



# South Carolina Commission on Higher Education

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Acting Executive Director

ACAP  
Agenda Item 3  
3-21-13

March 21, 2013

## **MEMORANDUM**

**To:** Members, Advisory Committee on Academic Programs  
**From:** Renea H. Eshleman, Acting Director, Academic Affairs and Licensing

### **State Authorization Reciprocity Agreement (SARA), an Initiative to Reduce State Barriers to Distance Learning Providers**

#### Current Issue:

The State Higher Education Executive Officers (SHEEO) has requested assistance of state higher education entities in assembling a state team for an April 16-17, 2013, conference on implementing interstate reciprocity for the regulation of distance education (Attachment A). A copy of the request is attached for your information. The purpose of the meeting is to bring together representatives who are supportive of and will play a role in achieving state approval of recommendations to address regulatory costs and inefficiencies.

Postsecondary institutions are now required to comply with duplicative and sometimes inconsistent state laws and regulations when providing educational opportunities in multiple state jurisdictions. The concept of interstate reciprocity for the regulation of distance education has been under discussion by national and regional higher education organizations for several years. Leading the discussion are the Presidents' Forum, the Council of State Governments, regional higher education compacts, and the Commission on Regulation of Postsecondary Distance Education. These groups have been working on a framework and final recommendations are to be released soon.

After discussions with other state representatives and SREB, CHE has decided that it will be important to attend the meeting, not for the purpose of signing on to the initiative, but instead to become better informed about the initiative and its future direction. I will attend the April 16-17 meeting along with an already-identified representative from a public institution; one more delegate may be added to represent the private institutions.

The purpose of this memo is to provide background information on the issue and begin a conversation about South Carolina's participation. Access to reports and information concerning the initiative are hyperlinked below or attached as applicable.

## Background:

In October 2010, the US Department of Education (USDE) issued regulations designed to clarify the requirement that institutions hold authorization where required for states in which they enroll students. This provision has launched about 600 requests to CHE since the summer of 2011 for information about CHE's licensing authority for institutions that enroll SC residents into distance education programs. Other states have experienced similar increases in requests from institutions outside of their states seeking to comply with the revised authorization regulations.

Regional and national organizations have launched efforts to help simplify and streamline the authorization process. The Presidents' Forum (Forum) <http://presidentsforum.excelsior.edu/>, a group that has been in existence since 2004 representing leaders of institutions that offer online programs, with support from the [Lumina Foundation for Education](#), initiated the [Multi-State Reciprocity in Postsecondary Approval and Regulation](#) project to create a common template for the substance and processes of state approval, and to draft and educate policy makers about the benefits of model compact legislation designed to support increased reciprocity and efficiencies among the states.

In September 2010 higher education officers of sixteen states and observers from several national organizations and the not-for-profit and for-profit sectors of higher education met to comment on the Forum's Fall 2009 task force report [Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions: A National Strategy](#). The report defined critical policy issues that could significantly reduce state barriers that have tended to inhibit the ability of students to find appropriate access to degree opportunities and to complete progress toward a degree goal.

In May 2012 the Association of Public and Land-grant Universities (APLU) and SHEEO announced the formation of the [Commission on Regulation of Postsecondary Distance Education](#) to advocate for recommendations to address regulatory costs and inefficiencies faced by postsecondary institutions.

Collaborating with regional compacts and SHEEO, the Forum assembled a National Drafting Team and, under the oversight of the Council of State Governments, developed a draft of a [State Authorization Reciprocity Agreement](#), (SARA) ([April 12 Working Draft](#)). The August 2012 draft is not yet posted online (Attachment B). The report provides an outline for SARA as a model interstate reciprocity agreement and includes an outline of an organizational and financing framework to support such an agreement.

The proposed SARA process is built on the concept of home state responsibility. The regional higher education commissions (SREB for our region) will manage the interstate process. If the state of South Carolina wants to participate, it will apply to SREB to be a participating state. The decision to admit a state will be based on its ability to undertake the required functions and to ensure native institutions comply with the requirements. The four regional compacts have agreed to work together and use a common agreement across all of the compacts.

A national commission (State Authorization Reciprocal Agreement Commission), whose structure and membership are still being debated, would handle any issues that transcend the regional scope of responsibility and resolve disputes between the regions.

The Commission on Regulation of Postsecondary Distance Education will release its findings, principles and recommendations soon. A draft report which has been circulated to and is anticipated to be finalized and released publically is also attached for your review (Attachment C).

Questions to members of ACAP:

1. Would institutions support participation in SARA?
2. What questions do we have that we want answered in the upcoming meeting?
3. What concerns, feedback that do we need to advance?
4. Are there other options for consideration?

From: Paul E. Lingenfelter  
Sent: Thursday, February 14, 2013 10:23 AM  
To: SHEEOs, Chief Governmental Relations Officers, Chief Academic Officers  
CC: Larry Isaak, David Longanecker, David Spence, Michael Thomas, and SHEEO Executive Assistants  
Re: YOUR ASSISTANCE REQUESTED IN ASSEMBLING A STATE TEAM FOR AN APRIL 16-17 CONFERENCE ON IMPLEMENTING INTERSTATE RECIPROCITY FOR THE REGULATION OF DISTANCE EDUCATION

As you know, the Presidents' Forum, the Council of State Governments, the regional higher education compacts, and the Commission on the Regulation of Postsecondary Distance Education have been working to develop an effective, practical framework to achieve interstate reciprocity in the regulation of distance education. The final report of the Commission, which will integrate the contributions of these efforts into a single document, will be released in the coming weeks.

With the assistance of the Lumina Foundation the Presidents' Forum and the Council of State Governments is convening a national conference to discuss the implementation of these recommendations in Indianapolis on April 16 and 17 beginning with dinner on the 16th and concluding by mid-afternoon on the 17th. Hotel costs for participants will be covered, but those attending will be asked to find other sources of funding for travel costs.

You can review the background on the Commission at <http://www.sheeo.org/node/527> . Within a few days a draft of the final report will also be available.

I am writing to ask you to take the lead in assembling a delegation from your state for this meeting. The target size of each state's delegation is three. If some states choose not participate, there may be space available for one or two additional people from participating states. Accordingly, we ask that you nominate three delegates from your state, and propose one or two alternates in the event they may be accommodated on a space available basis. These are our suggestions for assembling your delegation:

1. Since the regional compacts will be the key players in implementing interstate reciprocity, members of the state team ideally will be familiar with and supportive of their work. I encourage you to work with the staff of WICHE, MHEC, NEBHE, and SREB as you consider assembling your team.
2. This meeting is about implementation: The state team should include at least one senior person who understands the policy and practical issues involved in quality assurance and consumer protection, and who will likely play a role in setting up or implementing the interstate reciprocity agreement. In addition, it is essential that the state team include people who can play a strong role in achieving the approval of the executive and legislative branches of government. These members might come from the executive branch, legislature, or institutional leaders who will likely play an influential role in authorizing legislation. I have attached a list of institutional representatives who have been active in the A\*P\*L\*U / AASCU advisory committee to the Commission; it would be good if some of these institutional representatives can be included in state delegations. I have also attached a directory of state regulatory agencies and lead contacts, and at this link <http://www.sheeo.org/sites/default/files/Distance%20Education%20Commission.pdf> you will find the members of the Commission on the Regulation of Postsecondary Distance Education. While we know the numbers are limited, we expect that some states may find it useful to include one or two people from these lists.

3. Within a delegation of three people we hope you can assemble the critical mass necessary to reach out to every essential constituency, even though every one of them may not be directly represented. We'll do our best to include one or two of your alternates.

I would be grateful if you would consult with the regional compacts (please feel free to contact me to discuss this if you are not part of a regional compact) as you assemble suggestions for your team and provide a list to me by February 22, 2013. I will be supported in this work by Sharmila Mann and Angela Sanchez (copied on this note), so a list of participants to invite should be sent to all three of us. [asanchez@sheeo.org](mailto:asanchez@sheeo.org); [smann@sheeo.org](mailto:smann@sheeo.org); [plingenfelter@sheeo.org](mailto:plingenfelter@sheeo.org)

If, for any reason, you will not be sending a delegation to the symposium, I would be grateful for an RSVP regrets note at your earliest convenience.

Finally, if the need to cover travel expenses for this meeting poses an insuperable barrier to any member of your state delegation, a limited pool of funds is available to help with airfare. Please let me know if that is the case, as well as sharing any other questions or concerns.

I am grateful for your help with this.

Best wishes,  
Paul E. Lingenfelter  
President  
State Higher Education Executive Officers  
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[www.sheeo.org](http://www.sheeo.org)

Model for State Authorization Reciprocity  
Agreement  
August Draft



***SARA: Working Draft of a State Authorization Reciprocity Agreement,***

including outlines of an organizational and financing framework to support such an agreement

Final Draft

**Background**

- Most states have for many years regulated the offering of postsecondary education (through various delivery methods) within their borders. They have carried out that regulation in remarkably different ways, with widely varying standards, policies, practices, and “triggers” for application and enforcement. In turn, institutions vary in the degree to which they have paid attention to state regulation, particularly in regard to activities they pursue outside their home state, and especially in regard to “distance” or “online” students.
- As a condition for institutional participation in federal financial aid programs, U.S. Department of Education rules require institutions to be approved to operate in all states or territories in which they serve students (“state authorization”), or to document that such approval is not required by the states or territories in which those students reside. (Although this regulation is currently being reviewed in the courts, we expect that the Department of Education will make every effort to see that it is kept in place.)
- At present, there is no alternative to each institution separately pursuing state authorization (or assurance that authorization is not required) in each state and territory in which it serves students. Consequently, thousands of institutions must seek approval/authorization in as many as 54 states and territories.
- That approach is inefficient and challenging for institutions and states alike.

**Another approach to the issue**

- The *Lumina Foundation* has provided funding to the *Presidents’ Forum*, working with the *Council of State Governments*, to develop a ‘model state reciprocity agreement’ based on nonpartisan research and analyses that states could adopt to acknowledge other states’ work and decisions in regard to institutional authorization. **SARA**, developed as a working draft by a team familiar with these issues, is the current product of that effort.

**Goals**

- **SARA** offers a process that could make state authorization more efficient, more uniform in regard to necessary and reasonable standards of practice that could span states, and more effective in dealing with quality and integrity issues that have arisen in some online/distance education offerings. It could also be less costly for states and institutions

and, thereby, the students they serve. The achievement of those goals will support the nation in its efforts to increase the educational attainment of its people.

## Challenges

Anyone engaging these issues faces some hard realities:

- State laws, rules and regulation around these issues are remarkably diverse, making agreement between states about any one way to do this work especially challenging. In addition, the *reasons* for that diversity vary from state to state, in some cases stemming from a desire to uphold very high standards, while in others, perhaps, the desire to limit competition for in-state institutions or generate revenue for agency operations.
- Efforts to facilitate and enable good practice must not only deliver on those points; they must also maintain the ability for appropriate entities to deal with, and, if necessary, punish bad institutional behavior.
- In particular, states must be able to trust other states to carry out their responsibilities.
- Any alternative to the current situation must include a means of effective governance and a workable model for financial sustainability.
- A fully effective means of dealing with these issues requires a comprehensive national model, one that can serve all interested states, accommodate all sectors of higher education (public, independent non-profit, and for-profit), and embrace the diversity of institutional and specialized accreditation.

## Essential characteristics of the current working draft. SARA:

- Acknowledges the traditional roles of members of the accountability triad: federal government, states, and recognized accrediting bodies.
- Preserves full state oversight of on-the-ground institutions and campuses.
- Sets forth a reasonable set of “triggers” of “physical presence.”
- Requires institutional accreditation by an accrediting body recognized by the U.S. Secretary of Education.
- Proposes a uniform set of minimal standards for state and institutional participation.
- Allows states, at their discretion, to rely on accreditors for various tasks.
- Calls on states to assume the principal role in matters of consumer/student protection while working in partnership with recognized accreditors.
- Shifts principal oversight responsibilities from the state in which the “distance learning” is being offered to the “home state” of the institution offering the instruction.
- Lays out a model reciprocity agreement that states could adopt to do this work, including outlines of a possible organizational structure and a financial plan to support operations.

**Issues SARA does not address**

- The Drafting Team is aware that approval to offer certain types of programs (nursing, education, or psychology, for example) in a state may require approval by a licensing board, as well as approval by a more general authorizing agency. SARA does not cover approval by professional licensure boards, leaving that to future work, probably carried out by others. The issues SARA does attempt to handle are challenging enough.
- The Drafting Team has intentionally provided minimal details on the operation of the organization that will be required to support SARA. Those would be generated by the entity itself, and the organization could be constituted and managed in a variety of ways.

**Partnerships and consultation**

- The Drafting Team has benefited from feedback from an advisory committee that includes representatives from a broad range of higher education constituencies.
- We have also benefited greatly from several conversations with representatives of the country's four regional higher education compacts: WICHE (Western Interstate Commission for Higher Education), SREB (Southern Regional Education Commission), MHEC (Midwestern Higher Education Compact), and NEBHE (New England Commission of Higher Education). WICHE, especially, is also working on state authorization reciprocity issues. The leadership of the Presidents' Forum / Council of State Governments project and the regional higher education compacts are working toward a goal of creating a unified SARA agreement. The intent is to leverage the strengths of these organizations in developing the final agreement, determining effective governance models, and developing strategies for recruiting states.
- We have also greatly benefited from conversations with and suggestions from representatives of the accreditation community. That engagement will continue, as well, and will also likely lead to further modifications of SARA.

**Comments and suggestions**

- We look forward to engaging further the broad higher education community, including state regulators (NASASPS), institutional organizations, and other interested and affected parties
- Comments and suggestions are welcome. They can be most efficiently handled if sent to:  
R. Crady deGolian  
Director, The National Center for Interstate Compacts  
The Council of State Governments  
PO Box 11910  
Lexington, KY 40578  
(859) 244-8068 phone  
[cdegolian@csg.org](mailto:cdegolian@csg.org)

**THE PRESIDENTS' FORUM**  
**&**  
**THE COUNCIL OF STATE GOVERNMENTS**  
**NATIONAL CENTER FOR INTERSTATE COMPACTS**

**State Authorization Reciprocity Agreement**

**Drafting Team Roster**

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1                                   **STATE AUTHORIZATION RECIPROCITY AGREEMENT**

2   **ARTICLE I**

3   **PURPOSE**

4

5   It is the purpose of this agreement to facilitate expanded access to high quality post-secondary  
6   distance educational opportunities for students by improving the policy and operational  
7   mechanisms in the state regulatory environments and encourage consideration by the states of  
8   reciprocal agreements that will make the regulatory process more efficient.

9

10   Significant benefits will accrue to students, institutions and states if the current lack of  
11   uniformity in the patchwork of state regulation could be improved through sharing in common,  
12   high quality and consistently applied processes and standards. It is hoped that institutions and  
13   states will also reap financial benefits by no longer having to engage in the duplicative process of  
14   seeking approval to operate on an individual, case-by-case basis.

15

16   It is the purpose of this agreement to build upon and strengthen the existing efforts of states,  
17   accrediting bodies, and the federal government to facilitate expanded access to high quality  
18   education by:

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- 20       1. Providing for consumer protection and a complaint resolution process;
  - 21       2. Providing for the uniform collection and sharing of information between and among  
22       member states;
  - 23       3. Reducing barriers to innovation in educational delivery;

- 1 4. Increasing access to post-secondary education and degree completion;
- 2 5. By establishing common, high quality and consistently applied processes and standards
- 3 endorsed by participating states, which are efficient and cost-effective.

4

5 Quality in postsecondary education derives from three components: inputs, processes, and

6 outcomes. Student outcomes are paramount, but students depend on the quality of institutional

7 inputs (services and processes) to enable them to acquire knowledge and skill. While institutions

8 should ultimately be held accountable for outcomes and encouraged to pursue them in

9 innovative, cost-effective ways, their contributions to those outcomes and the connection

10 between student achievement and institutional services and processes is the basis of institutional

11 quality.

## 12

### 13 **ARTICLE II**

### 14 **DEFINITIONS**

- 15
- 16 A. “Accredited” means: holding institutional accreditation by name as a U.S.-based
- 17 institution from an accreditor recognized by the U.S. Department of Education.
- 18
- 19 B. “Authorized” means: holding a current valid charter, license or other written document
- 20 issued by a state or the federal government, granting the named entity the authority to
- 21 issue degrees and operate within its home state.
- 22

- 1 C. “Bylaws” means: those bylaws established by the SARA Commission pursuant to Article  
2 VIII for its governance, or for directing or controlling its actions and conduct.
- 3  
4 D. “Certify” or “Certification” means: written assertion by a home state that an institution  
5 meets the standards required by this agreement.
- 6  
7 E. “Charter” means: a document bearing the name Charter issued by proper governmental  
8 authority that names a college or university as a degree-granting institution authorized to  
9 operate under the laws of the issuing jurisdiction.
- 10  
11 F. “Commission” means: the body created pursuant to Article VII of this agreement.
- 12  
13 G. “Commission Representative” means: the voting representative appointed by each  
14 member state pursuant to Article VII of this agreement.
- 15  
16 H. “Complaint” means a formal assertion that the terms of this agreement, or of laws,  
17 standards or regulations incorporated by this agreement, are being violated by a person,  
18 institution, state, agency or other organization or entity operating under the terms of this  
19 agreement.
- 20  
21 I. “Credits” means numeric descriptors of completion of academic work applicable toward  
22 a degree, including the Carnegie unit system.
- 23

- 1 J. “Degree” means: An award conferred at the associate level or higher by an institution as  
2 official recognition for the successful completion of a program of studies. (Based on  
3 IPEDS)  
4
- 5 K. “Distance Education” means instruction offered by any means where the student and  
6 faculty member are in separate physical locations. It includes, but is not limited to, online  
7 or correspondence courses or programs.  
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- 9 L. “Faculty” means: a professional individual employed by or contracting with an  
10 institution primarily to teach, conduct research or provide similar professional education  
11 services.  
12
- 13 M. “Hybrid” means: an educational program that includes both face-to-face and distance  
14 education. Also known by the name “blended” and, sometimes, other terms.  
15
- 16 N. “Home State” means: a member state where the institution holds its principal institutional  
17 accreditation.  
18
- 19 O. “Host State” means: a member state in which an institution operates under the terms of  
20 this agreement, other than the home state.  
21
- 22 P. “Institution” means: a degree-granting postsecondary entity.  
23

- 1 Q. “Member State” means: any state or territory that has taken any necessary legislative  
2 action and is approved by the State Authorization Reciprocity Agreement Commission to  
3 participate in this agreement.  
4
- 5 R. “Non-degree award” means: a formal postsecondary award that does not carry the  
6 designation of associates degree or higher.  
7
- 8 S. “Operate” means: activities conducted by an institution in support of offering distance  
9 education degree or non-degree courses or programs in a state, including but not limited  
10 to instruction, marketing, recruiting, tutoring, field experiences and other student support  
11 services.  
12
- 13 T. “Physical Presence” means:  
14 1. conducting the following operations in a member state:  
15 a. Establishing a physical location for students to receive synchronous or  
16 asynchronous instruction; or  
17 b. Requiring students to physically meet in a location for instructional purposes  
18 more than once during the course term; or  
19 c. For purposes of this agreement, interstate supervised field experiences originating  
20 from campus-based programs in a member state are considered to be distance  
21 education if they have:

- 1                   1. fewer than five students from each campus-based program in a
- 2                   member state physically present simultaneously at a single facility
- 3                   or site in a host state, and
- 4                   2. do not involve any multi-year contract between a sending
- 5                   institution and a field site. Such programs are treated as distance
- 6                   education for purposes of determining whether they are covered by
- 7                   the provisions of SARA.
- 8                   d. Establishing an administrative office, including:
- 9                   i. for purposes of enrolling students, providing information to students
- 10                  about the institution, or providing student support services;
- 11                  ii. Providing office space to instructional or non-instructional staff; or
- 12                  iii. Maintaining a mailing address or phone exchange.
- 13                  2. Physical presence in any member state is not triggered by the following:
- 14                  a. Offering courses via distance education.
- 15                  b. Advertising to students whether through print, billboard, direct mail, internet,
- 16                  radio, television or other medium;
- 17                  c. Student field experiences. Offering educational field experiences for students.
- 18                  d. An educational field trip arranged for a group of students that are normally in
- 19                  residence at an institution in another state;
- 20                  e. Face-to-face non-credit courses that are not a part of a degree or non-degree
- 21                  program that are less than 16 clock hours in length.
- 22                  f. Courses offered on a military installation;

- 1 g. Maintaining a server, router or similar electronic service device housed in a  
2 facility that otherwise would not constitute physical presence; The presence of  
3 a server or similar pass-through switching device does not by itself constitute  
4 the offering of a course or program in that state.
- 5 h. Having faculty, adjunct faculty, mentors, tutors, or other academic personnel  
6 residing in a member state; The presence of instructional faculty in a state,  
7 when those faculty teach entirely via distance-education and never meet their  
8 students in person, does not establish physical presence for purposes of this  
9 agreement.
- 10 i. Proctored exams at a by the institution;
- 11 j. Contractual arrangements in the home or host state.
- 12
- 13
- 14 U. “Practicum” means: experiential field placement at work sites typically used by programs  
15 in teacher education but also by some other fields.
- 16
- 17 V. “Rule” means: a written statement by the Commission promulgated pursuant to Article X  
18 of this agreement that is of general applicability, implements, interprets or prescribes a  
19 policy or provision of the agreement, or an organizational, procedural, or other  
20 requirement of the Commission, and has the force and effect of statutory law in a member  
21 state, and includes the amendment, repeal, or suspension of an existing rule.
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- 23 W. “State” means: any state, commonwealth, district, or territory of the United States.

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X. “Supervised field experience” means: a student learning experience under the oversight of a supervisor, mentor, faculty member or other qualified professional located in the host state who has a direct or indirect reporting responsibility to the institution where the student is enrolled, whether or not credit is granted. Examples include practica, student teaching, or internships. Independent study by individual students not engaged in a supervised field experience is exempt from requirements of this compact and does not constitute a physical presence of a postsecondary institution under the laws of any member state.

### ARTICLE III

#### GENERAL APPLICABILITY

- A. This agreement shall apply to degree granting institutions that are chartered and/or authorized to operate within a home state as defined in this agreement and that serve students in multiple states via distance education. All institutions that have the authority to operate in the home state are potentially eligible to be authorized to operate in host states under the following conditions:
- B. The activities to which this agreement applies are:

- 1           1. Distance learning courses that are offered to private individuals separately,  
2           without in-person group activities, classroom activity; in-person meetings or  
3           similar work;
- 4           2. That portion of hybrid and blended courses and programs that consist of distance  
5           learning and the non-distance portions that meet any requirements that a host state  
6           may have for the operation of an institution;
- 7           3. Field placements, clinicals, internships, and similar experiential learning  
8           opportunities that are a required part of a program authorized by an institution's  
9           home state.
- 10
- 11
- 12           4. New programs duly authorized by the home state following the enactment of this  
13           agreement.
- 14

15       C. In order to be eligible to participate under the terms of this agreement, an institution  
16       must:

- 17
- 18           1. Currently hold accreditation by an agency recognized by the U.S. Department of  
19           Education;
- 20           2. Declare a home state for purposes of this agreement;
- 21           3. Provide distance education from the home state into host states;
- 22           4. Be responsible for and accountable to the home state and to the institution's  
23           accrediting agency for the academic quality and appropriate delivery of its

1 offerings under this agreement, irrespective of the actual provider of courses and  
2 services.

3 a. Only an institution, as defined in Article II, is eligible to operate under  
4 the terms of this agreement, and all such work must be offered in its  
5 own name and be transcribed by it.

6 b. Any institution operating under this agreement shall be directly  
7 responsible to the home state and/or SARA, as needed, for responding  
8 to any questions, data requests, complaints or other communications  
9 regarding its academic activities and/or actions or practices of any  
10 third party supplier whose products or services are part of the  
11 institution's activities under this agreement.

12 5. Provide indemnification, including but not limited to, surety bonds, tuition  
13 protection funds, multi-institutional cooperatives, and state supported financial  
14 arrangements as required by the home state.

15 6. Meet all other requirements set forth in this agreement.

16  
17 D. The home state shall exercise legal authority over all offerings by an institution in any  
18 member state under the laws of the home state. This does not, however, include meeting  
19 qualifications for professional licensure in each member state.

20  
21 E. Multiple providers with common ownership

22  
23 1. Public systems having a single entity ultimately responsible for new program

1           approvals may operate under the terms of this agreement as a single unit. States in  
2           which the approval of new programs is by a coordinating entity rather than an  
3           institutional governing board are also qualified under this section. State systems  
4           using this provision must name a single contact for information and problem-  
5           solving, including complaint processing, under this agreement.

- 6           2.     Multiple units of a nonpublic institution or network bearing the same institutional  
7           name and accreditation and for which a single entity or owner is ultimately  
8           responsible for new program approvals may operate as a single unit under the  
9           terms of this agreement. An institution using this provision must name a single  
10          contact for information and problem-solving, including complaint processing,  
11          under this agreement.

12  
13       F.     Institutions that offer non-degree programs in addition to degree programs:

- 14  
15          1.     All non-degree courses or programs offered by an institution shall be governed by  
16          the applicable laws or regulations of the home state.  
17          2.     This agreement supersedes any host state law that requires separate authorization  
18          of non-degree activities of degree-granting institutions.

19  
20       G.     Recruiting by an institution:

- 21  
22          1.     An institution operating under this agreement may recruit students in any member  
23          state for any degree or non-degree program authorized by the home state under



- 1                   i. A participating institution is accredited by a federally recognized
- 2                   accrediting body ; and
- 3                   a. Meets the standards contained in Article V; or
- 4                   b. Meets the home state's standards that meet or exceed the standards
- 5                   contained in Article V as determined by the SARA Commission.
- 6                   ii. The state will notify the institution of its decision.
- 7                   2. A home state may require an institution to provide documentation related to its
- 8                   accreditation.
- 9                   3. The home state shall investigate and resolve any complaints or other issues arising
- 10                  from its own standards for authorization, or the standards under this agreement,
- 11                  even if an institution has been authorized by virtue of its accreditation.
- 12
- 13                  B. Provide to the SARA Commission and the participating institutions at least once each
- 14                  year a list of institutions that have received certification to operate under this agreement.
- 15
- 16                  C. Report any changes, including the addition, substantial modification as reported to the
- 17                  accrediting body or elimination of offered programs, to an institution's authorization to
- 18                  operate to SARA Commission within thirty days after such change in status.
- 19
- 20                  D. The home state must require each institution operating under the provisions of this
- 21                  agreement to provide for the indemnification of any student or enrollee who is a resident
- 22                  of any member state and who suffers loss or damage because of a violation of the SARA
- 23                  standards by the institution, as determined by the home state.

- 1           1. The home state shall establish the type or types of indemnification that satisfy this  
2           requirement. Indemnification types may include, but are not limited to, surety  
3           bonds, tuition protection funds, multi-institutional cooperatives, state supported  
4           financial arrangements or other acceptable means.
- 5           2. In order to be considered adequate, the home state requirement for each institution  
6           must ensure the following:
  - 7               a. The maintenance of an indemnification amount that is equal to at  
8               least 25 percent of the institution total tuition and fee income (less  
9               refunds) received from students residing in all the member states  
10              for the most recently completed fiscal year, and
  - 11              b. Provides indemnification for all students who enrolled under this  
12              agreement at the institution and are residents of a member state.
- 13       E. In the event of the closure of an institution or if an institution discontinues serving  
14       students in a member state, the home state shall require each institution to establish a  
15       process to protect student interests.
  - 16           1. The process must provide for the preservation of transcript records for all students  
17           enrolled at the institution in manner approved by the home state.
  - 18           2. The process must provide for the students to complete their programs through  
19           teach-out arrangements or other provisions approved by the home state.
  - 20           3. If an institution fails to fulfill its obligations under this provision, the home state  
21           may use student indemnification funds to provide for the protection of these  
22           student interests.
- 23

1 F. Provide any member state and/or the SARA Commission, upon request, with copies of  
2 home state authorization-related documents pertaining to an institution fulfilling its  
3 obligations under the agreement. .  
4

5 G. Provide such data as may be required by the SARA Commission for the purpose of  
6 administering and evaluating the agreement.  
7

8 H. Investigate and resolve complaints regarding the activities of an institution in a member  
9 state to meet the obligations of this agreement.

10 I. Investigate at the request of any member state any reported non-compliance with these  
11 standards and report to the SARA Commission the results of such investigation.  
12

13 J. K. Establish a single point of contact with the SARA Commission for administering the  
14 Agreement and coordinating state activities.  
15

16 **ARTICLE V**

17 **STANDARDS UPON WHICH STATE AUTHORIZATIONS TO OPERATE WILL BE**

18 **GRANTED**  
19

20 This agreement incorporates standards developed by the Council of Regional Accrediting  
21 Commissions (CRAC) and builds upon these standards to ensure an adequate level of consumer  
22 protection for students.<sup>1</sup> The agreement relies on a high level of engagement and authority being  
23 exercised by the home state and is intended to increase the confidence of member states in that

1 process. . Standards set forth in this agreement may also serve as an example to home states that  
2 desire to be a member state and whose standards may not currently be at these levels. Home  
3 states have the ultimate legal responsibility for the quality of offerings and operations of  
4 institutions that they authorize.

5  
6 The standards outlined in this article are designed to serve as a framework for home states to use  
7 in developing their plans and procedures for the review of an institution and for the SARA  
8 Commission to use in review of each member state's plans to meet the requirements of this  
9 agreement, as referenced in Article IV.A. The SARA Commission will determine whether a state  
10 has standards that meet or exceed the standards in this agreement, and will monitor state  
11 adherence to the standards. State applications for membership in this agreement must:

- 12 1. Address each of the standards in this article, may and are encouraged to set  
13 acceptable levels above the minimum levels for its institutions
- 14 2. Be able to demonstrate and document how each institution has met the standards  
15 of this agreement as required in Article V.
- 16 3. The home state plan shall include processes through which any of its accredited  
17 degree granting institutions can apply to participate in SARA.

18  
19 In the event that a home state finds that an institution has violated any of the standards set forth  
20 in this agreement, the state will address the violation and may remove the institution from the list  
21 of certified institutions.

22

1 The requirements in each of the areas below will be reasonably determined under rules  
2 promulgated by the SARA Commission created hereunder. Reciprocal state authorizations to  
3 operate shall be granted when a home state indicates compliance in the following areas. While  
4 the institutional review and approval process will be determined and conducted by the home  
5 state, the procedures for ensuring compliance with the standards under this agreement must be  
6 approved by the SARA Commission as a prerequisite to joining the agreement.

7  
8 Home states shall verify to the SARA Commission that each eligible institution meets the  
9 following standards.

- 10 1. Online learning is appropriate to the institution's mission and purpose. Examples  
11 may include the following:
  - 12 a. The mission statement explains the role of on-line learning within the range of  
13 the institution's programs and services.
  - 14 b. Institutional and program statements of vision and values inform how the on-  
15 line learning environment(s) is created and supported.
  - 16 c. A appropriate, the institution incorporates into its on-line learning programs  
17 methods of meeting the stated institutional goals for the student experience at  
18 the institution.
  - 19 d. The recruitment and admissions programs supporting the on-line learning  
20 courses and programs appropriately target the student populations to be  
21 served.
  - 22 e. The students enrolled in the institution's on-line learning courses and  
23 programs fit the profile of the students the institution intends to serve.

- 1           f. Senior administration and staff can articulate how on-line learning is  
2           consistent with the institution's mission and goals.
- 3           2. The institution's plans for developing, sustaining, and, if appropriate, expanding on-  
4           line learning offerings are integrated into its regular planning and evaluation process.  
5           Examples include the following:
- 6           a. Development and ownership of plans for on-line learning extend beyond the  
7           administrators directly responsible for it and the programs directly using it.
- 8           b. Planning documents are explicit about any goals to increase numbers of  
9           programs provided through on-line learning courses and programs and/or  
10          numbers of students enrolled in them.
- 11          c. Plans for on-line learning are linked effectively to budget and technology  
12          planning to ensure adequate support for current and future offerings.
- 13          d. Plans for expanding on-line learning demonstrate the institution's capacity to  
14          assure an appropriate level of quality.
- 15          e. The institution and its on-line learning programs have a track record of  
16          conducting needs analysis and of supporting programs.
- 17          3. On-line learning is incorporated into the institution's systems of governance and  
18          academic oversight. Examples include the following:
- 19          a. The institution's faculty have a designated role in the design and  
20          implementation of its on-line learning offerings.
- 21          b. The institution ensures the rigor of the offerings and the quality of instruction.
- 22          c. Approval of on-line learning courses and programs follows standard processes  
23          used in the college or university.

- 1 d. Online learning courses and programs are evaluated on a periodic basis.
- 2 e. Contractual relationships and arrangements with consortial partners, if any,
- 3 are clear and guarantee that the institution can exercise appropriate
- 4 responsibility for the academic quality of all on-line learning offerings
- 5 provided under its name
- 6 4. Curricula for the institution's on-line learning offerings are coherent, cohesive, and
- 7 comparable in academic rigor to the programs offered in traditional instructional
- 8 formats. Examples include the following:
- 9 a. The curricular goals and course objectives show that the institution or
- 10 programs has knowledge of the best uses of on-line learning in different
- 11 disciplines and settings.
- 12 b. Curricula delivered through on-line learning are benchmarked against on-
- 13 ground courses and programs, if provided by the institution, or those provided
- 14 by traditional institutions.
- 15 c. The curriculum is coherent in its content and sequencing of courses and is
- 16 effectively designed in easily available documents including course syllabi
- 17 and program descriptions.
- 18 d. Scheduling of on-line learning courses and programs provides students with a
- 19 dependable pathway to ensure timely completion of degrees.
- 20 e. The institution or program has established and enforces a policy on on-line
- 21 learning course enrollments to ensure faculty capacity to appropriately work
- 22 with students.

- 1 f. Expectations for any required face-to-face, on ground work (e.g., internships  
2 specialized laboratory work) are clearly stated.
- 3 g. Course design and delivery supports student-student and faculty-student  
4 interaction.
- 5 h. Curriculum design and the course management system enable active faculty  
6 contribution to the learning environment.
- 7 i. Course and program structures provide schedule and support known to be  
8 effective in helping on-line learning students persist and succeed.
- 9 5. The institution evaluates the effectiveness of its on-line learning offerings, including  
10 the extent to which the on-line learning goals are achieved, and uses the results of its  
11 evaluations to enhance the attainment of the goals. Examples include the following:
- 12 a. Assessment of student learning follows processes used in onsite courses or  
13 programs and/or reflects good practice in assessment methods.
- 14 b. Student course evaluations are routinely taken and an analysis of them  
15 contributes to the strategies for course improvement.
- 16 c. Evaluation strategies ensure effective communication between faculty  
17 members who design curriculum, faculty members who interact with students  
18 and faculty members who evaluate student learning.
- 19 d. The institution regularly evaluates the effectiveness of academic and support  
20 services provided to students in on-line courses and uses the results for  
21 improvement.
- 22 e. The institution demonstrates appropriate use of technology to support its  
23 programs of assessment and evaluation.

- 1 f. The institution documents its successes in implementing changes informed by  
2 its programs of assessment and evaluation.
- 3 g. The institution provides examples of student work and student interactions  
4 among themselves and with faculty.
- 5 h. The institution sets goals for the retention/persistence of students using on-line  
6 learning, assesses its achievements of these goals, and uses the results for  
7 improvement
- 8 6. Faculty responsible for delivering the on-line learning curricula and evaluating the  
9 students' success in achieving the on-line learning goals are appropriately qualified  
10 and effectively supported. Examples include the following:
- 11 a. On-line learning faculties are carefully selected, appropriately trained,  
12 frequently evaluated, and are marked by an acceptable level of turnover.
- 13 b. The institution's training program for on-line learning faculty is periodic,  
14 incorporates good practices in on-line learning pedagogy, and ensures  
15 competency with the range of software products used by the institution.
- 16 c. Faculty are proficient and effectively supported in using the course  
17 management system.
- 18 d. The office or persons responsible for on-line learning training programs are  
19 clearly identifies and have the competencies to accomplish the tasks,  
20 including knowledge of specialized resources and technical support available  
21 to support course development and delivery.

- 1 e. Faculty members engaged in on-line learning share in the mission and goals of  
2 the institution and its programs and are provided the opportunities to  
3 contribute to the broader activities of the institution.
- 4 f. Students express satisfaction with the quality of the instruction provided by  
5 on-line learning faculty members.
- 6 7. The institution provides effective student and academic services to support students  
7 enrolled in on-line learning offerings. Examples include the following:
- 8 a. The institution's admissions program for on-line learning provides good web-  
9 based information to students about the nature of the on-line learning  
10 environment, and assists them in determining if they possess the skills  
11 important to success in on-line learning.
- 12 b. The institution provides an on-line learning orientation program.
- 13 c. The institution provides support services to students in formats appropriate to  
14 the delivery of the on-line learning program.
- 15 d. Students in on-line learning programs have adequate access to student  
16 services, including financial aid, course registration, and career and placement  
17 counseling.
- 18 e. Students in on-line learning programs have ready access to 24/7 tech support.
- 19 f. Students using on-line learning have adequate access to learning resources,  
20 including library, information resources, laboratories, and equipment and  
21 tracking systems.
- 22 g. Students using on-line learning demonstrate proficiency in the use of  
23 electronic forms of learning resources.

- 1 h. Student complaints processes are clearly defined and can be used  
2 electronically.
- 3 i. Publications and advertising for online programs are accurate and contain  
4 necessary information such as program goals, requirements, academic  
5 calendar, and faculty.
- 6 j. Students are provided with reasonable and cost effective ways to participate in  
7 the institution's system of student authentication.
- 8 8. The institution provides sufficient resources to support and, if appropriate, expand its  
9 on-line learning offerings. Examples include the following:
- 10 a. The institution prepares a multi-year budget for on-line learning that includes  
11 resources for assessment of program demand, marketing, appropriate levels of  
12 faculty and staff, faculty and staff development, library and information  
13 resources, and technology infrastructure.
- 14 b. The institution provides evidence of a multi-year technology plan that  
15 addresses goals for on-line learning and includes provisions for a robust and  
16 scalable technical infrastructure.
- 17 9. The institution assures the integrity of its on-line learning offerings. Examples  
18 include the following:
- 19 a. The institution has in place effective procedures through which to ensure that  
20 the student who registers in a distance education course or program is the  
21 same student who participates in and completes the course of program and  
22 received the academic credit. The institution makes clear in writing that these  
23 processes protect student privacy and notifies students at the time of

1 registration or enrollment of any costs associated with the verification  
2 procedures. (Note: This is a federal requirement. All institutions that offer  
3 distance education programming must demonstrate compliance with this  
4 requirement.)

5 b. The institution's policies on academic integrity include explicit references to  
6 on-line learning.

7 c. Issues of academic integrity are discussed during orientation for on-line  
8 students.

9 d. Training for faculty members engaged in on-line learning includes  
10 consideration of issues of academic integrity, including ways to reduce  
11 cheating.

12 10. Recruitment, marketing and other institutional disclosures. Examples include the  
13 following:

14 a. Advertisements and promotional information are clear and complete in  
15 describing the instructional activity, including a description of any colloquia,  
16 conferences, or workshops that are a required part of the program.

17 b. An institution offering programs intended to prepare a student for a licensed  
18 profession shall explicitly state whether the program meets standards for  
19 licensure in any member state in which the program enrolls students.

20 c. An institution must fully disclose all institutional policies mandated by the  
21 home state and accreditor and its institutional and programmatic accreditation  
22 status.

- 1 d. An institution is responsible for the conduct and activities of its recruitment
- 2 personnel.
- 3 e. An institution must disclose its complaint policy and procedures.
- 4 f. An institution must disclose the technologies required for successful
- 5 completion of its programs.
- 6 g. An institution will refrain from unfair, false, or misleading statements or
- 7 practices, promotions, recruiting, marketing, etc.

#### 8 11. Financial Disclosures

- 9 a. An institution provides the general public with full disclosure about
- 10 institutional and program requirements, costs, program completion, and
- 11 accreditation.
- 12 b. An institution shall have and fully disclose its refund policies and, if
- 13 employment or related salary information is provided to the public, sufficient
- 14 supporting data is made accessible by the institution.
- 15 c. An institution must provide information about financial assistance available to
- 16 students (including federal and state financial aid, grants, loans, institutional
- 17 aid) that is complete, accurate, and consistent with federal and state law.

#### 18 12. Financial responsibilities

- 19 a. An institution has the financial resources necessary to support program
- 20 activities in all member states, and to discharge all obligations to students.
- 21

1           b. An institution is limited to charging tuition and fees for the current term of  
2           enrollment and cannot charge or obligate a student for a period longer than six  
3           months.

4           c. An institution must provide for indemnification of students as address in  
5           Article II.

6  
7       13. Data Reporting

8           An institution must provide data to the home state as determined by the SARA  
9           Commission.

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14                   **ARTICLE VI**

15                   **STATE COORDINATION**

16  
17       Each member state shall, through the creation of a state council or use of an existing body or  
18       Commission, provide for the coordination among the agencies responsible for governing higher  
19       education in each member state concerning the state's participation in, and compliance with, this  
20       agreement. Each member state may determine the membership and governance of its own state  
21       council.

22  
23                   **ARTICLE VII**

1     **INTERSTATE COMMISSION ON THE STATE AUTHORIZATION RECIPROCITY**  
2                                     **AGREEMENT**

3  
4     The member states hereby create the Interstate Commission on The State Authorization  
5     Reciprocity Agreement. The activities of the Commission are the formation of public policy and  
6     are a discretionary state function. The Interstate Commission shall:

7  
8         A.    Be a body corporate and joint agency of the member states and shall have all the  
9             responsibilities, powers and duties set forth herein, and such additional powers as may  
10            be conferred upon it by a subsequent concurrent action of the respective legislatures of  
11            the member states in accordance with the terms of this agreement.

12  
13        B.    Consist of one Commission voting representative from each member state who shall be  
14             that state's agreement representative and who is empowered to establish state policy  
15             related to matters governed by this agreement.

16  
17            1.   Each member state represented at a meeting of the Interstate Commission on  
18                SARA is entitled to one vote.

19            2.   A majority of the total member states shall constitute a quorum for the transaction  
20                of business, unless a larger quorum is required by the bylaws of the Commission.

21            3.   A representative shall not delegate a vote to another member state. In the event  
22                the agreement representative is unable to attend a meeting of the Commission, the

- 1 Governor or State Council may delegate voting authority to another person from  
2 their state for a specified meeting.
- 3 4. The bylaws may provide for meetings of the Commission to be conducted by  
4 telecommunication or electronic communication.
- 5
- 6 C. The Commission may include both voting and non-voting representatives of the  
7 following higher educational compacts (WICHE, SREB, MHEC, NEBHE), and  
8 members of other organizations as deemed beneficial.
- 9
- 10 D. Meet at least once each calendar year. The chairperson may call additional meetings  
11 and, upon the request of a simple majority of the member states, shall call additional  
12 meetings.
- 13
- 14 E. Establish an executive committee, whose members shall include the officers of the  
15 Commission and such other members of the Commission as determined by the bylaws.  
16 The executive committee shall oversee the administration of the agreement and shall  
17 have such other powers as delegated to it by the Commission through its bylaws.
- 18
- 19 F. Establish bylaws and rules that provide for conditions and procedures under which the  
20 Commission shall make its information and official records available to the public for  
21 inspection or copying. The Commission may exempt from disclosure information or  
22 official records to the extent they would adversely affect personal privacy rights or  
23 proprietary interests.

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G. Public notice shall be given by the Commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the agreement.

1. The Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote.
2. All documents considered in connection with an action shall be identified in such minutes.

H. The Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Commission’s internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by federal and state statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime, or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute an invasion of personal privacy;

- 1           6.     Disclose investigative records compiled for law enforcement purposes; or
- 2           7.     Specifically relate to the Commission's participation in a civil action or other
- 3                 legal proceeding.
- 4
- 5           I.     For a meeting, or portion of a meeting, closed pursuant to this provision, the
- 6                 Commission's legal counsel or designee shall certify that the meeting may be closed
- 7                 and shall reference each relevant exemptible provision. All minutes and documents of
- 8                 a closed meeting shall remain under seal, subject to release by a majority vote of the
- 9                 Commission.
- 10
- 11          J.     The Commission shall collect standardized data as directed by the rules promulgated by
- 12                 this agreement which shall specify the data to be collected, the means of collection, and
- 13                 data exchange and reporting requirements. Such methods of data collection, exchange
- 14                 and reporting shall, in so far as is reasonably possible, conform to current technology
- 15                 and coordinate its information functions with the appropriate custodian of records as
- 16                 identified in the bylaws and rules.
- 17
- 18          K.     The Commission shall create a process that permits students, higher education officials,
- 19                 institutional administrators and others to inform the Commission if and when there are
- 20                 alleged violations of the agreement or its rules, or when issues subject to the
- 21                 jurisdiction of the agreement or its rules are not addressed by the state. This section
- 22                 shall not be construed to create a private right of action against the Commission or any
- 23                 member state.

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**ARTICLE VIII**  
**POWERS AND DUTIES OF THE COMMISSION**

The Commission shall have the following powers:

- A. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this agreement. The rules shall have the force and effect of statutory law and shall be binding in the member states to the extent and in the manner provided in this agreement.
- B. To provide for dispute resolution among member states.
- C. To issue, upon request of a member state or participating institution, advisory opinions concerning the meaning or interpretation of the interstate agreement, its bylaws, rules and actions.
- D. To enforce compliance among member states with the agreement provisions, the rules promulgated by the Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

- 1 E. To establish and maintain offices which shall be located within one or more of the  
2 member states.  
3
- 4 F. To purchase and maintain insurance and bonds.  
5
- 6 G. To borrow, accept, hire or contract for services of personnel.  
7
- 8 H. To establish and appoint committees including, but not limited to, an executive  
9 committee as required by Article VIII, Section E, which shall have the power to act on  
10 behalf of the Commission in carrying out its powers and duties hereunder.  
11
- 12 I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to  
13 fix their compensation, define their duties and determine their qualifications; and to  
14 establish the Commission's personnel policies and programs relating to conflicts of  
15 interest, rates of compensation, and qualifications of personnel.  
16
- 17 J. To accept donations and grants of money, equipment, supplies, materials, and services,  
18 and to receive, utilize, and dispose of it.  
19
- 20 K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, or  
21 use any property, real, personal, or mixed.  
22

- 1 L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of  
2 any property, real, personal or mixed.  
3
- 4 M. To establish a budget and make expenditures.  
5
- 6 N. To adopt a seal and bylaws governing the management and operation of the  
7 Commission.  
8
- 9 O. To report annually to the legislatures, governors, judiciary, and state councils of the  
10 member states concerning the activities of the Commission during the preceding year.  
11 Such reports shall also include any recommendations that may have been adopted by  
12 the Commission.  
13
- 14 P. To coordinate education, training and public awareness regarding the agreement, its  
15 implementation and operation.  
16
- 17 Q. To establish uniform standards for the reporting, collecting and exchanging of data.  
18
- 19 R. To maintain corporate books and records in accordance with the bylaws.  
20
- 21 S. To perform such functions as may be necessary or appropriate to achieve the purposes  
22 of this agreement.  
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**ARTICLE IX**  
**ORGANIZATION AND OPERATION OF THE COMMISSION**

A. The Commission shall, by a majority of the members present and voting, within 12 months after the first Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the agreement, including, but not limited to:

1. Establishing the fiscal year of the Commission;
2. Establishing an executive committee, and such other committees as may be necessary;
3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Commission;
4. Providing reasonable procedures for calling and conducting meetings of the Commission, and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the Commission;

1           6.     Providing a mechanism for concluding the operations of the Commission and the  
2                 return of surplus funds that may exist upon the termination of the agreement after  
3                 the payment and reserving of all of its debts and obligations.

4           7.     Providing "start up" rules for initial administration of the agreement.

5  
6           5.

7           C.     The Commission shall, by a majority of the members, elect annually from among its  
8                 members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have  
9                 such authority and duties as may be specified in the bylaws. The chairperson or, in the  
10                chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of  
11                the Commission. The officers so elected shall serve without compensation or  
12                remuneration from the Commission; provided that, subject to the availability of  
13                budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and  
14                expenses incurred by them in the performance of their responsibilities as officers of the  
15                Commission.

16  
17          D.     Executive Committee, Officers and Personnel

18  
19          1.     The executive committee shall have such authority and duties as may be set forth  
20                 in the bylaws, including but not limited to:

- 21                a.     Managing the affairs of the Commission in a manner consistent with the  
22                         bylaws and purposes of the Commission;
- 23                b.     Overseeing an organizational structure within, and appropriate procedures

1 for the Commission to provide for the creation of rules, operating  
2 procedures, and administrative and technical support functions; and

3 c. Planning, implementing, and coordinating communications and activities  
4 with other state, federal and local government organizations in order to  
5 advance the goals of the Commission.

6 2. The executive committee may, subject to the approval of the Commission,  
7 appoint or retain an executive director for such period, upon such terms and  
8 conditions and for such compensation, as the Commission may deem appropriate.  
9 The executive director shall serve as secretary to the Commission, but shall not be  
10 a member of the Commission. The executive director shall hire and supervise  
11 such other persons as may be authorized by the Commission.

12  
13 E. The Commission's executive director and its employees shall be immune from suit and  
14 liability, either personally or in their official capacity, for a claim for damage to or loss  
15 of property or personal injury or other civil liability caused by, or arising out of, or  
16 relating to an actual or alleged act, error, or omission that occurred, or that such person  
17 had a reasonable basis for believing occurred, within the scope of Commission  
18 employment, duties, or responsibilities; provided, that such person shall not be  
19 protected from suit or liability for damage, loss, injury, or liability caused by the  
20 intentional or willful and wanton misconduct of such person.

21  
22 1. The liability of the Commission's executive director and employees or  
23 Commission representatives, acting within the scope of such person's employment

1 or duties for acts, errors, or omissions occurring within such person's state of  
2 residence may not exceed the limits of liability set forth under the Constitution  
3 and laws of that state for state officials, employees, and agents. The Commission  
4 is considered to be an instrumentality of the states for the purposes of any such  
5 action. Nothing in this subsection shall be construed to protect such person from  
6 suit or liability for damage, loss, injury, or liability caused by the intentional or  
7 willful and wanton misconduct of such person.

8 2. The Commission shall defend the executive director and its employees and,  
9 subject to the approval of the Attorney General or other appropriate legal counsel  
10 of the member state represented by a Commission representative, shall defend  
11 such Commission representative in any civil action seeking to impose liability  
12 arising out of an actual or alleged act, error or omission that occurred within the  
13 scope of Commission employment, duties or responsibilities, or that the defendant  
14 had a reasonable basis for believing occurred within the scope of Commission  
15 employment, duties, or responsibilities, provided that the actual or alleged act,  
16 error, or omission did not result from intentional or willful and wanton  
17 misconduct on the part of such person.

18 3. To the extent not covered by the state involved, member state, or the Commission,  
19 the representatives or employees of the Commission shall be held harmless in the  
20 amount of a settlement or judgment, including attorney's fees and costs, obtained  
21 against such persons arising out of an actual or alleged act, error, or omission that  
22 occurred within the scope of Commission employment, duties, or responsibilities,  
23 or that such persons had a reasonable basis for believing occurred within the

1 scope of Commission employment, duties, or responsibilities, provided that the  
2 actual or alleged act, error, or omission did not result from intentional or willful  
3 and wanton misconduct on the part of such persons.  
4

## 7 **ARTICLE X**

### 8 **RULEMAKING FUNCTIONS OF THE COMMISSION**

- 9
- 10 A. Rulemaking Authority - The Commission shall promulgate reasonable rules in order to  
11 effectively and efficiently achieve the purposes of this agreement. Notwithstanding the  
12 foregoing, in the event the Commission exercises its rulemaking authority in a manner  
13 that is beyond the scope of the purposes of this agreement, or the powers granted  
14 hereunder, then such an action by the Commission shall be invalid and have no force or  
15 effect.  
16
- 17 B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that  
18 substantially conforms to the "Model State Administrative Procedure Act," of 1981  
19 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate  
20 to the operations of the Commission.  
21
- 22 C. Not later than thirty (30) calendar days after a rule is promulgated, any person may file  
23 a petition for judicial review of the rule; provided, that the filing of such a petition shall

1 not stay or otherwise prevent the rule from becoming effective unless the court finds  
2 that the petitioner has a substantial likelihood of success. The court shall give deference  
3 to the actions of the Commission consistent with applicable law and shall not find the  
4 rule to be unlawful if the rule represents a reasonable exercise of the Interstate  
5 Commission's authority.

## 9 **ARTICLE XI**

### 10 **OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION**

#### 12 **A. Oversight**

- 13 1. The executive, legislative, and judicial branches of state government in each  
14 member state shall enforce this agreement and shall take all actions necessary and  
15 appropriate to effectuate the agreement's purposes and intent. The provisions of  
16 this agreement and the rules promulgated hereunder shall have standing as  
17 statutory law.
- 18 2. All courts shall take judicial notice of the agreement and the rules in any judicial  
19 or administrative proceeding in a member state pertaining to the subject matter of  
20 this agreement which may affect the powers, responsibilities, or actions of the  
21 SARA Commission.
- 22 3. The Commission shall be entitled to receive all service of process in any such  
23 proceeding, and shall have standing to intervene in the proceeding for all

1 purposes. Failure to provide service of process to the Commission shall render a  
2 judgment or order void as to the Commission, this agreement, or promulgated  
3 rules.

4  
5 B. Default, Technical Assistance, Suspension and Termination

6 1. If the Commission determines that a member state has defaulted in the  
7 performance of its obligations or responsibilities under this agreement, the  
8 bylaws, or promulgated rules, the Commission shall:

9 a. Provide written notice to the defaulting state and other member states of  
10 the nature of the default, the means of curing the default, and any action  
11 taken by the Commission. The Commission shall specify the conditions  
12 by which the defaulting state must cure its default.

13 b. Provide training and specific technical assistance regarding the default.

14 c. Terminate from the agreement upon an affirmative vote of the majority of  
15 the member states and all rights, privileges, and benefits conferred by this  
16 agreement. If a cure of the default does not relieve the offending state of  
17 obligations or liabilities incurred during the period of the default.

18 d. Suspend or terminate membership in the agreement only after all other  
19 means of securing compliance have been exhausted. Notice of intent to  
20 suspend or terminate shall be given by the Commission to the Governor,  
21 the majority and minority leaders of the defaulting state's legislature, and  
22 each of the member states and their participating institutions.

1 e. The state that has been suspended or terminated is responsible for all  
2 assessments, obligations and liabilities incurred through the effective date  
3 of suspension or termination including obligations, the performance of  
4 which extends beyond the effective date of suspension or termination.

5 2. The SARA Commission shall not bear any costs relating to any state that has been  
6 found to be in default or which has been suspended or terminated from the  
7 agreement, unless otherwise mutually agreed upon in writing between the  
8 Commission and the defaulting state.

9 3. The defaulting state may appeal the action of the Commission by petitioning the  
10 U.S. District Court for the District of Columbia or the federal district where the  
11 Commission has its principal offices.

12 4. The prevailing party shall be awarded all costs of such litigation including  
13 reasonable attorney's fees.  
14

15 C. Dispute Resolution

16 1. The SARA Commission shall attempt, upon the request of a member state, to  
17 resolve disputes that are subject to the agreement and which may arise among  
18 member states and between member and non-member states.

19 2. The Commission shall promulgate rules providing for both mediation and binding  
20 dispute resolution as appropriate.  
21

22 D. Enforcement



1 and may disperse said fees to cover home state costs of serving students from other states. The  
2 Commission may also act as the intermediary to dispense funds to member states.

3

4 A. This agreement does not infringe upon the right of any member state to charge fees to  
5 its home state institutions. The home state shall retain all such fees in order to cover the  
6 costs associated with review, approval, and monitoring of operations of institutions in  
7 its state.

8

9 B. Institutions operating in states other than their home state under the provisions of the  
10 agreement shall pay an additional annual interstate fee to the SARA Commission. The  
11 fee shall consist of two parts:

12

13 1. A fee to help host states cover their costs of assisting students being taught by  
14 institutions from other states. The Commission shall annually approve a fee  
15 schedule using a graduated scale based upon the number of students served  
16 annually in a state. The fees collected will be remitted to the member states by the  
17 Commission.

18 2. A fee to cover the Commission's operational costs.

19 a. The Commission shall annually approve and publish an institutional fee  
20 structure to cover its operational costs.

21 b. The Commission has the authority to determine whether to use a flat fee,  
22 graduated scale, or other criteria for setting the fee.

23

1 C. The Commission shall not incur obligations of any kind prior to securing the funds  
2 adequate to meet the same; nor shall it pledge the credit of any of the member states,  
3 except by and with the authority of the member state.

4  
5 D. The Commission shall keep accurate accounts of all receipts and disbursements.

6  
7 1. The receipts and disbursements of the Commission shall be subject to the audit  
8 and accounting procedures established under its bylaws.

9 2. All receipts and disbursements of funds handled by the Commission shall be  
10 audited yearly by a certified or licensed public accountant and the report of the  
11 audit shall be included in and become part of the annual report of the  
12 Commission.

13  
14  
15 **ARTICLE XIII**

16 **MEMBER STATES, EFFECTIVE DATE AND AMENDMENT**

17  
18  
19 A. Any state is eligible to become a compacting state.

20 B. The agreement shall become effective and binding upon legislative enactment of the  
21 agreement by no fewer than eight (8) compacting states or alternatively upon enactment  
22 by states which are home states, as defined in this compact, for no less than fifteen  
23 percent (15%) of the total number of accredited degree granting institutions in the United

1 States as of December 31, 2012 as determined to exist by the Council on Higher  
2 Education Accreditation. . Thereafter it shall become effective and binding as to any  
3 other member state upon enactment of the agreement into law by that state. The  
4 governors (or designees) of non-member states shall be invited to participate in the  
5 activities of the Commission on a non-voting basis prior to adoption of the agreement by  
6 all states.

- 7
- 8 C. The Commission may propose amendments to the agreement for enactment by the  
9 member states. No amendment shall become effective and binding upon the  
10 Commission and the member states unless and until it is enacted into law by unanimous  
11 consent of the member states.

12

13

14 **ARTICLE XIV**

15 **WITHDRAWAL AND DISSOLUTION**

16 A. **Withdrawal**

- 17
- 18 1. Once effective, the agreement shall continue in force and remain binding upon  
19 each and every member state, provided that a member state may withdraw from  
20 the agreement by specifically repealing the statute that enacted the agreement into  
21 law.
- 22 2. Withdrawal from this agreement shall be by the enactment of a statute repealing  
23 the same, but shall not take effect until one (1) year after the effective date of such

1 statute and until written notice of the withdrawal has been given by the  
2 withdrawing state to each other member jurisdiction and institutions located in the  
3 withdrawing state.

4 3. The withdrawing state shall immediately notify the chairperson of the  
5 Commission in writing upon the introduction of legislation repealing this  
6 agreement in the withdrawing state.

7 4. The Commission shall notify the other member states of the withdrawing state's  
8 intent to withdraw within thirty (30) days of its receipt thereof.

9 5. The withdrawing state is responsible for all assessments, obligations, and  
10 liabilities incurred through the effective date of withdrawal, including obligations,  
11 the performance of which extend beyond the effective date of withdrawal.

12 6. Reinstatement following withdrawal of a member state shall occur upon the  
13 withdrawing state reenacting the agreement or upon such later date as determined  
14 by the Commission.

## 15 16 B. Dissolution of Agreement

17  
18 1. This agreement shall dissolve effective upon the date of the withdrawal or default  
19 of the member state which reduces the membership in the agreement to one (1)  
20 member state.

21 2. Upon the dissolution of this agreement, the agreement becomes null and void and  
22 shall be of no further force or effect, and the business and affairs of the SARA

1 Commission shall be concluded and surplus funds shall be distributed in  
2 accordance with the bylaws.

3  
4 **ARTICLE XV**

5 **SEVERABILITY AND CONSTRUCTION**

- 6  
7 A. The provisions of this agreement shall be severable, and if any phrase, clause, sentence  
8 or provision is deemed unenforceable, the remaining provisions of the agreement shall  
9 be enforceable.
- 10  
11 B. The provisions of this agreement shall be liberally construed to effectuate its purposes.
- 12  
13 C. Nothing in this agreement shall be construed to prohibit the applicability of other  
14 interstate agreements to which the states are members.

15  
16 **ARTICLE XVI**

17 **BINDING EFFECT OF AGREEMENT AND OTHER LAWS**

- 18  
19 A. Other Laws
- 20  
21 1. Nothing herein prevents the enforcement of any other law of a member state  
22 consistent with this agreement.

1           2.     All member states' laws conflicting with this agreement are superseded to the extent  
2                   of the conflict.

3

4     B.    Effect of this agreement on professional licensing

5

6           1.     Nothing in this agreement confers professional licensure in a state, exempts  
7                   students or institutions from requirements of any professional licensing agencies,  
8                   replaces any professional licensure requirements, guarantees that a course or  
9                   program graduate will meet professional licensing requirements, or otherwise  
10                  changes, supersedes, or replaces any requirement in any state related to  
11                  professional licensure.

12          2.     All institutions retain an obligation to determine and disclose whether or not  
13                  programs or courses offered under this agreement meet any standards for  
14                  professional licensing in both the home and host states.

15          3.     Students and potential students retain an obligation to know the professional  
16                  licensure requirements in the state in which they wish to practice their profession.

17          4.     Subsections 1 and 2 of this section shall be provided in writing by all institutions  
18                  to all students enrolled under the benefits of this agreement, whether or not the  
19                  student has declared intent to obtain professional licensure or is enrolled in a  
20                  course that leads to such licensure.

21

22     C.    Reporting requirement

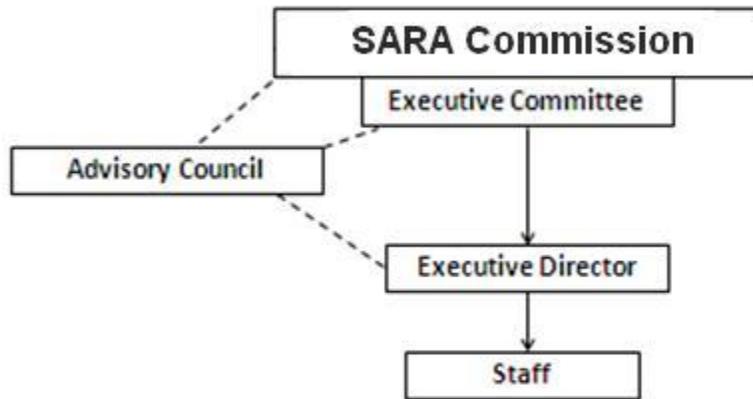
23

- 1           1.     The SARA Commission may establish reporting requirements that it considers  
2                    necessary to ensure the proper operation of the agreement.
- 3           2.     Institutions operating under this agreement must report to the home state data that  
4                    the Commission considers necessary for the proper performance of its oversight  
5                    functions.
- 6           3.     Data that is reported to the home state under this agreement is considered to meet  
7                    and replace any reporting requirements to individual member states. The home  
8                    state shall provide state-specific reported data to any member state upon request.

9  
10       D.    Binding Effect of the Agreement

- 11  
12           1.     All lawful actions of the Commission, including all rules and bylaws promulgated  
13                    by the Commission, are binding upon the member states.
- 14           2.     All agreements between the Commission and the member states are binding in  
15                    accordance with their terms.
- 16           3.     In the event any provision of this agreement exceeds the constitutional limits  
17                    imposed on the legislature of any member state, such provision shall be  
18                    ineffective to the extent of the conflict with the constitutional provision in  
19                    question in that member state.

## Appendix A – Governance Structure



# 1                   **State Authorization Reciprocity Agreement – Fiscal Model**

2

## 3   **Introduction**

4   The State Authorization Reciprocity Agreement (SARA) will require funds to support expanded  
5   home state activities, to assist host states in providing assistance to the home state, and to provide  
6   support staff, contracts, travel, and other expenses related to its operations.

7

## 8   **Operational Costs**

9   While the final activities and organizational structure of the State Authorization Reciprocity  
10   Agreement are still being determined, any estimates of operational costs are very preliminary.  
11   Table 1 (on the next page) gives an outline of the suggested cost categories and the estimated  
12   amounts needed. The total ongoing cost is estimated at approximately \$750,000 annually.

13

14   This does not reflect start-up costs, which are projected to be higher. There will be more trips to  
15   states to market the Agreement, testify at state legislative hearings, and to develop many of the  
16   elements (i.e., by-laws, operational definitions, rules, regulations, financial processes) that need  
17   to be created and implemented in the first years of operation. Given the scale of these start-up  
18   requirements, external funding will probably be needed to fund some or all of these activities.

19

1 **Table 1: SARA Operational Costs Estimates****Personnel***Executive**Director*

Salary	\$130,00	
Benefits	\$42,900	\$172,900

*Professional Staff*

Salary	\$90,000	
Benefits	\$29,700	\$119,700

*Administrative Support Staff*

Salary	\$50,000	
Benefits	\$16,500	\$66,500

**Contracted Help**

Legal Assistance	\$100,000	
Web Support	\$50,000	
Accounting	\$50,000	
Writing/Research	\$40,000	\$240,000

**Travel**

Staff Trips	25	
Cost per trip	\$1,250	\$31,250

**Office Space**

Offices	3	
Cost per office	\$10,000	\$30,000

**Miscellaneous**

Meeting Expenses	\$25,000	
Communications	\$10,000	
Technology	\$45,000	
Marketing	\$5,000	
Supplies	\$5,000	\$90,000

<b>TOTAL</b>		\$750,350
--------------	--	-----------

1 ***Personnel***

2 An executive director, professional staff person, and administrative staff person are proposed.  
3 While the executive director will be the face of the organization, the staff person and  
4 administrative staffer will need to track the many details of implementing the agreement.

5 ***Contracted Help***

6 Rather than hiring staff, some duties can be contracted. In working with state laws and with  
7 interstate agreements, there will be on-going need for legal advice. The web will be an important  
8 tool for informing constituents (i.e., state regulators, institutional personnel, legislators, students)  
9 about the Agreement. Given the amount of pass-through funds, having extensive accounting and  
10 auditing expertise will be necessary. Given the constantly changing issues that arise by inclusion  
11 of new states into the agreement, writing and research services help can be contracted as needed.

12 ***Travel***

13 The staff will need to travel to national and regional meetings to promote the Agreement. They  
14 will also need to travel to states to meet with legislators and regulators to assist with  
15 implementation. While these costs will be higher during the implementation stage, some travel  
16 will be required as part of the ongoing operation of the Agreement.

17 ***Office Space and Miscellaneous***

18 The staff will need office space, communications (phone and web conferencing), technology  
19 (computers, software, web licensing), and supplies. The marketing line item will be used to  
20 create materials to help explain the need for and details of the Agreement. The meeting expenses  
21 will be used to support the costs of meetings of the Commission, subcommittees, and working  
22 groups undertaking tasks on behalf of the Agreement.

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## **Income**

In reviewing interstate agreements (whether regional higher education models or for other purposes), those agreements often charge a single fee to a state for participation. Given the uneven impact on other states of institutional participation in distance education, an institutional fee charged on sliding scale (based on number of distance students) is proposed.

### ***Recommended Fee Structure***

The exact fee structure will be left to the determination of the Commission which will include states that decide to enter into the Agreement. The Drafting Team examined alternative fee structures and the agreement draft includes the following recommendations.

An institution in a member state will pay:

1. *A fee to help host states cover their costs of assisting students being taught by institutions from other states.* SARA's Commission shall annually approve a fee schedule using a graduated scale based upon the number of students served annually in the member states. The fees collected will be remitted to SARA and distributed to the member states.
2. *A fee to cover SARA's operational costs.* The Commission shall annually approve and publish an institutional fee structure to cover its operational costs. The Commission has the authority to determine whether to use a flat fee, graduated scale, or other criteria for setting the fee.

1 The following sections further explain the reasoning behind these two charges and provide  
2 examples of financial impact.

3

#### 4 ***Funding Host State Regulatory Activities***

5 While SARA will need to cover the on-going costs of its internal operations, the income model  
6 also takes into account the shift in activities that will occur in each of the individual state  
7 regulatory offices for states participating in the agreement. SARA shifts the oversight of  
8 institutions to the institution's home state. For some states, this will mean a loss of revenue  
9 from fees charged to out-of-state institutions. Additionally, the host state retains some  
10 responsibility to assist regulatory agencies from partnering states in particular circumstances.  
11 While acknowledging that state regulatory offices have widely differing financing models, the  
12 proposed SARA financing model seeks to assist host states in funding these responsibilities.

13

14 One of the goals (but certainly not the only goal) of the fee is to help states replace funds lost due  
15 to participating in reciprocity. To obtain a grasp on the level of institutional fees required, we  
16 created the following very conservative scenario. Minnesota and Missouri had regulatory  
17 members on the Drafting Team, so we used them as examples. The Minnesota Office of Higher  
18 Education has registered 73 regionally-accredited institutions and the Missouri Department of  
19 Higher Education has licensed 53. To make the estimates more conservative, we counted only  
20 regionally accredited institutions. If both states join SARA and only half of their regionally-  
21 accredited institutions decide to participate, and each institution pays \$5,000, the Minnesota  
22 institutions would pay \$182,500 and the Missouri institutions would pay \$135,000. All of these

1 funds would be distributed to other states. Even with this modest fee and modest participation,  
2 substantial funds could be raised to assist the state regulatory offices.

3

4 Once SARA is enacted, the agreement draft envisions that the Commission will develop a sliding  
5 scale based upon the number of students that an institution has in a host state. For example, the  
6 fees might be divided by levels, such as 1-100, 101-250, and 250+ separate student enrollments  
7 in a host state in a year. Specific definitions of enrollments, time periods, and rates will need to  
8 be developed.

9

10 The financial proposal needed to meet the following goals for state regulatory agencies:

- 11 • Replace funds that some state regulatory agencies will lose due to the reciprocal  
12 agreement.
- 13 • Assist state regulatory agencies in performing the new duties required through this  
14 agreement by imposing a user fee on the institutions that decide to operate in this state.

15

### 16 *SARA's Operational Costs*

17 SARA will require a small and highly skilled staff to promote, implement, and manage its  
18 operations. Many of the duties are outlined in the Agreement, but there will also be the need to  
19 contract for short-term services (such as additional drafting assistance at start-up), legal  
20 assistance, travel, and technical support. It is recommended that a portion of the institutional fee  
21 be targeted to support SARA's operational costs by a flat fee that is reviewed and set annually by  
22 the Commission. As the number of states joining the Agreement increases, most of the fixed

1 costs will remain the same. Taking into account the actual cost of services, the fee could be  
2 lowered over time.

3

4 As an example, let's assume that SARA's annual operational costs are \$750,000. If 15 states  
5 join SARA and 30 institutions participate from each state, an annual institutional fee of \$1,667  
6 could initially be required. Again, we used conservative estimates to demonstrate that the costs,  
7 even in these scenarios, would not be exorbitant.

8

9 The financial proposal needed to meet the following goals for SARA's operations:

- 10 • Maintain an infrastructure to effectively operate and expand the administration of the  
11 Agreement.
- 12 • Keep the fee low enough to encourage institutions to participate in the Agreement.

13

#### 14 ***Overall Cost to an Institution***

15 The institutional costs of compliance with existing state by state requirements can be very high  
16 for institutions operating in multiple states. Last year, the University Professional Continuing  
17 Education Association (UPCEA) and the WICHE Cooperative for Educational Technologies  
18 (WCET) conducted a survey on institutional compliance with state authorization laws.  
19 Institutions averaged serving students in 34 states and estimated that they had or would need to  
20 pay more than \$100,000 per year in fees (or other approval-related costs, such as external  
21 reviews, travel costs to appear before Commissions) to obtain and retain these approvals. Note  
22 that these costs do not include the staff time required to interpret the regulations, inquire about  
23 requirements, and complete the multiple applications for approvals to operate in multiple states.

1

2 Those costs are being borne by institutions that are seeking compliance. In the UPCEA/WCET  
3 survey, 69% of institutions had not yet applied to a state for authorization to operate. While  
4 these institutions currently have zero cost of compliance, they may be at substantial risk for  
5 unanticipated costs at both the state and federal level.

6 The financial proposal needed to meet the following goals for institutions:

- 7 • Reduce the overall costs to institutions currently seeking approval.
- 8 • Keep the cost to institutions low enough to encourage institutions that have not sought  
9 approval to do so through this agreement.

10

11 By participating in SARA, an institution will incur a fraction of what it is currently expected to  
12 pay in fees. This lower fee and the simplified compliance process will attract additional  
13 institutions to comply. If we use the estimates from previous sections, a projected institutional  
14 fee might be:

- 15 • Host state fee – amount that will go to states in which the institution will serve students:  
16 \$5,000. Of course this is not a flat fee. Institutions serving many students in multiple  
17 states may pay more.
- 18 • SARA Operational Cost – amount to keep SARA operating: \$1,667

19 Even if the institutional fee were double this amount, it would still be a fraction of what many  
20 institutions are currently expected to pay.

21

22 Home State Fees: The current agreement draft provides for the home state to establish fees  
23 based on its own statutory and regulatory framework, with the assumption those fees will cover

1 any additional cost related to expanded responsibilities under SARA. Since many states already  
2 have such fee structures in place, it is assumed SARA will only have a minimum impact in this  
3 area. While it is anticipated that some states will raise their fee levels to cover the additional  
4 costs, it is not anticipated those increases will be substantial. If we assume an average existing  
5 home state fee of \$10,000 and a 10 percent increase as a result of SARA, the Agreement would  
6 only contribute \$1,000 in additional institutional costs. Combined with the additional costs  
7 referenced above of \$6,777, the total estimated cost (\$7,777) to cover multiple states is likely to  
8 be less than the cost of licensure currently required in just two additional states.

9 **Note:** This analysis does not include the institutional cost of providing a surety bond or paying  
10 into an state's tuition recovery fund. According to a review of the regulations in all 50 states and  
11 the District of Columbia, it appears that 29 states require at least one surety bond and/or money  
12 to be deposited into a tuition recovery fund and one state has the option to require a bond.  
13 Because of the type and scope of these requirements, this tuition recovery fund will remain a  
14 state responsibility.

**Commission on Regulation of Postsecondary Distance  
Education**

***Draft Findings, Principles, and  
Recommendations***  
**February 2013**

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### About the Commission

The Commission was convened by Paul Lingenfelter of the State Higher Education Executive Officers (SHEEO) and Peter McPherson of the American Association of Public and Land-Grant Universities (A\*P\*L\*U) and chaired by former U.S. Secretary of Education Richard Riley.

Selected in order to represent a diverse group of leaders from the full spectrum of stakeholders in postsecondary distance education policy, Commissioners include:

Meg Benke, Acting President, State University of New York Empire State College  
 Hon. James Geringer, Chair, Western Governors University Board of Trustees; Director of Policy and Public Sector Strategies, ESRI; former Governor of Wyoming  
 Rufus Glasper, Chancellor, The Maricopa County Community Colleges  
 Terry Hartle, Senior Vice President, Division of Government and Public Affairs, American Council on Education  
 Marshall Hill, Executive Director, Nebraska Coordinating Commission for Postsecondary Education  
 Arthur Kirk, President, Saint Leo University  
 Paul Lingenfelter, President, State Higher Education Executive Officers Association  
 M. Peter McPherson, President, Association of Public and Land-grant Universities  
 Silvia Manning, President, Higher Learning Commission  
 Bobby Moser, Chair, American Distance Education Consortium Board of Directors; former Dean, the College of Food, Agricultural and Environmental Sciences, The Ohio State University  
 Hon. Tad Perry, former representative, South Dakota House of Representatives  
 George Peterson, Executive Director emeritus, Accreditation Board for Engineering and Technology, ABET  
 Michael Plater, President, Strayer University  
 Pam Quinn, Provost, LeCroy Center for Education Telecommunications, Dallas Community College District  
 James Petro, Chancellor, Ohio Board of Regents  
 George Ross, George Ross, Central Michigan University  
 Paul Shiffman, Assistant Vice President for Strategic and Governmental Relations and Executive Director of the Presidents' Forum, Excelsior College  
 Ronald Taylor, Co-Founder and retired Chief Executive Officer, DeVry Inc.  
 Belle Wheelan, President, Southern Association of Colleges and Schools Commission on Colleges

The Commission expresses its gratitude to the staff of EducationCounsel, LLC, who prepared drafts of the Recommendations, conducted relevant legal and policy analysis, and facilitated meetings of the Commission: Arthur Coleman, Sarah Rittling, Saba Bireda, and Teresa Taylor. The Commission is also grateful for the dedicated support and guidance provided by staff of A\*P\*L\*U and SHEEO, who were integrally involved in the work of the Commission and the development of its recommendations.

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## Executive Summary

### Mission and Purpose of the Commission

The Commission on Regulation of Postsecondary Distance Education ("the Commission") was established to develop and provide recommendations that will address the costs and inefficiencies faced by postsecondary institutions that must comply with multiple (often inconsistent) state laws and regulations as they endeavor to provide educational opportunities to students in multiple state jurisdictions. In that context, the Commission has addressed key issues associated with appropriate government oversight, consumer protection, and educational quality related to distance education offered by institutions in the United States. After considering multiple strategies and potential solutions, the Commission has focused on grounded, principled, and practical recommendations that reflect the core aims of efficiently ensuring quality programs and consumer protection in a rapidly changing education landscape.

**Comment [R1]:** What are those?

### Overview of Recommendations

#### 1. Interstate Reciprocity and Physical Presence

Interstate reciprocity is based on the voluntary participation of states and of institutions. Participating institutions must be authorized by their "home state" (which is, presumptively, the institution's state of legal domicile). Once designated, the home state should have responsibility for authorizing the institution for purposes of interstate reciprocity and be the default forum for consumer complaints.

For purposes of the interstate reciprocity agreement, the definition of "physical presence" includes the ongoing occupation of an actual physical location for instructional purposes or the maintenance of an administrative office to facilitate instruction in the state. Institutional activities in a state that meet the definition of physical presence should require the institution to seek authorization by that state, both for the general authority to offer instruction in that state and for authority to participate in the system of interstate reciprocity. The Commission recommendations also identify a number of institutional activities that do not trigger physical presence requirements, including advertising, faculty members' residence, field trips, certain blended learning courses, and experiential learning opportunities (provided that certain other requirements are met).

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**Comment [R2]:** State-based advertising triggers oversight in SC

Authorization for purposes of interstate reciprocity will be granted by the home state, though states may also regulate the in-state activity of institutions that have physical presence in their borders. The interstate reciprocity agreement, therefore, provides a rational definition of physical presence that clearly differentiates what does and does not constitute physical presence. States must adopt this definition of physical presence as a prerequisite to participation in the interstate reciprocity agreement in order to decrease confusion among institutions, clarify oversight responsibilities for states, and ensure that students participate in duly vetted academic programs.

**Comment [R3]:** Will CHE be willing to do this?

#### 2. A Regional Approach for Governing Interstate Reciprocity

While a national system is essential for the viability of the interstate reciprocity agreement, establishing and maintaining an entirely new national structure would likely be too time- and resource-intensive and potentially too bureaucratic to be viable. The four regional higher education compacts provide an existing structure by which states can participate in an interstate reciprocity agreement. The compacts are well-positioned to manage state participation in the agreement since they have strong, existing relationships with states and institutions and demonstrated experience in managing interstate activities.

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To complement the regional compacts' role, ensure efficiencies in systems, and monitor existing mechanisms for effective implementation, a national coordinating board made up of a diverse group of stakeholders, including the regional compacts, can ensure fundamental, nationwide alignment with the reciprocity agreement's requirements.

**Comment [R4]:** Adding another "layer" of oversight.

Additionally, the home state has a right to oversee its home-state institutions and the in-state activities of institutions that have physical presence in its borders as the home state sees fit. By virtue of its agreement to participate in the interstate reciprocity agreement, the home state accepts the obligation and assures its capability, whether through law or mutually accepted, binding contractual agreements with constitutionally autonomous institutions, to certify compliance with quality standards and to receive and resolve consumer complaints.

### 3. Accreditation and Institutional Quality

A core principle of the interstate reciprocity agreement is that it does not create redundant requirements when well-established structures and requirements that ensure institutional quality already exist. Accreditation by a federally-recognized accreditation agency can provide sufficient evidence of institutional quality for purposes of interstate reciprocity, give students a clear indicator of quality when selecting an institution, and help to eliminate low-quality institutions from the institutional marketplace as states increase the rigor of the authorization process. Correspondingly, the accrediting agencies and institutions must provide the necessary transparency in process and rigor that preserves the confidence of the higher education community at large and of the broader public even in a rapidly changing postsecondary landscape.

### 4. Consumer Protection

All postsecondary students require protection against fraud and misrepresentation, but students in distance education programs may require even stronger protections because they complete their courses and programs outside the visibility of traditional oversight and monitoring structures. Because the interstate reciprocity agreement is likely to increase the number of students participating in distance education programs, participating states and institutions must take special care to protect these students.

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Both current and prospective students need access to accurate, complete, and current information about the institutions they attend or are considering attending. Because this information is already required to be disclosed to students or reported publicly by a large majority of institutions to fulfill Title IV and/or accreditation requirements, an additional reporting requirement will only be necessary for institutions that do not participate in Title IV programs but that seek to participate in the reciprocity agreement.

Interstate reciprocity provides a means for states to focus on the institutions with a physical presence within the state, and to rely on the authority and responsible regulation of the home state for out of state institutions offering instruction to its residents. Still, regardless of whether an institution is authorized directly by a state or through interstate reciprocity, it should be accountable for violations of consumer protections. States, therefore, must be vigilant in investigating and resolving consumer complaints. A prerequisite for state participation, therefore, will be a clear process for receiving and resolving consumer complaints.

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### 5. Institutional Financial Responsibility

The reciprocity agreement avoids creating new requirements when sufficient structures already exist, but it also encourages transparency among members of the higher education triad. Because Title IV reporting requirements and the accreditation process adequately examine institutional fiscal viability, the interstate reciprocity agreement should

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not impose any new or duplicative requirements other than encouraging transparency. Participating states can rely on the financial responsibility system used by the Department to determine if an institution qualifies for Title IV program participation as an indicator of a participating institution's fiscal stability.

Home states should ensure that the institutions they authorize for participation in the interstate reciprocity agreement are financially responsible by requiring, at minimum, that institutions are found to be financially responsible by the U.S. Department of Education for purposes of Title IV participation. If an institution does not attain a rating of 1.5 on the Department's financial responsibility index, the state may request additional information to determine whether the institution is financially responsible for purposes of participation in the interstate reciprocity agreement. If a home state institution does not participate in Title IV, its authorizing state should require the institution to submit to the state the same financial information required for Title IV compliance as a condition for participating in the interstate reciprocity agreement. The state should analyze the information and determine fiscal viability in a manner that is the same as or substantively similar to what would have been computed using the Department's financial responsibility standards.

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## I. Introduction Regarding Distance Education Programs: The Legal and Policy Context

### A. Overview

The advent of large scale distance education programs has led to the unprecedented availability of educational opportunities to students across the United States. The regulation of distance education is of growing significance as distance education providers work in more than one state – and often in many states. Complexity, confusion, and costs of compliance can be reduced if state laws and regulations embody common principles and/or if rules are established that narrow compliance obligations (i.e., requiring compliance with the rules of a single jurisdiction), while working to assure appropriate consumer protection and quality of service. State and federal oversight of distance education is important but such oversight cannot overly burden multi-state distance education providers. Unless alternatives are developed to the current 50+ state compliance system, many providers may choose to limit the states where distance education is offered, thereby denying access to students who otherwise would not have those educational opportunities.

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Moreover, concerns persist regarding possible abuses in the delivery of distance education that may require specific forms of government oversight that is not now being consistently and coherently provided. The current system – in which states seek to protect their citizens as consumers (in various ways) and the U.S. Department of Education ("the Department") continues to be engaged in protecting the investment and quality of Pell Grants and student loans through its regulations and compliance activities – lacks an overarching, coherent framework and focus.

### B. Distance Education Today

Postsecondary distance education programs expand educational opportunities for students by providing a flexible, accessible method to acquire new skills and fulfill degree requirements. Postsecondary institutions increasingly depend on distance education to advance the goals of raising college completion rates and preparing students for 21st century careers. With almost seven million students using online technology to access postsecondary courses, distance education has emerged as a viable alternative and supplement to the traditional in-classroom university experience.<sup>1</sup>

Distance education can provide enhanced and expanded academic options for all students – over 30% of college and university students take at least one online course<sup>2</sup> – with non-traditional students, including military personnel, having especially benefited from the surge in online educational offerings.<sup>3</sup> A central value for students taking online courses is the ability to tap into an expanded universe of course offerings and find the programs or courses that best meet their interests and schedules, regardless of geographical location. (Institutions providing distance education typically do not limit student enrollment by geographic area.) According to a 2008 survey by the Department, higher education institutions offered distance education primarily to meet student demands for flexible scheduling and to expand college access for underserved students.<sup>4</sup> In addition, institutions of higher education appear to focus on the

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<sup>1</sup> I. Elaine Allen and Jeff Seaman, *Changing Course: Ten Years of Tracking Online Learning in the U.S.*, Babson Survey Research Group, Pearson, and The Sloan Consortium, Jan. 2013, p. 4

<sup>2</sup> *Id.*

<sup>3</sup> While federal monitoring and research on distance education programs is in its nascent phase, data collected by the U.S. Government Accountability Office (GAO) shows that distance education is creating educational opportunities for many traditionally underserved students including older students, military personnel, working students, and students with families. U.S. Government Accountability Office, GAO-12-39, *Higher Education: Use of New Data Could Help Improve Oversight of Distance Education* (2011).

<sup>4</sup> *Id.* at pp. 9-10.

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potential of distance learning to address a variety of other student and institutional needs, from student expectations for easy access to curricular materials, to the generation of increased revenues, to the enhancement of their reputation and “brands.”

The “borderless” nature of distance education has resulted in many institutions serving students from a large number of states. An institution may have national reach but only serve a small number of students in any given state through online courses. As such, the oversight methods used by individual states to monitor traditional on-campus, in-classroom courses may not appropriately cover the operations of these multi-state distance education providers.

The rapid growth of distance education programs has outpaced the ability of states and the federal government to provide a coherent and comprehensive system of regulation appropriately attentive to issues of consumer protection and quality that, at the same time, reflects the unique features of distance education. One result is that education providers face a patchwork of individual state regulations with different requirements and varying degrees of complexity and costs. And the demand that distance education providers operating in multiple states comply with any applicable state requirements for offering postsecondary distance education casts a glaring light on that challenge, and its potential consequences.<sup>5</sup> The current inconsistent and burdensome regulatory scheme ultimately acts to hinder students' access to valuable postsecondary opportunities if institutions choose to limit their operations to a fewer number of states because of those hurdles—a prospect notably at odds with national postsecondary education goals and national needs.

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### C. Legal and Policy Background

#### 1. State Law and Policy Regarding Distance Education

Historically, state laws and regulations governing institutions of higher education have only addressed the conduct of institutions physically located within the state, with state authorization requirements generally having provided a gatekeeper function to protect citizens from fraud and poor quality programs.<sup>6</sup> The emergence of online educational services has complicated the regulatory environment and requires states to determine how to best regulate out-of-state providers delivering educational services to students in their states primarily through the Internet.

Over the last two decades or more, states have adopted and adapted varying approaches to the authorization of online providers, with some states requiring institutions to acquire authorization regardless of physical presence in the state and others making no substantive reference to out-of-state providers of distance education at all.<sup>7</sup>

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The lack of uniformity across state regulations has led to limited inter-state and multi-state reciprocity compacts, in which member states agree to recognize each other's institutional authorization decisions. At least one of the four regional compacts, the Southern Regional Education Board's Electronic Campus, gives students the opportunity to choose online courses from over 300 colleges and universities across 16 member states.

<sup>5</sup> Most visibly articulating this reality (as is reflected in certain state requirements), the U.S. Department of Education (USED) on October 29, 2010 issued “Program Integrity Rules” promulgated under the Higher Education Act. Among other things, and as described in more detail below, these Rules required that institutions of higher education offering distance education comply with requirements in each state in which their students are located. As explained below, these rules are in current limbo, given a federal court ruling in June of 2012.

<sup>6</sup> Presidents' Forum Task Force, “Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions: A National Strategy” (Fall 2009).

<sup>7</sup> Eduventures, “Online Learning Across State Borders: Assessing State Regulation of Out-of-State Schools,” available at [http://www.accet.org/downloads/program\\_integrity/state\\_reg\\_report\\_jan11.pdf](http://www.accet.org/downloads/program_integrity/state_reg_report_jan11.pdf) (Jan. 2011).

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## 2. Federal Law and Policy Regarding Distance Education

The federal government's oversight power over distance education providers emanates from its management of student aid programs.<sup>8</sup> Even though the federal role is limited in scope, much of the recent growth in distance education can actually be attributed to significant changes in the provisions of the Higher Education Act (HEA) in 2006 and the Higher Education Opportunity Act (HEOA) of 2008. The 2006 amendments to the HEA excluded distance education programs from a 1992 rule stating that schools were not eligible for federal student aid programs if more than 50% of their courses were offered by correspondence or if more than 50% of their students were enrolled in correspondence courses.<sup>9</sup> The HEOA also clarified accrediting agency duties in regard to distance education. Agencies are not required to have separate standards for evaluating distance education and recognized agencies are not required to obtain approval to expand their scope of accreditation to include distance education, if notice is provided to the Department.<sup>10</sup>

Prompted by "the rapid growth of enrollment, debt load, and default rates" at some institutions, in 2009, the Department initiated a Negotiated Rulemaking process to develop new regulations under the HEA.<sup>11</sup> In June 2010, the Department released a proposed set of rules, including provisions regarding state authorization requirements for institutions. In October 2010, the Department issued final "Program Integrity" rules promulgated under the HEA.<sup>12</sup> The rules included the following provision (codified at 34 C.F.R. § 600.9 (c)) which was not included in the proposed rules:

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 postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.<sup>13</sup>

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The Department further explained that the provision "in no way preempt[ed] any State laws, regulations, or other requirements established by any State regarding reciprocal agreements, distance education, or correspondence study."<sup>14</sup> The Department declined to regulate or require federal authorization for reciprocal agreements. The final rules also included a provision requiring institutions to provide current and future students with contact information for filing complaints with the institution's accrediting agency and the appropriate state agency that would handle the student's complaint.<sup>15</sup> The final Program Integrity rules went into effect on July 1, 2011.<sup>16</sup>

<sup>8</sup> Regulation of higher education has traditionally been understood to be under the constitutional purview of the states. As the Presidents' Forum 2009 Task Force Report explains, the federal government had "virtually no role in the oversight of colleges and universities" until the passage of the post-World War II GI Bill. The Higher Education Act of 1965 established the first federal student financial aid program thereby granting the federal government a more meaningful role in oversight as colleges and universities must agree to certain requirements and comply with federal law as a condition of receiving federal funds for students. Presidents' Forum Task Force, "Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions: A National Strategy" at p. 5 (Fall 2009).

<sup>9</sup> Higher Education Reconciliation Act of 2005, Pub. L. No. 109-171, Title VIII, Subtitle A, 120 Stat. 4, 155 (2006).

<sup>10</sup> 20 U.S.C. § 1099b(a)(4)(B)(i)(I), (II).

<sup>11</sup> U.S. Department of Education, "Department of Education Establishes New Student Aid Rules to Protect Borrowers and Taxpayers," available at <http://www.ed.gov/news/press-releases/department-education-establishes-new-student-aid-rules-protect-borrowers-and-tax> (last accessed May 30, 2012).

<sup>12</sup> Reciprocity and Distance Education, 75 Fed. Reg. 66,866-67 (Oct. 29, 2010) (to be encoded 34 C.F.R. § 600.9).

<sup>13</sup> 34 C.F.R. § 600.9 (c).

<sup>14</sup> 75 Fed. Reg. 66867 (Oct. 29, 2010).

<sup>15</sup> 34 C.F.R. § 668.43 (b).

<sup>16</sup> In March 2011, the Department released a "Dear Colleague" letter intended to provide guidance for the Program Integrity Rules. The guidance established that for the 2011-12 award year, the Department would consider institutions to be making a "good-faith effort" at

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Following the release of the final Program Integrity Rules, the Association of Private Sector Colleges and Universities sued the Department arguing that interested parties were not given sufficient notice and an opportunity to comment on the state authorization rule. In *Career College Association v. Duncan*, 34 C.F.R. § 600.9 (c) was vacated on the grounds that the Department did not provide proper notice-and-comment as required by the Administrative Procedure Act.<sup>17</sup> On appeal, the District of Columbia Court of Appeals, in June 2012, upheld the lower court's decision and ruled that § 600.9 (c) was "not a logical outgrowth" of the Department's proposed Program Integrity rules.<sup>18</sup> Although the Department has not yet indicated what next steps will be, the decision would appear to require that the Department engage in some form of notice and comment in the event that it decides to reissue the state authorization rule (or some variant thereof).<sup>19</sup>

### 3. The State Regulatory Landscape after the State Authorization Rule

The promulgation of the federal state authorization regulation (§600.9 (c)) and resulting focus on state authorization has called attention to and elevated the dialogue regarding the inconsistent state regulatory scheme surrounding multi-state distance education providers. Notably, these state requirements existed before the rule and will continue to impact multi-state providers, regardless of future U.S. Department of Education action.<sup>20</sup>

As described herein, the pronounced variability among state laws regarding authorization makes compliance, in a national or even regional sense, an extremely time-consuming and expensive task. Some states require any distance education provider, regardless of physical presence in the state, to seek authorization from the state before offering courses to students. For states that require institutions with a physical presence to seek authorization, there are numerous legal definitions regarding what constitutes a "physical presence" – dependent upon, for example, whether the providers owns or leases actual property in the state, advertises its operations in the state, or engages in recruiting activities in the state. In addition, some states require providers to seek accreditation while others do not. Finally, almost every state requires an institutional fee for the authorization process, which may vary based on the type of program and number of students being served. Some states grant authorization at the institutional level, others on a program-by-program basis. All of these requirements may be further complicated by the type of programs (degree vs. non-degree) and provider (public, private, for-profit, religious/tribal) seeking authorization.<sup>21</sup>

compliance with the regulation if the institution met certain conditions. See Eduardo M. Ochoa, Office of Postsecondary Educ., U.S. Dep't of Educ., Implementation of Program Integrity Regulations, at 6 (Mar. 17, 2011). In a later April 2011 "Dear Colleague" letter, the Department clarified that it would not initiate any enforcement action to require repayment or limit student eligibility before July 1, 2014. See Eduardo M. Ochoa, Office of Postsecondary Educ., U.S. Dep't of Educ., State authorization under the Program Integrity Regulations, at 2 (May 6, 2011).

<sup>17</sup> *Career Coll. Ass'n v. Duncan*, 796 F.Supp.2d 108 (D.D.C. 2011).

<sup>18</sup> *Ass'n of Private Sector Colls. and Univs. V. Duncan*, No. 11-5174, slip op. at 5 (D.C. Cir. June 5, 2012).

<sup>19</sup> See generally Kelly Field, "Appellate Court Sides with For-Profit Colleges on Tossing Out a Controversial Rule," *The Chronicle of Higher Education*, June 5, 2012. In this context, it bears noting that both the U.S. House of Representatives and the U.S. Senate have also taken action to repeal 34 C.F.R. § 600.9 (c). The House passed H.R. 2117 (the Protecting Academic Freedom in Higher Education Act) in February 2012. The bill would repeal several of the state authorization regulations including § 600.9. A companion bill in the Senate, S. 1297, was introduced in June 2011 but has not moved out of the Senate Committee on Health, Education, Labor, and Pensions. President Obama has indicated that he would not support the repeal of the rules as they "help ensure the integrity" of the federal student aid programs. Kelly Field, "House Votes to Repeal Two Controversial Education Department Rules," *The Chronicle of Higher Education*, February 28, 2012.

<sup>20</sup> As the Department's March 2011 guidance notes, "[a]n out-of-State institution offering distance education, including online education or correspondence study to students in a State that regulates these offerings, was *always* required to have determined whether State approval was necessary and to have sought approval from the State" (emphasis added) prior to awarding title IV funds. The guidance goes on to explain that § 600.9 (c) "merely reinforces" the need for State approval in all states where a provider operates. See also, Paul E. Lingenfelter, "The Federalization of Higher Education?," presented at the Presidents' Forum Conference, March 28, 2011.

<sup>21</sup> States may have different approval requirements for degree and non-degree programs and may further distinguish requirements if the

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Institutions also must constantly monitor state regulations, policies, and interpretations to ensure that they are meeting current requirements in a policy environment of consistent change. Removing this patchwork of conflicting, constantly changing state laws and regulations is the principal motivation for the recommendations that follow.

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program is in a specialty area (such as nursing or education). This differentiation may require a provider to follow multiple authorization procedures in one state.

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## II. The Work of the Commission: Convenings and Stakeholder Outreach

The Commission's work, which began in the summer of 2012, centered on the development of recommendations designed to:

- Expand and ensure quality opportunities in higher education for all students nationwide;
- Reduce the cost, burden, and inefficiencies associated with current regulatory schemes associated with distance education;
- Build upon existing requirements and governance structures to develop a new system of interstate reciprocity that is both efficient and effective in assuring quality and consumer protections.

To work toward solutions, the Commission has pursued a consensus-based approach with significant stakeholder engagement. Between June 2012 and February 2013, the Commission has held three in-person meetings, one remote webinar, and an ongoing process of seeking and providing feedback on the Commission's work from Commissioners and the organizations and sectors of higher education that they represent. The initial meeting on June 14, 2012, focused on addressing preliminary issues and identifying likely points of prospective consensus on which to build the Commission's work. The six key issues identified were: (1) cost and burden; (2) impact on students; (3) the need for innovation; (4) the need for coherent and consistent policies; (5) the continuing importance of the triad of higher education governance; and (6) institutional quality. In this context, the Commissioners discussed the importance of bringing together a diverse group of leaders in the distance education community to discuss alternatives and solutions for the regulation of distance education, in light of compliance obligations with different and inconsistent state regulatory schemes.

The second meeting, held on September 12, 2012, involved significant steps forward by Commissioners. Prospective common ground was identified in a number of key areas, significantly informed by the work of the Western Interstate Commission for Higher Education (WICHE) and the Council of State Governments (CSG)/Presidents' Forum, both of which released new drafts of their model reciprocity agreements in the summer of 2012. Important insights and background on key issues also came from participation by invited guests David Longanecker of WICHE and Judith Eaton of the Council of Higher Education Accreditation (CHEA) and a report from the joint APLU – AASCU Advisory Group of presidents and chancellors of public institutions. Secretary Riley, commenting on the unique opportunity the Commission has to forge consensus, urged all stakeholders to work toward one comprehensive set of principles and actions, particularly in light of comments provided from and about the WICHE and Presidents' Forum approaches, as well as feedback provided by representatives of the A\*P\*L\*U- AASCU Advisory Committee. Those in attendance agreed with this consensus approach as opposed to pursuing separate strategies.

A first draft of the Commission's findings, principles, and recommendations was circulated in November 2012. Commission members participated in a webinar on November 14, 2012, to discuss several outstanding issues in the draft. After the November webinar, Commissioners were encouraged to share an updated draft with their colleagues and networks. The Commission received dozens of responses and written feedback from more than twenty groups and individuals, including:

- Public, private, non-profit, and for-profit institutions of higher education,
- State regulators from both higher education- and health-related departments,
- National organizations that focus on higher education, and
- Regional compacts.

The overall tenor of the feedback received was positive toward the Commission's approach to the recommendation. A few concerns were raised about the specifics of the document, with many comments focusing on the physical presence definition, the governance structure, and the implementation plan. The majority of concerns were addressed in subsequent updates to the Commission document. Commissioners participated in a detailed survey for each of the proposed recommendations in December 2012.

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Through discussions at Commission meetings, solicitation of feedback from Commissioners, and outreach with other stakeholders, the Commission recommendations were near completion prior to the January 2013 meeting. Thus, the January 2013 meeting focused on resolving the few remaining issues and looking forward to the plan for implementation of the recommendations, including an initial strategy for stakeholder outreach and engagement regarding the Commission recommendations, including a symposium focused on state implementation in April 2013 that is being planned by the Presidents' Forum and the Council of State Governments. During the meeting, Commissioners expressed a desire to create a unified path for implementation between the Commission, the Presidents' Forum, and WICHE and the other regional compacts. To that end, Commissioners expressed a need for a single document on interstate reciprocity to be produced from the draft Commission document and the related WICHE document.

Commission staff subsequently engaged with WICHE's staff to produce this document, which represents alignment with the WICHE recommendations and has been drafted in response to final feedback from Commissioners.

*[Note: Additional text on the conclusion of the Commission's work on drafting recommendations will be provided once Commissioners approve the final recommendations.]*

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### III. Draft Findings, Principles, and Recommendations of the Commission

The Commission considered a number of issues in its work to develop recommendations to improve the current patchwork system of state authorization for distance education providers. As part of this work, the Commission reviewed and discussed current reciprocity agreement proposals from the Western Interstate Commission for Higher Education (WICHE), and the Council of State Governments (CSG)/Presidents' Forum, as well as comments to the Commission from the A\*P\*L\*U – AASCU Advisory Committee and additional feedback received since the June meeting. The draft recommendations in this document result from observations and reactions to these existing proposals and comments. Because the Commission was able to reflect and build on work of WICHE, CSG, and the Presidents' Forum, it offers recommendations that are specific and intended to frame a concrete, consensus-based action agenda.

Each recommendation (with accompanying relevant findings and principles) emerged from discussions during the Commission's past three meetings and represents a potential path forward to address the needs of states, institutions, and students in regard to distance education. The draft recommendations are structured within the following five topics:

1. Interstate Reciprocity and Physical Presence
2. A Regional Approach for Governing Interstate Reciprocity
3. Accreditation and Institutional Quality
4. Consumer Protection
5. Institutional Financial Responsibility

These topics were ordered so that readers first understand the core concept of interstate reciprocity (including our definition of physical presence). Then the recommendations explain the governing structure for supporting the proposed system of interstate reciprocity. Finally, the recommendations explain how the governing structure protects three key interests in the system of interstate reciprocity (institutional quality, consumer protection, and institutional fiscal viability).

#### 1. Interstate Reciprocity and Physical Presence

**Findings:** State laws and regulations governing institutions of higher education have typically only addressed the conduct of institutions physically located within the state, with state authorization requirements generally providing a gatekeeper function to protect citizens from fraud and poor quality programs offered by those institutions.

The emergence of distance education has complicated the regulatory environment and now requires states to determine how best to regulate out-of-state providers delivering educational services to students in their states (primarily through the Internet). Over the last two decades or more, states have adopted and adapted varying approaches to the authorization of online providers.<sup>22</sup> Most regulatory activity has involved defining the concept of "physical presence" by identifying which institutional activities constitute a sufficiently robust relationship with the state to warrant a requirement that the institution seek state authorization to operate. The spectrum of state requirements on physical presence falls along four categories:

<sup>22</sup> Eduventures, "Online Learning Across State Borders: Assessing State Regulation of Out-of-State Schools," available at [http://www.accet.org/downloads/program\\_integrity/state\\_reg\\_report\\_jan11.pdf](http://www.accet.org/downloads/program_integrity/state_reg_report_jan11.pdf) (Jan. 2011).

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- All online providers must acquire state authorization regardless of physical location.<sup>23</sup>
- Online providers must acquire state authorization when physical presence is triggered.<sup>24</sup>
- Online providers must seek an express exemption from state authorization even if the provider has no physical presence in the state.<sup>25</sup>
- No particular requirement exists for out-of-state online providers, provided that they are accredited.<sup>26</sup>

This lack of uniformity in state policy has created confusion for institutions seeking to offer distance education across state lines. Institutions that seek a national presence face the burdensome and expensive process of seeking authorization in multiple states. Institutions depend on directories and lists developed by the entities within the higher education community (which may not always be up-to-date) and, in some cases, expend inordinate amounts of their own time and resources in order to determine and comply with variable authorization requirements.

**Principles:** Interstate reciprocity is based on the voluntary participation of states and of institutions. The success of the agreement is not dependent upon securing the participation of all states and institutions in the United States, but rather on an agreement based on a uniform set of standards for state authorization that ensures that institutions can easily operate distance education programs in multiple states. Such an agreement will allow students to enjoy increased access to higher education opportunities and provide appropriate quality assurance of distance education that alleviates the need for states to monitor distance education activities of institutions authorized outside of the state.

Institutions offering instruction to students must be authorized by the state, regardless of whether that instruction takes place in a traditional classroom or through a distance education program. Authorization for purposes of interstate reciprocity will be granted by the home state (discussed fully in Recommendation 1.2), though states may also regulate the in-state activity of institutions that have physical presence in their borders. The interstate reciprocity agreement, therefore, must provide a rational definition of physical presence that clearly differentiates these two means for institutions to attain state authorization.

## Recommendations:

### 1.1. Interstate Reciprocity

- States should be encouraged to participate in a voluntary system of interstate reciprocity to reduce the regulatory burden on institutions providing distance learning opportunities to students in multiple states, broaden access to distance education opportunities, and ensure a baseline of standards among participating institutions and states. States should opt into the reciprocity agreement through their existing participation in regional compacts. Those states that are not current members of a regional compact should be able to request membership in a regional compact for the limited purpose of**

<sup>23</sup> Only a few state agencies expressly require all online education providers to acquire state authorization regardless of whether the provider is physically located in the state. Almost every institution is required to seek authorizations in these states regardless of the number of students enrolled at the institution.

<sup>24</sup> A significant majority of state agencies regulate distance education providers with a physical presence in the state. Physical presence triggers include face-to-face instructional activities, internships/externships, recruitment activities, actual facilities (may house administrative offices or equipment), staff or faculty employed in the state, third-party contracts for services administered in the state, and advertising.

<sup>25</sup> Only a handful of state agencies fit into the "exempt status" category. These exemptions may require the provider to provide evidence of national or regional accreditation as a quality assurance check.

<sup>26</sup> A very small number of state agencies fall into this category.

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participating in the reciprocity agreement.<sup>27</sup> (Regional compacts are discussed fully in Recommendation 2.1.)

- B. An institution should not be able to participate in the interstate reciprocity agreement if the state which is its home state is not a participant in the interstate reciprocity agreement. Thus, institutions that are located in non-participating states are not eligible to take part in the agreement.

## 1.2. Physical Presence

- A. As a prerequisite to participation in the interstate reciprocity agreement, states that seek to participate should adopt a common definition of physical presence to decrease confusion among institutions, clarify oversight responsibilities for states, and ensure that students participate in duly vetted academic programs. For purposes of the interstate reciprocity agreement, **the definition of "physical presence" should be limited to the ongoing occupation of an actual physical location for instructional purposes or the maintenance of an administrative office to facilitate instruction in the state.**
- B. Institutional activities in a state that meet the definition of physical presence, as defined here, permit but do not require a state to require the institution to seek authorization by that state, both for the general authority to offer instruction within that state.
- C. The authorizing state will serve as the institution's "home state" for purposes of the interstate reciprocity agreement. Institutions that have physical presence in more than one state will have only one home state (the presumptive home state will be the institution's state of legal domicile)<sup>28</sup> for purposes of the interstate reciprocity agreement. Once designated, the home state should have responsibility for authorizing the institution for purposes of interstate reciprocity and be the default forum for consumer complaints (described fully in Recommendation 4.2). (Institutions would continue to need general state authorization, outside the scope of interstate reciprocity, in all states in which they have physical presence.)
- D. For purposes of the interstate reciprocity agreement, institutions delivering pure distance education courses and conducting no other activities in a state should not be deemed to be physically present. These institutions, therefore, should have to seek authorization for purposes of interstate reciprocity only from their home state. Other institutional activities that should not trigger physical presence requirements include:
- **Advertising,**
  - **Recruiting,**
  - Contractual arrangements in states (e.g., procurement contracts or online academic offerings provided through consortia agreements),
  - Courses on military installations by an accredited institution, limited to active and reserve military personnel, dependents of military personnel, and civilian employees of the military installation,<sup>29</sup>
  - Faculty residing in the state but not physically meeting students in that state,
  - Field trips,
  - Proctored exams held in the state,

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<sup>27</sup> These states are New Jersey, New York, and Pennsylvania. The District of Columbia also does not currently participate in a regional compact.

<sup>28</sup> Though there are some variations between different states, legal domicile generally indicates permanent residence in a particular jurisdiction. A person or entity may only have one legal domicile at any one time, although domicile may change. A corporation's domicile is usually its place of incorporation.

An important note for purposes of interstate reciprocity is that the home state does *not* need to be tied to accreditation-related geographic considerations. (Some regional accrediting agencies determine whether an institution has "substantial presence" within their region to determine whether they may accredit that institution.)

<sup>29</sup> Because military installations are governed by federal, not state, authorities, physical presence should not be triggered by courses offered on a military base.

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- Operation of a server or other electronic service device,
- **Short courses (20 classroom hours or less),**
- **Courses for which fewer than 25 percent of class requirements take place in a setting where the instructor and students physically meeting together,**
- Experiential learning opportunities, such as a clinical, practicum, residency, internship, provided that:
  - The institution has already obtained all the necessary professional and licensure approvals necessary (if any) to conduct the learning opportunity in the state, or
  - Only ten students from each institution are physically present simultaneously at a single field site.

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## 2. A Regional Approach for Governing Interstate Reciprocity

**Findings:** A system of interstate reciprocity requires an infrastructure to facilitate communication and collaboration between states. A key element of interstate reciprocity is the management of a strong process for determining whether states meet and continue to adhere to standards for participation in the agreement.

The four regional higher education compacts provide an existing structure by which states can participate in an interstate reciprocity agreement. The compacts, as entities based on state membership, are well-positioned to manage state participation in the agreement. The majority of states currently belong to one of the four existing regional compacts: the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE). These compacts were created to encourage resource-sharing and collective action among member higher education systems. These compacts have strong, existing relationships with states and institutions and demonstrated experience in managing interstate activities.<sup>30</sup>

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Full membership in the compacts is limited to states within each region.<sup>31</sup> Limited membership for states outside a compact's region is available for certain programs. MHEC, for example, allows states not within its region to be affiliate members (collaborative relationships based on mutual interests with no set fees) or associate members (broader participation allowed, e.g., in procurement activities, for an annual payment of \$50,000).<sup>32</sup> Under WICHE's leadership, these four compacts have engaged with the issue of interstate reciprocity for distance education and appear prepared to support such a system.

**Principles:** While a national system is essential for the viability of the interstate reciprocity agreement, establishing and maintaining an entirely new national structure would likely be too time- and resource-intensive and potentially too bureaucratic to be viable. The regional compacts can act as the agents of a national reciprocity agreement

<sup>30</sup> One of the most visible activities in which all compacts currently engage is a regional academic "common market" that allows students to receive discounted tuition at an out-of-state institution within the compact to pursue a degree program not available to that student in his or her home state.

<sup>31</sup> MHEC has 12 member states (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin). NEBHE has six member states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). SREB has 16 member states (Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia). WICHE has 15 member states (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming).

<sup>32</sup> MHEC, Member States, <http://www.mhec.org/memberstates> (last accessed Oct. 24, 2012).

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between states. Using regional compacts as the vehicle for the interstate reciprocity agreement has the advantages of limiting costs, utilizing existing structures, and working within established relationships.

The home state has the obligation to oversee its home-state institutions and has the right to oversee the in-state activities of institutions that have physical presence in its borders. By virtue of its agreement to participate in the interstate reciprocity agreement, the home state accepts the obligation and assures its capability, to certify compliance with the standards defined in these recommendations and to receive and resolve consumer complaints.

An oversight body for the interstate reciprocity agreement will be necessary to ensure efficiencies in systems and monitor existing mechanisms for effective implementation. Additionally, some forum will be necessary to address possible conflicts among regional compacts about interpretation and enforcement of the reciprocity agreement. A national coordinating board made up of a diverse group of stakeholders, including the regional compacts, can ensure fundamental, nationwide alignment with the reciprocity agreement's requirements. Until the permanent coordinating board is in place, WICHE will lead efforts with the other regional compacts to implement the interstate reciprocity agreement. There is a need ensure a seamless transition from the Commission's work to actual implementation of the recommendations and to provide some oversight to that process. Accordingly WICHE will seek guidance from the Commission (or select members as appropriate) regarding interim and transitional issues of consequence. Initial membership of the National Coordinating Board should also be the product of a similar process.

The recommendations presented are intended to provide an overview of the functions served by the regional compacts, participating states, participating institutions, and the national coordinating board that will be necessary to prepare for, implement, and maintain the interstate reciprocity agreement.

#### Recommendations:

##### 2.1. Role of the Regional Compacts

- A. As a preliminary step, all four regional compacts should agree to adhere to the standards and responsibilities involved in the interstate reciprocity agreement. These standards and responsibilities should include a process for admitting states to the interstate reciprocity agreement and determining whether any additional fees are necessary for current compact member states and/or non-member states seeking to join a compact for the limited purpose of participation in the interstate reciprocity agreement. The reviewing regional compact should ensure that states have both the authority and capacity to adhere to the requirements of the interstate reciprocity agreement.
- B. To implement the interstate reciprocity agreement, regional compacts should accept state requests to join the agreement and admit states that have adopted the appropriate legislation and/or regulations to facilitate compliance with the requirements of the reciprocity agreement.
- C. After the agreement has been implemented, regional compacts should perform the following functions: (1) maintain a public list – easily accessible to students – of states and institutions that are part of the agreement (this list should be comprehensive and available on each regional compact's website); (2) facilitate the agreement's continued growth and expansion to more participating states; and (3) monitor states' compliance with the reciprocity agreement, including admitting, performing a biennial review of, and expelling states from the agreement. The heads of the four regional compacts should use the meetings of the national coordinating board to facilitate a regular exchange of information regarding state compliance with the interstate reciprocity agreement as well as the standards and responsibilities of the regional compacts themselves.

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2.2. Role of Participating States

- A. As a preliminary step, states that wish to join the interstate reciprocity agreement should take necessary action to comply with the requirements and standards of the interstate reciprocity agreement. Once admitted to the interstate reciprocity agreement, states should notify institutions that are likely to designate them as their home state about the interstate reciprocity agreement, its terms, and potential benefits to institutions. *(Additional guidance about these steps is presented in Section III.)*
- B. To implement the interstate reciprocity agreement, states should authorize for participation in the agreement institutions that wish to participate in the agreement and meet the standards and requirements of the agreement.
- C. After the state has authorized an institution for participation in the interstate reciprocity agreement, it should (1) notify the regional compacts of the institutions that it has admitted to the agreement in a timely manner; (2) reauthorize participating institutions on an annual basis; (3) monitor the compliance of the institutions it authorized for participation in the agreement with requirements regarding institutional quality, consumer protection, and fiscal viability (as described in the recommendations below); (4) take appropriate action against an institution it authorized if that institution fails to comply with those standards and requirements, which may include an investigation, citation, suspension, or expulsion from the interstate reciprocity agreement; and (5) notify the relevant regional compact of any adverse action taken against an institution related to the interstate reciprocity agreement.

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2.3. Role of Participating Institutions

- A. As a preliminary step, institutions that wish to participate in the agreement should apply to their home state for admission into the agreement.
- B. The interstate reciprocity agreement should be triggered for participating institutions when out-of-state students enroll in their programs that are covered by the interstate reciprocity agreement. Students should be made aware of these programs were authorized through the interstate reciprocity agreement, possibly by a symbol on the institution's website and/or a standard statement used by all participating institutions.
- C. To maintain the agreement, institutions should comply with the standards and requirements of the agreement.

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2.4. Role of Accrediting Agencies

- A. As a preliminary step, federally recognized accrediting agencies for distance education purposes should monitor whether institutions they accredit are domiciled in a state that plans to join or has joined the agreement.
- B. To implement the interstate reciprocity agreement, accrediting agencies that are federally recognized to accredit distance education programs should provide confirmation, when requested by the state, about the accreditation status of institutions seeking to participate in the agreement.
- C. To maintain the agreement, accrediting agencies should continue to revisit and revise their standards for higher education to take into account the changing landscape of distance education. Additionally, in light of the reliance of states and institutions on accreditation as the primary means of quality assurance and in order to increase awareness of accreditation processes and decisions, all regional, national, and programmatic accreditors should be urged to provide a summary to relevant states of adverse actions with regard to distance education taken relative to institutions or programs to relevant home-state agencies on a timely basis. (See also Recommendations 3A, 3B, 3C, and 4.2C, below.)

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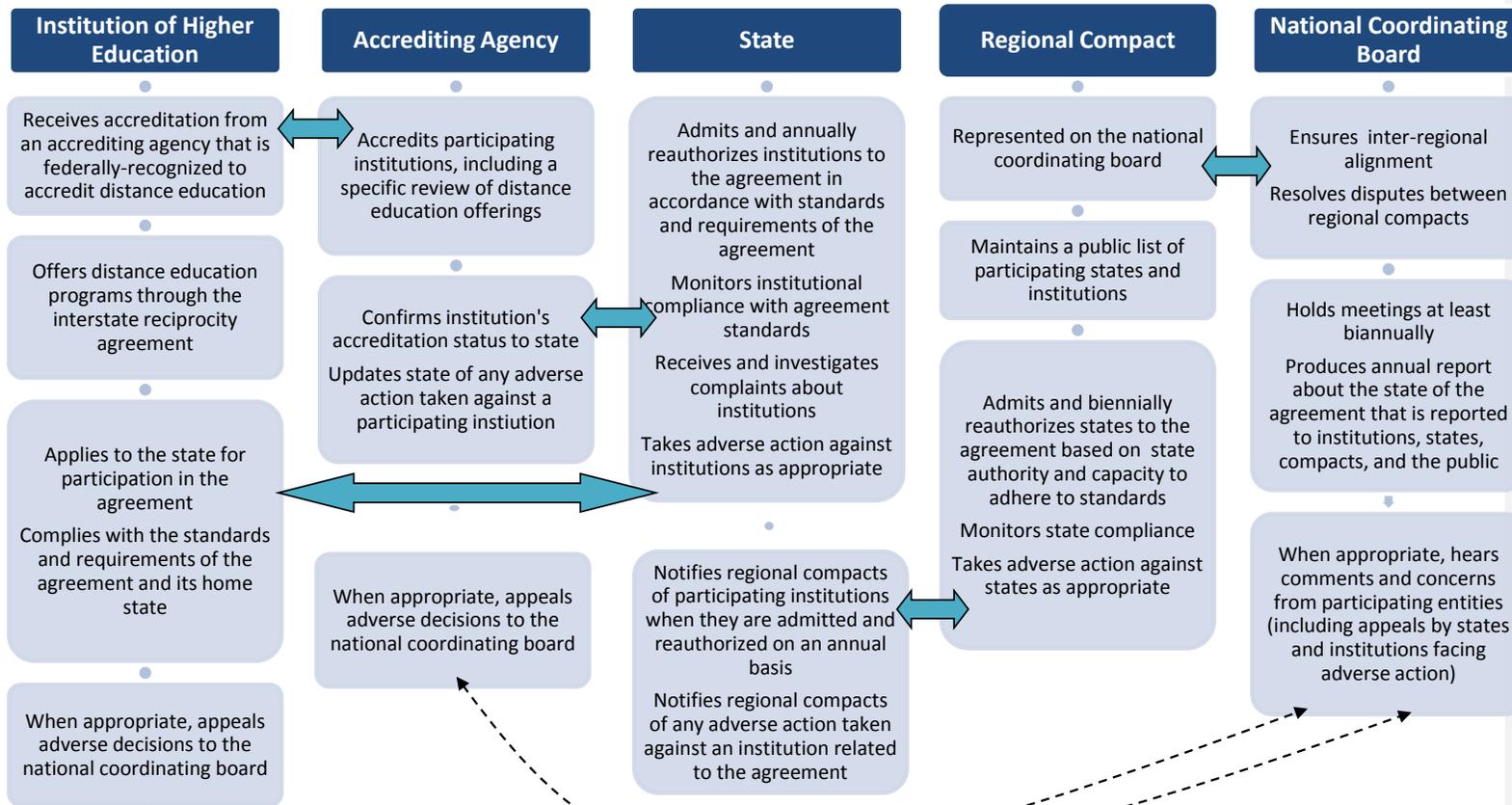
## 2.5 Role of the National Coordinating Board

- A. As a preliminary step, a national coordinating board, comprised of an odd number of members representing the full spectrum of the higher education community, should be established. The following principles should guide the establishment of the board:
- Members should come from the range of impacted groups to assure a wide range of support as the interstate reciprocity agreement is promoted and implemented, while also taking into consideration the need for those groups to have a permanent voice. Members should be drawn from all institutional sectors (including large- and small-scale distance education providers), regional and national accreditation agencies, and state officials including both state attorneys general and state higher education executive officers.
  - Though the board should represent a diverse set of perspectives and interests, roughly mirroring the composition of membership of the Commission on the Regulation of Postsecondary Distance Education, membership should not be driven by numerical representation or delegated interests. Instead, members should be selected based on their knowledge of the field, ability to work across multiple perspectives, and commitment to the collaborative work and success of the national coordinating board, consistent with the principles set forth herein.
  - The presidents of regional compacts (or their designees) should be voting members with an important but not controlling role, e.g., the representative of a regional compact could be the vice chair of the board but not the chair.
  - Members should have staggered terms.
  - Members should have term limits.
- B. To implement the agreement, the national board should advocate for the expansion of the agreement and adhere to three core principles of operation: maintenance of a limited role within the overall governance of the agreement, responsibility for communicating information to the field, and representativeness of all stakeholders.
- C. To maintain the agreement, the national coordinating board should (1) focus on ensuring inter-regional alignment with the reciprocity agreement; (2) hold meetings at least twice per year; (3) produce an annual report on the state of the interstate reciprocity agreement; (4) establish a mechanism to resolve disputes between regional compacts about interpretation and enforcement of the agreement when they arise; and (5) be accessible to the higher education community at large to address concerns and questions as they arise (including appeals from states that are expelled from the agreement by their regional compact).

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### Interstate Reciprocity: Key Actors and Functions



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### 3. Accreditation and Institutional Quality

**Findings:** Since the late 19<sup>th</sup> century, accreditation of institutions of higher education in the United States has been used as a standards-based sign of institutional quality. To assess institutional quality, accrediting agencies examine the full range of services and operations at institutions through a peer review process that includes site visits, self-assessment, and curriculum review. Standards are developed by and approved by the member institutions of the accrediting agencies and are reviewed regularly to account for innovations in education, new models of instructional delivery, and the new demands of the workforce and economy.

Federal recognition is the means used by the Department to identify accrediting agencies that are reliable authorities on the quality of education or training offered by the institutions or programs they accredit.<sup>33</sup>

To receive federal recognition, accrediting agencies must comply with numerous requirements under Department regulations.<sup>34</sup> An accrediting agency must (among other things):

- Demonstrate its link to federal programs by establishing that institutions it accredits rely on its accreditation for participation in those programs.<sup>35</sup>
- Have a qualifying geographic scope of accrediting activities (must be a state government agency or accredit regionally or nationally).<sup>36</sup>
- Have accrediting experience.<sup>37</sup>
- Be accepted by educators, educational institutions, licensing bodies, practitioners, and employers within the fields of instruction offered at institutions they accredit.<sup>38</sup>
- Have the administrative and fiscal capacity to carry out accreditation activities within their identified scope.<sup>39</sup>
- Have sufficiently rigorous standards for determining academic quality at an institution – including the quality of distance education programs – and have effective means of determining compliance with these standards.<sup>40</sup>
- Make decisions in a way that is consistent and take into account institutional mission.<sup>41</sup>
- Monitor, re-evaluate, and (when necessary) take enforcement action against institutions that they accredit.<sup>42</sup>

Federal recognition also entails several requirements for accreditation agencies seeking to include distance education programs within their scope of recognition. An accrediting agency must:

- Effectively address the quality of institutions or programs offering distance education through its standards, though there is no requirement for agencies to develop separate standards for distance education programs.<sup>43</sup>

<sup>33</sup> 34 CFR § 602.1(a).

<sup>34</sup> 20 USC 1099b; 34 CFR § 602.1 et seq. (2010).

<sup>35</sup> 34 CFR § 602.10.

<sup>36</sup> 34 CFR §§ 602.11.

<sup>37</sup> 34 CFR § 602.12.

<sup>38</sup> 34 CFR §602.13.

<sup>39</sup> 34 CFR § 602.15.

<sup>40</sup> 34 CFR §§ 602.16(a), (b), 602.17(a).

<sup>41</sup> 34 CFR §602.18.

<sup>42</sup> 34 CFR §§ 602.19, 602.20.

<sup>43</sup> 34 CFR § 602.16(c).

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- Evaluate distance education offerings by institutions both during full review for accreditation or re-accreditation and between full reviews when an institution offers new distance education programs that constitute a change in scope of its program offerings (any such change in scope must be reported to the Department by the accrediting agency).<sup>44</sup>
- Ensure that institutions offering distance education have processes in place to ensure that the student who registers for the distance education course is the same student who completes requirements for that course.<sup>45</sup>

In response to new federal requirements and the quickly expanding world of online learning, the accreditation community has made significant progress toward meeting the need for accreditation standards specific to distance education. The *Guidelines for the Evaluation of Distance Education (Online Learning)* have been established by the Council of Regional Accreditors (C-RAC) and provide a basis or example for ensuring quality in such programs.<sup>46</sup> The *Guidelines* have been endorsed by all regional accrediting organizations in the United States.<sup>47</sup>

Even though progress is being made, it is not moving at the same pace as the rapidly changing landscape of distance education. New models such as massive open online courses, "MOOCs," and competency-based education are gaining in popularity and acceptance by the higher education community. Many institutions are experimenting with types of blended learning (which couples face-to-face instruction with online instruction). Because of these changes and the future innovations that are likely to come, many in the accrediting community are moving beyond standards that are specific to distance education and focusing on applying more general standards to new innovations.

**Principles:** The reciprocity agreement will not create redundant requirements when well-established structures and requirements that ensure institutional quality already exist. Accreditation by a federally-recognized accreditation agency will provide sufficient evidence of institutional quality for purposes of interstate reciprocity, give students a clear indicator of quality when selecting an institution, and help to eliminate low-quality institutions from the institutional marketplace as states increase the rigor of the authorization process. Correspondingly, the accrediting agencies and institutions must provide the necessary transparency in process and rigor that preserves the confidence of the higher education community at large and of the broader public even in a rapidly changing postsecondary landscape.

<sup>44</sup> 34 CFR §§ 602.19(e); 602.27(a)(5).

<sup>45</sup> 34 CFR § 602.17(g).

<sup>46</sup> Council of Regional Accrediting Commissions, *Interregional Guidelines for the Evaluation of Distance Education (Online Learning)* (2011), available at: <http://www.msche.org/publications/Guidelines-for-the-Evaluation-of-Distance-Education-Programs.pdf>.

<sup>47</sup> The *Guidelines* establish nine hallmarks of quality for distance education.

1. Online learning is appropriate to the institution's mission and purposes.
2. The institution's plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes
3. Online learning is incorporated into the institution's systems of governance and academic oversight.
4. Curricula for the institution's online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats.
5. The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals.
6. Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieve the online learning goals are appropriately qualified and effectively supported.
7. The institution provides effective student and academic services to support students enrolling in online learning offerings.
8. The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings.
9. The institution assures the integrity of its online learning offerings.

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**Recommendations:**

- A.** Based on accreditors' compliance with federal regulations and specific review of distance education programs in light of recognized quality standards, states should view institutional accreditation (including accreditation for offering distance education programs) by a federally-recognized accreditor as a sufficient guarantee of academic quality in distance education programs offered in the state under the interstate reciprocity agreement.
- B.** To participate in the reciprocity agreement, states should require that institutions seeking authorization to participate in the interstate reciprocity agreement demonstrate institutional quality by attaining accreditation by an accreditation agency that is federally-recognized to accredit distance education programs. States should confirm an institution's accreditation status with the institution's accrediting agency.
- C.** Federally-recognized accreditors that accredit institutions participating in the reciprocity agreement should consider the unique facets of distance education as part of a comprehensive review of institutional quality and revisit and revise their standards as needed to reflect changes and innovations in distance education.

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#### 4. Consumer Protection

**Findings:** As a recognition that consumer protection begins with consumers having access to accurate, complete, and timely information about the institutions they attend or plan to attend, federal Title IV programs require institutions to disclose information related to a number of areas related to consumer protection. Required disclosures relate to a wide range of topics, including institutional information and characteristics, student financial aid information, health and safety programs, student outcomes, athletic programs, and student loan information. Disclosures must be made in a variety of ways, depending on the nature of the information. For example, various financial aid communications must be made to individual borrower, while a net price calculator for tuition, fees, and expected costs of living should be available on the institution's website.

Some information also must be reported to the Integrated Postsecondary Education Data System (IPEDS) on an annual basis.<sup>48</sup> More than 7,500 institutions complete IPEDS surveys every year.<sup>49</sup> IPEDS houses all reported information in its IPEDS database (an online data analysis tool); a subset of IPEDS data also is available in its College Navigator database, the Department's search tool for prospective students and parents. Moreover, federally recognized accrediting agencies are required to include consumer protection-related information in their accreditation standards.

There are three core areas related to consumer protection: recruitment and marketing information; tuition, fees, and other charges; and admissions information. Current disclosure and reporting requirements for institutions participating in Title IV and for federally recognized accrediting agencies encompass each of these areas:

- *Recruitment and Marketing Information.* Much information related to an institution's basic characteristics, enrollment, graduation and student persistence rates, and resources must be reported to IPEDS annually.<sup>50</sup>

<sup>48</sup> Title IV of the Higher Education Act of 1965, as amended, 20 USC 1094, § 487(a)(17); 34 CFR § 668.14(b)(19).

<sup>49</sup> IPEDS, About IPEDS, <http://nces.ed.gov/ipeds/about/> (last accessed Oct. 24, 2012).

<sup>50</sup> Specific reporting requirements include:

- Institutional characteristics: Basic contact information, room and board charges, institutional control or affiliation, type of calendar system, level of credentials offered, types of programs, and admissions requirements. Effective starting in 2012-13,

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Effective starting in 2012-13, institutions also must report details specific to distance education, including the types of programs offered exclusively through distance education and enrollment rates in such programs.<sup>51</sup> Additionally, federal requirements for recognized accrediting agencies require agencies to effectively address the quality of the institution or program in its recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising<sup>52</sup> as well as student achievement success indicators that may include course completion, State licensing examination, and job placement rates.<sup>53</sup>

- *Tuition, Fees, and Other Charges.* To participate in Title IV programs, institutions must disclose to enrolled and prospective students information about the cost of attending the institution (including tuition and fees); as well as estimates of other related expenses (e.g., cost of books and transportation as well as special program fees).<sup>54</sup> Institutions also must disclose their policies related to refunds,<sup>55</sup> withdrawal from the institution,<sup>56</sup> and requirements for the return of title IV grant or loan assistance.<sup>57</sup> Much of this information also must be reported to IPEDS.
- *Admissions.* To participate in Title IV programs, institutions must make available to enrolled and prospective students "a prominent and direct link on any other Web page containing general, academic, or admissions information about the program, to the single Web page that contains all the required information."<sup>58</sup> Moreover, as part of the requirements for accrediting agencies to be federally recognized, an agency's accreditation standards must effectively address the quality of the institution or program in its recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.<sup>59</sup>

A grounding purpose for these federally mandated disclosures and reporting requirements is to help students and parents make informed decisions before enrolling at an institution and to continue to provide useful information after students enroll. The Department can limit or revoke an institution's eligibility to participate in Title IV programs if the institution engages in a "substantial misrepresentation," which is prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.<sup>60</sup>

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- Enrollment: Fall enrollment, residence of first-time students, age data, 12-month head counts, total entering class, and total credit hours delivered by the institution in a 12-month period. Effective starting in 2012-13, institutions also must report the number of students enrolled in any distance education and the number of students enrolled exclusively in distance education. Data will be broken out by student level (undergraduate, graduate) and student location (in same state as institution, in U.S. but not in same state, outside U.S.).
  - Degrees and certificates conferred: Completion rates by type of program and type of credential awarded.
  - Student persistence and success: First year retention rates and graduation rates.
  - Institutional resources: institutional human resources (positions, salaries, and staff) and finances (revenues, expenditures by category, and assets and liabilities). *Id.*

<sup>51</sup> IPEDS, Changes to 2012-13 Data Collection, <https://surveys.nces.ed.gov/ipeds/ViewContent.aspx?contentid=17> (last accessed Oct. 24, 2012).

<sup>52</sup> 34 CFR § 602.16(a)(1)(vii).

<sup>53</sup> 34 CFR § 602.16(a)(1)(i).

<sup>54</sup> 34 CFR § 668.43(a)(1).

<sup>55</sup> 34 CFR § 668.43(a)(2).

<sup>56</sup> 34 CFR § 668.43(a)(3).

<sup>57</sup> 34 CFR § 668.43(a)(4).

<sup>58</sup> 34 CFR § 668.6(b)(2).

<sup>59</sup> 34 CFR § 602.16(a)(1)(vii).

<sup>60</sup> 34 CFR § 668.71(b). Examples of substantial misrepresentation include:

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When students or their parents want to file a complaint against an institution, however, they usually look to the states, which historically have fulfilled the role of protecting consumers from fraud and misrepresentation in postsecondary education. This is a role states are well-positioned to play as the initial authorizing body for institutions and the source of investigative and enforcement authority.

A state's traditional responsibility for protecting consumers is investigating complaints from students residing in the state. When an institution enrolling a student is based primarily in another state than the student's residence, the state must either assert its authority over that institution or rely on other means for addressing the issue. Responsibility for resolving complaints that relate to distance education, however, often involves overlapping jurisdiction between different states. This is because jurisdiction over a possible claim is held by both the state in which the distance education program is delivered (the student's home state) and the state in which the institution delivering the distance education holds legal domicile (the institution's home state).

Accrediting agencies also receive and resolve institutional complaints related to agency standards and policies, but this information is not generally or always shared in an easily accessible format.

Though many avenues for filing consumer complaints exist, students and parents may be unaware of or confused by the avenues for filing a complaint, particularly when they take part in distance education programs.

**Principles:** All postsecondary students require protection against fraud and misrepresentation, but students in distance education programs may require even stronger protections because they complete their courses and programs outside the visibility of traditional oversight and monitoring structures. Because the interstate reciprocity agreement is likely to increase the number of students participating in distance education programs, participating states and institutions must take special care to protect these students.

Both current and prospective students need access to accurate, complete, and current information about the institutions they attend or are considering attending. Because this information is already required to be disclosed to students or reported publicly by a large majority of institutions to fulfill Title IV and/or accreditation requirements, an additional reporting requirement will only be necessary for institutions that do not participate in Title IV programs but that seek to participate in the reciprocity agreement.

Interstate reciprocity provides a means for states to focus on the institutions with a physical presence within the state, and to rely on the authority and responsible regulation of the home state for out of state institutions offering instruction to its residents. Still, regardless of whether an institution is authorized directly by a state or through interstate reciprocity, it should be accountable for violations of consumer protections. States, therefore, must be vigilant in investigating and resolving consumer complaints.

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- When the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation regarding the eligible institution, including about the nature of its educational program, its financial charges, or the employability of its graduates. 34 CFR § 668.71(b).<sup>60</sup>
  - Misrepresentation related to the nature of an eligible institution's education program includes but is not limited to false, erroneous, or misleading information about whether successful completion of a course of instruction qualifies a student for acceptance to a labor union or similar organization or to receive a professional certificate or license for a profession for which the program purports to prepare students. 34 CFR § 668.72.

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## Recommendations:

### 4.1. Reporting Requirements

- A. A state serving as an institution's home state for purposes of the interstate reciprocity agreement should confirm that the institution is in fact providing to current and prospective students (and, where applicable, to IPEDS) the information that is required for Title IV disclosures and reporting. This encompasses current required disclosures and reporting requirements as well as any future requirements that the Department may adopt.
- B. If an institution does not participate in Title IV, its authorizing state should require the institution to post the same information required for Title IV participation on the institution's website as a condition for participating in the interstate reciprocity agreement.

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### 4.2. Complaint Mechanisms

- A. A state should agree to receive and resolve consumer protection complaints filed against institutions that the state authorized for purposes of interstate reciprocity. In so doing, the state may not limit the jurisdiction of other involved states (e.g., the student's home state), but agree to serve as the default forum for student complaints. States that are designated as the home state of an institution for purposes of interstate reciprocity should serve as this default forum for that institution. Other involved states and accrediting agencies should remain free to receive and resolve consumer complaints as well.
- B. A state should confirm that the institutions that it authorized for purposes of the reciprocity agreement are in fact providing students in distance education programs with clear information about how to file a complaint and with what entities complaints may be filed. At a minimum, this information should be provided on the institution's website and through direct communication when the student enrolls in a distance education program authorized as part of the reciprocity agreement.
- C. To respond effectively to complaints and ensure transparency, states should communicate and share complaint histories with other states and accrediting agencies involved in the reciprocity agreement. Additionally, in light of the reliance of states and institutions on accreditation as the primary means of quality assurance and in order to increase awareness of accreditation processes and decisions, all regional, national, and programmatic accreditors should be urged to provide a summary of adverse actions regarding distance education or the accreditation status of a program available through distance education or of the institution as a whole to relevant home-state agencies and the general public on a timely basis.

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## 5. Institutional Financial Responsibility

**Findings:** Title IV of the Higher Education Act requires institutions to demonstrate financial responsibility to participate in student financial aid programs.<sup>61</sup> The U.S. Department of Education (the Department) uses a financial responsibility composite score to provide an initial evaluation of an institution's financial health and determines a score on a range between -1.0 and 3.0. The Department has identified a score of 1.5 or greater as an indication that an institution is financially responsible, although institutions with lower scores also may continue to receive federal

<sup>61</sup> Title IV of the Higher Education Act of 1965, as amended, 20 USC 1094, § 498 (c) (requires for-profit and non-profit institutions to submit annually audited financial statements to the Department to demonstrate they are maintaining the standards of financial responsibility necessary to participate in the Title IV programs). To reach the score, the Department uses a composite of three ratios derived from an institution's audited financial statements – a primary reserve ratio, an equity ratio, and a net income ratio. Federal Student Aid, Financial Responsibility Composite Scores, <http://studentaid.ed.gov/about/data-center/school/composite-scores> (last accessed Oct. 24, 2012).

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funding if they meet additional fiscal requirements. In 2009-2010 (the last period for which the Department has provided information on institutions' composite scores, prompted by a Freedom of Information Act request from the *Chronicle of Higher Education*), 150 private, non-profit institutions of higher education and 30 for-profit colleges received scores of less than 1.5.<sup>62</sup>

In November 2010, after the unexpected failure of more than 100 non-profit colleges on the Department's financial ratios test, the National Association of Independent Colleges and Universities (NAICU) established its Financial Responsibility Task Force to review the Department's process for determining institutions' fiscal viability.<sup>63</sup> In November 2012, the Task Force released its final report, which called into question the Department's financial review procedures and recommended that the Department's financial responsibility system be revised to ensure more appropriate and accurate means of determining financial health.<sup>64</sup>

Financial information also is collected through the accreditation process and can provide a more complete view of an institution's financial health. Most of this information, however, is not available to states or the public, although some information (e.g., public accounting statements for for-profit institutions) is made available to the public for compliance with financial regulations.

**Principles:** The reciprocity agreement avoids creating new requirements when sufficient structures already exist, but it also encourages transparency among members of the triad. Because Title IV reporting requirements and the accreditation process adequately examine institutional fiscal viability, the interstate reciprocity agreement should not impose any new or duplicative requirements other than encouraging transparency. **Participating states can rely on the financial responsibility system used by the Department to determine if an institution qualifies for Title IV program participation as an indicator of a participating institution's fiscal stability, a detail that is verifiable with accrediting agencies.**

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**Recommendations:**

- A. Public institutions, consistent with U.S. Department of Education policies, are presumed to be financially responsible by virtue of their status as state institutions enjoying the financial backing of their state.
- B. A private non-profit or for-profit institution is determined to demonstrate sufficient financial strength for inclusion in a state's reciprocity agreement if:
  - The institution is eligible for federal Title IV student financial aid programs plus the U.S. Department of Education, for the institution's most recent fiscal year for which data is available, has not determined it to have a financial responsibility composite score below 1.5 (Only institutions with composite scores of 1.4 or lower are currently notified of their scores.); or
  - The institution is otherwise eligible for federal Title IV student aid programs, has a financial responsibility composite score of 1.0 - 1.5, and **the state has determined, upon examination of additional supporting material, that the institution has sufficient financial strength for inclusion or that the reason for the score being between 1.0 and 1.5 is the result of accounting error or the misapplication of generally accepted accounting standards in the calculation of that score.**
- C. A private non-profit or for-profit institution that is currently included in its state's reciprocity agreement but that the Department of Education determines in a given year to have a financial responsibility

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<sup>62</sup> Kelly Field & Alex Richards, 180 Private Colleges Fail Education Dept's Latest Financial-Responsibility Test, *The Chronicle of Higher Educ.* (Oct. 12, 2011), <http://chronicle.com/article/180-Private-Colleges-Fail/129356/>. A list of scores for all participating institutions is available at Federal Student Aid, Financial Responsibility Composite Scores, <http://studentaid.ed.gov/about/data-center/school/composite-scores> (last accessed Oct. 24, 2012).

<sup>63</sup> Report of the NAICU Financial Responsibility Task Force 5 (Nov. 2012), [http://www.naicu.edu/docLib/20121119\\_NAICUFinan.Resp.FinalReport.pdf](http://www.naicu.edu/docLib/20121119_NAICUFinan.Resp.FinalReport.pdf).

<sup>64</sup> *Id.* at 6-7.

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composite score between 1.0 and 1.5 and remains eligible for federal Title IV student aid programs, may, upon approval of its state, be included in the state's reciprocity agreement for an additional year.

- D. A private non-profit or for-profit institution that is currently included in its state's reciprocity agreement but that the Department of Education determines to have a financial responsibility composite score below 1.5 for a second, consecutive year may no longer participate in the state's reciprocity agreement, unless the institution demonstrates to the state that the cause of the score is the result of accounting error or the misapplication of generally accepted accounting principles in the calculation of that score. A private non-profit or for-profit institution that has lost its approval to participate in its state's reciprocity agreement under this provision but remains eligible to participate in federal Title IV student aid programs will meet the financial responsibility requirements of the reciprocity agreement if and when the U.S. Department of Education determines the institution no longer has a financial responsibility composite score below 1.5.
- E. The above provisions do not limit the right of the home state to require more demanding financial responsibility requirements for its home state institutions.

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#### IV. Prerequisites for State Implementation

The Commission on the Regulation of Postsecondary Distance Education offers these recommendations as a first step towards establishing a new system of interstate reciprocity for distance education. While the recommendations build on existing roles and structures, the Commission recognizes that successful implementation of this new system may require significant changes in policy and processes, particularly at the state level. The need for policy change should not deter state participation in the agreement. These early investments likely will ultimately lead to a less burdensome, more cost-effective delivery system for distance education that will benefit states and students.

The "Core Conditions for State Participation" listed below are intended to give an overview of the elements of state law and policy that will be required for state participation the reciprocity agreement. In order to join the reciprocity agreement, **states will be expected to show evidence that state law and policy has been enacted or amended to meet the standards in state authorization agreement.** All participating states will have to meet the same standards but will have flexibility in the process used to do so (for example, to assure consumer protection one state may choose to investigate student complaints through the state higher education agency while another state utilizes its consumer protection agency). Indeed, because each state legal and policy context is unique, each state participating in the interstate reciprocity agreement likely will need to enact a unique set of changes to ensure that it meets the requirements of the interstate reciprocity agreement.

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#### Core Conditions for State Participation

To participate in the agreement, a state must demonstrate that:

**1. State law includes a reasonable definition of physical presence for purposes of interstate reciprocity that clearly explains which activities do and do not trigger state authorization.**

The state definition of physical presence should not materially deviate from the definition offered in Recommendation 1.2. Additionally, the state should ensure that it does not classify any of the non-triggering activities identified in Recommendation 1.2 (such as recruiting, clinical programs, etc.) as triggers for physical presence requirements for institutions participating in the interstate reciprocity agreement. Depending on their current definitions of physical presence, different states will likely face different consequences when making this change. States that currently require state authorization regardless of physical location or based on certain triggers will likely see a decrease in the amount of oversight activity required. In contrast, states that currently do not require authorization or provide an exemption for distance education programs will likely see an increase in the amount of oversight activity required.

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**2. State law allows participation in the reciprocity agreement.**

States must take appropriate steps to ensure that state **law or regulation explicitly allows the state higher education agency (or other responsible agency) to undertake the requirements of the reciprocity agreement.** Additionally, states that do not currently belong to a regional compact and wish to participate in the regional compact will need to take steps to join a compact for the limited purpose of participating in the agreement.

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**3. The state is prepared to receive applications for participation in the reciprocity agreement and authorize institutions on an annual basis.**

States must establish a separate process to admit institutions into the reciprocity agreement that will require a review of the institution's accreditation status, consumer protection disclosures, and financial viability. This review must be conducted on an annual basis. The state should also be prepared to provide an **appeals process for institutions that are not approved for participation in the agreement.**

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**4. A state agency (or multiple agencies) has been designated to receive, investigate, and resolve student complaints regarding institutions authorized under the agreement.**

Under the reciprocity agreement, a state must agree to serve as the default forum for any complaint filed against an institution authorized by the state. Therefore, a state agency (or multiple agencies) must be empowered to investigate and resolve complaints that may originate outside of the state.<sup>65</sup>

**5. The state has eliminated fees, requirements for a refund policy unique to that state, requirements for a set curriculum for general education requirements, a mandatory number of hours for a degree or certificate, and/or other such requirements for out-of-state institutions that do not have physical presence in their borders and are participating in the interstate reciprocity agreement.**

States cannot impose fees and/or other requirements on participating out-of-state institutions that were properly authorized by another state to provide distance education under the reciprocity agreement. However, institutions with physical presence in states beyond their home state may be subject to fees and/or other program requirements by the states in which they have physical presence, as those states determine as to their in-state activities.

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**6. Additional requirements will not be imposed on institutions authorized to offer distance education in the state under the agreement.**

The purpose of the reciprocity agreement is to provide uniform standards for distance education across states. The agreement eliminates the need for states to assess the quality of out-of-state institutions through the traditional authorization process. Therefore, states cannot demand that institutions participating in the agreement meet additional requirements before serving students in the state.

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<sup>65</sup> The Commission recognizes that states may choose to impose reasonable fees on institutions participating in the agreement to cover additional costs associated with these duties.

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**Appendix A**

**Recommended Action Steps to Be Considered by the Regional Compacts, States, Institutions of Higher Education, and National Coordinating Board**

The following recommended action steps provide an overview of many of the key steps that may be necessary to implement and maintain the interstate reciprocity agreement pursuant to recommendations contained in this Report. Separate action steps, followed by potentially relevant key questions, are provided for each of the actors identified in the Report as key players in the implementation of Report recommendations—regional compacts, states, institutions of higher education, and the (new) national coordinating board. (The Commission's recommendations for accrediting agencies involve no concrete action steps.) These action steps are not intended to reflect a comprehensive guide to implementation of the Report's recommendations. In fact, not all questions suggested will be relevant for all parties in all jurisdictions, and some parties will need to address questions that are not included here, depending on their particular context. This document should be viewed as a working draft.

Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>Preliminary Steps</b>		
<i>Develop standards and processes for state participation</i>	<ul style="list-style-type: none"> <li>▪ Do standards for state participation align with those set by the Commission's recommendations?</li> <li>▪ How will the compact assess the state's physical presence definition for compliance with the agreement? The state's standards for institutional quality, consumer protection, and institutional financial responsibility?</li> <li>▪ How will the compacts determine whether a state has the authority and capacity to adhere to the requirements of the agreement?</li> </ul>	2.1A
<i>Develop a process to admit states into the agreement as well as rejection and appeal processes</i>	<ul style="list-style-type: none"> <li>▪ What process will be used for admitting states to the agreement? Are the procedures used by all compacts the same or substantially similar?</li> <li>▪ How will the compact review state applications for admission to the agreement?</li> <li>▪ Is the compact planning to admit non-member states for the limited purpose of participation in the interstate reciprocity agreement? If so, have standards for non-member state participation been established?</li> <li>▪ How will the appeals process for a rejected state be structured? Who will hear the appeal?</li> <li>▪ How soon will rejected states be permitted to re-apply after an initial application is made?</li> </ul>	2.1A

Regional Compacts

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### **Implementation**

<i>Notify states of the requirements and process to join the reciprocity agreement</i>	<ul style="list-style-type: none"> <li>▪ How will states be notified when the compact is ready to receive applications?</li> <li>▪ How will standards for admission to the agreement be communicated to member states and any interested non-member states?</li> </ul>	2.1B
<i>Admit states to the reciprocity agreement</i>	<ul style="list-style-type: none"> <li>▪ Do an applicant state's law, regulations, and policies align with the requirements in the reciprocity agreement, particularly with regard to the state's physical presence definition and standards for institutional quality, consumer protection, and institutional financial responsibility?</li> <li>▪ What state agency or agencies will authorize institutions for participation in the agreement? For cases where the state has multiple agencies involved, have responsibilities been clearly delineated? Does the agency or agencies have the capacity to manage the state's responsibilities under the agreement?</li> </ul>	2.1B

### **Agreement Maintenance**

<i>Maintain a list of participating states and institutions</i>	<ul style="list-style-type: none"> <li>▪ How does the compact collect information from participating states and institutions?</li> <li>▪ How does the compact share this information to the other regionals, the national coordinating board, and the field at large?</li> <li>▪ How often will states be required to update their list of authorized institutions?</li> <li>▪</li> </ul>	2.1C
<i>Facilitate the agreement's continued growth and expansion</i>	<ul style="list-style-type: none"> <li>▪ How will the successes and benefits to current participating states be communicated to non-participating states?</li> <li>▪ What barriers exist to participation by states? Are these barriers state-specific or are they shared by several non-participating states?</li> <li>▪ How can those barriers be overcome?</li> </ul>	2.1 C
<i>Monitor participating states' compliance</i>	<ul style="list-style-type: none"> <li>▪ How often will participating states need to be reauthorized for participation?</li> <li>▪ How does the compact monitor student complaints about participation institutions?</li> <li>▪ Are procedures for admitting and expelling states clearly defined and properly followed?</li> </ul>	2.1C
<i>Communicate with the other regional compacts regarding compliance, standards, and responsibilities of the reciprocity agreement</i>	<ul style="list-style-type: none"> <li>▪ Does the head of the compact (or his/her designee) participate in regular meetings with other members of the national coordinating board?</li> </ul>	2.1C

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Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>Preliminary Steps</b>		
<i>Review the requirements of the reciprocity agreement and determine what changes in state law or regulations are needed for full alignment</i>	<ul style="list-style-type: none"> <li>Does state law (statutes and/or regulations) allow for participation in the reciprocity agreement? (e.g., does state law allow institutions authorized by another state to provide distance education?)</li> <li>Under current law, when must an institution to seek state authorization? (e.g., when the institutions occupies a physical space in the state, when the institution recruits or advertises in the state, etc.)</li> </ul>	1.2, 2.2
<i>Take appropriate steps to amend state law or regulations to allow the state to participate in the reciprocity agreement</i>	<ul style="list-style-type: none"> <li>Will the necessary changes require a <b>change in statute or regulations</b>?</li> <li>Has outreach been made to relevant policymakers?</li> <li>What resources will be helpful to policymakers in understanding the changes that are necessary to participate in the reciprocity agreement? How will these resources be developed and shared?</li> </ul>	2.2A
<i>Determine the appropriate state agency or entity to serve as the lead authorizing agent and assess its capacity for carrying out the provisions of the agreement</i>	<ul style="list-style-type: none"> <li>Does state law require a certain agency to perform the tasks required under the reciprocity agreement?</li> <li>If the state has multiple agencies managing higher education, how will work be divided between them? How do the agencies collaborate in other ways? Does assigning one agency to oversee the interstate reciprocity agreement make sense for simplicity and efficiency or should the work be divided between them and carried out by each separately? <b>Would a new joint task force be useful?</b></li> <li>Which state agency currently authorizes institutions to operate in the state? Is this agency responsible for assessing institutional quality, adherence to consumer protection requirements, and institutional financial responsibility? Is staff in the agency familiar with accrediting agencies and accreditation processes?</li> <li>Does the agency have the <u>capacity</u> to verify the information related to consumer protection, institutional quality, and financial responsibility that institutions are required to demonstrate for participation in the agreement? If not, what additional resources are necessary to build capacity?</li> <li>How does the agency currently receive, investigate, and resolve student complaints, including those that originate out of state? Are additional resources necessary to build capacity?</li> <li><b>Does the agency have policies and procedures in place to respond to "catastrophic</b></li> </ul>	2.2A

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	<ul style="list-style-type: none"> <li>events" such as the closure of an institution?</li> <li>Does the agency have policies and procedures in place to revoke authorization?</li> <li>How will the agency alert the regional compact and other states when it has taken adverse action against an institution?</li> </ul>	
<b>Implementation</b>		
<p><i>Notify institutions that are likely to designate the state as their "home state" about the reciprocity agreement and explain its terms</i></p>	<ul style="list-style-type: none"> <li>Has the lead agency identified institutions likely to designate the state as "home state?"</li> <li>Is the lead agency prepared to communicate the terms of the agreement to institutions?</li> <li>Is the lead agency prepared to provide technical assistance to those institutions that require it?</li> <li>Has the lead agency communicated the process for applying for authorization to institutions?</li> </ul>	<p>2.2A</p>
<p><i>Once accepted into the reciprocity agreement, begin authorizing institutions for participation in the agreement</i></p>	<ul style="list-style-type: none"> <li>Has the lead agency verified that the institution meets all of the requirements for participation in the reciprocity agreement?</li> <li>Has the lead agency verified that the institution has had no significant adverse action (related to the agreement) levied against it by a state or accrediting agency in the last year?</li> <li>Has the lead agency informed the institution of all of its obligations under the reciprocity agreement?</li> </ul>	<p>2.2B</p>
<b>Agreement Maintenance</b>		
<p><i>Provide notification to regional compact of important developments</i></p>	<ul style="list-style-type: none"> <li>Has the state provided timely notification to the regional compact of the institutions it has admitted and any institutions it has reauthorized?</li> <li>Has the state provided timely notification to the regional compact of any adverse action taken against institutions related to the agreement?</li> </ul>	<p>2.2C</p>
<p><i>Conduct annual review of participating institutions to ensure full alignment with the reciprocity agreement</i></p>	<ul style="list-style-type: none"> <li>Has the institution maintained its accreditation status?</li> <li>Have any adverse actions been taken against the institution by its accrediting agency or any other state?</li> <li>Has the institution completed its annual disclosures in accordance with Title IV as well as its annual reporting to IPEDS? If the institution is not participating in Title IV, has current information been posted on the institution's website?</li> <li>Has the institution met annual financial responsibility requirements?</li> <li>Has the institution met all additional state requirements for home state institutions?</li> </ul>	<p>2.2C</p>

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Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>Preliminary Steps</b>		
Determine the institution's home state	<ul style="list-style-type: none"> <li>Do the institution's activities in any given state meet the definition of physical presence?</li> <li>If the institution has physical presence in more than one state, where does the institution hold legal domicile?</li> </ul>	1.2
Determine whether the institution meets the requirements to participate in the reciprocity agreement	<ul style="list-style-type: none"> <li>Has the institution reviewed the requirements and procedures of its home state?</li> <li>Has the institution been accredited by a federally-recognized accrediting agency? Does its agency's federal recognition include recognition for the approval of distance education programs?</li> <li>Has the institution made all disclosures and met all reporting requirements related to consumer protection for purposes of Title IV?</li> <li>Has the institution been deemed financially responsible by the U.S. Department of Education? If not, does the state have processes in place to determine whether the institution may participate in the interstate reciprocity agreement? Will any other financial information be required so that the state can make this judgment?</li> <li>Does the institution meet any additional requirements imposed by the home state?</li> </ul>	3, 4.1, 4.2, 5
<b>Implementation</b>		
Apply to the home state for authorization to participate	<ul style="list-style-type: none"> <li>Has the institution sent its application to the appropriate state agency?</li> <li>Has the institution submitted all relevant information, particularly with regard to its accreditation status, compliance with Title IV reporting and disclosure requirements, and financial responsibility determination from the U.S. Department of Education?</li> </ul>	2.3A
Once approved, meet participation requirements	<ul style="list-style-type: none"> <li>Has the institution signed the reciprocity agreement?</li> <li>Has the institution paid all required fees?</li> <li>Are all distance education courses and programs offered through the interstate reciprocity agreement clearly identified for current and prospective students? If a symbol or standard language about the agreement has been developed for all participating institutions to use to notify students, does the institution use it?</li> </ul>	2.3B
<b>Agreement Maintenance</b>		
Comply with the standards and requirements of the agreement	<ul style="list-style-type: none"> <li>Does the institution have processes in place to allow for annual reauthorization for participation?</li> </ul>	2.3C
Engage with the regional compact(s) and/or national coordinating board	<ul style="list-style-type: none"> <li>What benefits has the institution received from participation in the agreement?</li> <li>Are the regional compacts and national coordinating board aware of these benefits?</li> </ul>	2.5C

Institutions of Higher Education

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Action Step	Potential Key Questions	Relevant Recommendation(s)
<i>Preliminary Steps</i>		
<i>Establish initial <u>board</u></i>	<ul style="list-style-type: none"> <li>▪ Do members represent all four regional compacts, all institutional sectors (including large- and small-scale distance education providers), regional and national accreditation agencies, and state officials including both state attorneys general and state higher education executive officers?</li> <li>▪ Have members been selected based on their knowledge of the field, ability to work across multiple perspectives, and commitment to the collaborative work and success of the national coordinating board?</li> <li>▪ Have the presidents of regional compacts (or their designees) been included as voting members?</li> <li>▪ Is there an odd number of board members?</li> <li>▪ Has an executive director been hired?</li> <li>▪ Where is the board housed?</li> <li>▪ How will the board be <u>financed</u>?</li> </ul>	2.5A
<i>Develop the Board's bylaws</i>	<ul style="list-style-type: none"> <li>▪ How are term limits defined?</li> <li>▪ Have terms been staggered?</li> <li>▪ How are board members nominated, confirmed, and removed?</li> <li>▪ How do the bylaws ensure the representation of all four regional compacts, all sectors of the higher education community, state regulators, national higher education-focused organizations, accrediting agencies, and any other relevant groups?</li> <li>▪ What board officers have been defined?</li> <li>▪ Do the bylaws prevent the presidents of the regional compacts from assuming the presidency or chairmanship of the board?</li> <li>▪ Is the board required to meet at least biannually? Is there a procedure for calling emergency meetings?</li> <li>▪ What voting structure has been adopted? What percentage of board members' votes is required for different types of action?</li> <li>▪ Has an amendment process to the bylaws been established?</li> <li>▪ How will board meetings be memorialized?</li> </ul>	2.5A

National Coordinating Board

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<b>Implementation</b>		
<i>Advocate for the expansion of the agreement</i>	<ul style="list-style-type: none"> <li>▪ What strategies is the board using to <u>promote</u> the agreement among states, institutions, and other stakeholder groups?</li> <li>▪ How does the board identify, memorialize, and publicize the success of the agreement?</li> <li>▪ How does the board <u>address objections or concerns</u> from members of the higher education community?</li> </ul>	2.5B
<i>Adhere to three core principles of operation</i>	<ul style="list-style-type: none"> <li>▪ Has the board only taken a <u>limited</u> role within the overall governance of the agreement?</li> <li>▪ Has the board accepted responsibility for communication of information to the field?</li> <li>▪ Does the board represent all stakeholders and is it accessible by all stakeholders?</li> </ul>	2.5B
<b>Agreement Maintenance</b>		
<i>Maintain inter-regional alignment</i>	<ul style="list-style-type: none"> <li>▪ How will <u>disputes</u> between compacts be managed and resolved?</li> <li>▪ How will <u>disputes</u> between institutions and compacts be managed and resolved?</li> </ul>	2.5C
<i>Convene regularly</i>	<ul style="list-style-type: none"> <li>▪ Does the board meet at least twice per year?</li> <li>▪ How are agendas for meetings developed?</li> <li>▪ Do the agendas for board meetings reflect all responsibilities of the board and related business of the agreement?</li> <li>▪ How does the board remain in compliance with its bylaws?</li> </ul>	2.5C
<i>Manage information and national discourse on the agreement</i>	<ul style="list-style-type: none"> <li>▪ Is an <u>annual report on the state of the agreement</u> delivered publicly? Are all participating regional compacts, states, and institutions of higher education notified of its release?</li> <li>▪ Is the <u>board accessible to participating states, participating institutions, and the higher education community at large?</u></li> <li>▪ How does the board collect and share information about participating institutions and states?</li> <li>▪ How can the board maintain a relationship with the U.S. Department of Education?</li> </ul>	2.5C

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