

**Date:** February 14, 2024  
**To:** U.S. Department of Education  
**From:** Scott Dolan, Alternate Negotiator, Private-Nonprofit Institutions of Higher Education  
**Re:** Issue Paper 2—State Authorization (Data Request)

In the January sessions, the Department raised concerns that reciprocity agreements, “...have shortcomings that fail to protect students and taxpayers and that reduce States’ oversight of institutions. Additionally, we are concerned that some States are deferring all, or nearly all, of their oversight responsibilities to other States and the governing bodies that oversee these agreements for approval of educational institutions. The Department’s concerns **are primarily related to two areas: complaints and governance.**

In the February sessions, the Department added the language “education-specific” to **§ 600.9 State authorization**, based on a proposal submitted by Carolyn Fast, representing Civil Rights Organizations and Consumer Advocates. The Department also asked negotiators to provide feedback on what defines an education-specific law? Despite a long discussion at the table, a clear definition of “education-specific” failed to emerge. And the Department provided no perspective on its own interpretations of “education-specific” making it difficult to negotiate. At the table, the below questions were asked. FMCS team members asked that the questions be submitted via chat or formal proposal. This is a formal data request for the questions raised during the session.

#### **Data Request**

We are asking for the Department to provide additional data, research and/or clarification regarding the following:

1. Please define what is meant by an education-specific law?
2. In introducing the conversation about education-specific laws, what issues or problems is the department trying to address?
3. How are these issues and concerns different than the Department’s original concerns, which focused on “complaints and governance”?
4. For the issues/problems identified by the Department, what evidence or data can the department provide about the scale and scope of the issues?
5. How will the introduction of education-specific language help to resolve these issues and in what ways? What is the department’s ultimate rationale for how this will fix the most pressing issues?
6. Given the concerns raised by other constituencies about enforcement across state lines, will the new regulations actually work to the desired end?
7. Would the Department’s proposed language disallow SARA’s current policy that prevents states from enforcing education-specific authorization requirements on out-of-state institutions?
8. Where, specifically, in the Higher Education Act does the department derive regulatory authority over state authorization?