



WICHE Cooperative for Educational Technologies



E.O. 12866 Meeting

OMB/OIRA

October 2023

Talking Points

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Thank you for the opportunity to address this panel today!

I. Introduction

A. Explanation of Organizations:

- a. [WICHE – Western Interstate Commission for Higher Education](#): an interstate compact for 15 states and the Pacific territories and freely-associated states.
- b. [WCET – WICHE Cooperative for Educational Technologies](#): a unit of WICHE with member institutions, organizations, state agencies, and corporations focused on digital learning in higher education. Members in all 50 states.
- c. [SAN – State Authorization Network](#): a division of WCET with member institutions and systems in most states. SAN provides guidance and support for navigating state and federal regulatory compliance for out-of-state activities of postsecondary institutions

B. Our organizations are housed within the higher education regional compact WICHE (the Western Interstate Commission for Higher Education), which is a state-based organization. As a result, we firmly believe in the primacy of the state's role in protecting students.

II. Context of our comments

Not knowing the details of any changes that may have been made by the Department of Education following the public comment period, the focus of the comments will be on the proposed language found in the Certification Procedures issue and specifically found in 34 CFR 668.14(b)(32) addressing a) programs leading to a professional license or certification and b) issues of state authorization of institutions to serve students in a state. These regulations require an institution to attest to compliance through the Program Participation Agreement in order to participate in Title IV HEA programs.

Our organizations have worked on these issues since the initial iteration of the federal regulation of state authorization in 2010. What has been the hallmark of the federal regulations is a lack of consideration of how state agencies operate and the impact of the proposed rules on the state agencies. This has resulted in numerous delays including a 4-year delay in the implementation of the enforcement date of the original regulation, relying upon the issuance of “Dear Colleague” letters to clarify how the rules were to be implemented and the Department of Education holding multiple rulemakings to issue multiple iterations of the rules over a 10-year period. This inconsistency of oversight requirements has occurred across three different administrations.

III. Focus is on Certification Procedures

A. Related to Institutions Providing Programs Leading to a License or Certification (34 CFR 668.14(b)(32)(ii))

Summary of the rule: requiring that for purposes of program eligibility for title IV HEA Program funds, the institution must determine that it satisfies applicable educational prerequisites for a license or certification in the state where the student is located at the time of initial enrollment.

1. **Issues of Federalism** - considering the many different licensed professions and occupations, when there is no state law prohibiting or minimizing student access to be served to be educated or trained for a license, this regulation:
 - a. Usurps the state's role in determining who may be served in the state.
 - b. Usurps the state's role in overseeing the education and training of future licensed practitioners located in the state.
2. **Economic Impact and State Burden**
 - a. The Department of Education failed to provide a complete analysis regarding the burden to states and incorrectly provided analysis twice within the regulation announcement for a different subsection 668.14(b)(26) addressing maximum clock hours while citing the analysis as pertaining to this subsection.
 - b. Burdens the state licensing boards that will be relied upon to affirm that the institution satisfies state educational prerequisites with any legal certainty.
 - c. Despite shortages of licensed practitioners in certain professions, this subsection disregards the state's decision to participate in other pathways to a license including:
 - a. various professional interstate reciprocity opportunities,
 - b. Interstate professional compacts, and
 - c. provisional license pathways (i.e., the person can practice on a temporary basis until they fulfill final local requirements) to bring a licensed practitioner into meeting educational requirements in their state.
3. **Conflicts with Administration Goals**
 - a. President Biden's July 2021 Executive Order 14036 to address unnecessary licensing restrictions that impede worker mobility.
 - i. Offers no exceptions for those who are active military or military-affiliated students who may be temporarily located in a state where the educational prerequisites are not met.

We agree with the premise of the proposed regulation in that institutions should not deceive students by enrolling them in programs in which they will not be eligible to sit for licensure in their chosen profession. Unfortunately, the proposed rule:

- fails to recognize that there are multiple paths to licensure beyond educational prerequisites,
- fails to recognize that not all professions or states have educational requirements (therefore leaving institutions and their students at a loss as to how to comply), and
- fails to recognize the resulting burden on the state licensing agencies.

B. Issues of State Authorization 34 CFR 668.14(b)(32)(iii)

Summary of the rule: requiring that for purposes of program eligibility for Title IV HEA Program funds, institutions must determine that it complies with specific state consumer protection laws for *closure*, *recruitment*, and *misrepresentations* including those specific to educational institutions in the state where the student is located at time of initial enrollment.

1. Issues of Federalism

- a. Undermines a state-to-state agreement to create uniform consumer protections for all students nationwide participating in interstate distance education-related or other educational activities covered by the agreement.
- b. Disregards decisions of state legislators to create legislation signed by state governors to voluntarily participate in a reciprocity agreement to provide uniform oversight of institutions providing interstate distance education-related activities.
- c. Others argue that the current State Authorization Reciprocity Agreement (SARA) overrides state laws, when the fact is that most states joined through a legislative act signed by the governor and a few states joined through administrative action by a legislatively authorized agency. In each case, the state affirmatively chose to participate in the benefits and restrictions inherent in the SARA agreement. The proposed rule intends to override parts of those state-based agreements and decisions.

2. Economic Impact and State Burden

- a. Burdens the state higher education agencies to expand their oversight to all institutions serving students located in their state in order to affirm that the institution complies with all State consumer protection laws related to closure, recruitment, and misrepresentation. Guidance on which laws are considered to be related to “closure, recruitment, and misrepresentation” was not provided.
- b. Forces the states to create a process of institution registration to review out-of-state institutions’ compliance with state laws related to closure, recruitment, and misrepresentation for purposes of participating in Title IV programs when serving students in their state even if the institution is approved to participate in reciprocity. Based on the [most recent SARA data](#).
 - i. New York currently reviews 140 New York institutions for approval to participate in reciprocity through SARA, oversight will increase to more than 1340 out-of-state institutions that serve students in New York by interstate distance education.
 - ii. Massachusetts currently reviews 74 Massachusetts institutions for approval to participate in reciprocity through SARA, oversight will increase to more than 1025 out-of-state institutions that serve students in Massachusetts by interstate distance education.
 - iii. Maryland currently reviews 40 Maryland institutions for approval to participate in reciprocity through SARA, oversight will increase to more than 1230 out-of-state institutions that serve students in Maryland by interstate distance education.
- c. Compels states to enforce certain state consumer protection laws on institutions for purposes of participating in Title IV programs that could be contrary to state law that expressly limits consumer protection laws to specific sectors.
 - i. California Education Code 94801.5(c)(1) *This section does not apply to a higher education institution that grants undergraduate degrees, graduate degrees, or both, and that is either formed as a nonprofit corporation and is accredited by an agency recognized by the United States Department of Education, or is a public institution of higher education.*
 - ii. As a result, California (the only non-SARA state), would be required to create oversight for out-of-state public and non-profit institutions serving students in their state.

In summation, the U.S. Department of education has not fully considered the states' impact:

- Including impact on states to address professions and occupations and education of future practitioners.
- Impact on state higher education agencies and their capacity and variation of oversight processes
- No consideration of the state legislators and governors who chose reciprocity as the path for compliance for student consumer protection laws for interstate distance education.

Thank you again for the opportunity to address this panel.