



**National Council for
State Authorization
Reciprocity Agreements**

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April 24, 2023

U.S. Department of Education
Office of Postsecondary Education
Lyndon Baines Johnson (LBJ) Building
400 Maryland Ave. S.W.
Washington, DC 20202

Submitted electronically.

Dear Department of Education Office of Postsecondary Education:

Thank you for the opportunity to comment on the U.S. Department of Education’s (ED) notice of intent to establish negotiated rulemaking in 2023 regarding certain Title IV topics. Since ED is anticipating state authorization and distance education as topics for the 2023 negotiated rulemaking sessions, we respectfully request that ED not move forward with changes discussed during the 2022 negotiated rulemaking sessions related to “Certification Procedures” that would impact state authorization reciprocity, and thus State Authorization Reciprocity Agreements (SARA). Should ED decide to move forward with changes that would impact state authorization reciprocity, we request that such changes be addressed as a part of the upcoming negotiated rulemaking.

The National Council for State Authorization Reciprocity Agreements (NC-SARA) is a private nonprofit organization that, along with four regional compacts, supports states’ implementation of SARA. SARA - and its set of policies for interstate postsecondary distance education - was agreed upon by 52 member states, districts, and territories. SARA:

- Provides a set of uniform policies for student consumer protections that otherwise would vary state by state.
- Ensures valuable oversight of, and increases students’ access to, interstate distance education and out-of-state experiential learning opportunities.
- Improves strategic coordination and communication between and among states.

SARA was established in 2013. Today more than 2,300 institutions are reviewed by states on an annual basis against eleven consumer protection requirements. These accredited and approved participating institutions represent more than 75 percent of eligible U.S. postsecondary institutions that offer distance education, serving millions of students annually.

The topic of state authorization reciprocity was introduced during negotiated rulemaking in 2022, under §668.14 Program Participation Agreement, Subsection (32)(iii) – Certification Procedures. As we have noted previously, we have specific concerns regarding the proposed language that was discussed as a part of that negotiated rulemaking session, as well as the process through which it was written and discussed.

If the language discussed in the 2022 negotiated rulemaking sessions becomes part of an NPRM and eventual final rule, there could be *significant consequences* to the efficacy of state authorization reciprocity in that we could return to the confusing and complex patchwork of state authorization distance education regulations that existed before SARA. The proposed language presented would undermine state authorization reciprocity by requiring each institution to comply with education-specific consumer protection laws of each state in which they enroll students. This would have the effect of individual state laws taking precedence over the parameters of SARA, thus eroding reciprocity. Additionally,

- Without SARA, half of the states do not regulate interstate distance education, and a third do not require accreditation for degree-granting institutions.
- There is no evidence that SARA opens the gate to unchecked fraudulent behavior on the part of institutions offering distance education.
- SARA does not prohibit any state Attorney General from investigating or taking action against an institution committing fraud or engaging in deceptive behavior.

In addition to the potential consequences of this language that was proposed during the 2022 negotiated rulemaking session, state authorization reciprocity was not initially listed as a proposed topic, nor was it put on the table until late in the process. Then, it was inserted in the section related to program participation and certification procedures rather than current regulations that address state authorization.

- This placement of language about state authorization reciprocity is problematic in that the federal regulations concerning state authorization are in a separate section (600.9), which was not discussed in the 2022 negotiated rulemaking session.
- The negotiated rulemaking process in 2022 did not allow sufficient time for research and impact analysis, or for thoughtful discussion and deliberation inclusive of constituents that could be impacted by such a regulatory change.
- It also did not include state authorization experts who could speak about the potential consequences. Therefore, the committee lacked proper representation of negotiators able to express the views and concerns of the SARA community.

Because of our concerns regarding the proposed language and the process, we urge ED to remove from consideration any changes to state authorization reciprocity as part of the anticipated NPRM on Certification Procedures. However, should ED move forward with language impacting reciprocity, we respectfully request that any proposed changes be debated appropriately to include proper representation of state authorization experts and stakeholders, including members of the SARA community.

The SARA community is very well-positioned for, and committed to, inclusive and collaborative continuous improvement. To improve state reciprocity, including protections for student consumers, a new SARA Policy Modification Process, with a focus on broad stakeholder engagement and enhanced transparency, was approved by the NC-SARA Board in 2022. This new process is now underway; the first round of proposed policy changes to SARA will be on the docket for the Fall 2023 NC-SARA Board Meeting. Every individual and organization that has chosen to participate in the SARA Policy Modification Process has a seat at the table – including opportunities for participation in public forums and public comments.

The SARA community is committed to ED’s emphasis on student consumer protections, and we wish to express our sincere intention to continue to work collaboratively with all stakeholders toward common sense, common ground approaches to ensure protections needed for today’s distance education learners.

Thank you for considering our view on this matter.

Sincerely,

Marianne Boeke

Marianne Boeke, Ph.D.
Interim President and CEO; Vice President, Research and State Partnerships
NC-SARA