





National Council for State Authorization Reciprocity Agreements

A voluntary, regional approach to state oversight of distance education

Memorandum

December 20, 2016

To: Interested parties

From: Paul E. Lingenfelter, Chair 
Marshall A. Hill, Executive Director 

Subject: New rules from the U.S. Department of Education (ED) affecting State authorization of distance education

On December 16, 2016 ED placed on their website new rules regarding state authorization of distance education; the new rules were published in the *Federal Register* on December 19, 2016 and may be read here:

<https://www.federalregister.gov/documents/2016/12/19/2016-29444/program-integrity-and-improvement>. The rules are to take effect July 1, 2018.

The National Council for State Authorization Reciprocity Agreements (NC-SARA) is particularly concerned about the rules' definition of a "state authorization reciprocity agreement" (Section 600.2 – Definitions). For such an agreement to be acceptable to ED as a way for institutions to demonstrate their having authorization for distance education in States other than their own, the agreement must 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."

This regulation indicates that reciprocity agreements are an acceptable means to deal with state authorization of distance education only if the parties to such an agreement (the States) can continue to enforce their different statutes and regulations for educational institutions, even after voluntarily joining a reciprocity agreement.

This is a puzzling view of reciprocity. If it applied to drivers' licenses, each state would need to establish testing centers at the state line to assure that every driver authorized to drive by another state could pass the local state's examination.

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A “reciprocity agreement” that would satisfy ED’s definition strikes us as no reciprocity agreement at all. If these rules are implemented, institutions of higher education offering distance education throughout the country would likely have to go back to dealing with all of the 54 individual States, territories and districts in which they enroll students in order to retain Title IV eligibility for those students.

The General Comments section of the *Federal Register* text sets aside this disconnect with the statement that “We would expect States to work together to implement a reciprocity arrangement to resolve conflicts between their respective State statutes and regulations and the provisions of the State authorization reciprocity agreement.” This is exactly what has happened with SARA and the 47 States (plus DC) that thus far have chosen to join (see www.nc-sara.org). SARA States voluntarily have committed to employ agreed-upon SARA provisions to deal with out-of-state SARA institutions. They retain their individually differing laws and rules to deal with out-of-state, *non-SARA* institutions. Typically, these are institutions in the three states which have not yet voluntarily agreed to implement and to recognize SARA provisions, or institutions in the 47 participating states who have not yet sought or could not achieve the approval of their state to be a SARA institution. More than 1,250 institutions now voluntarily participate in SARA (96 percent of which are public or independent, non-profit colleges or universities).

SARA eligible institutions must be approved for participation by their home state, must be accredited by an ED-approved accreditor, must meet higher standards of financial responsibility than required by the Department of Education, must certify that they observe the standards for offering distance education set by the country’s regional accrediting bodies, and must agree to a visible process for resolving student complaints.

In brief, the intended consequence of the ED rule is unclear. Is it to deny states the option of making a distinction between SARA institutions and non-SARA institutions? Is it to require all states to adopt identical statutes and regulations in order to achieve interstate reciprocity for distance education? Or is it to require any reciprocity agreement to admit states into reciprocity that are unwilling to accept the provisions established in the reciprocity framework?

We will continue to review the implications of these rules and communicate with our partners in the SARA initiative and with others.