



# Potential Changes to the Regulatory Landscape: Distance Education & State Authorization

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THE GHOST OF REGULATIONS YET TO COME

# Introductions!

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# What is Happening

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State Authorization & distance education are once again under scrutiny and review

- Department of Education
- Consumer Advocacy Groups
- State Regulators and Attorneys General

Regulations seem to be happening faster and in greater number than before, making it hard for many to keep up

# Why is this Happening

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Consumer protection

Safeguarding "interests of taxpayers"

Return of program integrity agenda


Prominent, vocal opponents of for-profits and OPMs in Congress and among consumer protection groups

Legitimate concerns over:

- Predatory recruitment
  - Cost of tuition/loan debt
  - Information asymmetries
  - Lack of enforcement
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# Goals for Today

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1. Remain calm
  2. Understand what changes were discussed by the Dept. Of Education
  3. Develop a proactive and collaborative mindset when considering applicable risk mitigation strategies
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# Negotiated Rulemaking 2024

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## DISTANCE EDUCATION

**“virtual locations”**

**No asynchronous education for clock hour programs**

**Taking attendance in distance education courses**

**The return of the 50% rule**

**New data requirements on enrollment for distance & correspondence education**

## STATE AUTHORIZATION

**State Closure Laws**

**Enrollment cap**

**Allowing states to enforce individual “education specific” general purpose laws**

**Allowing for certain institutions to be “exempt” from state authorization laws if a state permits**

**Requiring authorization agreements to employ a complaint process that doesn’t involve the institution**

# Distance Education

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## “Virtual Locations”

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The Department proposed adding a third type of location to its list in 600.2:

- Branch Campus
- Additional Location
- Virtual Location \*NEW\*

No documentation to support this proposal



# Data collection on Distance Enrollments

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Proposed language in this and several areas appeared to be asking for more institutional data. The proposed language here was more blatant about it.

- Would require institutions to report enrollment data for each student enrolled in distance or correspondence education that receives title IV aid.
- This requirement would create considerable changes in how many IHEs deliver and manage financial aid.

No evidence given as to what problem this was aiming to solve.



# Clock-Hour & Asynchronous Delivery

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Department proposed language that would cease allowing clock-hour programs to be delivered asynchronously.

- This would have an enormous impact on career and technical schools
- Some negotiators questioned what problem this was trying to solve

# R2T4 & Last Date of Attendance

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Proposed language would require an institution, regardless of an individual institution's internal policies, to take attendance in all distance education courses.

- Proposed what is essentially and automatic withdrawal of students who do not participate in academic engagement opportunities for a period of 14 days.
- Department cited a lack of adequate policies and processes at institutions for calculating last date of attendance in distance education courses.

Proposed language appears to be ignorant of other federal language regarding last date of attendance





## What *could* this mean for us?

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- Increase in reporting requirements
- Further scrutiny on the education we deliver and to whom
- Increased roadblocks to completion for or students
- Increase in cost for the delivery of online education

# What happens Next?

- Proposed rules on Distance Education were sent to the Office of Management & Budget (OMB) for review on 6/17/24.
- According to [reginfo.gov](https://www.reginfo.gov) these rules are slated to be published in a NPRM on "07/00/2024"
- While we don't know *exactly* what will be proposed, the general consensus is the language will be very similar to what was discussed/proposed during negotiated rulemaking.

# State Authorization

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# State Authorization in a Nutshell

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To offer educational opportunities outside of an institution's home state – including via online education and through courses like internships, clinical placements, or student teaching – institutions must comply with applicable state and federal regulations relating to state authorization.

Reciprocity agreements support student access to online education and other courses and programs offered at a distance as well as access to learning opportunities in other states

States follow a uniform process for approving and reviewing participating institutions and requiring participating institutions to comply with agreed upon policies relating to education offered online.

# What is covered by state authorization?

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The ability to deliver education to students located outside of your institution's home state

- Distance education
- Correspondence education
- Hybrid programs
- Dual-Credit
- Internships
- Practicum
- Field Trips
- Short Courses & Seminars
- Offerings on military bases





MHEC • NEBHE • SREB • WICHE



**APPROVED INSTITUTION**

## State Authorization Reciprocity Agreement

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Department of Education requires institutions to adhere to other state's laws when delivering education within their borders (physical & digital) or belong to a reciprocity agreement (i.e. NC-SARA)

Participating in NC-SARA allows your institution to offer courses and programs outside of your home state without having to request permission from each individual state or territory.

## Misconceptions & Misunderstandings

SARA doesn't allow students to make a complaint about an institution

SARA doesn't allow a state to enforce consumer protection laws on participating institutions

SARA evaluates institutions for quality

“Online” education is no longer synonymous with only the for-profits: 92.13% of students enrolled in online courses were enrolled in public or private non-profit institutions as of Fall 2022

State authorization and SARA are synonymous, as long as you have one you need not do anything else

# Getting our vocabulary right

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**NC-SARA:** National Council for State Authorization Reciprocity Agreements

**SARA:** State Authorization Reciprocity Agreement

❖ *In January 2023, NC-SARA announced that the new SARA Policy Modification Process would be accepting modifications to SARA Policy. . .*

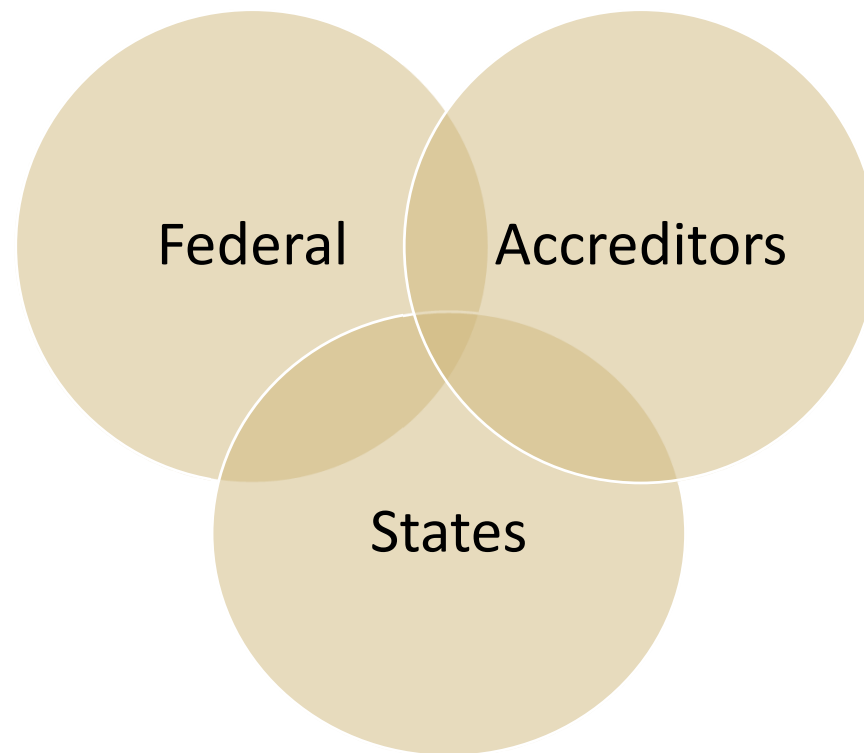
• For states & institutions:

❖ *Colorado is a member of SARA*

❖ *The University of Colorado Boulder participates in SARA*

## Erika's Weird Venn Diagram of Regulatory Oversight

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# State Closure & General Purpose Laws

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Would require that a “reciprocity agreement” allow states to “. . .enforce [their] own applicable State laws and regulations outside of the initial approval for state authorization. . .”

This would allow states to enforce

- individual “education specific” general purpose laws
- Individual closure laws (including laws relating to tuition recovery funds or surety bonds)

Would allow states to revoke the authorization of an institution “under a reciprocity agreement based on violations of such State’s general purpose laws and regulations”

# Enrollment caps

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*(d) If an institution is authorized to offer distance education in another State under a state authorization reciprocity agreement, as defined in 600.2;*

...


*(4) As a condition of participation, the institution must obtain within one-year direct authorization from any participating State where it enrolls more than 500 students.*

- States would have to administer this.
- How did 500 become the threshold?
- How do we calculate the 500? Would that differ by state?

# Exempting some institutions from reciprocity

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*Allowing* for certain institutions to be “exempt” from state authorization laws if a state permits

- If it is public institution backed by the full faith and credit of the state
  - If a state action exempts the institution based on the institution being in operation on or before 11/8/1965 without undergoing change of ownership
  - If a state action exempts the institution based on the institution’s accreditation by one or more recognized agencies or based on the institution being in operation for at least 20 years (this exemption would expire on 7/1/2030)
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# What *could* this mean for us?

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A return to state-by-state authorizations

Irregular oversight and requirements that could cause confusion (at best) and a withdrawal from some states (at worst)

Potential limits on the type of education or even subjects offered in some states

Limits on the variety of education, limits on access to education







# Being Proactive with a Collaborative Mindset

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Consider applicable risk mitigation strategies

- Identifying the risk
- Assessing the risk
- Proposing solutions
  - e.g., what if the Department allows states to be more selective about which institutions can deliver within their borders? If your part of a system, would that impact all your campuses or only a few?



## QUIZ& Take-Home Assignment #1: Enrollment Numbers

How many students do you have enrolled in at least one class offered online (including distance, correspondence, or hybrid, credit, and non-credit)?

- How would you find this number?
- How many of those students are in each state or territory?

## QUIZ & Take-Home Assignment #2: Distance/Online Education

- How many courses AND programs do you offer in alternative modalities?
- How do you monitor regular and substantive interaction?
- How do you currently determine last date of attendance?
- Do “online” students have access to equitable campus services?



# Today's Key Takeaways

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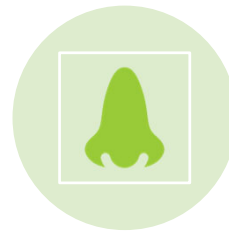
STAY INFORMED



GET (campus leadership)  
INVOLVED



KNOW WHERE YOUR  
STUDENTS ARE



Take a deep breath & take  
stock of what you offer,  
where, and to whom