



# The Evolution of Compliance for State Authorization of Distance Education



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# ABSTRACT

## The Evolution of Compliance for State Authorization of Distance Education

This paper demonstrates the various factors and entities that influenced the multiple changes that have occurred in regulatory oversight of institutions of higher education. By researching numerous articles, federal and state regulations, and interviewing stakeholders involved in state authorization over the years, this paper summarizes major milestones in the progression of state authorization and reflects on the influences the numerous, and often complicated, changes have had on states, institutions, and students.

# INTRODUCTION

This paper presents the evolution of the history of state authorization of distance education and the impacts experienced by states, institutions, and students. The history includes attempts to adopt and implement a form of reciprocity of state authorization between states. Further, also discussed are descriptions of the series of federal regulations dealing with state authorization, including effective dates and lawsuits. The federal regulations published in late 2010 brought state authorization to the forefront for hundreds of institutions for the first time. The winding path of federal regulations is covered in this paper, along with the creation, organizational structure, and status of the reciprocity agreement currently in place, called the State Authorization Reciprocity Agreements (SARA). A written picture is provided describing how state authorization was handled before and after SARA was adopted by states. The paper ends with a look ahead—what will state authorization be in the future and how might impact states, institutions, and students?

# STATE AUTHORIZATION

**A**s clearly described throughout the paper, state authorization of distance education has been in existence for years and is wrought with nuances, conflicts, complications, and controversies. There is seldom a black and white answer to higher education regulatory questions. The overarching theme of state authorizations of distance education is, “it depends.” What defines an online student? It depends on how a state vs. how an institution determines “online” or “student.” What is supervised field experience? It depends: Is it supervised by an institutional employee?; Is the site supervisor paid?; Does the site supervisor need to be approved by the state or the professional licensing agency?; Is the supervised field experience offered for credit or not for credit?; Is the supervised field experience a required part of the academic program, or is it optional?; and How is “supervised field experience” defined by the state vs. the institution? These are just a few examples of matters to consider when learning about or applying for out-of-state authorizations.

The purpose of this paper was to document the progression and influencers of state authorization of distance education, better known in the context of this paper as oversight of out-of-state institutional activities. Even though state authorization is a state issue, it is strongly impacted by federal regulations, individual state regulations, accreditation standards, and the state reciprocity agreement currently in place. Which regulations apply to an institution depends on: (not an exhaustive list)

- ▶ The type of institution: degree-granting, non-degree granting; religious, for-profit, public, private non-profit.
- ▶ The governance of the institution.
- ▶ Whether the institution is approved to provide federal financial aid to its students.
- ▶ Whether the institution provides veterans’ or military benefits.
- ▶ Whether the institution is regionally, nationally, or programmatically accredited, and by which agency(ies).
- ▶ If the institution offers distance education.

So many questions, and yet, many answers to the same questions. It just depends. The following pages document the various parts or aspects of state authorization, particularly since 2010 when major changes began to take place.

## **Background: Authority of the States**

The authority of the states is spelled out in the U.S. Constitution’s Tenth Amendment, referred to as the “Reserved Powers Clause,” which says: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (Constitution Annotated, n.d.). This is important and relevant because it makes clear that unless specified otherwise in the U.S. Constitution, states have the authority to pass and enforce laws and regulations applicable within their own jurisdictions without interference by the federal government. For higher education, states regulate activities institutions conduct within their borders.

## Purpose of State Oversight in Higher Education

As far back as the 1920s, some states passed legislation recognizing their oversight of private correspondence schools. In the late 1930s states recognized their authority to regulate private vocational schools.

*This need was brought into sharp focus by the abuses of some school operators taking unfair advantage of persons who, because of unemployment during the depression, sought retraining for different jobs or wives seeking marketable skills to supplement reduced family incomes. In the beginning only a very limited number of states adopted such regulatory control. (NASASPS, 1978)*

State oversight of private vocational schools increased with the passage of the Veterans Readjustment Act after World War II, the G.I. Bill, due to abuses experienced by veterans attending private vocational schools. By 1959, 20 states had passed laws to regulate all or some types of the vocational schools (NASASPS, 1978).

Although discussions were held over a period of years among state regulators, in 1972, with 26 states represented, the National Association of State Administrators and Supervisors of Private Schools (NASASPS) was formed (NASASPS, 1978). James R. Manning from Virginia, president of NASASPS from 1974-1977 stated, "Interestingly, many school people and accreditors were not aware of the purposes of NASASPS, beyond what they considered the obvious – to hassle an already frazzled proprietary school sector" (NASASPS, 1978). He further stated,

*The interesting fact about NASASPS was that the vast majority of the membership could handle an adversarial/advocacy relationship with the schools, some few could not and did not. They were always adversarial. The majority felt that they could and would stamp out the unethical operators while still being able to support the excellent work of the good schools. (NASASPS, 1978)*

A NASASPS (1978) research study in 1974 provided the statistics regarding the progression of states that enacted state regulatory agencies (see **Table 1**).

In 1977, NASASPS' constitution was rewritten and adopted, which included the formation of several committees (NASASPS, 1978). Of particular interest to the topic of this paper, one committee was responsible for writing a paper on problems with recruiting agents and strategies to reduce those problems. A second committee was charged with developing a model guide for advertising. Recruitment and advertising remain concerns of state regulating agencies today as that is where fraud and abuse often starts. Indeed, Manning further stated, in his record of the history of NASASPS,

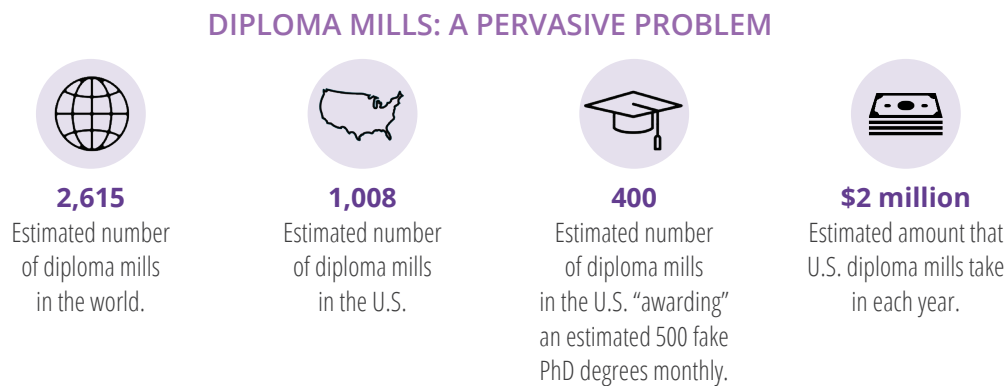
*It had long been established that the states have the legal right to regulate educational institutions. Critics of a more recent vintage have voiced the concern that the states had, by 1974, yet to exercise this right by passing strong laws and providing staff and budget to the existing agencies to carry out the adequate enforcement. From a historical point of view the states have attempted, albeit unevenly, to regulate proprietary schools almost from their inception to ensure some manner of protection to educational consumers. (NASASPS, 1978)*

**Table 1 States Enacting Regulatory Agencies by Range in Years**

YEAR OF ENACTMENT	NUMBER OF STATES
1900–1945	6
1946–1955	2
1956–1965	8
1966–1970	8
1971–1974	22
No laws	4

As described in more detail later in this paper, the primary purpose of state oversight of higher educational activities is consumer protection. The need for such consumer protection started to grow substantially in the late 1990s due to the proliferation of diploma mills (i.e., a company or organization that provides degrees without education for a fee) across the country. An article published by the Council for Higher Education Accreditation (CHEA; n.d.) in 2017 stated, “In the past several years, concern over the problem of fraudulent operators has escalated because of the ease of creating a fraudulent institution on the Internet.” In December 2017, Park published statistics concerning degree or diploma mills (see **Figure 1**).

**Figure 1 World Education Services Diploma Mills Statistics**



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Diploma mills were rapidly increasing in number in the United States, and it was a common practice for many of them to take students’ money and run. This left the students without their money, without any viable education, and no recourse. The fraud went so far as individuals stealing an institution’s website content and design, and advertising that a student could get their credential within a very short period of time, but at a significant cost (CHEA, n.d.).

State laws and regulations are the primary mechanism put in place to deter and hold diploma mills accountable while protecting students from fraudulent activities. It is the responsibility of each state to provide consumer protection for higher education students. These regulations provide oversight of higher education institutions within each state, commonly referred to as “state authorization.”

## What is State Authorization?

The simple answer is, state authorization, sometimes called approval to operate, is a formal determination from a state entity that an institution meets the criteria necessary for it to:

- ▶ Be established by name as an educational institution by a state and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate; have degree-granting authority,
- ▶ Be physically located in a state, and/or
- ▶ Conduct regulated activities in the state.

The regulated activities vary state-by-state. Some states have only one activity for which authorization is required—that of having a physical location in the state. Other states have several activities regulated, meaning if an out-of-state institution conducts just one of those activities, it must seek authorization. Common activities of out-of-state institutions that may need approval to operate (authorization) include:

- ▶ Enrolling distance education students.
- ▶ Location of distance education faculty.
- ▶ Face-to-face recruiting.
- ▶ Conducting short-term face-to-face courses, or in some cases, field trips.
- ▶ Targeted advertising (may include unsolicited emails).
- ▶ Supervised field experiences, like a practicum, internship, clinicals, student teaching, etc.
- ▶ Having a mailing address, physical location, or phone exchange in the state (regulated in all states).
- ▶ Housing a computer server through which distance education courses and academic activities are offered or provided.
- ▶ Sites for proctoring exams.

State authorization is somewhat of a confusing term, as it covers more than oversight of out-of-state activities. Therefore, to clarify the one aspect of state authorization—regulated activities—suggested terms include: oversight regulation of out-of-state activities; compliance management for out-of-state activities; or out-of-state activity compliance. No state considers authorization to be an approval of the institution itself. It simply means an institution has met certain criteria allowing it to operate in a state. In the context of this paper, authorization is permission to conduct certain activities within a state.

Institutions new to state authorization often express the desire to become authorized in all 50 states. However, this is neither practical nor possible. If an institution conducts no regulated activity in a state, it does not fall under that state’s jurisdiction, so it cannot be authorized. Some states offer an exemption based on certain criteria, so it is more prudent for an institution to obtain the official exemption than to apply for authorization. Therefore, there are three distinctions for state authorization: officially authorized, officially exempt, or not under a state’s jurisdiction. As mentioned earlier, regulated out-of-state activities vary from state-to-state. **Table 2** provides some examples of the differences between state requirements for out-of-state activity compliance.

**Table 2 Differences of State Requirements for Out-of-State Activity Compliance**

STATE	STATE REQUIREMENTS
Alabama	Out-of-state institutions may enroll distance education students located in Alabama without needing authorization, but targeted advertising and recruiting are activities that require a license to operate (Alabama Community College System, 2022). Oversight is carried by two agencies; one for the academic program review and one for consumer protection.
Arkansas	Arkansas regulates distance education along with other academic activities. It authorizes (“certifies”) program-by-program if an institution enrolls a distance education student located in Arkansas or if students do a supervised field experience in the state. Arkansas also has state-specific general education requirements (Arkansas Higher Education Coordinating Board, 2012).



STATE	STATE REQUIREMENTS
California	All out-of-state non-accredited institutions must file for an approval to operate. Effective January 1, 2022, only institutions meeting new definitions of non-profit corporation or public institution of higher education, are excluded from needing to register with the California Bureau for Private Postsecondary Education (BPPE; 2023).
Florida	Florida requires authorization only if the institution has a physical location in the state or if students do a medical clerkship in the state. The application is very detailed with several Florida-only requirements. Regulated institutions must also register with the Florida Secretary of State (Florida Statutes, 2022).
Georgia	Georgia regulates online programming as well as other activities, and each degree program is individually reviewed and approved. Students enrolled in a campus-based program from an out-of-state institution may do a supervised field experience in Georgia without institutional authorization (Georgia Nonpublic Postsecondary Education Commission, 2023).
Minnesota	If a degree-granting out-of-state institution has an online student physically located in Minnesota, the institution needs to go through the normal registration process. Authorization (registration) is determined program-by-program. Sometimes subject matter experts conduct an academic program review. The fees assessed are based on the level of the degree program and additionally, the number of degrees offered within a degree level (Minnesota Office of Higher Education, 2023).
North Carolina	North Carolina requires an institution to be licensed if they enroll online students located in the state or for field experience placements that are required for degree completion and for which credit is earned. A site visit is conducted, including out-of-state, with experts representing the programs the institution is seeking a license for. The whole licensing process is like an accreditation process. Institutions must meet 15 standards to obtain a license. The regulator is the University of North Carolina Board of Governors (The University of North Carolina System, 2023).
Maryland	Maryland has one application for a license to operate if an out-of-state institution enrolls distance education students located in the state; there is a different application, a registration, if students are doing a supervised field experience in Maryland (Maryland Higher Education Commission, 2023). Adherence to the C-RAC Guidelines is an important component of the application.
Oregon	Any activity conducted by an out-of-state institution requires an approval to operate (Office of Degree Authorization, 2023).
South Dakota	Authorization is required only if an out-of-state institution has a physical location in the state (South Dakota Board of Regents, 2014).
Washington (state)	An out of-state institution may enroll distance education students without needing to be authorized (licensed); but if that institution advertises specifically to Washington prospective students or wants to have students in a clinical supervised field experience in the state, a license to operate is required (Washington Student Achievement Council, 2023).
Wisconsin	<p>Distance education is regulated in Wisconsin (Distance Learning Authorization Board, 2023). The state's website provides a flow chart to inform institutions whether they need to be licensed to operate. The application process includes:</p> <ul style="list-style-type: none"> <li>• Evaluating applications for approval of schools, programs, recruiter permits, and teaching locations.</li> <li>• Requiring a surety bond to demonstrate financial stability.</li> <li>• Ensuring schools adhere to legal requirements in catalogs/handbooks and enrollment agreements.</li> <li>• Reviewing advertising materials for honesty and fairness.</li> </ul>

## Terminology/Definition Differences

### *Definitions of Location of a Student*

At the time of writing this paper, enrolling online students was a regulated out-of-state activity in approximately 25 states. Therefore, if the only out-of-state activity an institution conducted was enrolling online students, that institution had to know in which state students were located to be able to determine if authorization was required. In addition to knowing a student's location to determine the need for authorization, for data purposes and according to the current state authorization reciprocity agreement, some states required institutions to report how many students were located within their borders, usually annually.

Although federal regulations are covered later in this paper, the definition of a student's location is also addressed at the federal level. Recent federal regulations pertaining to Title IV federal financial aid eligibility and distance education allow institutions to define the students' location. This definition needs to be evidenced by having a documented policy explaining how a student's location is determined and include a procedure students must follow should they change their location.

This demonstrates the definition differences of "location" between the federal regulations and the individual state regulations, and these differences present a challenge for institutions. Some institutions have preferred to define the students' mailing address as the location; some use students' permanent addresses; while others have defined "location" to coincide with state regulations, which means where the student is physically located while taking an online course. If an institution chooses to define "location" based on the federal regulations, it still is required to know where the student is physically located at the time of enrolling in an online course to comply with individual state authorization and SARA reporting requirements.

### *Definitions of Experiential Learning (Internships, Practica, Supervised Field Experiences)*

The definitions of experiential learning are very nuanced. Whether a state regulates experiential learning is dependent on several factors:

- ▶ Is the field experience required as part of the academic program, or is it optional?
- ▶ Does the field experience carry academic credit?
- ▶ Is the site supervisor paid by the institution?
- ▶ How many students are involved in the same field experience at the same time at the same site while enrolled in the same program?
- ▶ Does the student secure the field experience location or does the institution make those arrangements? and,
- ▶ In Colorado, does the institution's workers' compensation insurance cover the student while in the supervised field experience?

This activity is one where institutions like to use creative terms, sometimes in attempt to avoid needing authorization. However, what institutions call this activity is not relevant. If authorization is needed, it is based on what activity takes place, based on the state definitions, and any of the factors listed above.

## Definitions of “Physical Presence” and “School” or “Operating”

As listed earlier in this paper, there are many activities that may require the need for an institution to seek authorization in a state. All these activities center around how each state defines “school,” “operating,” or “physical presence.” Regarding physical presence, all states consider physical presence as having a physical location or phone exchange in the state. Additionally, some states include enrolling online students in their state as physical presence. Finally, other states consider supervised field experiences, recruiting, or targeted advertising as physical presence.

**Table 3** below shows the differences in definitions for two basic terms: “school” and “operating.” These difference in definitions demonstrates the challenge institutions face when determining whether to seek authorization for their out-of-state activities and making sure they are using the correct terminology with each state. While each state has its own definitions, institutions may have different definitions of the same terms. That means, for state authorization, institutions need to set their own definitions aside and apply the state’s definitions when determining the requirements for authorization.

**Table 3 Differences in State Definitions of “School” and “Operating”**

STATE	TERM	DEFINITION
<i>Definitions of “School”</i>		
Delaware	Institution of higher education	“a college, university or other Post Secondary Institution authorized to offer programs and degrees or to confer degrees. For the purpose of this regulation, Post Secondary Institutions and Institutions of Higher Education shall have the same meaning” (Delaware Department of Education, 2017).
Iowa	School	<p>“an agency of the state or political subdivision of the state, individual, partnership, company, firm, society, trust, association, corporation, or any combination which meets any of the following criteria:”</p> <ol style="list-style-type: none"> <li>Is, owns, or operates a postsecondary educational institution.</li> <li>Provides a postsecondary course of instruction leading to a degree.</li> <li>Uses in its name the term “college,” “academy,” “institute,” or “university” or a similar term to imply that the person is primarily engaged in the education of students at the postsecondary level, and charges for its services” (Iowa Registration of Postsecondary Schools, 2022).</li> </ol>
New Jersey	School	“ordinarily means a major subdivision of a college or university that is organized to carry out instruction and/or research in related academic and/or professional fields” (New Jersey Administrative Code, 2022).
Kentucky	College	“any educational facility or institution maintained or conducted by any person, association, partnership, corporation, or trust and operating as an institute, junior college, college, university, or entity of whatever kind which awards a degree, diploma, or other statement of recognition purporting to indicate a level of collegiate attainment beyond secondary school graduation” (Kentucky Definitions, 2018).

STATE	TERM	DEFINITION
<i>Definitions of "Operating"</i>		
Delaware	Operating license	"means authorization of Institutions not incorporated in Delaware to offer courses, Programs of courses, or Degrees to residents of Delaware" (Delaware Department of Education, 2017).
District of Columbia	To operate or operating	"when applied to an educational institution means to establish, keep, or maintain any facility or location in the District, or to establish, keep, or maintain any facility or location organized or chartered in the District where from or through which education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act" (Office of the State Superintendent of Education, 2016).
Kentucky	Operating or soliciting	"having a physical presence within Kentucky and includes: (a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge; (b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors; (c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential; (d) An articulation agreement with a Kentucky licensed college or state-supported institution; or (e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state" (Kentucky General Assembly, 2022)
New Mexico	Operating that requires authorization	"A. Unless expressly exempt pursuant to 5.99.1.10 NMAC, an institution shall obtain distance education authorization from the department if the institution either: 1. has a physical presence in New Mexico and engages in distance education with students located outside New Mexico; or 2. engages in distance education from a location originating outside New Mexico with a student located in New Mexico" (New Mexico Higher Education, 2018).
South Carolina	Operating or soliciting	"having actual presence within the State and includes for the purposes of application of this chapter: (a) an instructional site within South Carolina whether owned, leased, rented, or provided without charge; (b) instruction whether theoretical or clinical within or originating from South Carolina utilizing teachers, trainers, counselors, advisors, sponsors, or mentors; (c) an agent, recruiter, in-state liaison personnel, institution, or business that solicits for enrollment or credits or for the award of an educational credential; and (d) advertising, promotional material, or public solicitation in any form that targets South Carolina residents through distribution or advertising in the State" (South Carolina Code of Laws, n.d.).

STATE	TERM	DEFINITION
<i>Definitions of "Operating"</i>		
Washington	Operating license	<p>"means, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.</li> <li>(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.</li> <li>(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose other than contact with the institution's former students for any legitimate purpose related to their previous attendance.</li> <li>(d) Maintaining or advertising an application for enrollment or a mechanism to collect prospective student data in any advertisement, publication, website, software application, or other media, if the institution maintains a Washington location.</li> <li>(e) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs" (Washington Definitions, n.d.).</li> </ul>

## Differences in State Application Requirements

With the wide variances in state regulations and application requirements, it is not possible to simply cut information from one state application and paste it into another state's application. Further, the applications are not like those for a driver's license or credit card. Some state applications are one-to-two pages long; others can become hundreds of pages long. In the past, some states required institutions to mail a paper copy of the entire application and attachments to each state board member. Although more states are moving to online applications, today, some states still prescribe the font type and size to be used in the application.

The applications for authorization require institutions to gather information from virtually every internal department including: enrollment management, admissions, the placement office, the registrar's office, marketing, website creation and maintenance, the institutional catalog, academic leadership, the libraries, assessment, program reviews, human resources, faculty credentials and hiring processes, cohort default score, and policies, just to name a few.

To further demonstrate state differences, some states require institutions to:

- ▶ Register with the Office of the Secretary of State.
- ▶ Contract with a resident agent to accept any legal documents on behalf of the out-of-state institution.
- ▶ Secure a surety bond or letter of credit to cover students financially should the institution close.
- ▶ Sign a written agreement with another institution or agency that will keep the student records should the institution close.
- ▶ License individual enrollment recruiters.
- ▶ Go through a training session before applying for authorization.

## *State Authorization Application Challenges for Institutions*

In some states, both in the past and the present, it can be very difficult for an institution offering distance education or conducting other out-of-state activities to meet the very detailed, specific requirements of each state, especially when the institution's way of operating does not "fit" those requirements. For example, a state may require applicant institutions to submit a notarized paper form from every online faculty member that includes educational background (i.e., name of each institution attended, years of graduation, fields of study, years of teaching experience, courses taught, etc.). When an institution has hundreds of faculty members across the country or world, it is almost impossible to collect notarized forms from everyone, especially by a hard deadline.

Another example of challenges with state authorization applications is the requirement to apply a state-specific tuition refund policy. Each authorized institution is required to have a published tuition refund policy. However, some states have very specific requirements for their authorized institutions. For example, in Florida, defining the percentage of refund can be based on time the student is enrolled and if the student is charged tuition for an entire program rather than per credit hour (Commission for Independent Education, 2022); and in Maryland, the minimum refund institutions must pay to students is determined by a metric set by the state based on the proportion of the total course, program, or term completed as of the student's date of withdrawal or termination (e.g., <10% equals a 90% refund, 10%–20% equals an 80% refund, etc.) and the refund must be paid within 60 days of the student's departure (Division of State Documents, 2023).

Another difference in the state authorization application processes includes some states requiring a site visit, including to institutions that have only an office building housing the operations of the institution and no campus. Site visit teams go to the institution's office building to review it like they would a physical campus. After the institution submits an acceptable application for authorization, the site visit team conducts face-to-face interviews with faculty and students, the librarian, the lead administrators, the chief financial officer, the academic leadership teams, the registrar, etc., and they observe the online course rooms. The remainder of the review is much like that of an accreditation site visit—a site team report on findings, suggestions, and recommendations for improvement, an institutional response to the site team report, and culminating with a recommendation to the state regulatory agency or board whether to authorize the institution.

## *State Authorization Application Challenges for States*

State regulators also face significant challenges in processing applications from out-of-state institutions. These challenges are very similar to the institutional challenges, including the differences in definitions of terms and institutions' creative ways of labeling their activities, such as supervised field experiences. Regulators also must contend with applications from institutions whose staff are not familiar with how state authorization works. For example, institutional staff may not understand or accept that states cannot guarantee when a response to an application will be given and they must hold all regulated institutions to the same standards no matter the reputation of the institution. Another challenge for states can be the common shortage of staff to process applications and correspond with applying institutions, often leading to multiple calls and emails from institutions asking for information that may be already provided on the state's website.

## Costs of State Authorization

It can be very expensive for institutions to operate out-of-state. Of course, it depends upon the number of states and the specific states within which authorization is sought. The cost for authorization varies from \$0 up to \$17,000 or more annually, depending on how the state charges their fees. The various ways of assessing state fees include charging:

- ▶ By the program.
- ▶ By both the program level and/or the program.
- ▶ Based on full-time enrollment (FTE) in that state (by program).
- ▶ A flat fee.
- ▶ On gross tuition received based on the number of students located in the state.
- ▶ An additional application fee (apart from the program approval fee).
- ▶ Other fees may include agent (recruiter) licenses, surety bonds, secretary of state filings, site visit stipends and expenses, hiring a registered agent in the state to receive legal documents, tuition recovery funds, change fees such as adding programs or sites, curriculum modifications, change of ownership, location, or name, etc.
- ▶ Any of the fees listed above may also be required for renewals of authorization, usually annually.

With these high costs, it is logical to expect institutions will pass those added expenses on to the cost of tuition and fees. This then leads to higher tuition and fees which can potentially raise the level of students' debt.

A survey conducted by the National Center for Higher Education Management Systems (NCHEMS; 2018) addressed the institutional costs of state authorization. The results of that survey indicated the average annual costs for state authorization are over \$100,000. Renewal costs range from \$35,000 to \$81,000, usually annually. Another NCHEMS survey conducted for the National Council for State Authorization Reciprocity Agreements (NC-SARA; 2021) showed substantial savings by participating in SARA. The results from data compiled from 171 institutions can be found in **Table 4**. The data in Table 4 demonstrate why many institutions must close enrollments to potential students located in certain states simply due to cost and compliance burdens. This reduces the educational opportunities for students across the country, especially those in more rural areas where a campus-based institution is not located nearby, or in those states that charge large fees.

**Table 4 Institutional Savings from Participating in State Authorization Reciprocity Agreement**

	SARA PARTICIPATING INSTITUTION	WITHOUT PARTICIPATION IN SARA
Initial Authorization Fees	\$3,351 - \$11,221	\$11,221 - \$219,000
Authorization Renewal Fees	\$3,258 - \$11,033	\$75,000
Initial Authorization Estimated Total Cost Savings	\$402,000,000	
Renewal Estimated Total Cost Savings	\$133,000,000	

# STATE AUTHORIZATION RECIPROACITY

## History—Efforts for Commonality—The Need for a Better Solution

The complex maze of state oversight of higher education for the purpose of consumer protection of students was evident to stakeholders early on. In years past, efforts were made to find better ways to manage state oversight of higher education and bring uniformity to the myriad of processes regulators and institutions were required to follow to achieve compliance with state authorization rules and regulations for interstate activities of postsecondary institutions.

One effort toward state authorization reciprocity was made in the 1970s with the Assessing Long Distance Learning Via Telecommunications Project (Project ALLTEL). A Project ALLTEL report was issued by the Council on Postsecondary Education and the State Higher Education Executive Officers Association (SHEEO) to address the difficult and varied state authorization requirements. The sponsoring agency was the Fund for the Improvement of Postsecondary Education (ED), and the report was authored by the Council on Postsecondary Accreditation. The intent of Project ALLTEL was to create a framework within which state regulators and accreditors could “establish rational interstate and interregional policies for the oversight of telecommunicated learning” (Goldstein et al., 2006).

The Project ALLTEL report was disseminated via a national video teleconference on May 31, 1984.

*The primary objective of the teleconference was to inform affected communities about the Project and the issues concerning the assessment of long-distance learning via telecommunications. The goal was to educate by making use of the telecommunications technology which had been the focus of the study for two years. (Chaloux, 1985, p. 79)*

According to Paul Shiffman and James Hall (2017), in a paper describing the development of the State Authorization Reciprocity Agreement (SARA), the Project ALLTEL report “identified disparate and onerous state licensure requirements as posing a significant threat to the ability of institutions to effectively and efficiently offer telecommunications supported learning” (p. 5). The strategies and principles recommended in the report helped lay the groundwork for future efforts toward state authorization reciprocity.

Another attempt for some form of state authorization reciprocity was made by the State Postsecondary Review Entity (SPRE) program developed under the program integrity triad. “Under the original SPRE concept, the U.S. Department of Education would create agreements with the states for approving education programs, state agencies would create authorization plans, and the federal government would help states pay for the additional oversight” (Harnisch et al., 2016). The 1965 Higher Education Act 1992 reauthorization sought to increase the strength of state oversight of higher education by requiring each state to establish or designate a State Postsecondary Review Entity (SPRE) together with the federal government. The government was especially focused on increasing oversight on the for-profit institutions.



*Under the SPRE, the USED would make agreements with the states for approving education programs and financially support the efforts to do so. However, due to flaws in the scope of the regulatory authority granted to these partnerships ... the SPRE concept ended almost before it began. (Harnish et al., 2016)*

Congress withdrew funding in March 1995, and implementation of the act ended, eliminating the SPREs.

In the early 2000s, the potential for state authorization reciprocity began to gain momentum again as more institutions offering distance education were learning of their regulatory responsibilities on a state-by-state basis. There were discussions and presentations about state authorization of distance education held through NASASPS (n.d.), an organization formed by and for state regulators. After learning about the state-by-state requirements and costs, institutions, of course, were very eager to find a more efficient way to follow states' regulations. An initial collective effort made by state regulators and institutions to create and agree upon a common state authorization application form was also unsuccessful because states began to individually put their applications into an online format.

Based on experiences of the author of this report at the time, state regulators seemed to be satisfied with their regulations and application/approval processes and some states were resistant due to a lack of trust between the states and differing levels of consumer protection. Indeed, at the start, many state regulators were wary of the possibility of a state authorization reciprocity agreement. In reality, this hesitancy was due to some states approaching consumer protection of students more vigorously than others.

### ***Creation of the Current State Authorization Reciprocity Agreements (SARA)***

In 2009, the Presidents' Forum became involved in a state authorization reciprocity effort. The Presidents' Forum, formed in 2002, is an organization comprised of institutional leaders who support efforts to make national changes in various academic areas. Under the leadership of Paul Shiffman (retired) from Excelsior College, the Presidents' Forum decided to take on the task of creating a framework for reciprocity of state authorization (Shiffman & Hall, 2016), whereby the institution's home state would authorize institutions whose main campus was located there, and the other member states would recognize that authorization. With funds provided by the Lumina Foundation and the Bill Gates Foundation, and with the help of the Council of State Governments, a reciprocity agreement drafting team was formed.

The drafting team's charge was to develop model legislation allowing states to voluntarily be members of a state authorization reciprocity agreement. Between 2009-2011, the team met with many stakeholders: accreditors, institutions, state regulators, the regional compacts, and professional organizations, to mention a few. The work was rigorous. It was very challenging to take such a wide disparity of regulations, processes, priorities, costs, and opinions and agree on what should be included in the model legislation.

The various drafts of the model legislation were reviewed by many people from all areas of higher education, each with the opportunity to provide feedback. Some people did not want accreditation to be a requirement for participation in the agreement. Some did not want for-profit institutions to be allowed to participate. Some individuals wanted the model legislation to be more descriptive and detailed, while others wanted there to be broader requirements for participation. Even if the legislation was adopted, some wanted the states to be able to add requirements for institutions participating in the agreement,

thus negating the essence of reciprocity. Others thought the effort would “inspire schools to set up shop in the states with the lowest regulatory standards while broadcasting nationwide” (Group of Advocates, 2016), which has not happened. The same source advocated that, “SARA agreement induces every college to become an advocate for the worst, most predatory company.” This, too, has not happened.

Some leaders in higher education expressed concerns that home state oversight would only primarily enable the for-profit institutions to expand their scope and few non-profit or public institutions would benefit. For example:

*The agreement would require New York and every other state to ignore the financial incentives that have caused so much predatory behavior at for-profit schools, by requiring that for-profit, nonprofit and public institutions be assessed as if they are the same. (Group of Advocates, 2016)*

The drafting team acknowledged the states were ultimately responsible to determine if the reciprocity agreement would be accepted. The team knew it would not be a small task to convince many states to come to an agreement and discussed that if even six states signed on within the first year, that would be success. Eighteen states became members of the State Authorization Reciprocity Agreements (SARA) within the first year (Straumsheim, 2016).

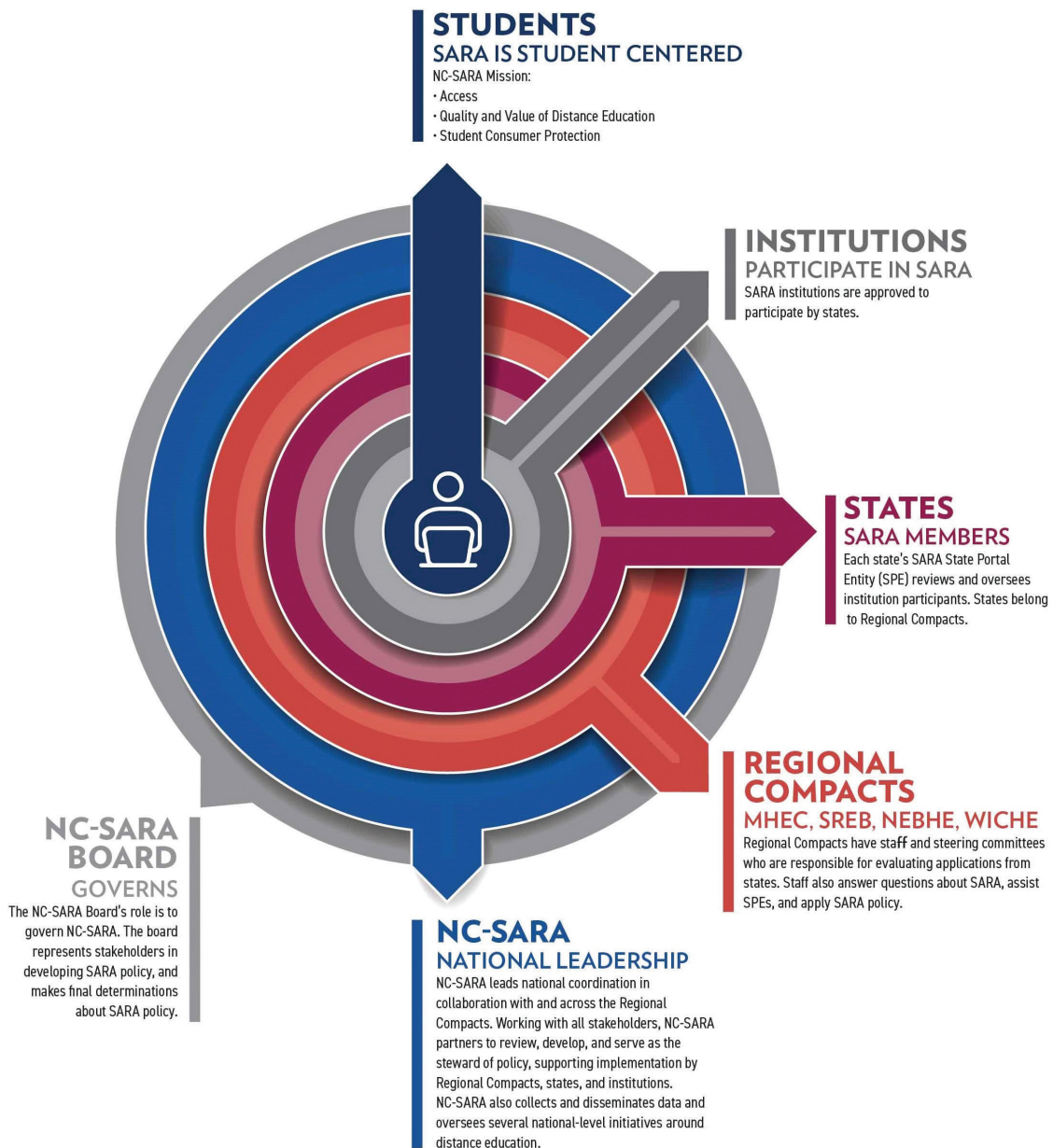
One big point of discussion by the drafting team was how the agreement would be administered. Who would oversee the agreement? Who would operationalize the agreement? What would the governance structure be? What would be the future role of state regulators? During one drafting team meeting, David Longenecker, then President of the Western Interstate Commission for Higher Education (WICHE), one of the four regional compact agencies, recommended those agencies be the overseers of the agreement (Longenecker & Hill, 2017). The other three regional compact agencies are the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), and the Southern Regional Education Board (SREB).

The regional compact agencies are experienced in working with multi-state agreements and they know the legislators with whom to consult in order to move legislation to be presented and passed. In 2015, the four regional compact agencies agreed upon one uniform reciprocity agreement, the Unified Agreement, and not separate agreements for each region of the country. It was decided that a national board would be the official administrators of the agreement, with the four regional compacts taking the lead on operationalizing the agreement. The Lumina Foundation provided further funding for the national and regional implementation of SARA (NC-SARA, 2023).

The National Council for State Authorization Reciprocity Agreements (NC-SARA) was established in December 2013 to ensure reciprocity through SARA was a national, and not a regional, initiative. NC-SARA is a 501c(3) organization created to facilitate collaboration of the regional compacts who coordinate the member states in implementing the reciprocity agreement called SARA. States voluntarily agreed, often through state legislative action, to apply uniform standards and procedures for providing state authorization of distance education related activities as provided in the reciprocity agreement in other SARA member states. The original NC-SARA Board included 22 leaders from many sectors of higher education and government (Longenecker & Hill, 2017). Marshall Hill, former state regulator in Texas and Nebraska, was hired as the first executive director of NC-SARA. Each regional compact established a SARA steering committee to ensure consistency. Each state must have a portal agency to review the state SARA applications and make recommendations to the steering committee to initially approve or renew institutions’ applications for participation in SARA.

The governance of NC-SARA is complex and includes many partners. According to NC-SARA (n.d.), the regional compacts work with NC-SARA "... in close partnership ... to implement the State Authorization Reciprocity Agreements (SARA). The four regional compacts ... have helped states, and the public and private institutions within the states, work cooperatively to expand distance education access and excellence within their regions." Additionally, "each of the four regional compacts that administer SARA has a regional steering committee that provides oversight of the state members within their region." Finally, "each state also designates a State Portal Entity (SPE) that oversees SARA participating institutions in each member state" (NC-SARA, n.d.). Additional partners and further information on the above-mentioned partners, can be found in **Figure 2**.

**Figure 2 SARA Partners**



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SARA policy states that participating institutions must obtain authorization in their home state. This home state authorization is recognized in all other SARA member states. SARA covers a limited number of activities, like a maximum number of students doing a supervised field experience at the same time at the same location and while enrolled in the same program (SARA Policy Manual, 2022). SARA does not pertain to state professional licensure requirements or other state requirements such as filing with the Office of the Secretary of State, departments of labor, and state tax departments.

By Fall 2016, 42 states had applied for and had been accepted as members to the reciprocity agreement, SARA, allowing students in all those states to have a broader path to their desired higher education goals. The reciprocity agreement between states also allows participating SARA institutions to open educational opportunities to more students while being in compliance with state authorization regulations in multiple states in less time and for less money. As of October 2021, more than 2,300 institutions were approved SARA participants with a total of over four million distance education students being served (“Data Dashboards,” 2023).

By 2018, 49 of the 50 states, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, were accepted as SARA member states. California remains the only state not to apply for membership in SARA. Despite the naysayers to SARA, and the fear that for-profit institutions would dominate participation in the agreement, as shown in **Table 5**, public institutions represent the highest number of SARA participating institutions (“Data Dashboards,” 2023). Of the institutions participating in SARA, the top five states are: Texas (138), New York (135), Pennsylvania (121), Illinois (101), and Florida (95; “Data Dashboards,” 2023). Finally, **Figure 3** provides the number of institutions participating in SARA from 2015-2020 (“Data Dashboards,” 2023).

**Effects of SARA on State-by-State Institutional Authorization**

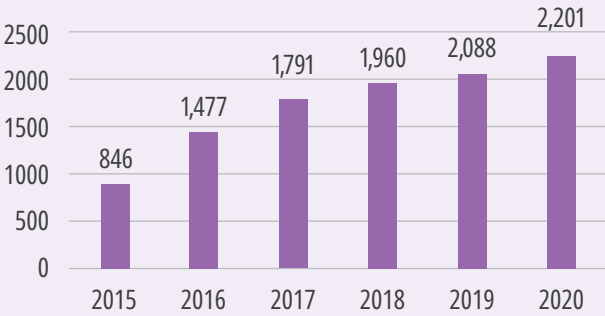
While states voluntarily became members in SARA, many of them also raised the authorization fees for non-SARA institutions, and in some cases, they revised the list of activities that required authorization. For example, before SARA there were 12 states that required authorization for enrolling online students located in their state. Now there are approximately 25. Some individual state authorization application fees also increased substantially; for example, New York charges \$17,000 annually; and Michigan \$10,000 annually. For a smaller institution, those annual fees alone prevent them from enrolling students in those states, as well as others.

Following the release of the 2010 version of the federal state authorization of distance education regulations, state higher education websites became increasingly more transparent to share authorization information institutions must follow to seek compliance in the state. However, since states have become members of SARA, it is noticeable that some state web pages have revised their websites

**Table 5 Number and Type of Institutions Participating in SARA**

SECTOR	INSTITUTIONAL PARTICIPANTS
Public institutions	1,139
Private non-profit institutions	1,012
Private for-profit institutions	157
Tribal institutions	3

**Figure 3 SARA Participating Institutions 2015-2020**



to provide information about compliance for purposes of reciprocity through SARA only and have removed the access to state regulations and basic information to address state authorization outside of reciprocity. Access to information to comply with individual state authorization regulations is a challenge for the thousands of institutions that choose not to, or cannot, participate in SARA.

### *SARA's Impacts on Students*

One of the greatest benefits of SARA is that students across the country have many more choices of institutions from which to seek their education. Prior to SARA, institutions often had to limit the states from which students could enroll in distance education or do their supervised field experiences. Institutions not participating in reciprocity through SARA still need to make the decisions whether to close enrollments to prospective students in certain states because of the cost and requirements in a state. With SARA and the students enrolled at 2,300 institutions approved by their home state to participate in SARA, potential students have the option to enroll in other participating institutions in 49 states, the DC, and two territories (“Fast Facts,” 2022).

Alan Contreras, former regulator in Oregon and member of the SARA drafting team, indicated another benefit for students enrolled at institutions participating in SARA was that previously, some states did not allow out-of-state students access to the tuition recovery fund should a problem arise, such as an institutional closure (A. Contreras, personal communication, March 16, 2022; SARA Policy Manual, 2022, 2.5(h)).

### *SARA's Impacts on States*

During interviews with a number of state regulators, a common response to the question of the impact of SARA on the state was funding and staff workload. Betsy Talbot, Institutional Registration & Licensing Manager at the Minnesota Office of Higher Education (MOHE) reported, pre-SARA, 470 institutions were regulated by her office. After SARA, of which Minnesota is a member state, MOHE oversees just over 200 institutions. Talbot said, “There has been a significant funding impact. MOHE now cannot afford the four staff members they previously had and there are no longer any funds for special projects.” MOHE is also the Minnesota portal agency for SARA, which creates additional work, but “funding is not there” (B. Talbot, personal communication, March 8, 2022). The issue of sufficient state funding to manage programs, including the management of SARA, is a discussion and an ongoing challenge in many states.

Julie Woodruff, Assistant Executive Director and Lead Attorney at the Tennessee Higher Education Commission said during the creation of SARA, it “became clear public institutions (in Tennessee) wanted to be part of it, so they moved forward so it would be implemented properly” (J. Woodruff, personal communication, March 10, 2022). Woodruff also indicated the greatest impact SARA has had on her agency is revenues—reduced state authorization fees. Tivoli Nash, Director of Private School Licensure at the Alabama Community College System, agreed the reduced fees from out-of-state institutions has had an impact on her agency, which operates solely on state authorization fees (T. Nash, personal communication, March 9, 2022).

Another impact on states is how student complaints are handled. SARA policy directs that student complaints are to be managed by the portal agency of the home state of the institution. A final decision on a complaint is provided from that home state, but collaboration with the host state where the student is located is encouraged. Some state regulators interviewed expressed concerns about the change in addressing or participating in student complaints, like they did pre-SARA. Sarah Levy, Executive Director, Postsecondary Licensing, Kentucky Commission for Postsecondary Education (CPE), oversees the SARA portal agency for Kentucky as well as the state authorization office. She was

asked, “Have you had an increase or decrease of student complaints since your state became a member of SARA?” Prior to SARA, Kentucky did not require state authorization if the only activity an out-of-state institution conducted in the state was enrolling online students. As a member of SARA, the portal agency in Kentucky would field student complaints pertaining to SARA policies, which could include online delivery.

Levy provided the series of complaint statistics shown below in Tables 6 and 7 with the following explanation:

We have distinguished the complaints CPE received as the state regulator from the complaints we received as the SARA State Portal Entity. We have only listed complaints that were facilitated by our agency (CPE) all the way through to conclusion, with our agency sending a final letter to the complainant.

*Example 1: Our numbers do not include instances where a student later withdrew the complaint after filing with CPE.*

*Example 2: Our numbers do not include instances where a student submitted a complaint to CPE that did not end up getting processed as a SARA complaint by our agency because upon investigation and confirmation with the institution, it was determined the student had not yet exhausted the institution’s grievance policy as required by SARA.*

*Example 3: The numbers do not include instances where we received a complaint that did not get processed by CPE because upon investigation and consultation with a different state regulator it was determined the complaint needed to be processed by the other state regulator. (S. Levy, personal communication, April 21, 2022)*

The NC-SARA Board and staff continue to discuss how to improve tracking of SARA complaints.

### **SARA’s Impacts on Institutions**

Next to the additional educational opportunities afforded to students because of SARA, thousands of accredited degree-granting institutions have been positively affected. Before SARA, institutions were limited with the states from which they could enroll online students, with SARA they can enroll online students located in 49 of the 50 states, in addition to the District of Columbia, Puerto Rico, and the U.S. Virgin Islands without having to seek authorization from each state or territory individually. As demonstrated earlier in this paper, participation in SARA, while imposing uniform authorization requirements, has saved institutions thousands of dollars. Betsy Talbot from the MOHE reported that based on SARA enrollment numbers, more Minnesota students are going to out-of-state providers and Minnesota is not receiving as many out-of-state students (B. Talbot, personal communication, March 8, 2022). Heather Delange from the Colorado Department of Higher Education said, “SARA

**Table 6 Distance Education Related Student Complaints Since 2014**

**Non-SARA related student complaints facilitated by CPE to conclusion and final letter since 2014:**

2015	5
2016	4
2017	13
2018	9
2019	2
2020	3
2021	8

**Table 7 Distance Education Related Student Complaints Since Kentucky Became a SARA Member State in 2016**

**SARA-related student complaints facilitated by CPE to conclusion and final letter since 2016 (when Kentucky joined SARA):**

2016	0
2017	0
2018	0
2019	0
2020	1
2021	1

afforded institutions to have a bigger footprint, but at the same time [early on] the institutions did not understand the uniform institution requirements for which they must adhere in order to participate in reciprocity through SARA” (H. Delange, personal communication, March 7, 2022).

Other significant impacts of SARA on institutions are the reduced costs and workload to obtain institutional approvals for states where the institution’s students are located. Pre-SARA, institutions had to manage the varied state authorization requirements and fees in each state individually. Now, the institutions must maintain approval to participate in reciprocity in their home states and follow the uniform SARA requirements including annual renewal and annual data reporting.

Jeannie Yockey-Fine, General Counsel and Vice President, Policy and Regulatory Affairs at NC-SARA mentioned a common misconception on the part of institutions is their assumption that SARA covered everything, and they did not have any further responsibilities other than complying with the SARA policies (J. Yockey-Fine, personal communication, March 24, 2022). SARA’s scope is limited in state institutional approval for distance education related activities. SARA does not include the state-specific professional licensure requirements, filings with the Secretaries of State offices, state Departments of Labor regulations, etc. Institutions still need to be mindful of their obligations for all aspects of state regulatory compliance.

### *California—The Only Non-SARA State*

As stated in the California Postsecondary Education Act of 2009 and revised effective January 2022, “In 2013 more than 300,000 Californians attended more than 1,100 private postsecondary schools in California.” According to the Council for Higher Education Accreditation (CHEA; n.d.), there are 145 public institutions, 128 WASC-accredited non-public institutions, and 253 state-approved or exempt private postsecondary and vocational institutions located in California. If California was a member of SARA, the majority of all degree-granting, accredited institutions in the state would be eligible to participate in the reciprocity agreement and their residents would have access to more educational opportunities from institutions outside of California and be afforded greater consumer protection than what is currently available to them in California. Instead, California institutions that conduct educational activities outside the state must seek approval to operate on a state-by-state basis, which restricts their enrollments and costs more time and money.

California remaining the only state not in SARA is puzzling. The California Department of Consumer Affairs and other consumer protection advocates have raised concerns that if California joined SARA, students in the state would be less protected than they are currently (Martindale et al., 2015). One might consider the opposite opinion upon review of state law indicating limited oversight of out-of-state institutions in California.

The Bureau for Private Postsecondary Education (BPPE; 2023) is the agency that “oversees private postsecondary education institutions operating in California.” However, at the present time, the only out-of-state institutions without a physical location in California subject to BPPE oversight are non-accredited institutions and for-profit institutions, which must pay into the state tuition recovery fund (BPPE, 2023). Degree-granting, accredited public and most non-profit out-of-state institutions that serve students located in California are exempt from oversight by California state law (BPPE, 2023). Due to this exemption in state law, no state authority exists in California to provide state consumer protection for students located in California attending in-state or out-of-state accredited public and most non-profit institutions. Non-profit institutions that changed their status from for-profit since January 1, 2010 are subject to oversight in California due to new California law effective July 1, 2022 (BPPE, 2023).

# U.S. DEPARTMENT OF EDUCATION AND STATE AUTHORIZATION

**H**igher education accountability in the United States is shared by what is known as “the Triad.” The Triad consists of the U.S. Department of Education (USED) with respect to student financial aid, administrative and fiscal integrity; the accreditors, which are approved by the U.S. Department of Education to ensure acceptable levels of quality and continuous improvement are in place; and the states with respect to degree-granting authority and consumer protection of students..

## Federal Role in State Authorization

State oversight of higher education by the USED and other agencies like the U.S. Department of Veterans Affairs, and U.S. Department of Defense, determine criteria institutions must meet to access Title IV federal financial aid funds, veterans’ benefits, or tuition assistance. One condition for an institution being allowed to participate in federal financial aid is the institution must obtain state authorization in any state that requires it or be a participant in a state authorization reciprocity agreement like SARA (Federal Student Aid, 2023).

Although individual state authorization laws and regulations have been on the books for many years (Tandburg et al., 2019), the Higher Education Act (HEA) of 1965 includes the general requirement for institutions to abide by state laws and regulations in order to access federal financial aid for their students. The HEA of 1965 says an eligible institution of higher education for the purpose of using Title IV federal financial is one that is “legally authorized with such State to provide a program of education beyond secondary education ...” (National Defense Education Program, 1958). Federal involvement in state authorization increased in 2010 when new regulations were proposed that included references to distance education and state oversight.

### 2010 Program Integrity Rules

On October 29, 2010, the USED published final regulations, which were to go into effect July 1, 2011. These regulations covered many topics, all tied to an institution’s ability to offer federal financial aid to its students. Below is a synopsis of those regulations and how they affect states, institutions, and students. State authorization is a state issue and responsibility. However, it was not until the 2010 Program Integrity Rules were released that the USED published federal regulations for state authorization of distance education. An institution’s approval to offer Title IV federal financial aid to its students is tied to compliance with these federal regulations, which are tied to state regulations. This direct tie-in for approval to use federal financial aid was the impetus for many institutions to begin to pay attention to, and act on, state authorization regulations. The publication of these new rules spurred an awakening by institutions across the country that until then were unaware they were regulated at the state level.

*The State Authorization (2023) part 34 CFR 600.9(c) as originally released, stated: If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State.*



These 2010 Program Integrity federal regulations woke sleeping giants—institutions and state regulators. As mentioned earlier, and based on this report author’s years of experience, most institutions across the United States were either unaware of state requirements for authorization for activities that occurred out-of-state, or if aware, did not believe the requirements were applicable to their institution. Indeed, it often appeared as though some institutions chose to ignore them. As for the state regulators, prior to these federal distance education regulations, their state regulations focused primarily on institutions physically located within their jurisdictions and distance education as we know it today was only beginning to grow and expand. So, in 2010, very few, if any, states had authorization regulations regarding distance education. As part of the 2010 Program Integrity Rules, the U.S. Department of Education published the following chart (see Table 8) to be used as part of determining if an institution met the requirements to be eligible to distribute federal financial aid (Federal Register, 2010).

**Table 8 State Authorization Requirements: Chart A**

LEGAL ENTITY	ENTITY DESCRIPTION	APPROVAL OR LCENSURE PROCESS
<i>Meets state authorization requirements*</i>		
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

*\*Notes. Federal, tribal, and religious institutions are exempt from these requirements. A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.*

## Timeline for 2010 Program Integrity Rules

With an effective date of July 1, 2011 for the Program Integrity rules, institutions (and others) asked the USED for an extension to this deadline because it would take longer than six months to apply for, and obtain, all the necessary state authorizations. In an interview with Russ Poulin, Executive Director, WCET (WICHE Cooperative for Educational Technologies) and Vice President for Technology-Enhanced Education, WICHE (Western Interstate Commission for Higher Education), he said,

*... it was clear that many institutions have not begun to address this issue (written on January 12, 2011—less than 6 months before the effective date). In looking at the state regulations, the regulations are complex and some of the agencies take many months (if not years) to act on applications. (Poulin, 2011)*

Poulin corresponded with Mr. Fred Sellers, USED Office of Postsecondary Education, on this issue whose response was:

*For the 2011–2012 award year, we (USED) will consider an institution to be making a good-faith effort to comply with the distance education regulations for state authorization, if:*

- 1. The institution has applied for approval of its offerings in such a state, either in response to the publication of the regulations, or earlier of the state notified the institution that such approval was required;*
- 2. The institution is able to document its application for approval and the application's receipt by the state; and*
- 3. The institution notifies the Department when the state issues its decision on the pending applications for approval. If the state does not regulate such activities by out-of-state institutions, the institution is considered to be legally operating in that state. (Ochoa, 2011a)*

That decision by the USED provided some relief to institutions, though there remained a tremendous amount of work to do to demonstrate a good faith effort. The work included:

1. Find, and read each state's regulations.
2. Determine if the institution conducts any regulated activities in a state.
3. Find and follow the state's application process and requirements including:
  - a. Forms,
  - b. Data,
  - c. Governance of the institution with organizational chart,
  - d. Faculty qualifications, experience, and hiring process,
  - e. Institutional policies,
  - f. Catalog,
  - g. Programs offered,
  - h. Program review process,
  - i. Audited financial statements,
  - j. Administrators' names, roles, qualifications and contact information,
  - k. Fees,
  - l. Format for application and appendices, and
  - m. Print, collate and send in application and supporting materials.

Later, on April 20, 2011, the USED issued a Dear Colleague letter moving the effective date of the 2010 Program Integrity rules to July 1, 2014 (Ochoa, 2011b). This was to give time for institutions to comply and allow them to put forth good faith efforts to do so. However, on June 12, 2011, the United States

District Court for the District of Columbia struck down the distance education portion of the state authorization regulations (34 CFR 600.9(c)), and the U.S. Circuit Court of Appeals (2012) upheld the decision to vacate this portion of the regulations based on procedural grounds, and the July 1, 2014, effective date was eliminated.

### *Impacts of 2010 Program Integrity Rules on States*

The new regulations proved challenging for state regulators as well as institutions. As mentioned earlier, prior to 2010, most state regulators, as with most people in general, had little or no concept of how distance education could possibly provide a quality education, especially via the Internet. Upon release of the 2010 Program Integrity Rules, and with the influx of institutional inquiries and applications to state agencies, concern was rising between states and institutions. There was uneasiness toward, and a lack of knowledge and understanding by, regulators regarding distance education modality and its quality, out-of-state institutions in general, and state authorization of distance education specifically. As a result, some states were placing more scrutiny on an institution offering distance education from out-of-state than from an institution in-state, especially the for-profit institutions.

The publication of the Program Integrity Rules spurred a large influx of emails, phone calls, and applications from institutions to the state higher education agencies. It was overwhelming to state regulatory offices, especially those already short-staffed, which delayed the responses to the institutions. Without reading the state laws and regulations, institutions often asked regulators if there was state oversight of their institutions while: (a) not knowing what activities their institutions were doing out-of-state, (b) what they needed to do to be in compliance, (c) where their students were located, and (d) misunderstanding state authorization terminology, which was often different than institutions' terminology. Some institutions mailed an inquiry form letter to states without providing pertinent information such as the state in which the institution was located, if the institution was accredited, and if the institution was authorized in the state where it was domiciled, etc.

Jeannie Yockey-Fine worked at the Florida Commission for Independent Education at the time the 2010 regulations were released. Her recollection of the impact of these regulations in her office included staff meeting together to see what it meant to ensure Florida complied, "It was a scramble," and there was a flood of emails and calls from institutions (J. Yockey-Fine, personal communication, March 24, 2022).

Sarah Levy, of the Kentucky Council on Postsecondary Education (CPE), provided the following statistics regarding the increase in the volume of inquiries about Kentucky state authorization from out-of-state institutions (S. Levy, personal communication, April 21, 2022).

From 2010 to August 2016:

- 1,408 out-of-state institutions contacted the CPE. Of those:
  - CPE referred 38 institutions to the Kentucky Commission on Proprietary Education because the institutions were offering below the bachelor's degree.
  - CPE was waiting to hear from 739 institutions if they would certify to the CPE that they would not operate or solicit in Kentucky per 13 KAR 1:020, or if they would apply for licensure.
  - CPE received written confirmation from 512 institutions that they would not operate or solicit in Kentucky per 13 KAR 1:020, and thus CPE confirmed that licensure was not required at that time.
  - 119 institutions applied for licensure with CPE.

Levy also provided the increase in the number of out-of-state licensees in Kentucky from 2010 to 2016, shown in **Table 9**.

Heather Delange, Colorado Office of Private Postsecondary Education, reported the volume of letters received from out-of-state institutions asking for guidance on state authorization increased to “thousands and thousands” (H. Delange, personal communication, March 7, 2022). Betsy Talbot, Minnesota Office of Higher Education, said there was a “huge increase” in the number of registered institutions following the 2010 Program Integrity Rules. In 2010, 60 out-of-state institutions were registered in Minnesota; by 2014 that increased to 300 (B. Talbot, personal communication, March 15, 2022).

**Table 9 Increase in Number of Out-of-State Licenses in Kentucky 2010–2016**

YEAR	IN-STATE INSTITUTIONS	OUT-OF-STATE INSTITUTIONS
2010	39	36
2014	38	120
2015	38	145
2016	36	162

### **Impacts of 2010 Program Integrity Rules on Institutions**

As mentioned earlier, though state authorization or approval to operate regulations were in existence for many years, until 2010, most higher education institutions were unaware of these regulations, especially the private non-profit and public institutions. In the late 1990s and early 2000s, institutions were starting to offer more courses and programs via various means of distance education. The creation of the Internet caused the distance education modality to explode. According to National Center for Education Statistic’s (NCES; 2021) data between the falls of 2012 and 2018, enrollment in distance education courses increased by 29 percent (from 5.4 to 6.9 million). By fall 2019, 7,313,623 students were enrolled in distance education courses at degree-granting postsecondary institutions (NCES, 2023).

Of the institutions that were aware of the regulations, many had the false opinion that the regulations did not apply to them, especially the public institutions. Even after the federal 2010 Program Integrity Rules were published, many institutions resisted the requirement for authorization. Alan Contreras, administrator with the Oregon Office of Degree Authorization in 2010, confirmed these observations. He shared,

*the 2010 rules caused institutions to have to decide what to do; the most impact was on public institutions because they were unaware that they were regulated. The non-profit institutions at that time were doing very little distance education and the for-profits were already aware of state authorization requirements and had been working toward compliance for a number of years. (A. Contreras, personal communication, March 16, 2022)*

Further, Russ Poulin said, “Institutions were in disbelief and would come up with many reasons why they shouldn’t or wouldn’t seek state authorization” (R. Poulin, personal communication, March 15, 2022). Based on informal comments made by institutional staff responsible for doing the work of state authorization, a common reaction was that many institutional leaders were skeptical about the state oversight applicability for their institutions. They believed other institutions were providing online courses across state lines without state authorization and that (mistakenly) no one was being penalized for doing so. This opinion made them determine the level of risk for their institution was low.

As Contreras mentioned, the institutions paying attention to the state-by-state regulations were the for-profits, though they did not share their knowledge between themselves because they believed compliance with state authorization was a competitive advantage. Therefore, for many of the for-profit institutions, the release of the 2010 Program Integrity Rules was business as usual because they had been applying for state authorization for years (A. Contreras, personal communication, March 16, 2022).

Another institutional impact of the 2010 Program Integrity Rules was that many colleges and universities assigned the responsibility of state authorization to staff members who were unfamiliar with how to find and research the applicable state laws and regulations for out-of-state activities conducted by the institution. Also, this person was often at a lower level in the institution, making it extremely difficult to get the cooperation and buy-in needed in order to be efficient and successful. Additionally, as more institutions became aware of being regulated, they had challenges determining where state authorization fit within the organizational structure and from whose budget the costs of authorization would be allocated. Also, it made institutions aware they were accountable to states for their recruiting and advertising practices, along with other out-of-state activities pertaining to consumer protection. This meant institutions may have had to curtail or change some recruiting and advertising activities and practices.

### *Impacts of 2010 Program Integrity Rules on Students*

The direct impact on students with respect to the 2010 federal regulations is impossible to measure. One obvious advantage to the students was they now must be informed by institutions about where to file student complaints, as this information is now required to be posted on institutions' websites. Prior to the publication of the 2010 federal regulations, about 12 states regulated institutions that solely provided distance education, which means students enrolled in distance education in the majority of states were not protected by a complaint process (Contreras et al., 2017). More transparency by institutions empowers potential students to make better informed decisions as to where to obtain their education. With distance education being in the federal regulatory language, more students are afforded consumer protection.

The history recall of the federal regulations is interrupted here in order to present a major shift in resources available to institutions during the time institutions were grappling with all things pertaining to state authorization. Until this time, institutions had to independently try to figure out what and how to do this work. Fortunately, WCET caught a vision of what could be done to assist institutions.

# THE STATE AUTHORIZATION NETWORK (SAN)

**B**ecause of the confused reactions and alarm by institutions regarding the 2010 federal regulations, Russ Poulin, then the Deputy Director, Research & Analysis of WICHE Cooperative for Educational Technologies (WCET) saw the need for creating a resource to assist institutions regarding state authorization. He worked with WCET to form a special interest group, a national membership organization. This group is called the State Authorization Network (SAN) and was originally meant to be a temporary means of providing institutions with information on state authorization.

It was Russ Poulin's idea to gather organizations together at the WCET Annual Meeting in November 2010 (Downs, 2021). As Poulin stated, "The original State Authorization Network was envisioned as a service for state systems or consortia of institutions using a 'train the trainer' model. It was not long before we had individual institutions asking to join and that was allowed" (Downs, 2021). The first meeting of SAN was in Boulder, Colorado in April 2011.

Those attending the first SAN meeting were overwhelmed to learn about all the work ahead of them, yet most of them were not at a level in their institutions where their voices were readily heard. Tremendous pressure was experienced by those individuals who were responsible for the state authorization compliance at their institutions, but they had little or no authority to carry out those responsibilities. They knew what needed to be done, but the administrators in their institutions often discounted the importance, did not support the efforts with human or financial resources, and too often blew it off because they thought no other institutions were being held accountable, so they probably would not be either. A common question from institutional staff attending SAN meetings was how to get buy-in and support from the administrators.

# FEDERAL NEGOTIATED RULEMAKING AND ADDITIONAL REGULATIONS

## New US Education Department Negotiated Rulemaking Committee: 2014

In 2014, another Negotiated Rulemaking Committee was formed by the USED to propose additional regulations pertaining to state authorization. According to Poulin (2014), regulation suggestions included:

- The concept of an interstate reciprocity agreement was recognized as one of two methods for achieving authorization. The second is directly being authorized by a state.
- Under certain conditions, members of the armed forces, their spouses, or their children would continue to be authorized for the purposes of federal financial aid if they move to another state.
- A contentious regulation draft of “An institution is not considered to be authorized to offer postsecondary distance or correspondence education in a state for purposes of institutional eligibility for funding under the HEA if it is exempt from state approval or licensure requirements based solely on accreditation, years in operation, or other comparable exemption.”

The Negotiated Rulemaking Committee did not come to a consensus on these issues, which meant the USED could draft its own language for proposed regulations that would be published for public comment.

## New Federal Regulations: December 19, 2016

On December 19, 2016, the USED released the Program Integrity and Improvement (2016) regulations for State Authorization of Postsecondary Education, Foreign Locations, with an effective date of July 1, 2018. On July 3, 2018, the Federal Register official announcement was published indicating the Department’s delay of the effective date for the regulations until July 1, 2020 (Program Integrity and Improvement, 2018). This delay was based on concerns raised by regulated parties and was granted to ensure there was adequate time to conduct negotiated rulemaking to reconsider selected provisions of the 2016 final regulations, and as necessary, develop revised regulations.

The 2016 regulations were confusing to institutions. One of the confusing issues was the reference to a student’s “residence.” Individual state authorization regulations are based on where a student is “located.” Letters were written to the USED asking for clarification because if the regulations were published as written, institutions would need to know a student’s physical location for individual state applications and a student’s residence for federal compliance (Poulin et al., 2018). Part of that confusion also was because institutions have many different ways of defining a student’s residence—the home address, the mailing address, the campus address, the physical location of the student, or for service members, their station address, etc. There needed to be some continuity between the federal,

state, and institutional definitions of where the students were.

In August 2018, the USED was sued by the California Teachers Association (CTA), the National Student Legal Defense Network (NSLDN), and the National Education Association (NEA) claiming the Department did not have the authority to delay the effective date of the 2016 rules without going through a negotiated rulemaking process (Flannery, 2019). On April 26, 2019, the Court ruled in NEA's favor to vacate the delay and ordered the USED to move the effective date of the 2016 federal regulations 30 days from the date of the court decision to May 26, 2019, in order to allow institutions to address compliance (rather than July 2020; United States District Court et al. v Betsy DeVos et al., 2019).

## Impacts of the 2016 Regulations on States

Probably one of the most obvious impacts of the 2016 regulations on states pertained to California. The federal regulations required the institution to document a state process for review and appropriate action on student complaints for institutions to be approved to disburse federal financial aid and offered distance education to students residing in a state in which the institution is not physically located. California did not have an entity to field student complaints, which potentially impacted the tens of thousands of students located in the state (R. Poulin, personal communication, March 15, 2022).

Stated in a letter from Diane Auer Jones (2019), Principal Deputy Under Secretary at the USED written to Christopher S. Shultz, Chief Deputy Director, California Department of Consumer Affairs, was:

*To the extent that the process proposed by California involves simply referring a complaint to an institution's accrediting agency or another agency in the State in which the institution is located, it does not appear to comply with the 2016 regulations. It would be difficult for an accrediting agency or an agency in another State to enforce applicable California laws, and without participating in a reciprocity agreement, California could not simply refer student complaints to the State in which the institution has a physical presence. Moreover, it appears that in some instances you would be depending upon non-California entities, such as accreditors or other States to "investigate and resolve" a complaint. Although this may be permissible by mutual agreement, the 2016 regulations require the State of California to lead the investigation and resolve it in a timely manner. Under the 2016 regulations, for institutions without a physical presence in California to disburse Title IV aid to distance education or correspondence students who reside in California, the State of California must rely on a state agency, such as the Bureau for Private Postsecondary Education, the Attorney General, or some other State entity to enforce applicable California law and resolve student complaints based on their laws. Accordingly, to avoid the disruption in educational programs for California students adversely affected by the 2016 regulations and so as to provide a bridge for institutions serving the students to the new 2019 regulations ... the Department will assume that California will modify its plan to refer student complaints to a California State agency to oversee the investigation of the student complaint and resolve it, according to applicable California State law ... the Department will consider California to have had an acceptable plan in place dating back to May 26, 2019. Thus, no student will experience an interruption in his or her education or federal student aid.*

Unfortunately, as of August 2023, California has not modified its plans to be in closer alignment with the federal regulations.



## Impacts of 2016 Regulations on Institutions

The 2016 regulations had the greatest impact on institutions, primarily because there were so many conflicting changes occurring and institutions were unsure how to get and stay in compliance so their students could continue to access federal financial aid. The confusion included changing deadlines, lack of clarity in the regulations themselves, and lawsuits. Institutions were scrambling to put protocols and practices in place to comply with the 2016 regulations without knowing the final court decisions.

## New Federal Regulations: 2019

After the USED delayed the effective date of the 2016 federal regulations, the USED announced its intention to form another rulemaking committee which met during the first few months of 2019. This very large rulemaking was created to address state authorization, distance education, disclosure requirements and many other issues regarding accreditation and innovation. The Negotiated Rulemaking Committee was formed in October 2018 and met between January and April 2019. Consensus was reached on April 3rd, 2019. The 2019 proposed regulations covered 11 different topics, including state authorization. The state authorization portion of the regulations addressed the following:

- 34 CFR 600.2: Definition of “reciprocity agreement for state authorization.”
- 34 CFR 600.9(c)(1)(i)(ii): Student location—institutions must determine a student’s location at the time of enrollment, not “residence” as used in the 2016 regulations. This determination must be made in accordance with the institution’s policies or procedures, which must be applied consistently to all students.
  - Upon request, institutions must provide the Secretary with written documentation of its students’ location, including the basis for such determination.
  - Institutions approved to participate in a state authorization reciprocity agreement have met state requirements for it to be legally offering postsecondary distance education or correspondence courses in that state.

On November 1, 2019, the USED published the final 2019 regulations and institutions were given the choice to either comply with the 2016 regulations that were effective May 26, 2019, or the 2019 regulations that were effective July 1, 2020 (Federal Register, 2019).

### *Impacts of 2019 Regulations on Institutions*

The 2019 regulations had a significant impact on institutions, mostly because the 2016 regulations became effective May 26, 2019, and the 2019 regulations became effective July 1, 2020. Institutions were unsure if they should work to follow the 2016 rules or the 2019 rules. Fortunately, as stated earlier, the USED determined that institutions could choose which regulations to abide by, though the effective date of the 2019 regulations remained the same.

The 2019 regulations also clarify language around a student’s “residence” verse a student’s “location.” The regulations remove references to residence and replace them with location, which makes the terminology coincide with individual state authorization regulations. This means institutions can still decide how they determine a student’s location, but if they choose to use the intent in state regulations (where a student is physically located), they have only one set of location data to track.

### *Impacts of 2019 Regulations on Students*

A primary impact of the 2019 regulations on students relates to their “location.” Based on an institution’s definition of what a student’s “location” is, it becomes even more important for students to notify their institutions if they are going to change their physical location as it could affect if the student can continue their studies in the new location or if the institution has authorization to provide distance education in the new state. This is especially true if the student is enrolled in an institution that does not, or cannot, participate in the state reciprocity agreement.

In review, the original effective date for the 2016 regulations of July 1, 2018, was delayed by the Department until July 1, 2020. A lawsuit objected to the delay, and by order of the U.S. District Court for the Northern District of California in the case *NEA v. DeVos*, Case No. 18-cv-05173-LB (Flannery, 2019), and the effective date for 2016 final regulations was moved to May 26, 2019. The 2019 regulations became effective July 1, 2020.

# COVID-19 AND STATE AUTHORIZATION

In late 2019, a coronavirus, COVID-19, began to spread across the world. In early 2020, businesses, institutions, religious buildings, clinics, hospitals, and schools were either shut down or restricted significantly in order to try and slow the spread of the horribly contagious disease. Higher education institutions closed their campuses to students and staff, requiring them to rapidly make it possible for employees to work remotely and to provide a means to continue teaching students without meeting face-to-face with students. Students had to vacate their campus housing with very little notice and relocate until the federal disaster was declared over or until the institution reopened its campus. Suddenly, students and faculty who had never participated in an online course found themselves having to learn how to navigate distance education/remote learning while also trying to find housing off-campus.

## Federal Decisions Regarding COVID-19

On March 5, 2020, the USED published guidance for interruptions of study related to COVID-19 (Davis et al., 2020; Office of Postsecondary Education, 2020). This guidance addressed institutions' compliance with Title IV federal financial aid during the national emergency. Part of the guidance included USED's broad approval for institutions to use electronic means (remote learning) to accommodate students on a temporary basis without going through the regular approval process, and students could still receive federal financial aid. The affected regulations were: 34 CFR 600.9, 602.16, 602.18, 602.19, 602.27, 668, 673, 674, 682, and 685. The waiver from having to go through an approval process for offering distance education applied only to these federal regulations. State regulations were still in place unless individual states determined otherwise.

On December 11, 2020, the guidance from the USED was updated corresponding to Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act), which gave the Secretary of Education the authority to provide waivers and modifications of statutory and regulatory provisions applicable to federal financial aid under certain conditions such as a national emergency, which in this case was COVID-19 (Dowd, 2020). In February 2023, the President of the United States announced the plan to let the national emergency declaration expire on May 11, 2023, thus ending the federal waivers and modifications (Health and Human Services, 2023).

## State Decisions Regarding COVID-19

The waivers and modifications provided by the federal government do not supersede state regulations and requirements. Prior to COVID-19, 33 states did not require authorization if the only activity an institution was doing from out-of-state was to enroll distance education students located in their state. Of the states that did require authorization for enrolling online students, some continued to require institutions to seek authorization, even temporarily during COVID-19.

In December 2020, Higher Education Regulatory (HER) Consulting conducted a review of state websites and emails were sent to several state regulators to discover how state authorization entities were dealing with the sudden increase of distance education providers due to COVID-19. The question asked

of states was, “What do out-of-state institutions need to do if a campus-based student relocates to your state due to their campus closing because of COVID-19, with the expectation that the students would return to campus?” These emails were sent to the states that regulated having online students.

According to responses, the following states placed their state authorization requirement for enrolling distance education students “on hold” for a specified time period:

- ▶ Alaska Commission on Postsecondary Education.
- ▶ Delaware Department of Education.
- ▶ Kansas Board of Regents.
- ▶ Minnesota Office of Higher Education.
- ▶ Oregon Office of Degree Authorization.
- ▶ New York, if students returned to campus for the Summer 2021 semester.
- ▶ Wisconsin Department of Safety and Professional Services.

The following states (see Table 10), which normally require out-of-state institutions to be authorized if they enroll an online student located there, modified their requirements. Although full authorization was not required in these states for limited time, institutions were to take some action during the national emergency. No special state authorization accommodations were made during COVID-19 in Arkansas, Georgia, Indiana, Montana, and Wyoming. These states continue to require out-of-state institutions that enroll distance education students located in their states to go through the usual authorization process.

**Table 10 States’ Modified Requirements for State Authorization**

STATE	EMERGENCY INSTITUTIONAL ACTION REQUIRED
Connecticut Office of Higher Education	Institutions must complete a form to receive a waiver/temporary approval without an application fee.
District of Columbia	Institutions needed to provide an extensive list of information in lieu of applying for authorization. This was temporary. Currently institutions enrolling distance education students located in the District even if only during COVID-19. Must go through the normal authorization process.
Maryland Higher Education Commission	Authorization or registration is not required for the emergency transition of coursework to a virtual format, but institutions need to provide official notification to the state of any campus-wide changes to academic programs that are made in light of the virus.
North Dakota University System	Institutions need to provide their regional accreditors’ documentation showing approval for online delivery.
Rhode Island Office of the Postsecondary Commissioner	Institutions need to request, in writing, permission to offer distance education.

Institutions across the country were, and still are, confused about whether the state regulations supersede the federal regulations, or vice versa. Some institutions mistakenly believe if they comply with the federal regulations, or in this situation, waivers, they do not need to be concerned with state regulations. This misunderstanding was played out during COVID-19 when the federal government offered flexibilities for state authorization compliance with Title IV participation, yet a number of states continued to require authorization during the national emergency (Office of Postsecondary Education, 2020). Due to the authority states have to adopt regulations that apply to people, activities, or organizations within their borders, institutions need to comply with both federal and state regulations.

## **Impacts of COVID-19 on Institutions**

The national emergency of COVID-19 had little impact on institutions that offer all their programs via distance education and had obtained the required state authorizations. However, for the thousands of campus-based institutions across the country that offer little or no distance education, COVID-19 created critical logistical consequences. Just a few of the issues faced by institutions when campuses temporarily closed, and programming became virtual included the need to assist students in relocating off campus and learning how to use the newly chosen course delivery platform, mitigating greater risks for cyber security and training faculty and staff the new methods of communication and safety protocols, address tuition changes, refunds, and other financial accommodations, and comply with state authorization requirements. Institutions were left scrambling in many areas and state authorization education and compliance jumped substantially. Many institutions did not realize that even though the federal government allowed for distance education without approval during COVID-19, states still had their own regulations and policies that needed their attention. Many institutions mistakenly thought that since the USED gave the go-ahead for distance education without approval, they had no other regulatory considerations to be concerned about.

For institutions new to distance education delivery, learning about the state authorization regulations and requirements was completely overwhelming. With the COVID-19 shutdown, all institutions needed to continue their operations and serve their students, but now, from a distance. This required them to move into compliance with state regulations—something that in many cases was unfamiliar. Fortunately, resources were developed to assist institutions, such as Pursuing Regulatory Compliance for Digital Instruction in Response to COVID-19: Policy Playbook (Davis et al., 2020).

## **Impacts of COVID-19 on Students**

The impacts on higher education students due to COVID-19 are significant. They include physical, emotional, psychological, financial, employment/income, and academic impacts. Placing oneself in the shoes of a student makes these impacts more real. First, it was a worldwide pandemic of a disease for which little information was known. Suddenly, students were wearing masks everywhere they went and they had to social distance from their friends, faculty, and families. Then, when campuses closed with very short notice, they had to pack up all their belongings, decide on where to relocate, leave their “home” and places of employment and hope there was adequate Internet access at the new location, and find the financial resources to make the move for an unknown period of time. Some students had never taken an online class, and many faculty had not taught from a distance, so now they had to learn a new course delivery system, and they could no longer meet face-to-face. In addition, many institutions required students to continue to pay for room and board on campus even while they were not located there. All of this combined with the isolation from people created a great deal of pressure, and in many situations, depression and anxiety (Birmingham et al., 2021).

## Institutional Resources During COVID-19

Since the very beginning of COVID-19, the State Authorization Network (SAN) diligently provided information and resources to institutions and other stakeholders on how to navigate state authorization issues during a national pandemic. These resources included numerous WCET Frontiers articles with the latest news of how COVID was affecting institutions. Campuses were being closed and campus-based institutions found themselves having to find distance education solutions in order to keep educating their students (Poulin, 2020). Some examples of these resources include links to COVID-19 guidance on institutional and programmatic accreditors and the Pursuing Regulatory Compliance for Digital Instruction in Response to COVID-19: Policy Playbook.

As of the writing of this paper, COVID-19 is still a factor in the delivery of educational programs, student housing, state authorization entities, and the institutions and administrators themselves. Of course, the utmost importance is on the students who may face many hurdles to finishing their education efficiently and effectively while still living with a world-wide pandemic. Institutions are doing their best to accommodate the myriad of students' and faculty needs while also finding ways to continue to deliver high-quality education

# THE FUTURE OF STATE AUTHORIZATION

## State Authorization in the Future: It Depends

The oversight parameters of state institutional approval to serve students participating in interstate distance education and the state compliance tie to participating in Title IV HEA programs will likely remain unsettled. The U.S. Department of Education has shown interest in ensuring students are protected in the state where the student is located. Federal rulemaking recently addressed compliance with state consumer protection laws where the student is located, regardless of the institution's participation in a state authorization reciprocity agreement. The Department announced another rulemaking for 2023-2024 sharing the intent to address institutional eligibility under 34 CFR 600.2, including State authorization as a component of such eligibility under 34 CFR 600.9.

A new SARA Policy Modification Process was implemented in January 2023 to provide a more transparent and inclusive annual process to improve SARA policy. States will continue to revise their oversight requirements for interstate distance education, which at this point affects only institutions that do not participate in reciprocity through SARA.

## SARA in the Future

The future of SARA somewhat hangs in the balance. Collaboration with key stakeholders, USED regulatory actions, and the annual policy modification process may cause SARA policy to continue to evolve in its student consumer protections requirements. Reciprocity through SARA is still a relatively new endeavor and changes have and will continue to be made for the protection of students across the country. The near future for SARA is bright. NC-SARA staff and SARA partners continue to expand resources, training, and policies for more clarity and advocacy. Indeed, there is a wealth of information and resources on the NC-SARA website including:

- ▶ SARA Quick Start Guides for states and institutions.
- ▶ The SARA Policy Manual.
- ▶ NC-SARA data reporting.
- ▶ Documents on protecting students, demanding quality, and promoting access, affordability, and quality.
- ▶ Student resources on topics like student consumer protections, student complaints, professional licensure information, an institution directory, as well as a searchable national catalog of distance education programs offered by SARA participating institutions.

## SAN in the Future

The State Authorization Network has grown into a very strong, effective division of WCET. It is dedicated to compliance of out-of-state activities, including professional licensure, disclosures, complaint policies, Secretary of State filings, surety bonds or tuition recovery funds, as well as monitoring and informing

institutions of federal or state actions being considered regarding state authorization and related matters. Further, SAN (2023) is “The leader for guidance and support for navigating state and federal regulatory compliance for out-of-state activities of postsecondary institutions.” As stated on the SAN website,

*SAN members will receive important interstate compliance support ... to manage Federal compliance, compliment institutional state approvals through reciprocity (SARA), as well as continuing to support institutions attaining state institutional approval through traditional individual state by state processes. SAN provides deeper examination and strategy consideration for regulatory compliance including ancillary regulatory issues related to educational technologies.*

One of the greatest benefits of SAN is the platform it provides for institutions to give and receive state authorization information from all other SAN institutions and the SAN staff. This is done through monthly newsletters, webinars, conferences, a listserv, open forums, and a robust website with many valuable resources. Currently, there are more than 140 individual and group memberships to SAN, which represents approximately 900 institutions and organizations nationwide.



# CONCLUSION

This paper described, in some detail, the history and evolution of state authorization of distance education, especially since 2010. As a person who was doing the work of state authorization before and after 2010 (and SARA), the number of changes and progress in oversight of out-of-state activities is remarkable. Many factors have produced these changes—the Internet, increased distance education, state and federal regulations, more input and feedback from regulated institutions, and a growing sensibility that things can be done more efficiently and still meet the ultimate goal—to protect students from fraud and enable them to receive a quality education to prepare them for the future.

There are a number of issues not covered in this paper and would make good topics for future writing. For example, professional licensure programs and all the state and federal implications for students and institutions. Or, technology solutions needed for institutions to manage state authorization and professional licensure. Another area, though not state related, is permission to operate in foreign countries.

State authorization is a narrow, complex, nuanced, and ever-changing field in higher education. It will continue to take involvement from all institutional sectors and state and federal governmental staff to move things forward by working together to bring about even more sensible, doable, and effective oversight of out-of-state educational activities for the betterment of the students being served.

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Sharyl founded her consulting company in 2014. She has a passion for helping institutions learn the requirements and nuances of state authorization, so they can more quickly and efficiently become experts themselves and lead their institutions into compliance. Sharyl earned a Master of Science in Organization and Management with a Specialization in Leadership from Capella University.