June 4, 2024

James Kvaal
Under Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Dear Under Secretary Kvaal,

I write as president of the Association of Public and Land-grant Universities (APLU) to express deep concern on the state of policy discussions among negotiators related to state authorization as the Department of Education (ED) concluded the Program Integrity and Institutional Quality negotiated rulemaking session. While APLU anticipates providing comment on a range of policy issues subject to the most recent negotiated rulemaking session, we focus this letter specifically on state authorization prior to ED releasing its proposed regulation.

Regrettably, we believe misperceptions and a focus on outlier anecdotes too often drive policy considerations in this area. With the goal of providing helpful information to ED as it takes next steps, I offer several key principles for consideration, comments specifically on the state of state authorization policy proposals, and summaries of feedback APLU received from its members.

Key Relevant APLU Principles on State Authorization:

1) The Department of Education has a legitimate and indispensable role in protecting the integrity of the federal financial aid system and ensuring federal investments are delivering for taxpayers and students. It is healthy and appropriate to periodically assess whether existing policy is best fulfilling its purpose.

2) Strong and effective state authorization reciprocity agreements (SARAs) serve the interests of students, federal and state policymakers, colleges, and universities.

3) It is a false choice to consider reform of state authorization as either substantial new federal mandates on voluntary state authorization reciprocity agreements or preserving the status quo. There are multiple lanes to reform state authorization, including working within existing SARA governance processes and states enacting and enforcing broadly applicable consumer protection statutes.

4) Federal overregulation can stifle innovation, limit options, and generate undue substantial administrative costs that detract from serving students. Resources are finite.

In the Program Integrity and Institutional Quality negotiated rulemaking session, ED sought to address concerns state authorization agreements are not adequately serving student interests and reform is needed. While we appreciate the concern and ED’s interests, we urge balanced solutions that enhance consumer protections while preserving the integrity of SARAs that enable high-quality online education across state lines. The individual and cumulative effect of changes to state authorization regulations considered by the committee would substantially
weaken and undermine SARAs and likely create barriers towards offering distance education to students in other states.

Specifically, the negotiated rulemaking committee discussed:

1) **Allowing states to enforce their own education-specific consumer protection laws and requiring SARAs to provide processes for states to change the terms of the agreement**

Allowing states to enforce their own education-specific consumer protection laws removes the common set of compliance rules states and institutions willingly agree to under a SARA, functionally dismantling the system and requiring anew a state-by-state approach to offering online education across state lines. To participate in a SARA, institutions and states must voluntarily commit to adhering to mutually agreed upon policies to protect students, setting a common set of standards for all participating parties. These standards allow institutions to offer online education across state lines without requiring state-by-state adjustments while providing states a baseline expectation of how institutions will operate in their state. These protections allow institutions to expand access to high-quality offerings and enable millions of students to access a high-quality education online, providing the opportunity to enroll in the program best suited to their interests and goals and at a time and modality most appropriate for their circumstances. Further, the expansion of high-quality online education programs provides opportunity to historically underserved and marginalized populations.

Should state education-specific consumer protection laws nullify a SARA, authorization for programs from out of state institutions could lapse and millions of students’ ability to continue their online program would be in immediate jeopardy. As we have seen coming out of the COVID-19 pandemic and in light of the implementation of the Better FAFSA, any systemic obstacles towards enrollment and program completion have disproportionate impacts on the most vulnerable students.

Additionally, requiring institutions to receive direct authorization in each state in which they operate exposes public universities to a complex patchwork of state-level authorization laws that increases administrative burden to compliance at the expense of an institution’s academic mission. For example, not all states have enforceable laws governing authorization for public institutions offering online education in their state, while some states require authorization on a program-by-program basis. Institutions would need guidance from state agencies across the country to ascertain whether direct authorization is applicable. At the same time, states would likely consider novel legislation on direct authorization, requiring institutions to monitor legislative activity in each state in which they enroll students, a task that would require substantial new staffing resources or investment in external legal consultants. These are the “administrative bloat” kinds of spending in which public universities are often unfairly criticized.
2) Requiring institutions to receive authorization from each state in which it enrolls 500 students in online courses

Requiring institutions to receive authorization from each state in which the institution enrolls at least 500 students in online courses creates an arbitrary threshold that negates the reciprocity agreements states voluntarily join to facilitate online education across states. APLU is concerned this proposal would substantially increase the cost of providing quality online education programs, decrease access to high-quality online education programs for students, and limit state autonomy to willingly choose to participate in SARA.

APLU requires additional information to assess the full impact to public universities of a direct authorization policy in each state in which an institution enrolls a certain number of students. In their discussions, the committee did not differentiate between students enrolled solely online, in both online and in-person coursework, or in experiential learning. At institutions near state borders, students living across state lines enroll in both online and in-person courses as well as participate in internship opportunities for credit. Institutions may also enroll out of state learners in non-credit and non-credential courses, in addition to non-Title IV students. Tying authorization requirements to enrollment figures would require institutions to reassess where they must be authorized every few years. In states where an institution cycles in and out of meeting enrollment thresholds for direct authorization, institutions could be required to pay an authorization fee each time they again meet the requirements for authorization, driving up costs.

3) Limiting participation on SARA governing boards to state employees and members of the public, prohibiting certain institutional representatives from serving

Other committee discussions included a proposal that would limit participation on SARA governing boards to state employees and members of the public, prohibiting institutional representatives from participating. In so doing, it would strip these advisory and oversight bodies of relevant professional experience and skills needed to inform its efforts. Further, a federal policy outlining who is eligible to serve on non-profit governing boards would represent a highly unusual federal intrusion into the governing of nonprofit entities.

Summary of Impact Feedback from APLU Member Institutions

APLU engaged our membership for feedback on the proposals as they stood at the conclusion of the negotiated rulemaking committee. Among institutions that provided feedback to APLU, nearly all mentioned the potential for increased costs, administrative burden, and regulatory complexity, while also noting institutions would be forced to consider decreased educational offerings. Costs are likely to come in the form of new state-imposed filing fees for initial authorization in each state in which the institution offers online programs, and human resources capacity to monitor legislative and regulatory action in states other than their own. APLU envisions a new industry of compliance consultants to monitor a 50-state regulatory landscape that some institutions may be able to afford, but many others would not.
One public research university in the Midwest estimated compliance costs of at least $1 million and one public research university in the South projects a need to hire eight to ten additional staff to ensure compliance. As policymakers bemoan increasing administrative expenditures in higher education, direct authorization regulations drive limited resources towards compliance and away from student success without providing commensurate benefits to students enrolled at public universities.

We thank you for consideration of APLU’s perspectives on state authorization regulations. Please know APLU is eager to continue to serve as a resource. We look forward to commenting on the full slate of issues contained in ED’s upcoming notice of proposed rulemaking on the Program Integrity and Institutional Quality negotiated rulemaking session.

Sincerely,

Mark Becker
President
Association of Public and Land-grant Universities