

May 1, 2024

Miguel Cardona
Secretary of Education

James Kvaal
Under Secretary of Education

U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Dear Secretary Cardona and Under Secretary Kvaal,

On behalf of the undersigned higher education organizations, we are writing to express concerns regarding the proposed changes to state authorization reciprocity agreements from the recent negotiated rulemaking sessions. As the final proposed language did not reach consensus, we hope the Department will give due consideration to our concerns and seek a balanced approach to the proposed regulations. We wish to highlight two especially problematic areas in the final proposed language during rulemaking:

- Reciprocity Eligibility for Institutions With More Than 500 Students in Another State
- State Specific Laws Related to Closure

Additionally, we offer alternate pathways to balance student protection with negative student impacts, unfunded state responsibilities, and the strain on limited resources to ensure compliance at a time when so many institutions are facing immense challenges.

We understand the intent of the proposals are to protect students as consumers as well as federal financial aid funds. However, as we discuss below, if enacted some of the proposals may increase protections for students in some states while ignoring students in other states. In some cases, the proposed regulations will lower protections for students.

Overall Concerns Regarding Proposed Changes to State Authorization Regulations

We appreciate the Department's goals to ensure access to quality education. We believe the proposals risk not only curtailing institutional growth, competition, and adaptation but also potentially lowering the quality of online education while increasing costs, and therefore the price for learners, as well as other unintended consequences that would negatively impact students.

The practical consequences upon students, states, and institutions must be given serious consideration should this regulatory language move forward:

- *Negative Impact on Students* – Marginalized communities may be the most affected by increased costs and reduced program availability.

- *Unfunded State Responsibilities* – Increased administrative processes and tasks will require additional funding and state staff to manage effectively.
- *Institutions Facing Significant Additional Compliance Requirements* – Heightened financial pressures due to increased compliance costs will require resources that could otherwise be directed toward student support and educational innovation, and could lead to institutions being discouraged from serving students.

Problematic Areas

1. Institutions With More Than 500 Students in Another State

Problem as expressed by the Department:

We understand the Department is concerned that a larger number of students enrolled in an out-of-state institution in a given state causes a greater risk to those students. As a result, the Department proposed the institution must seek direct state authorization from the state with the increased number of students.

Proposed elements we find problematic or lacking in clarity:

- The number of students may not be the most effective risk factor. It was chosen without data-supported evidence that greater student numbers from an institution elevate risk to students.
- What activities are considered in the total number of students? (i.e. is this count of only students in online courses or does it also include experiential learning?)
- A data source for determining the number of students threshold will need to be developed. Additionally, the delivery of the data to institutions and states must be timely.
- Many states will struggle to manage the additional oversight responsibilities associated with assessing more institutions.
- The State Authorization Network's (a division of WCET) [State Institutional Approval Quick Chart](#) shows that approximately 19 states do not oversee out-of-state institutions offering distance education in a state without the institution having a physical presence and an additional seven or eight states have oversight over out-of-state institutions only in some higher education sectors. Without state reciprocity, students in those institutions will lack protection. This proposal would afford students less protection than they have through reciprocity.
- Some states take more than a year for institutional approvals. What happens to the institution's authorization status and student aid eligibility and the student's education in the interim?

Alternate Pathways for Risk Management

During the final days of rulemaking, [a proposal from negotiators Klein, Linden, and Dolan](#) suggested that designated triggering events particular to the institution be met

before requiring the institution to seek direct state authorization in a particular state. This risk management proposal is the start of a strong alternative. It was proposed in response to the last session's Department proposal of the student threshold proposal but didn't receive sufficient time to fully work through. We find value in this structure addressing the institution experiencing a significant enrollment growth in a state via accreditor evaluation or by the institution being provisionally certified by the Department, as they align with existing regulatory authority within the triad.

2. State Specific Laws Related to Closure

Problem as expressed by the Department:

We understand from the Department that the concern is that in the event of a school closure, students may not be benefiting from their state's protections of an out-of-state institution authorized through reciprocity. Therefore, the Department proposes that regardless of a reciprocity agreement, an institution must comply with closure laws (i.e. record retention and tuition recovery funds or bonding) in the state where students are located.

Proposed elements we find problematic:

- As enforcement of state closure laws will vary from state to state, students will receive uneven protection based on state residency.
 - State enforcement of applicable state closure laws is limited, as many states have no state authority over out-of-state institutions without a physical presence in the state.
- For states to enforce state closure laws, many states would need to enact changes in legislation and state agency oversight capabilities.
 - Even if states have state closure laws, many states will have to develop legislation to bring out-of-state institutions under the state's authority to enforce the state closure laws.
 - States will have to increase staffing to provide oversight and management of the institutions serving students in their states.

Alternate Pathway to Address Closure Protections

Uneven protections across states do not provide sufficient safeguards to support student consumer protections. Only students in certain states would benefit. Reciprocity is rooted in uniform protections and oversight of institutions. A pathway to develop protections within the reciprocity agreement is the only true way to protect all students.

To ensure that all students in states that are members of a reciprocity agreement receive closure protections, it would be prudent to collaborate with organizations facilitating a reciprocity agreement to develop policies that include closure protections. A less desirable alternative is for the Department to require that reciprocity agreements must

include closure protections applicable to all students located in states for which the institution obtained state authorization through reciprocity.

While we have other concerns with issues discussed under the recent negotiated rulemaking, we wished to target these issues with state authorization reciprocity for distance education. The proposed language at the conclusion of the rulemaking meetings would undermine a framework in which we have evidence that states, institutions, and students have received immense value.

Reciprocity, through the single currently available agreement, State Authorization Reciprocity Agreements (SARA), has provided broad oversight rather than a patchwork of laws and regulations for institutions to track and respond. It has offered states the opportunity to enter into agreements that free up their already overburdened state education agencies and provide them with interstate agreements approved by their legislative bodies. Additionally, reciprocity has expanded access to programs for students and lowered institutional costs.

We also are concerned about the influence of the federal government on interstate agreements, and whether these regulations are properly aligned with state decisions to join these compacts.

We thank you for your attention to this letter. We respectfully request that the Department of Education consider these points carefully as it works to develop proposed regulations. Any new regulations must strengthen, rather than weaken, student access to high-quality distance education programs regardless of a student's location.

We appreciate your attention to these serious concerns and are available to discuss these issues in more detail at your convenience. Our aim is to collaborate constructively to develop regulations that fully support the advancement of quality and accessible higher education across all states.

Sincerely,

UPCEA

WCET

QM

OLC

National Association of College and University Business Officers

American Association of Community Colleges