



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

Federal regulations published in 2010 highlighted the concept of state authorization of distance education. That pivotal event caused a long and winding path of federal regulations leading the way for states and institutions to learn about and better understand state oversight of education. This new awareness presented the opportunity for the development of a reciprocity agreement to create uniform protections for students and uniform compliance requirements for institutions providing interstate distance education.

For more than a century, postsecondary institutions have been subject to a complex patchwork of rules and policies regulating their ability to provide educational services to students outside of the traditional campus setting. Now, the regulatory landscape around distance learning has transformed from a handful of state laws into a multivalent policy apparatus that operates on state and federal levels. This summary provides a high-level overview of that remarkable evolution.

### Origins of State Authorization

The authority of states is spelled out in the 10th Amendment to the U.S. Constitution, which was ratified in 1791 and is referred to as the “Reserved Powers Clause.” Essentially, those powers not delegated to the federal government by the Constitution nor prohibited by it to the states are reserved to the states.

This makes clear that unless specified otherwise in the U.S. Constitution, states have the authority to pass and enforce laws and regulations applicable within their own jurisdictions without interference by the federal government. For higher education, states regulate the activities of institutions conducted within their borders.

As early as the 1920s, some states pass legislation regulating the operation of correspondence schools.

In 1965, the Higher Education Act (HEA) stipulates that an institution must abide by state laws and be legally authorized to operate in the state where it is physically located to access student Title IV federal loan funds.

In 1972, in light of increased state-level regulation of private educational institutions, the National Association of State Administrators and Supervisors of Private Schools (NASASPS) is formed.

The group advocates for the interests of state regulators and promotes best practices for oversight of private, postsecondary schools.

### State Authorization Reciprocity

In 1984, the Assessing Long Distance Learning Via Telecommunications Project (Project ALLTEL) Report is issued by the Council on Postsecondary Education and the State Higher Education Executive Officers Association (SHEEO). The report highlights the difficulties faced by schools when seeking state authorization for distance learning. The authors suggest that a solution to the problem may be to “establish rational interstate and interregional policies for the oversight of telecommunicated learning.”

The need to modernize the state authorization process is recognized in 2009 by the Presidents’ Forum, a membership organization of college and university presidents and chancellors committed to innovation in higher education.

The Presidents’ Forum establishes a team to draft a framework for reciprocity for state authorization, known as State Authorization Reciprocity Agreements (SARA). Under the agreements, a school’s authorization to operate in its home state would be recognized by other participating member states.



## State Authorization Reciprocity

(continued)

The National Council for State Authorization Reciprocity Agreements (NC-SARA) was established in December 2013 to facilitate collaboration between states that are SARA members.

The four regional educational compact agencies (the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board, and Western Interstate Commission of Higher Education) are appointed to operationalize SARA. They adopt a uniform reciprocity agreement, the Unified Agreement, in 2015. In the first year, 18 states join SARA.

By 2018, 49 states (all but California), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, are members of SARA. As of 2023, more than 2,300 institutions are participants in the agreement.

## U.S. Department of Education and State Authorization

The popularity of online learning and advances in the technology used to deliver it created a need for consumer protections for online learners beginning in the late 2000s.

In 2010, the USED published the 2010 Program Integrity Rules for which compliance is tied to institution participation in Title IV HEA programs. The rules require schools to formalize student complaint processes and go through the state authorization process for any state in which they provide services, lest they lose access to federal student aid funds.

The portion of the federal regulation requiring state authorization where the institution provides services was ultimately vacated by federal courts for procedural reasons. Vacating the regulations removed federal oversight for purposes of Title IV HEA Programs, but state oversight of interstate distance education remains.

Over the next 10 years, the USED held several rulemaking sessions to create a new federal regulation. These attempts to create a new federal regulation for state authorization of distance education had varying levels of success. However, in 2019, a successful rulemaking session created the currently effective federal regulation for state authorization of distance education that became effective July 1, 2020.

## Lessons from COVID-19

In early 2020, the COVID-19 pandemic brings the issue of distance learning to the (virtual) doorsteps of all colleges, universities, and vocational schools. The emergency closures of classrooms nationwide require that many institutions offer distance learning for the first time.

Though federal requirements authorizing schools for distance education are suspended during the national emergency, state regulations are enforced on a state-by-state basis. While many states do not require authorization for schools that enroll students in online courses within their own state, others continue to require authorization during the pandemic.

## Looking Ahead

Although the COVID-19 emergency declaration expired in May 2023, the pandemic confirmed the reality that distance learning is a permanent and growing modality within U.S. higher education.

The constellation of federal and state regulations concerning distance education continues to evolve. More resources are also available to students pursuing education outside of the traditional on-campus model and for institutions to create implementation strategies of the rules to support strong student consumer protections.

Finally, the USED continues to refine its policies to protect students from fraud in an ever-changing educational and regulatory environment.

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