

# **Advancing Access through Regulatory Reform:**

Findings, Principles, and Recommendations for the State  
Authorization Reciprocity Agreement (SARA)

COMMISSION ON THE  
REGULATION OF  
POSTSECONDARY DISTANCE EDUCATION

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## Executive Summary

### **Mission and Purpose of the Commission**

The Commission on the 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.

### **Overview of Recommendations**

#### **1. Interstate Reciprocity and Physical Presence**

The backbone of the Commission's recommendations is a system of interstate reciprocity based on the voluntary participation of states and institutions to govern the regulation of distance education programs. Participating states will agree on a uniform set of standards for state authorization that ensure that institutions can easily operate distance education programs in multiple states as long as they meet certain criteria relating to institutional quality, consumer protection, and institutional financial responsibility (further described below). 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.

State authorization of institutions 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.

Most regulatory activity over the last two decades 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. As a result, education providers now face a patchwork of individual state regulations relating to physical presence with different requirements and varying degrees of complexity and costs.

A core concept in the Commission's recommendations, therefore, is a proposed definition of physical presence for all participating states to adopt as a prerequisite for participation in the interstate reciprocity agreement. This definition 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. The Commission recommendations also identify a number of institutional activities that should 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).

## **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.

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.

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.

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.

### **5. Institutional Financial Responsibility**

The proposed reciprocity framework 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 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. Public institutions are presumed to be financially responsible based on backing from their states. A private non-profit or for-profit institution is deemed to have sufficient financial strength if the U.S. Department of Education (the Department) considers it eligible for Title IV participation and does not assign it a financial responsibility composite score of less than 1.5. If an institution does not attain a rating of 1.5 on the Department's financial responsibility index but remains eligible for Title IV participation, the state may request additional information to determine whether the institution is financially responsible for purposes of participation in the interstate reciprocity agreement. After examining that material, the state may determine that the institution has sufficient financial strength for participation 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. The state may use this method for determining eligibility for participation in the agreement for two consecutive years. The institution will lose eligibility if its composite score remains below 1.5 for three consecutive years.

## I. Introduction Regarding Postsecondary Distance Education: 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.

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

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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).

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 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.

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

<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 have been vacated by a federal judge.

<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).

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.

## 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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<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).

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>

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>

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<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 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

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 provider 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> 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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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 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.

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

The Commission began work in the summer of 2012 to develop pragmatic and politically feasible recommendations to guide legal and policy action related to the regulation of distance education. These recommendations were 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 pursued a consensus-based approach with significant stakeholder engagement. Between June 2012 and April 2013, the Commission 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 Presidents' Forum/CSG and WICHE. 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. Indeed, the Commission's work built upon and was informed by the efforts of the Presidents' Forum / Council of State Governments (CSG) and the Western Interstate Commission for Higher Education (WICHE) to develop a model state reciprocity agreement and implementation plan. The Presidents' Forum and CSG first began work on a model state reciprocity agreement in 2010, prior to the issuance of §600.9(c) (described above). In drafting the model agreement, the Presidents' Forum and CSG engaged a number of stakeholders, including regulators, institutions, and accrediting agencies. WICHE, in conjunction with the other regional compacts (the New England Board of Higher Education, the Midwestern Higher Education Compact, and the Southern Regional Education Board), then led the charge to develop an implementation version of the agreement. The draft implementation plan, finalized in August 2012, leveraged the historic missions of the regional compacts in creating interstate partnerships to address higher education issues.

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 draft Report, 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 Report. Commissioners participated in a detailed survey for each of the proposed recommendations in December 2012.

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 Report and the related WICHE implementation plan.

Commission staff subsequently engaged with key stakeholders to produce this Report, which represents alignment with the Presidents' Forum/CSG and WICHE recommendations and has been drafted in response to final feedback from Commissioners.

### III. 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 Presidents' Forum/Council of State Governments (CSG), 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 recommendations in this Report result from observations and reactions to these existing proposals and comments. Because the Commission was able to reflect and build on the work of WICHE, the Presidents' Forum, and CSG, 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 meetings and outreach efforts and represents a potential path forward to address the needs of states, institutions, and students in regard to distance education. The 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 to present first 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).

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#### 1. Interstate Reciprocity and Physical Presence

**Findings:** State laws and regulations governing institutions of higher education have taken different approaches to authorization, with many typically only addressing the conduct of institutions physically located within the state. State authorization requirements generally provide 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

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<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).

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:

- 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, through a distance education program, or through a combination of both formats. 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.

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<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.

## Recommendations:

### 1.1. Interstate Reciprocity

- A. 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 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, as it applies to the interstate reciprocity agreement, 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

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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.)

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,
- Field trips,
- Proctored exams held in the state,
- Operation of a server or other electronic service device,
- Short courses (20 classroom hours or less, or the equivalent thereof),
- 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, or 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, and
  - Only ten students from each institution are physically present simultaneously at a single field site.

The following chart catalogs all triggering and non-triggering activities as described in Recommendation 1.

Activities that Trigger Physical Presence in a State <i>Participating states may require institutions that perform these activities to seek authorization for in-state activities.</i>	Activities that <u>Do Not</u> Trigger Physical Presence <i>Participating states may not require institutions that perform only these activities to seek authorization for in-state activities.</i>
<ul style="list-style-type: none"> <li>• On-going occupation of physical location for instructional purposes</li> <li>• Maintenance of an administrative office to facilitate instruction</li> </ul>	<ul style="list-style-type: none"> <li>• Offering instruction through pure online format</li> <li>• Advertising</li> <li>• Recruiting (e.g., hosting or attending recruitment fairs)</li> <li>• Contractual agreements</li> <li>• Courses on military installations (limited to active and reserve military personnel, dependents, and civilian employees of the military installation)</li> <li>• Faculty residing in the state</li> <li>• Field trips</li> <li>• Proctored Exams</li> <li>• Operation of server or other electronic service device</li> <li>• Short courses</li> <li>• Courses for which 25 percent or less of class requirements involve instructor and students meeting in a physical location</li> <li>• Experiential learning opportunities (provided certain condition are met, as described above)</li> </ul>

<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.

## **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>

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 by passing a statute to become a member with the same standing as the original 12 founding states, and also allows institutions to become associate members (participation allowed, e.g., in procurement activities, for an annual payment based on the number of activities used).<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 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.

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<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).

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 to 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 and any decisions relating to dues 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.**

### **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. (States are encouraged to use existing structures and agencies for this process.)
- 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 in a timely manner.

### **1.3. 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 the institution's distance education courses. Students should be made that the institution is authorized to offer those courses 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.

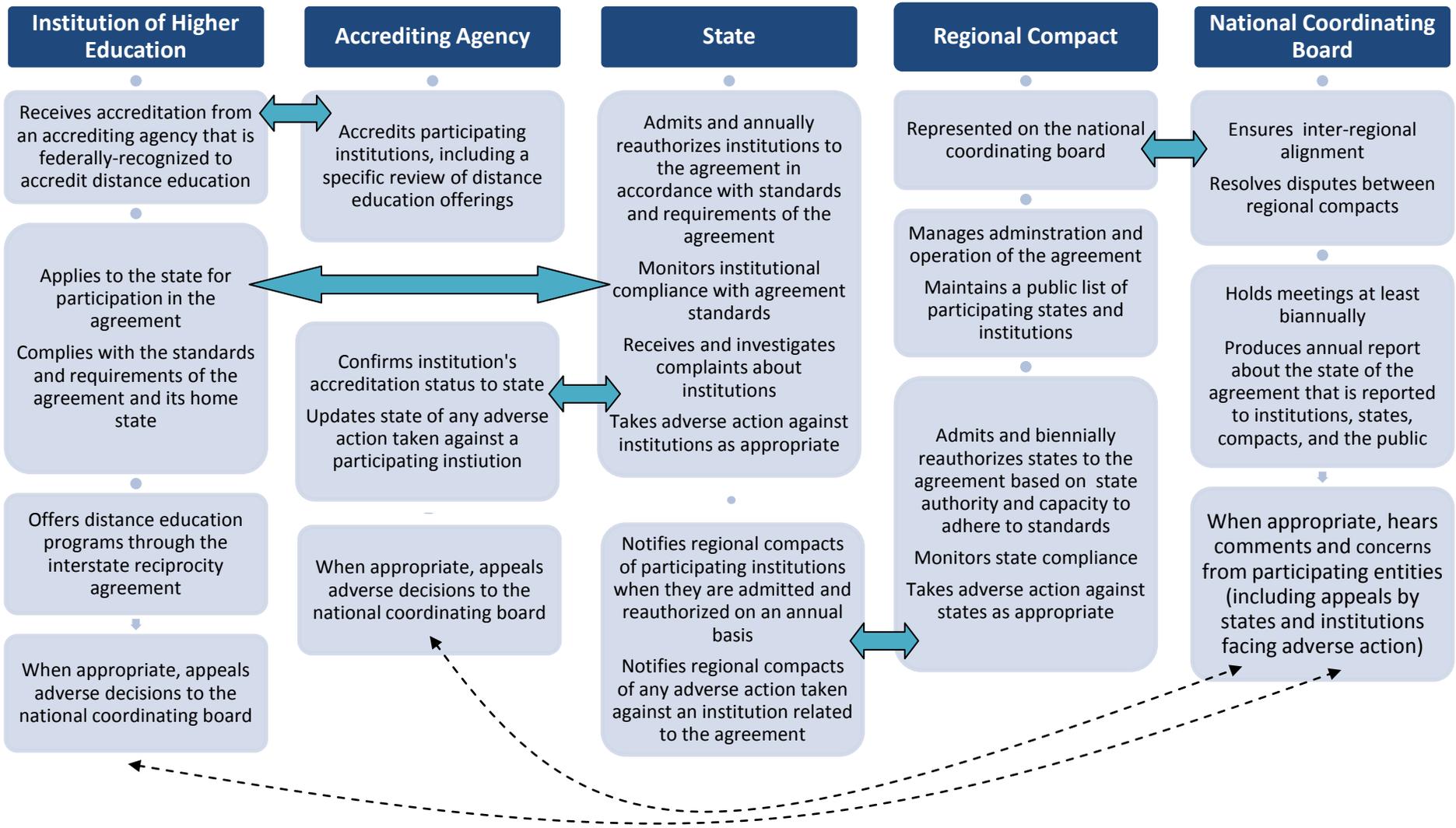
### **2.4. Role of Accrediting Agencies**

- 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.)

## 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 state regulators, 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).

### Interstate Reciprocity: Key Actors and Functions



## 2. 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>

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<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.

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>
- 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.

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<sup>43</sup> 34 CFR § 602.16(c).

<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.

**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.

**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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### **3. 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,

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<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).

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> 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

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<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,
- 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).

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>

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.

High among a state's traditional responsibilities 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.

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<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:

- 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.

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.

#### **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.**

##### **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 enrolled students 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.**

## **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. The U.S. Department of Education (the Department) assesses the financial responsibility of institutions in different ways, depending upon institutional type. For public institutions, the Department presumes that a public school is financially responsible if its debts and liabilities are backed by the full faith and credit of its state or another government entity.<sup>61</sup> Although the Department also requires public schools to meet “past performance and affiliation standards” (standards that evaluate a school’s past performance and individuals affiliated with the school) and submit financial statements, and public institutions may lose Title IV eligibility for failures in those areas, the general departmental assessment of the financial viability of public institutions rests heavily on those institutions having the financial backing of their state.

The Department uses a different approach for for-profit and non-profit institutions. The Department requires them to submit annual audited financial statements and draws financial information from those statements to create three financial ratios.<sup>62</sup> The Department then uses those ratios to create a financial responsibility composite score to provide an initial evaluation of an institution’s financial health with a score that ranges 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 funding if they meet additional fiscal requirements. The Department also requires for-profit and non-profit schools to meet additional financial standards (refund reserves, returning funds in a timely manner, etc.), as well as “past performance and affiliation standards.” Public institutions may lose Title IV eligibility for failures in those areas as well. 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>63</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>64</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>65</sup>

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<sup>61</sup> U.S. Department of Education, 2012-2013 Federal Student Aid Handbook, vol. 2, ch. 4, 2-65 <http://ifap.ed.gov/fsahandbook/attachments/1213FSAHbkVol2Ch4.pdf> (posted July 20, 2012).

<sup>62</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).

<sup>63</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>64</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>65</sup> *Id.* at 6-7.

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. The recommendations do not limit the right of the home state to require more demanding financial responsibility requirements for its home state institutions for non-reciprocity purposes.

**Recommendations:**

- A. Public institutions, consistent with U.S. Department of Education policies, should be presumed to be financially responsible by virtue of their status as state institutions enjoying the financial backing of their state, subject to certain filing requirements of the Department to meet "past performance and affiliation standards."**
- B. A private non-profit or for-profit institution should be determined to demonstrate sufficient financial strength for initial inclusion and continued participation in the interstate reciprocity agreement in either of the following two situations:**
  - 1. 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.)**
  - 2. 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, either 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. The state should use the method described in section B(2) for two consecutive years to determine financial responsibility, assuming that the institution remains eligible for Title IV student aid programs.**
- D. A private non-profit or for-profit institution should no longer be eligible if in the third year its composite score remains below 1.5, even if the institution remains eligible for Title IV programs.**
- E. A private non-profit or for-profit institution that has lost its approval to participate in its state's reciprocity agreement under recommendation 5D, but remains eligible to participate in federal Title IV student aid programs, should 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.**
- F. The Department of Education should review and consult outside expertise on the accounting approaches it uses to determine institutions' composite scores for financial responsibility purposes.**

#### **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 in 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's 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.

#### **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.

**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.

**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 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.<sup>66</sup>

**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.

**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.**

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.

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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<sup>66</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.

## Members of 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. Commissioners were selected in order to represent a diverse group of leaders from the full spectrum of stakeholders in postsecondary distance education policy. Each of the following individuals expresses his or her support for this Report and its findings, principles, and recommendations:

**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

**Hon. Joseph Garcia**, Lieutenant Governor of Colorado

**Rufus Glasper**, Chancellor, the Maricopa County Community Colleges

**Terry Hartle**,<sup>67</sup> Senior Vice President, Division of Government and Public Affairs, American Council on Education

**Marshall A. Hill**, Executive Director, Nebraska Coordinating Commission for Postsecondary Education

**Arthur Kirk**,<sup>68</sup> President, Saint Leo University

**Paul Lingenfelter**, President, State Higher Education Executive Officers Association

**Sylvia Manning**, President, Higher Learning Commission of the North Central Association

**M. Peter McPherson**, President, Association of Public and Land-grant Universities

**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; former Chief Executive Officer, South Dakota Board of Regents

**George Peterson**, Executive Director emeritus, Accreditation Board for Engineering and Technology, ABET

**Michael Plater**, President, Strayer University

**Pamela Quinn**, Provost, LeCroy Center, Dallas Community College District

**James Petro**, former Chancellor, Ohio Board of Regents

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<sup>67</sup> Commissioner Hartle agrees with Commissioner Kirk's partial dissent, identified in footnote 68 below.

<sup>68</sup> "While I support the Commission's efforts to arrive at a workable interstate reciprocity agreement related to state authority over distance education programs and find merit in the vast majority of the report, I must register my strong dissent to the final recommendations dealing with Institutional Financial Responsibility. The proposal does not offer even-handed treatment of all institutions—due to its dependence on a portion of the financial responsibility standards for private, non-profit institutions that memorializes in these agreements a partial and deeply flawed metric that needs to be either revised or abandoned and does not apply to public institutions of higher education."

**Hon. Richard Riley**, Senior Partner, EducationCounsel LLC; former U.S. Secretary of Education; former Governor of South Carolina

**George Ross**, President, 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.

## 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>Regional Compacts</b>	<b><i>Preliminary Steps</i></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

Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>Implementation</b>		
<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
<b>Agreement Maintenance</b>		
<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

	Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>States</b>	<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 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 change in statute or regulations?</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 or agencies 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? Would a new joint task force be useful?</li> <li>▪ Which state agency or agencies currently authorize institutions to operate in the state? Is this agency (or agencies) responsible for assessing institutional quality, adherence to consumer protection requirements, and institutional financial responsibility? Is staff in the agency (or agencies) familiar with accrediting agencies and accreditation processes?</li> <li>▪ Does the agency (or agencies) have the capacity 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 (or agencies) currently receive, investigate, and resolve student complaints, including those that originate out of state? Are additional resources necessary to build capacity?</li> <li>▪ Does the agency (or agencies) have policies and procedures in place to respond to "catastrophic events" such as the closure of an institution?</li> </ul>	2.2A

Action Step	Potential Key Questions	Relevant Recommendation(s)
	<ul style="list-style-type: none"> <li>▪ Does the agency (or agencies) have policies and procedures in place to revoke authorization?</li> <li>▪ How will the agency (or agencies) alert the regional compact and other states when it has taken adverse action against an institution?</li> </ul>	
<b>Implementation</b>		
<i>Notify institutions that are likely to designate the state as their "home state" about the reciprocity agreement and explain its terms</i>	<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>	2.2A
<i>Once accepted into the reciprocity agreement, begin authorizing institutions for participation in the agreement</i>	<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>	2.2B
<b>Agreement Maintenance</b>		
<i>Provide notification to regional compact of important developments</i>	<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>	2.2C
<i>Conduct annual review of participating institutions to ensure full alignment with the reciprocity agreement</i>	<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>	2.2C

	Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>Institutions of Higher Education</b>	<b>Preliminary Steps</b>		
	<i>Determine the institution's home state</i>	<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
	<i>Determine whether the institution meets the requirements to participate in the reciprocity agreement</i>	<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>		
	<i>Apply to the home state for authorization to participate</i>	<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
	<i>Once approved, meet participation requirements</i>	<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>Is the institution's participation in the agreement clearly communicated to 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>		
	<i>Comply with the standards and requirements of the agreement</i>	<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
	<i>Engage with the regional compact(s) and/or national coordinating board</i>	<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

	Action Step	Potential Key Questions	Relevant Recommendation(s)
<b>National Coordinating Board</b>	<b><i>Preliminary Steps</i></b>		
	<i>Establish initial board</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 financed?</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> <li>▪ Has a process been identified for appeals that can be heard by the board?</li> </ul>	2.5A

Action Step	Potential Key Questions	Relevant Recommendation(s)
<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 promote 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 address objections or concerns 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 limited 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 disputes between compacts be managed and resolved?</li> <li>▪ How will disputes 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 annual report on the state of the agreement delivered publicly? Are all participating regional compacts, states, and institutions of higher education notified of its release?</li> <li>▪ Is the board accessible to participating states, participating institutions, and the higher education community at large?</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