation from State employees – including regulatory bodies, enforcement agencies, attorneys general, and licensing bodies – and members of the public.** Institutional representatives would be prohibited from serving on the governing board. Public members would be required to be independent from institutions and could include students, higher education experts, and advocates. We are interested in the committee's feedback on this proposed requirement. The Department is considering a minimum number or percentage of representatives from each group.

Questions for discussion:

Under § 600.9, State authorization:

Issue:

Currently, States can exempt an institution from State authorization requirements if the institution is accredited by one or more accrediting agencies recognized by the Secretary or if the institution has been in operation for at least 20 years.

1. How can the Department ensure that State authorization is serving its intended purpose in the regulatory triad?
2. In what instances are exemptions from the State approval requirement appropriate or warranted? Is accreditation and/or length of time in operation sufficient for an exemption from the State approval requirement?
3. What factors should the Department consider as necessary for State authorization?

Proposed Regulations Redline:

§ 600.2 Definitions.

State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education. If a State authorization reciprocity agreement is administered by an organization, the governing body of such organization must consist solely of representatives from States, including regulatory bodies, enforcement agencies, attorneys general, and licensing bodies, and members of the general public. Public members must be separate from and independent of States, institutions, and accrediting agencies, and must not be:

(1) A current or former employee of, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that is subject to the State authorization reciprocity agreement;

(2) A current or former member of any trade association or membership organization related to, affiliated with, or associated with an institution or program that is subject to the State authorization reciprocity agreement;

(3) A current or former employee of or consultant to an accrediting agency that accredits an institution or program that is subject to the State authorization reciprocity agreement; or

(4) A current or former employee of member of the program integrity triad other than States including the Department of Education and accrediting agencies);

§ 600.9 State authorization.

(a)

(1) An institution described under [§§ 600.4](#), [600.5](#), and [600.6](#) is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution, including enforcing applicable State laws, and the institution meets the provisions of [paragraphs \(a\)\(1\)\(i\)](#), [\(a\)\(1\)\(ii\)](#), or [\(b\)](#) of this section.

(i)

(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by

one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under [paragraph \(a\)\(1\)\(i\)](#) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of [paragraph \(a\)\(1\)](#) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

(i) The Federal Government; or

(ii) As defined in [25 U.S.C. 1802\(2\)](#), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b) An institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt as a religious institution from State authorization under the State constitution or by State law.

(c)

(1)

(i) If an institution that meets the requirements under [paragraph \(a\)\(1\)](#) or [\(b\)](#) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in [paragraph \(c\)\(1\)\(ii\)](#) of this section, the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State's approval to the Secretary; or

(ii) If an institution that meets the requirements under [paragraph \(a\)\(1\)](#) or [\(b\)](#) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State not relating to State authorization of

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distance education. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(2)

(i) For purposes of this section, an institution must make a determination, in accordance with the institution's policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(ii) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.

(iii) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures, that the student's location has changed to another State.

(3)

(i) A State authorization reciprocity agreement must include a process for communicating information received on complaints regarding institutions or programs subject to the State reciprocity agreement to the State in which a student is located at the time of the student's initial enrollment, as determined in accordance with paragraph (c)(2) of this section.

(ii) If a State authorization reciprocity agreement is administered by an organization, the agreement must require that complaints received by States from institutions subject to the State reciprocity agreement are communicated to the organization. The organization must make information received on complaints public at least annually, including but not limited to the number and type of complaints by institution that is subject to the State reciprocity agreement.