

Report from the Distance Learning and Educational Innovation Subcommittee

Definition of “distance education” in 34 CFR 600.2

- The Department’s original proposal would have revised the regulatory definition of “distance education” to include clarifications of the phrase “regular and substantive interaction between students and the instructor,” which is a required component of the statutory definition. The Department proposed defining that phrase to include interactions between students and members of an instructional team. The Department indicated that its intent was to provide greater clarity to institutions regarding requirements for distance education and to accommodate innovative instructional models other than traditional synchronous instructional courses.
- During the first subcommittee discussion, a number of subcommittee members indicated support for the concept of an instructional team, but indicated a preference for a greater role for subject-matter experts on such teams. Following the first subcommittee session, the Department composed language incorporating the subcommittee’s discussion regarding the importance of subject-matter experts to instructional teams. This language has since been updated to reflect ongoing discussions and is presented below.
- The Department originally proposed having accrediting agencies define the term “distance education” and “correspondence course” and define their own requirements for fulfillment of the definition. The subcommittee generally opposed that idea, and following the first subcommittee meeting the Department sent new language that would once again have the Department define the term.
 - The Department offered an idea for a waiver process in which, following promulgation of regulations defining distance education, institutions could apply to their accrediting agency and the Department to use a model that was not explicitly covered by that definition, but met the statutory definition of the term. The Department noted that if it defined the term “distance education”, it would likely be unable to regulate to accommodate new instructional models (such as competency-based education) quickly enough to keep up with technology, and this process could offer an “escape valve” for innovations to occur if they were compliant with the statute.
 - In this process, institutions would be required to supply a reasoned basis for its adoption of the new model, and would be required to evaluate the model and report to the accrediting agency and the Department. If approved by both the accrediting agency and the Department, the Department would publish a Federal Register notice that established the institution and the model it was using as meeting the statutory definition of distance education.
 - Subcommittee members have not yet completed their discussion of the waiver process. Initial conversation on the idea of introducing a waiver process was met with mixed reactions from the subcommittee; some subcommittee members seemed supportive of the concept while others were concerned that such an approach could harm students. Still other members of the subcommittee were confused about how, as it is purposed in the current language, a course could meet the statutory definition of “distance education” but not the regulatory definition of the same term.
- Two members of the subcommittee circulated a separate proposal to define “distance education” that would require interactions to be initiated by the instructor; occur through predictable and

regular intervals; and both engage students in teaching and learning and provide systematic assessment of student learning.

- Under the proposal, the definition of an “instructor” could include members of an instructional team, provided it included at least one faculty member (as determined by the accreditor) who provides regular and substantive interaction to students.
- Similar concerns were raised as with the Department’s proposal, except that there was no concern raised about the statutory appropriateness of this proposed definition.
- No members of the subcommittee opposed the inclusion of a definition of “instructional team” into the definition of “distance education” and all members supported requiring the inclusion of a subject-matter expert into that definition. However, subcommittee members expressed several different views and concerns regarding the requirements and composition of an instructional team:
 - Some members expressed the view that because the statutory definition of distance education requires regular and substantive interaction with the “instructor,” any instructional team must include one or more subject-matter expert(s) that would be required to have regular and substantive interactions with students. Some members indicated that an instructional team should include a subject-matter expert who had the “primary responsibility” for interacting with students, where other members of the instructional team would identify problem areas and refer students to subject-matter experts when needed; and
 - Some members indicated that requiring people to refer students to subject-matter experts does not reflect the current or future state of distance education, which is increasingly using analytics to identify struggling learners in order to refer them to subject-matter experts for assistance.
- The subcommittee has not yet completed its discussion of the definitions of “regular” and “substantive,” but will report out on those concepts at the next full committee meeting. Areas of concern include:
 - Requirements for regularity that are too restrictive will impose unnecessary administrative burden, such as mandating an instructor “check-in” with a student when the student did not need or request such a check-in;
 - A definition of “regular” that is not sufficiently descriptive would not resolve confusion and uncertainty about the term and could dissuade institutions from using instructional models that lack scheduled class sessions (such as some programs offered utilizing competency-based education);
 - A definition of “regular” that is too infrequent could impact quality in higher education programs and risk taxpayer funds.
 - A loose definition of “substantive” that does not focus on an academic process involving student learning could lead to educational models that de-emphasize learning in favor of administrative check-ins with students.

Most recent redline language from the Department regarding the definition of “distance education”:

Comment [A1]: See also attached proposal from subcommittee members Jillian and Leah (with input from Russ)

34 CFR 600.2:

Distance education: means education that uses one or more of the technologies listed in paragraphs (1)(i) through (1)(iv)(4) of this definition to deliver instruction to students who are separated from the instructor or members of an instructional team and to support regular and substantive interaction between the students and ~~the~~ instructors or members of an instructional team, either synchronously or asynchronously.

(1) The technologies that may be used to offer distance education include—

~~(1)~~(i) The internet;

~~(2)~~(ii) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

~~(3)~~(iii) Audio conferencing; or

~~(4)~~(iv) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1)(i) through ~~(3)~~(1)(iv) of this definition.

(2)(i) An instructional team includes an instructor and one or more staff members that perform an instructional function. Members of an instructional team may have different and complementary roles and qualifications, as required by the institution’s accrediting agency, such as to share information, answer questions, provide direct instruction, provide assessment or feedback, monitor a student’s academic progress, or provide student support related the student’s success in a particular course or competency.

(ii) For purposes of this definition, an instructor is a subject-matter expert, by virtue of academic credentials or a combination of academic credentials and work experience, as defined by the accrediting agency;

(iii) For purposes of this definition, an instructional team must ensure that—

(A) One or more instructors have the primary responsibility for interacting with students regarding subject-matter content and for assessing a student’s learning and mastery of course content.

(B) It monitors each student’s academic engagement and success and ensures that a subject-matter expert is responsible for promptly and proactively providing academic assistance, when needed, on the basis of such monitoring, or upon request by the student.

(iii) General academic advisors or counselors are not considered to be members of an instructional team.

(3) For purposes of this definition, regular means the frequency or periodicity of contact that is established by the institution in accordance with any applicable requirements of its State or accrediting agency, in which –

(i) The interactions are initiated by an instructor or a member of an instructional team; and

(ii) (A) For a course that is worth three or more credit hours, interactions occur at least once for each week of instruction; or

(B) For a course that is worth less than three credit hours, interactions occur at least once every two weeks of instruction.

(4) For purposes of this definition, substantive means related to the subject matter under discussion for the course.

(5) Waiver Authority. Under procedures established by the Secretary, the Secretary may, through publication in the *Federal Register*, permit an institution or group of institutions to define the courses in one or more educational programs as “distance education” rather than “correspondence courses” using an instructional model that does not meet one or more of the requirements under paragraphs (1) through (4) of this definition if the institution or institutions demonstrate that—

(i) The instructional model ensures that each course in the program or programs meets the statutory definition of “distance education” under 20 USC 1003; and

(ii) Each institution’s accrediting agency has specifically reviewed and approved the educational program for which the institution seeks the waiver and the agency has determined that the program meets all of its applicable requirements.

Issues related to State authorization for distance education in 34 CFR Part 600 and Part 668

- The Department’s original proposal was to eliminate the regulations for State authorization for distance education that were promulgated in 2016, including both the institutional eligibility regulations in Part 600 and the disclosure requirements for distance education and correspondence courses in 34 CFR 668.50.
- During the first subcommittee session, subcommittee members expressed support for some aspects of the regulatory language promulgated in 2016. Following that session, the Department composed language designed to incorporate the subcommittee’s discussion with a number of changes. The most recent redline language is presented below.
- One subcommittee member asked that the Department eliminate references to “residence” in a State, since that concept could be conflated with legal residence requirements. That member asked that the Department use the term “located” in order to reflect the most common term used by States.
- Some Subcommittee members supported a requirement for verifying a student’s location only once upon admission to a program. For programs leading to professional licensure, the Department incorporated this idea into its current redlines below. The subcommittee has not yet completed its discussion of this matter.
- The subcommittee generally supported the concept of reciprocity agreements for State authorization, though there were differences of opinion regarding the requirements for such agreements. All subcommittee members agreed that the definition of reciprocity agreements should include the requirement that such an agreement not prohibit states from enforcing “laws or regulations of general applicability.”
 - The Department included language that would prohibit a reciprocity agreement from creating a conflict with State laws or regulations. Some subcommittee members supported that concept, but others indicated that it did not resolve concerns about reciprocity agreements reducing consumer protection requirements imposed by some States.
 - Several subcommittee members had concerns regarding the possibility that State authorization reciprocity agreements would prevent States from enforcing certain specific consumer protection requirements, and proposed to maintain the language in the 2016 regulations that prohibits reciprocity agreements from waiving both general and specific consumer protections. One subcommittee member proposed to define a reciprocity agreement to involve only authorization by a State in order to avoid conflicts with consumer protection requirements or laws of general applicability.
 - Others maintained that allowing States to maintain requirements directed at educational institutions while also participating in reciprocity agreements would undermine the purpose of reciprocity agreements and result in institutions being once more subject to numerous state-by-state requirements.
 - Several subcommittee members also proposed language that would require that state reciprocity agreements be governed and controlled by member states, and accordingly that the majority of governing board positions for such agreements be reserved for member state representatives. These subcommittee members also proposed representation on the board from a state AG office or a nonprofit that serves consumer and/or student interests. Other members expressed concerns about this proposal because it could result in the Department

regulating a private organization's board structure if the organization was responsible for overseeing the reciprocity agreement.

- Two subcommittee members expressed concern about NC-SARA's use of the Department's flawed financial responsibility standards as an eligibility criterion for participation in NC-SARA.
- The subcommittee generally agreed that if a concept of reciprocity is included in the regulations, there is a need to link that concept to Title IV eligibility through requirements for State authorization in 34 CFR 600.9. Following the first subcommittee session, the Department reintroduced language that would require institutions to meet any applicable State authorization requirements for distance education and explicitly state that such requirements could be met through reciprocity agreements.
- The subcommittee began discussions about requirements for a State-based complaint process in order for an institution to be considered authorized by a State for Title IV eligibility purposes, but there was disagreement on this point because at least one State still lacks a complaint process for students enrolled in distance education programs. The subcommittee has not yet completed its discussion on this issue.
- During the first subcommittee session, numerous members indicated support for at least some of the disclosure requirements imposed in the 2016 regulation. The subcommittee has not yet completed its discussion regarding disclosure requirements.
 - Several subcommittee members requested that most or all of those requirements be reintroduced in this regulation because they provided useful information to students regarding distance education programs, including whether States had taken adverse actions against an institution.
 - There were concerns expressed by some members of the subcommittee about the utility of excessive disclosure requirements and whether they actually confuse or overwhelm, rather than inform, consumers. The Department was urged by more than one member of the subcommittee to take a coordinated approach towards disclosure requirements, and to consumer test disclosures.
 - The majority of the subcommittee supported the inclusion of disclosure requirements regarding whether programs that were intended to lead to professional licensure would meet educational requirements for licensure in a State, particularly a State in which a student was located, although at least one member expressed concern about the regulatory burden these requirements have imposed on institutions. Following the first subcommittee session, the Department attempted to incorporate the ideas expressed in that discussion by drafting a general requirement – for all institutions, not just those using distance education – to disclose whether the program would meet State educational requirements for professional licensure if the institution had made such a determination for a given State.
 - In the second session, the majority of the subcommittee also supported a student-specific disclosure that had been included in the 2016 regulation regarding whether the program would meet licensure requirements in the State in which the student was located. Institutions would be required to provide such a disclosure to a prospective student prior to enrollment. The Department drafted that requirement in response to discussions by the subcommittee.
 - Several subcommittee members expressed support for disclosures for how a student can submit a complaint to a State, citing the value of students understanding where and how to submit complaints to a State-based authority. The subcommittee has not yet completed its discussion on this topic.

Most recent redline language from the Department regarding State authorization for distance education:

Comment [A2]: See also attached proposal from subcommittee member Russ, and also from subcommittee members Carolyn and Sue

34 CFR 600.2 Definitions:

Reciprocity agreement for State authorization: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students located in other States covered by the agreement and does not—

(1) Prevent the State from enforcing its laws or regulations of general applicability; or

(2) Result in a conflict between a State’s statutes and regulations and the requirements of the agreement.

34 CFR 600.9 State authorization:

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State’s jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State’s requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State’s approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(iii) For purposes of this paragraph and for disclosures related to State licensure under 34 CFR 668.43(a)(5)(v), an institution makes a determination regarding the State in which a student is located at the time the student is admitted to an educational program.

(2) The institution must document that there is a State process for review and appropriate action on complaints from students concerning the institution either in the States in which the students are located, or the State in which the institution’s main campus is located.

34 CFR 668.43 Institutional information:

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;

(iii) The institution's faculty and other instructional personnel; ~~and~~

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in that field, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

(A) A list of all States for which the institution has determined that completion of the program would fulfill educational requirements for licensure;

(B) A list of all States for which the institution has determined that completion of the program would not fulfill educational requirements for licensure;

(C) A list of all States for which the institution has not made a determination regarding whether completion of the program would fulfill educational requirements for licensure; and

(vi)(A) Prior to each prospective student's enrollment, any determination by the institution under subparagraph (v) regarding whether the program meets applicable educational prerequisites for professional licensure or certification in the State where the student is located, or an attestation that the institution has not made such a determination.

(B) Such disclosure shall be made directly to the student in writing, which may include through e-mail or other electronic communication.

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

Changes to the clock-to-credit conversion requirements

- The Department's original position was to revise 34 CFR 668.8(l), restoring the clock-to-credit hour conversion formula that existed prior to the 2010 program integrity regulations. Accordingly (for programs subject to clock-to-credit conversion a semester credit hour would have to include at least 30 clock hours of instruction and a quarter credit hour at least 20 hours of instruction. Work outside of class would have no bearing on the conversion. Current regulations establish a conversion formula of 37.5:1 and 25:1 for semester credit hours and quarter credit hours respectively, unless (as approved by an accreditor or State agency) students' work outside of class combined with clock hours of instruction meets or exceeds 37.5 clock hours for a semester hour clock hours for a quarter hour in which case an institution may use a 30:1 (clock hours to semester hours) or 20:1 (clock hours to quarter credit hours).
- Department representatives offered that the current conversion formula is awkward, difficult to enforce and has accomplished little since most programs subject to clock-to-credit hour conversion have the requisite outside coursework to support using a 30:1 or 25:1 conversion and do so if permitted by their accreditors.
- Most subcommittee members were supportive of the Department's position. A few members, while not outwardly supportive, indicated that they can accept the change. No members of the subcommittee expressed opposition to the change.

Most recent redline language from the Department regarding the clock-to-credit conversion:

34 CFR 668.8 Eligible program:

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the ~~€~~Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward completion of an eligible program offered by the institution that ~~institution provides an~~ associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that—

~~(i) The institution's degree~~ the eligible program requires at least two academic years of study; and

~~(ii) The the~~ institution ~~demonstrates~~can demonstrate that ~~students enroll in, and graduate at least one student graduated~~ from; the ~~degree~~ program during the current or most recently completed award year.

(l) *Formula.* ~~(1) Except as provided in paragraph (l)(2) of this section, for~~ For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and ~~determining~~ the number of credit hours in that educational program ~~with regard to~~ for purposes of the ~~€~~Title IV, HEA programs—

~~(i) A semester~~ hour must include at least 37.5 clock hours of instruction;

~~(ii) A or~~ trimester hour must include at least ~~37.5 clock hours of instruction; and~~

~~(iii) A quarter hour must include at least 25 clock hours of instruction.~~

~~(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions for participation in the title IV, HEA programs, has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c), so long as—~~

~~(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and~~

~~(ii)(A) A semester hour must include at least 30~~ clock hours of instruction; and

~~(B) A trimester hour must include at least 30 clock hours of instruction; and~~

~~(2)~~ A quarter hour must include at least 20 clock hours of instruction.

~~(m)~~ An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for title IV, HEA program purposes if the program is offered by an institution, other than a foreign institution, that has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association that—

(1) Is recognized by the Secretary under subpart 2 of part H of the HEA; and

(2) Has accreditation of distance education within the scope of its recognition.

~~(n)~~ For Title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under §668.10 and a comprehensive transition and postsecondary program approved by the Secretary under §668.232.

Changes to the limitation on hours exceeding State minimum requirements for employment

- The Department did not offer a proposal but rather invited discussion among the subcommittee members on possible changes to the current regulatory limiting the length of a gainful employment program to no more than 150 percent of the minimum number of hours required for training in the occupation for which the program prepares students (as established by the State where the institution is located or a Federal agency).
- Department representatives explained the Department's motivation for seeking to revise the applicable regulation, 34 CFR 668.14(b)(26). Ostensibly, the Department believes that the current rule inhibits institutions offering primarily cosmetology and massage therapy programs from increasing the number of hours in a program to the extent necessary to meet licensure requirements in neighboring states from which a significant number of students may be seeking employment. The Department is further concerned that, in addition to any effects this may have on a program's competitiveness, it restricts the economic mobility of graduates.
- Most subcommittee members expressed opposition to any change in the existing regulation, citing fears of artificially inflated program length and the resulting increases in student debt by borrowers in those programs.
- Some members were amenable to broadening the current regulation but felt strongly that there would need to be safeguards in place against the arbitrary lengthening of programs. Among those suggested by the Department were:
 - Limiting the length of a program to no more than 150 percent of the minimum number of hours required for training in the occupation for which the program prepares students (as established by the State where the institution is located or a Federal agency), or the minimum program length for training established by any State in the Census Region or Census Division of which the State where the institution offering the program is located, and any adjacent state not in that region.
 - Limiting the length of programs to no more than 150 percent of the minimum number of hours required for training in the occupation for which the program prepares students (as established by the State where the institution is located or a Federal agency), or the minimum number of hours required for training in the occupation for which the program prepares students in any State that is adjacent to the State in which the institution is located.
- One member proposed an alternative safeguard that would require an institution seeking an increase in program length to petition its accrediting body to do so. The institution would have to present a sound reason for seeking agency approval to extend a program's length to meet the needs of students wishing to seek employment in other states. There would have to be a specified cap of the state requirement where the students were wishing to seek employment. This cap should be determined based on data, in order to ensure it is sufficient to address the program and is not arbitrary. There was guarded support among some members for this proposal.
- One member of the subcommittee noted that the scope of this topic should be/should have been included in the Gainful Employment negotiated rulemaking.
- Overall, support for changes to the existing rule was lacking.

Most recent redline language (which has not been reviewed by the subcommittee) from the Department regarding the limitation on hours exceeding State minimum requirements for employment:

34 CFR 668.8 Eligible program:

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The [institution can demonstrate, in accordance with 34 CFR 668.14\(b\)\(26\) that the](#) number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency;

NOTE FOR NEGOTIATORS: The Department wishes to discuss how, outside of the 50% safe harbor, it can ensure adequate worker mobility without encouraging states to add or elevate licensure requirements or students and taxpayers to spend more than necessary to qualify for employment.

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in §668.414.

Changes to satisfactory academic progress (SAP)

- The Department's original position was to revise 34 CFR 668.34, simplifying SAP rules related to calculating pace for clock-hour programs, providing an additional option for establishing maximum timeframe, and clarifying the application of SAP for subscription-based programs.
- The Department proposed to remove the requirement to measure pace for non-term credit-hour programs and clock-hour programs. Since for these programs a student may not receive a subsequent disbursement of Title IV funds until successfully completing both the hours and weeks in a payment period, SAP rules related to pace are unnecessary.
- Institutions would be permitted to measure maximum timeframe for credit-hour programs in calendar time as well as in credit hours. Programs using measuring maximum timeframe in calendar time would be required to measure pace by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within maximum timeframe.
- Subscription-based programs would be required to measure maximum timeframe in calendar time and measure pace by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe.
- Subcommittee members were generally supportive of the Department's redline language and the reasons it offered for wanting to make changes to the existing regulations governing SAP. One member expressed the desire for more flexibility in applying SAP to subscription-based programs given that the Department's proposed disbursement changes for such programs already have a progression element. Although the degree of support varied among members, no direct opposition to the Department's position was expressed.

Most recent redline language from the Department regarding satisfactory academic progress:

34 CFR 668.34 Satisfactory academic progress:

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, *e.g.*, full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

~~(5)(4)~~ The policy specifies—

(i) for all programs, the maximum timeframe as defined in paragraph (b) of this section; and

(ii) for a credit hour program using standard or nonstandard terms, the pace, measured at each evaluation, at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and calculated by--:

(ii) An institution calculates the pace at which the student is progressing by (A) In a program that is not a subscription-based program, either dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted; or by determining the number of hours that the student should have completed at the evaluation point in

[order to complete the program within the maximum timeframe.](#) In making this calculation, the institution is not required to include remedial courses; [and](#)

[\(B\) In a subscription-based program, by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe.](#)

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

(b) *Definitions.* The following definitions apply to the terms used in this section:

Maximum timeframe. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours [or expressed in calendar time](#);

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

Changes to Written Arrangements to Provide Educational Programs

- The Department's original proposal was to revise 668.5 to permit institutions to enter into written arrangements with unaffiliated entities to provide up to 100% of an educational program, requiring accreditor approval for arrangements in excess of 25 percent of a program. Currently, such arrangements are capped at 50 percent and require accreditor approval above 25 percent.
- There was not widespread support for the proposal during the first session. Many Subcommittee members expressed that they did not believe arrangements above 50 percent were necessary, given that half a program is already a significant amount to be offered by someone other than the institution. One subcommittee member asked ED to provide data on how many institutions utilize the existing 50% authorization to inform further discussion on the proposal.
- The Department's new proposal (which the subcommittee has not yet discussed) would set the limit for written arrangements at 75 percent, because many accreditors have policies requiring that at least 25 percent of a program be earned at the institution awarding the credential; and would require accreditors approve any arrangements in excess of 50 percent. The new proposal also removes the existing regulatory language preventing arrangements between an eligible institution and an ineligible institution or organization owned or controlled by the same individual, partnership, or corporation for arrangements below 50 percent of a program.

Proposed definition of “distance education” – February 2019

Submitted by subcommittee members Jillian Klein and Leah Matthews with input from Russ Poulin.

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. ~~The technologies may include –~~

- (1) The technologies that may be used to deliver distance education include –
 - (i) The internet;
 - (ii) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
 - (iii) Audio conferencing; or
 - (iv) Video cassettes, DVDs, and CD- ROMs, if the cassettes, DVDs, or CD- ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.
- (2) “Regular” for the purposes of interaction is defined as being –
 - (i) initiated by the instructor, as defined in 600.2,
 - (ii) frequent in nature, as determined to be satisfactory by the institution’s accrediting agency, and
 - (iii) Covers the period of time prior to the student’s completion of all required assignments or demonstration of competency
- (3) Substantive interaction shall be considered to be the methods for teaching to and learning by the student while enrolled, as determined to satisfy the institution’s accrediting agency.

600.2

Instructor: An instructor can include one or more persons employed by the institution, making up an instructional team, so long as this team includes at least one faculty member, as defined by the criteria established by the institution’s accrediting agency, who must be among those who regularly and substantively interacts with the student.

State authorization for distance education proposed changes – February 2019
Submitted by subcommittee member Russ Poulin.

The proposed changes to the state authorization for distance education regulations (§600.2, §600.9, and §668.50) were developed by Cheryl Dowd, Dan Silverman, and Russ Poulin of WCET.

Our thoughts guiding our proposals:

- The protection of students and of Title IV financial aid expenditures are primary concerns to be addressed.
- We sought to make language conform with state regulations and with institutional practice, where possible.
- We used the 2016 language as a base.
- There are two types of institution-wide state approvals: 1) those obtained directly by the state, if any, and 2) those obtained through a reciprocity agreement. We tried to more clearly delineate the two and use parallel wording and structure in subsequent sections when compliance requirements differed based on the type of approval obtained by an institution.
- There was some confusion regarding the 2016 language regarding reporting requirements for complaints. We wanted to assure that the student receives notification of the processes they will use and not receive notices for processes for which they will not receive help. For example, students in a state may have different refund policies depending on the institutional approval. The student should receive the information appropriate for them.
- We tried to simplify language.
- In the comment boxes, we explain our reasoning.

§600.2 Definitions.

State authorization reciprocity agreement[±]: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students ~~located~~residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

[±]This definition was added to section 600.2 by 81 FR 92232 on 12/16/2016. The effective date of those regulations has been delayed until July 1, 2020. We propose to delete this definition.

§600.9 State authorization.

(a)(1) An institution described under §§600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section.

(i)(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

(i) The Federal Government; or

(ii) As defined in 25 U.S.C. 1802(2), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that—
publicly identifies itself as having, in part or in whole, a religious mission, or that maintains an institutional religious affiliation.

(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and

~~(ii) Awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.~~

Comment [RP3]: These changes were proposed by the Department and are outside the scope of the Subcommittee.

(c) 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.

(Authority: 20 U.S.C. 1001 and 1002)

[75 FR 66946, Oct. 29, 2010]

600.9 State authorization²

~~(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students located residing in a State in which the institution is not physically located domiciled or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, for each State in which a student is located, the institution must, upon request, document to the Secretary that the institution either:~~

Comment [RP4]: State consumer protection laws are based upon the location of the student when receiving instruction and not the student's state of residence (where they pay taxes, have a driver's license, etc.). It's a subtle but important difference.

~~(i) Meets direct compliance requirements, if any, of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State's approval to the Secretary; or~~

For example, say that I am an active duty military person with Colorado residence who is stationed in Texas while taking online courses from an institution in New Hampshire. Asking the student to complain to Colorado will be frustrating for the student as it has no jurisdiction.

~~(ii) Meets reciprocity requirements if an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a member of a State authorization reciprocity agreement, and the institution is covered by approved by its State to participate in such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.~~

Comment [RP5]: We defined the two types of institutional approvals here in two bullets. When the requirements for an institution differ by the type of approval in subsequent language, we mirror the language and format of this section. That should make it easier for institutional personnel to understand.

~~(2) Location of a student is initially determined at the time of enrollment in an academic program, consistent with other determinations of student eligibility, it must also be reevaluated each time an institution makes a new award to a student.~~

Comment [CD6]: These suggestions make clear that States are "members" of the state authorization reciprocity agreement and institutions "participate." Also suggest avoidance of the word "covered."

~~(3) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students located~~

Comment [RP7]: This language is taken from a Dear Colleague letter issued by the Department in March of 2011.

²Section 600.9 was revised through the publication of 81 FR 92232 on 12/19/2016. The effective date of section 600.9(c) has been delayed until July 1, 2020. We propose to delete this language.

<https://ifap.ed.gov/dpclatters/attachments/GEN1105.pdf> (See question 20)

residing in a State in which the institution is not domiciled physically located, for the institution to be considered legally authorized in that State, the institution must document that there is a State process for review and appropriate action on complaints from any of those enrolled students concerning the institution—

(i) In each State where the institution met direct compliance requirements, in which the institution's enrolled students are located, if that state has a complaint process reside; or

(ii) In each State where the institution met reciprocity compliance requirements, through a State authorization reciprocity agreement which designates for this purpose either the State in which the institution's enrolled students are located reside or the State in which the institution's main campus is located.

(d)² An additional location or branch campus of an institution that meets the requirements under paragraph (a)(1) of this section and that is located in a foreign country, i.e., not in a State, must comply with §§ 600.8, 600.10, 600.20, and 600.32, and the following requirements:

(1) For any additional location at which 50 percent or more of an educational program (as defined in § 600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the foreign governmental authority is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with §§ 602.24(a) and 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

Comment [RP8]: Institutions should be able to document the complaint process in states in which their students are located. However, some states (e.g., California) have no oversight or complaint process for public or non-profit institutions offering distance courses from out-of-state. Efforts to get California to create a complaint process has been fruitless.

²Section 600.9(d) was effective July 1, 2018. We propose to retain this language.

(2) An additional location at which less than 50 percent of an educational program (as defined in § 600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses the information regarding the student complaint process described in 34 CFR 668.433(b), of the State in which the main campus of the institution is located.

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

§668.50 Institutional disclosures for distance or correspondence programs.

(a) *General.* In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9 (a)(1) or (b) that offers ~~a~~ 50 percent or more of an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) *Public disclosures.* An institution described under 34 CFR 600.9(a)(1) that offers ~~a~~ 50 percent or more of an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(~~i~~) Whether the institution is met direct compliance requirements or authorized by each State met reciprocity compliance requirements in each State in which enrolled students are or will be enrolled in reside to provide the program;

~~(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2, to provide the program; and~~

~~(iii) A general explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;~~

(2)(~~i~~) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b), and

~~(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9 (c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;~~

(3) A description of the process for submitting consumer complaints in each State in which the program's current or prospective enrolled students are located, including: reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

(i) If the institution met direct compliance requirements, the complaint process of the State where the student is located.

(ii) If the institution met reciprocity compliance requirements, the complaint process required by the State authorization reciprocity agreement in which the State or institution are located, of which the State is a member.

Comment [RP9]: The suggestion to move to "50 percent or more of an educational program" was rooted in a concern that "solely" was ill-defined and could easily be circumvented to avoid compliance.

The "50 percent" is suggested because:

- 50% of a program is the threshold used to define an "additional location."
- If an institution begins to offer 50% or more of its program at a distance, then most (all?) accrediting agencies seek a review of the program.
- We would be protecting student who are receiving the bulk of their instruction at a distance or via correspondence.

One problem is that 50% is hard to define, but since it is already in use other places, there are lessons that can be learned from those cases.

Many states actually cover ANY activity in a state whether it is related to distance education or not. NC-SARA affects distance education and a limited amount of face-to-face activity.

Comment [RP10]: This was an ill-defined requirement. There are a very large number of permutations of the consequences depending on variations in student activity and state regulations. If the institution does not cover the particular permutation for a given student, is it at risk?

Does adding the word "general" still allow for informing students that there are consequences, but relieves the institution of specific consequences?

Comment [RP11]: We are in agreement for the notice for complaint processes, but tried to simplify the language in the next section.

(4) Any adverse actions taken by a State entity ~~has initiated~~, and the years in which such actions were initiated, related to postsecondary education programs for which 50 percent or more of the program was offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

Comment [RP12]: "Taken" typically means that there is a finding against an institution. "Initiated" means that the review is just beginning. We're suggesting that only "taken" actions be listed.

(5) Any adverse actions taken by an accrediting agency ~~has initiated~~, and the years in which such actions were initiated, related to postsecondary education programs ~~offered solely through~~ that could be 50% completed through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

Comment [RP13]: Is five years too many?

(6) Any adverse actions taken by a State authorization reciprocity agreement in which the institution participates, and the years in which such actions were initiated, related to postsecondary education programs that could be 50% completed through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

Comment [CD14]: Rationale: Since participation in a reciprocity agreement can be used to demonstrate compliance, any significant adverse action by such an entity is relevant, too.

(67) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees as required by the State or State authorization reciprocity agreement or for the State in which enrolled students are located; and

Comment [RP15]: There was considerable disagreement among state authorization professionals about the meaning of this section. We tried to clarify it.

(78)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

The intent is that the student receives the notification of the refund policy that applies to him or her. Some interpreted the original wording to require the institution to notify the student of all refund policies for the state or institution, whether it was applicable to the student or not. That would seem like a confusing disservice to the student.

(A) Each State in which the program's enrolled students are located ~~reside~~; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement ~~to that effect~~ as to the protocol used to determine whether the program satisfies applicable educational prerequisites and why the institution was not able to make a final determination.

(c) Individualized disclosures. (1) An institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that 50% or more is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—

(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet or cannot determine if the institution meets licensure or certification prerequisites in the State of the student's residence; and

(ii) To each enrolled and prospective student—

(A) Any adverse action taken ~~initiated~~ by a State, ~~or an~~ accrediting agency or State authorization reciprocity agreement related to postsecondary education programs offered by the institution solely for which 50 percent or more of the educational program is provided through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

State authorization for distance education proposed language – February 2019
Submitted by subcommittee members Carolyn Fast and Sue Huppert.

(1) The Department should retain the Department’s 2016 regulatory language defining state authorization reciprocity agreements.

In 2016, the Department issued a regulation that defined “state authorization reciprocity agreement” in Part 600.2 to require that such agreements permit member states to enforce all state consumer protection laws, including education-specific consumer protection laws, against member schools operating in their states. The Department should retain this language, which would ensure that online students have the same protections as students enrolled at traditional brick-and-mortar schools.

(2) The Department should add language to the “state authorization reciprocity agreement” definition that ensures that reciprocity agreements are governed and controlled by member states.

The National Council on State Authorization Reciprocity Agreements (“NC-SARA”), has grown to include 49 member states. NC-SARA is administered by a non-state entity which is governed by a board that includes few state regulators, yet has ultimate authority for establishing NC-SARA policies. While states can choose to withdraw from the agreement, states have little direct control over NC-SARA policy. State “portal agencies,” the agencies that administer NC-SARA in member states, hold only a few positions on the governing board. There are also no representatives of state consumer-protection agencies, such as state attorneys general offices, and no representatives of nonprofits that serve consumer or student interests, on the governing board. The Department should add language to Part 600.2 that ensures that state authorization reciprocity agreements are governed and controlled by member states.

Proposed language:

The Department should retain the language added to Part 600.2 in 2016 (in italics below) and add a provision on state governance and control (in italics and bolded below):

State authorization reciprocity agreement:

*(a) An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence course to students residing in other States covered by the agreement **that (1) does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions; and (2) is governed and controlled by member states.***

(b) State authorization reciprocity agreements comply with section (a)(2) where the agreement’s governing structure:

(1) allocates at least 50% of positions on its primary governing board to state higher education officials currently employed by a member state higher education agency; and

(2) allocates at least one position on its primary governing board to a representative of a member state attorney general's office or a representative of a non-profit organization representing the interests of consumers and/or students.