

June 20, 2023

*Filed via Regulations.gov*

The Honorable Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

**RE: Docket ID: ED-2023-OPE-0089**

Dear Secretary Cardona:

On behalf of state higher education leaders, I am writing in response to the May 19, 2023, notice in the *Federal Register* of the U.S. Department of Education’s Notice of Proposed Rulemaking. Founded in 1954, the State Higher Education Executive Officers Association (SHEEO) serves the chief executives of statewide governing, policy, and coordinating boards of postsecondary education and their staffs.

SHEEO welcomes the U.S Department of Education’s interest in strengthening the federal regulatory framework to promote greater transparency, provide better value for students and taxpayers, and improve institutional stability. States represent one leg of the regulatory triad, and we encourage continued conversations and opportunities to increase coordination and policy alignment with accreditors and the federal government.

SHEEO supports many of the provisions included in the NPRM. However, we have concerns pertaining to state authorization and licensure provisions. These provisions could lead to higher college costs, reduced student choice, and increased administrative burden. We encourage the Department to withdraw the state authorization language and revise the provision pertaining to professional licensure.

### **State Authorization**

SHEEO strongly supports robust consumer protections in higher education and welcomes conversations on ways to improve consumer protection standards and enforcement capacity. However, the additional requirement § 668.14(b)(32)(iii) requiring that each program eligible for Title IV “complies with all state consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable state laws and those specific to institutions” presents numerous challenges to institutions seeking to provide distance education opportunities.

It remains unclear who will interpret and which state laws are going to be applied as it pertains to closure, recruitment, and misrepresentation. If this is determined by each state, some states could have a broad definition encompassing an assortment of state laws, while others could have a more limited definition. States would take on considerable new enforcement costs, as they now will have to ensure compliance with state laws to the hundreds or more out-of-state distance education providers operating in their state.

If this change is approved, distance education providers will have to navigate an uneven, constantly evolving policy landscape, with the best resourced providers having an advantage over providers that cannot take on these additional administrative costs. These new requirements would be in addition to requirements under existing reciprocity



agreements, such as the State Authorization Reciprocity Agreement (SARA). Some states could choose to leave SARA, as the value of the reciprocity agreement will be reduced. Overall, this will result in higher institutional compliance costs, with the potential for increased tuition prices for students and fewer providers in the distance education marketplace.

The Department should be mindful that nearly all the states have voluntarily agreed to be part of SARA to realize the benefits of reciprocity. Authorization is a responsibility reserved to the states, and this proposed rule would override states' authority over one of their key responsibilities in higher education. Lastly, states already retain authority to investigate and prosecute misrepresentation, fraud, and other illegal activities by out-of-state educational providers under the SARA, including general purpose criminal and consumer protection laws.

We urge the Department to withdraw this provision and encourage greater collaboration with SARA to strengthen the agreement's protections. SARA has revised its process for making changes to its policies, with consumer protection as a core principle for its policies. Through the SARA process, states can realize the benefits of reciprocity agreements while also strengthening consumer protections for students across the country.

### **Professional Licensure**

SHEEO also is concerned about a provision requiring that each program eligible for Title IV satisfies applicable educational prerequisites for professional licensure or certification requirements. We share the Department's belief that institutions should follow state requirements when they are able to. However, some states do not have an approval process for institutions outside the state to satisfy this requirement, some boards lack the legal authority to approve institutions, or do not have the staff capacity. In addition, there are scenarios where a student knowingly and legitimately chooses to participate in a program that does not meet educational prerequisites.

We encourage the Department to consider language put forth by consumer groups and veterans advocates that requires meeting applicable educational prerequisites for professional licensure or certification requirements if it can be obtained from the state and allow for case-by-case exceptions with the written consent of each student who opts to knowingly enroll in a program that fails to meet the requirements and states a reason for their decision. This change would help provide protection for students while also accommodating students who knowingly want to enroll programs that fail to meet the requirements.

Thank you for your consideration of these comments. If you have any questions or concerns, please contact Tom Harnisch, Vice President for Government Relations, at [tharnisch@sheeo.org](mailto:tharnisch@sheeo.org) or by phone at 202.558.7625.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Anderson", written in a cursive style.

Robert E. Anderson  
President  
State Higher Education Executive Officers Association (SHEEO)