



National Council for State Authorization Reciprocity Agreements

A voluntary, regional approach to state oversight of distance education

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Dear Ms. Malawer,

In response to the Department of Education's June 22, 2017 request for comments on regulations that may be appropriate for repeal, replacement, or modification, the National Council for State Authorization Reciprocity Agreements (NC-SARA) offers the following comments on the December 19, 2016 amendments to the state authorization sections of the Institutional Eligibility regulations (34 CFR – Part 600) and amendments to the Student Assistance General Provisions regulations (34 CFR – Part 668).

Our organization

NC-SARA is an independent 501(c)(3) organization that provides a voluntary, regional approach to state oversight of postsecondary distance education delivered across state lines. Forty-eight states (plus the District of Columbia and the U.S. Virgin Islands) currently are members of SARA; about 1,600 institutions currently participate. Our close partners in this work are the country's four regional education compacts: the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE).

Support for general intent

We support the rule's requirement that institutions participating in Title IV programs must be able to demonstrate to the Department that they have obtained all necessary state authorization to offer distance education in each State in which they enroll students. We appreciate the Department's determination that institutions may demonstrate that compliance to the Department either by documenting each individual State's approval or through institutional participation in a state authorization reciprocity agreement covering those States in which the institution enrolls distance education students.



We also support the rule's requirement of institutional disclosures to students (both general and individualized disclosures) confirming whether the institution's programs meet educational requirements for professional licensure (e.g., in nursing, physical therapy, teaching, etc.) in the State in which the student would receive the instruction.

We are aware that other organizations are providing detailed suggestions for improvements to those notification and disclosure requirements; we therefore will focus our comments on the rule's definition of "state authorization reciprocity agreement," which is our principal concern.

Definition of "state authorization reciprocity agreement"

As we have previously commented to the Department, we believe the rule's definition of a "state authorization reciprocity agreement" is problematic. That definition is as follows, and we have italicized the text that concerns us:

34 CFR Section 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 residing in other States covered by the agreement and *does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.*

Some individuals are interpreting the italicized text to mean that a state authorization reciprocity agreement that is acceptable to the Department must allow a State that is a member of the agreement to enforce its own statutes and regulations *even if those statutes and regulations conflict with the provisions of an agreement (e.g. SARA) into which the State willingly entered.*

We do not believe the Department intended this particular interpretation, an interpretation that would in effect nullify any agreement. Our belief was confirmed by former Under Secretary Ted Mitchell in his letter of January 18, 2017 to Marshall A. Hill, NC-SARA's executive director and Russ Poulin of WCET (enclosed).

We agree with Mr. Mitchell's points, and ask that the Department, as part of a new Administration, at minimum clarify the meaning of the problematic text as soon as possible by confirming in an official manner the following points:

- States may enter into a "state authorization reciprocity agreement" to increase the efficiency and effectiveness of regulation of the interstate delivery of postsecondary distance education;
- The Department recognizes an institution's participation in such an agreement as sufficient documentation of the institution's having received authorization to enroll via distance education students located in States party to such an agreement;
- If States choose to enter into such agreements, they must work with member States of the agreement to resolve any inconsistencies between the joining State's statutes and regulations and the terms and conditions of the agreement prior to joining the agreement;

- Such a process demonstrates that the State's statutes and regulations are not superseded by the terms and conditions of the agreement;
- The State members of such an agreement are not required to accept as members States with statutes or regulations that conflict with the terms of the agreement.

Alternatively, through whatever means possible the Department could simply remove the problematic text, as indicated below:

34 CFR Section 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 residing in other States covered by the agreement. ~~and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.~~

We appreciate the opportunity to comment on this matter and would be pleased to work with the Department to resolve our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul E. Lingenfelter". The signature is fluid and cursive, with a large initial "P" and "L".

Paul E. Lingenfelter

Chair, NC-SARA Board