

What is State Authorization, and What Role Does NC-SARA Play?

Within the higher education regulatory system, states are tasked with the primary responsibility for ensuring consumer protection. The State Authorization rule was drafted by The U.S. Department of Education (Department) to ensure that institutions seeking access to federal student aid were following the laws established by states to protect students as consumers. The rule requires that institutions seek authorization – where required – and comply with the laws in the states where they operate. Institutions that operate in multiple states have argued that State Authorization can be complex, costly, and difficult to navigate. However, as outlined below, State Authorization ensures state consumer protection agencies provide adequate oversight and regulation of institutions.

This document answers some of the most commonly asked questions about State Authorization and how it relates to online distance education. It also provides information about interstate reciprocity and the National Council for State Authorization Reciprocity Agreements (NC-SARA).

WHAT IS STATE AUTHORIZATION?

The Department administers most federal student financial aid and many of the higher education laws created by Congress, including the Higher Education Act (HEA). The HEA designates three separate entities – the Department, states, and accreditation agencies – that must each grant higher education institutions approval for those institutions to be eligible to participate in federal financial aid programs. Together, these three gatekeepers comprise what is commonly referred to as the higher education “triad.”

The State Authorization rule helps ensure students and taxpayers are protected from predatory institutions by requiring institutions to comply with state-level consumer protections in each state in which they operate. This is especially true for online colleges, where the State Authorization rule protects students even when institutions do not maintain a physical presence in the state where students reside.

HOW DOES STATE AUTHORIZATION APPLY TO ONLINE DISTANCE EDUCATION PROGRAMS?

To qualify for federal financial aid, institutions are required to seek state authorization both for on-the-ground and online distance education programs. 34 C.F.R. § 600.9(c) mandates that institutions operating online satisfy any requirements under state law to enroll students in distance learning programs in all states in which the institution operates, even if it does not have a physical presence in the state. The rule also allows institutions to satisfy this requirement by participating in a State Authorization Reciprocity Agreement that covers the institution’s activities in the relevant state or territory.

WHAT IS A RECIPROCITY AGREEMENT AND WHAT IS THE ROLE OF NC-SARA?

A reciprocity agreement is an agreement between two states in which they agree to mutually recognize each other’s authorization processes or waive requirements under certain conditions. A State Authorization Reciprocity Agreement¹ is defined in the State Authorization rule as an “agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement.” In other words, an institution located and authorized in a state participating in the agreement can provide distance education programs in the other participating states without having to go through the traditional state authorization process.

The goal of such an agreement is to reduce the amount of review and oversight the state in which the student resides (student's state) must conduct, by requiring the state in which the institution is physically located (institution's state) to oversee and authorize the institution's online out-of-state programs. Reciprocity agreements can promote cooperation between states to support the delivery of high-quality education, however they also pose the risk of incentivizing a race to the bottom among states to undermine standards of education, accountability, and consumer protection without sufficient minimum standards and protections.

NC-SARA is one example of a reciprocity agreement. It was established in 2013, at a time when states were just beginning to grapple with how to oversee institutions operating online from out-of-state. Although NC-SARA was founded with the worthwhile mission of increasing access to higher education, the terms of the agreement undermine states' authority to protect the students within their borders.

Effectively, NC-SARA requires states to give up their authority to enforce state laws regarding higher education and oversight of out-of-state NC-SARA institutions, leaving online distance education students without the same state-level protections granted to their peers in brick-and-mortar programs. This is because, in an effort to simplify state authorization for institutions, NC-SARA policy places *all* regulatory authority over an institution in the hands of the institution's state regulator. Rather than apply to each state in which they enroll students for authorization, NC-SARA allows institutions to submit an application for membership in the state where they are headquartered, and upon approval the institution is authorized to offer online educational programs in any other NC-SARA member state. However, the student's state is *not* permitted to enforce higher education specific protections² against institutions, even if the institution is harming students from within their borders.

WHAT CHANGES ARE NEEDED WITHIN NC-SARA?

Although NC-SARA was created with good intentions, the agreement leaves students without sufficient protection and strips states of necessary authority. The NC-SARA agreement and governance structures must be substantially changed to ensure that states can take steps to protect students sufficiently, even when they enroll in online programs operated out-of-state. Fortunately, NC-SARA has the authority and opportunity to undertake these changes and can immediately take steps to better protect students.

Some initial steps that NC-SARA can take include:

1. Restructure the organizational governance to ensure that representatives of state regulators and law enforcement are the primary decision- and policymakers, and adopt the same level of transparency required of other higher education regulatory agencies;
2. Strengthen and ensure enforcement of uniform minimum eligibility requirements and consumer protection standards for participating in NC-SARA, both for institutions and for states;
3. Allow states to retain the authority to enforce important state-specific higher education consumer protection laws; and
4. Facilitate transparent institutional and complaint data sharing between states for enforcement purposes as well providing information to the public.

To learn more about our research and recommendations on state authorization and NC-SARA visit TICAS.org/State-Authorization.

1. 34 CFR § 600.2

2. States are permitted to enforce "general purpose laws," which apply to any entity doing business within the state, but laws specifically drafted to apply to institutions of higher education are preempted by the terms of the agreement.