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To: Department of Education and Negotiation Committee Members
Date: February 14, 2024
Re: Session Two Proposals on State Authorization and Reciprocity Agreements

This memorandum is provided in response to the discussion question posed by the Department of Education in Issue Paper 2: State Authorization, Session 2, which asked: “Additionally, we are interested in feedback on how regulations can better distinguish between State authorization requirements for approval and renewal and those related to State oversight.”

Federal regulations could recognize institutional participation in a compliant reciprocity agreement as state authorization in participating states where the size of an institution’s enrollment is below a student enrollment threshold in the state beyond which it would be required to obtain direct authorization. This would relieve institutions that provide distance education in multiple states from the administrative and financial burdens of seeking direct authorization in every state in which it may have only a small footprint. As an additional benefit, participating institutions would also be exempted from strictly academic (*i.e.*, non-licensure-related) state requirements through reciprocity authorization.

Federal regulations could then require all out-of-state institutions authorized through a compliant reciprocity agreement to comply with all state oversight requirements for continuing their operation in each state. These would consist of state requirements applicable to institutions providing education in the state, such as surety bonds, requirements on advertising, recruitment, student disclosures, records and record retention, refunds and tuition recovery funds, and all state consumer protection laws. This would level the playing field between in-state and out-of-state providers, ensuring that out-of-state providers are not given an unfair regulatory advantage relative to in-state providers. This is all the more important given the greater risk of predatory conduct in online transactions.

Another concern with state authorization reciprocity agreements is that they siphon off funding that would otherwise be paid as fees to support state regulators via direct authorization. To address this issue and ensure that state regulators have adequate capacity to meet their oversight responsibilities over Title IV institutions, federal regulations should require that reciprocity agreements impose an adequate fee on participating institutions. The fee would consist of two components: a fee retained by the reciprocity organization for competent administration of the terms of its agreement, and a state regulatory fee based on the total number of students enrolled in each institution’s distance education programs in all participating states under the agreement. The state regulatory fee would be distributed to state regulators in participating states based on

their share of students enrolled in participating out-of-state institutions through the reciprocity agreement. This would allow state regulators to carry out oversight with regard to participating out-of-state institutions providing distance education in their state. The state regulatory fee on each institution should be commensurable with average fees charged by participating states on an institution with an enrollment equal to the enrollment of each institution's entire out-of-state enrollments it secures through the reciprocity agreement.