

State Authorization for Distance Education
Proposed Language – February 2019
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(1) The Department should retain the Department’s 2016 regulatory language defining state authorization reciprocity agreements.

In 2016, the Department issued a regulation that defined “state authorization reciprocity agreement” in Part 600.2 to require that such agreements permit member states to enforce all state consumer protection laws, including education-specific consumer protection laws, against member schools operating in their states. The Department should retain this language, which would ensure that online students have the same protections as students enrolled at traditional brick-and-mortar schools.

(2) The Department should add language to the “state authorization reciprocity agreement” definition that ensures that reciprocity agreements are governed and controlled by member states.

The National Council on State Authorization Reciprocity Agreements (“NC-SARA”), has grown to include 49 member states. NC-SARA is administered by a non-state entity which is governed by a board that includes few state regulators, yet has ultimate authority for establishing NC-SARA policies. While states can choose to withdraw from the agreement, states have little direct control over NC-SARA policy. State “portal agencies,” the agencies that administer NC-SARA in member states, hold only a few positions on the governing board. There are also no representatives of state consumer-protection agencies, such as state attorneys general offices, and no representatives of nonprofits that serve consumer or student interests, on the governing board. The Department should add language to Part 600.2 that ensures that state authorization reciprocity agreements are governed and controlled by member states.

Proposed language:

The Department should retain the language added to Part 600.2 in 2016 (in italics below) and add a provision on state governance and control (in italics and bolded below):

State authorization reciprocity agreement:

*(a) 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 course to students residing in other States covered by the agreement **that (1) 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; and (2) is governed and controlled by member states.***

(b) State authorization reciprocity agreements comply with section (a)(2) where the agreement’s governing structure:

(1) allocates at least 50% of positions on its primary governing board to state higher education officials currently employed by a member state higher education agency; and

(2) allocates at least one position on its primary governing board to a representative of a member state attorney general’s office or a

representative of a non-profit organization representing the interests of consumers and/or students.