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STATE HIGHER EDUCATION EXECUTIVE OFFICERS ASSOCIATION

## **CAPACITY TO PROTECT: A SURVEY OF STATE AUTHORIZATION AGENCIES AND OFFICES**

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JULY 2021



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## ACKNOWLEDGEMENTS

The author would like to thank David Tandberg, Dustin Weeden, Jason Lee, Annahita Jimmerson, and Gloria Auer from the State Higher Education Executive Officers Association (SHEEO) and Lori Williams from the National Council for State Authorization Reciprocity Agreements (NC-SARA) for their thoughtful comments on earlier versions of this paper.

This paper is based on research funded by Lumina Foundation. The findings, conclusions, and any errors contained within are the sole responsibility of the author.

## AUTHOR BIOGRAPHY

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## ABSTRACT

In the regulation of higher education in the United States, there are three key players: the United States Department of Education, accrediting agencies, and the states—collectively known as the regulatory triad. States play the important role of authorizer—the consumer protection leg of the triad. In 2019, the State Higher Education Executive Officers Association (SHEEO) published a paper with recommendations for improving state authorization. To expand on that work and better understand the authorization capacity landscape, SHEEO conducted a survey of state authorization offices regarding their funding, staffing, and responsibilities in 2020. The results of the survey indicate wide variation in the capacity of these offices. This paper examines the capacity of state authorization offices to do the work they are tasked with: protecting students from unscrupulous actors and ensuring a baseline level of educational quality.

*Keywords: state authorization, consumer protection, regulatory triad*

# CAPACITY TO PROTECT: A SURVEY OF STATE AUTHORIZATION AGENCIES AND OFFICES

In the regulation of higher education in the United States, there are three key players, collectively known as the regulatory triad: the United States Department of Education, which regulates through fiscal authority under Title IV of the Higher Education Act; accrediting agencies, which are tasked with ensuring academic quality; and the states themselves. In the regulatory triad, states play the important role of authorizer—the consumer protection leg of the triad. As higher education faces increasing scrutiny about the value of a college degree, the quality of the education provided, and increasing numbers of defrauded students seeking student loan forgiveness, consumer protection in higher education is as important as it has ever been.

In a 2019 white paper, the State Higher Education Executive Officers Association (SHEEO) explored the role of the state in the regulatory triad and the state authorization process (Tandberg et al., 2019). One of the recommendations made to help states improve their authorization processes was to increase capacity in authorization offices. To better understand the authorization capacity landscape, SHEEO conducted a survey of state authorization offices regarding their funding, staffing, and responsibilities. The results of the survey indicate wide variation in the capacity of authorization offices across the country. This paper takes a closer look at the capacity of state authorization agencies and offices to do the important work they are tasked with, namely, protecting students from unscrupulous actors and ensuring a baseline level of educational quality.

## LITERATURE REVIEW

Until recently, much of the attention on the regulatory triad has been on the U.S. Department of Education and accrediting agencies, with accreditors taking the brunt of the blame when something goes wrong (Kreighbaum, 2020; Miller, 2017; Murakami, 2020; Quintana & Conlon, 2020; Schwartz, 2020). It took until the late 2000s for the United States Department of Education to take significant action on state authorization. The 2010 amendments to the Higher Education Act included language specific to state authorization and distance learning for the first time. Under those amendments, the Department of Education sought to strengthen distance learning regulation by dictating that an institution is only authorized if the state has authorized that specific institution by name and if the state has a process for reviewing and acting on complaints. Though the courts rejected the amendments in 2012, many states reviewed and updated their policy language regarding providers of distance learning not physically based within state borders (Ozdemir & McDaniel, 2013). In 2020, after several rounds of the rulemaking process, federal regulatory language for state authorization was codified in Title 34, Chapter VI § 600.9.

In 2012, in response to the Department of Education's work bringing focus to state authorization and distance learning, representatives from SHEEO and the American Association of Public and Land-grant Universities convened the Commission on Regulation of Postsecondary Distance Education in order to provide recommendations related to state authorization and distance learning. The recommendations ultimately lead to the creation of the State Authorization Reciprocity Agreements (SARA).<sup>1</sup> Proponents of SARA argued that states and institutions should opt to participate, asserting that the existing process was incapable of ensuring consistent consumer protection and that SARA would make the process more "efficient, effective, and uniform," reducing costs for states (Longanecker & Hill, 2014).

Multiple authors in recent years have gone on to outline how to improve state authorization processes, the importance of state authorization in consumer protection, and why increasing participation in SARA is beneficial for states, institutions, and students (Bruckner, 2020; Harnisch et al., 2016; Onwuameze, 2017; Perry & Cochrane, 2018; Tandberg et al., 2019). However, despite the litany of recommendations made for improvement and the noted importance of the authorization process, the literature has yet to take a closer look at the capacity of state authorization agencies and offices to actually do the important work they are tasked with.

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1. State authorization reciprocity agreements are voluntary agreements among states, districts, and territories to meet national standards for interstate distance secondary education. Participating institutions pay an annual fee, determined by enrollments, to gain approval to offer distance education in member states without having to go through each individual state's authorization process.

## DATA AND METHODOLOGY

### THE SURVEY

In March 2020, to better understand the authorization capacity landscape, SHEEO conducted an online survey of state authorization offices regarding their funding, staffing, and responsibilities. The questions specific to the capacity of the agency or office requested information on the staffing (full-time equivalent staff counts), office operating budget, and total number of institutions authorized, with separate questions for those authorized for distance education and those with a physical (or brick-and-mortar) presence in the state. The survey consisted of a variety of questions in different formats, though most also allowed for open-ended, clarifying responses. In addition to agency and office names, respondents were asked to identify the types of institutions and providers they authorize.

### SAMPLING METHOD

The target population of this study was state authorization agencies and offices. SHEEO maintains a list of authorization contacts that served as the sample for the survey. This list is comprised of 157 individuals representing 47 states and the District of Columbia. States missing from the invited sample include Maine, Michigan, and Vermont. Invitations to participate in the survey were sent via email with a link to participate in an online survey. A reminder email was sent to all those invited one week following the initial invitation. Additional follow-up communication was sent to those invited who had not completed responses following the first invitation or who had submitted multiple, conflicting responses. Survey collection lasted three months.

### DATA

Sixty-one offices representing 47 states received the survey, with 44 offices representing 37 states, including the District of Columbia, responding to the survey, resulting in a 72% response rate. Those items requesting information about types of institutions authorized and office staffing had the highest response rates at 100% and 96%, respectively. The item response rate for questions about budget was 80%. Questions about the number of institutions authorized had the lowest response rates at 74%.

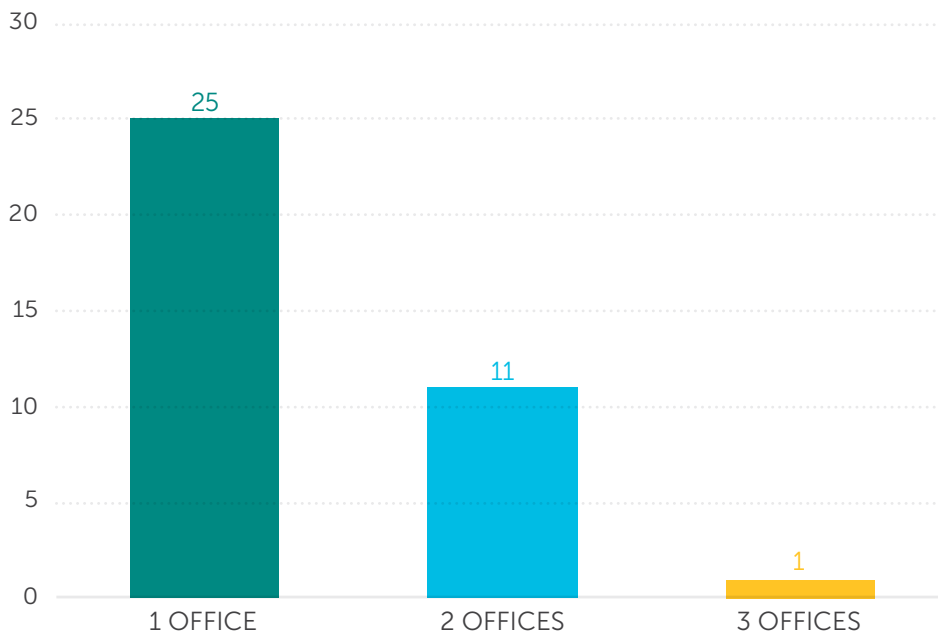
There were eight cases of multiple individuals representing the same office responding, resulting in conflicting responses. These offices were sent the conflicting responses via email and asked to resolve those conflicts and respond with a corrected survey via email or through the original survey link. Likewise, those offices that submitted incomplete responses received follow-up communication asking them to submit an updated, completed response. Despite follow-up attempts, 14 surveys (28%) remained incomplete. Following collection, the data were cleaned and verified through websites and publicly available data.

## RESULTS & DISCUSSION

### AUTHORIZING AGENCIES

In seven of the states that responded, authorization duties are split between multiple offices or agencies. In Colorado, for example, authorization duties are split three ways within the Colorado Department of Higher Education: all in-state public institutions are managed by the Office of Academic Affairs; all private, degree-granting institutions (and out-of-state public institutions) are managed by the Office of Private Postsecondary Education; and all private, non-degree-granting institutions are managed by the Division of Private Occupational Schools. While, in most of the responding states, authorizing duties are primarily housed in the higher education agency, Hawai'i's authorizing agency is the Department of Commerce and Consumer Affairs. In Utah and South Dakota, the higher education agency is responsible for authorizing through SARA, while other agencies—the Department of Commerce–Division of Consumer Protection and the Secretary of State, respectively—are responsible for all other authorizations. *Figure 1* illustrates the number of offices tasked with authorization duties.

**FIGURE 1**  
**NUMBER OF AUTHORIZING OFFICES PER STATE<sup>2</sup>**



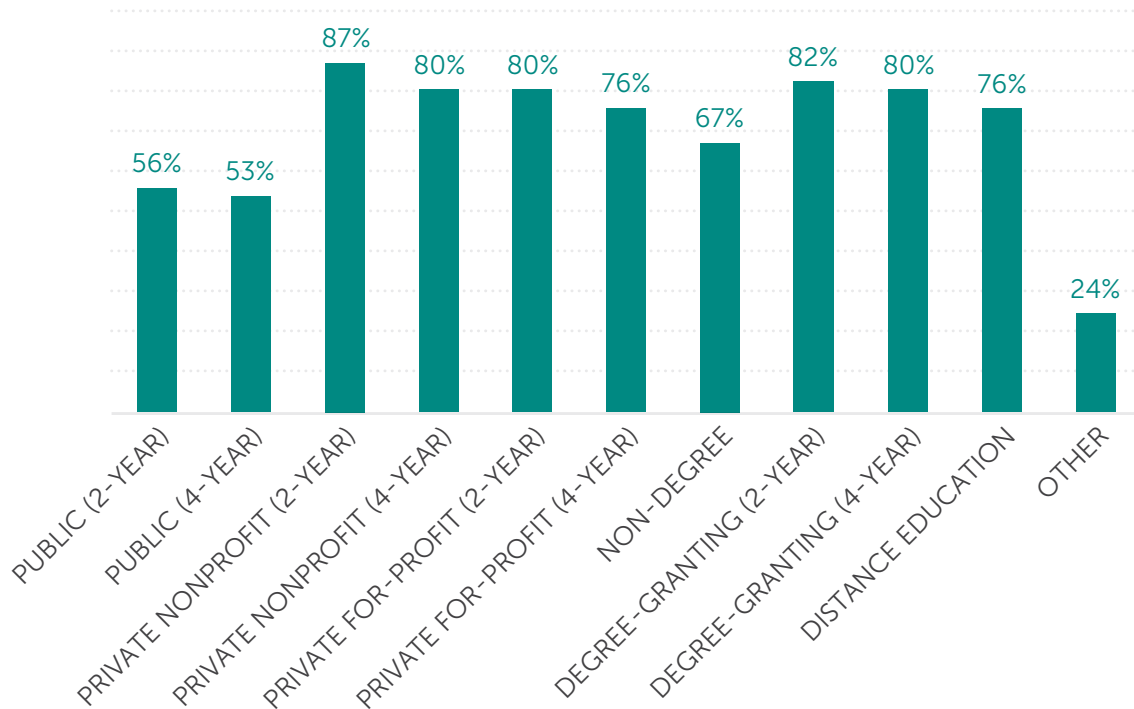
2. Survey items 1-3 (see *Appendix*).



## INSTITUTIONS/PROVIDERS AUTHORIZED

Eighty percent of the offices represented by survey respondents authorize private, nonprofit, four-year institutions; private, for-profit, two-year institutions; and four-year, degree-granting institutions.<sup>3</sup> Eighty-seven percent are responsible for authorizing private, nonprofit, two-year institutions, and 82% authorize two-year, degree-granting institutions. Seventy-six percent of respondents work in offices that authorize those providers seeking to offer some form of distance education within the state. Conversely, just over half of respondents represented offices that authorize public institutions, as illustrated by *Figure 2*. As noted by multiple respondents, this is because in-state public institutions are created through statute or within state constitutions and do not require authorization through the same processes as other institutions. Additionally, respondents tended to identify out-of-state public institutions in the distance education category, interpreting it as distinct from the other public institution categories. Most of these authorizations were provided through SARA.

**FIGURE 2**  
**TYPES OF INSTITUTIONS/PROVIDERS AUTHORIZED<sup>4</sup>**



While the types of institutions authorized by respondents were largely consistent, the number of authorized institutions—those triggering physical presence (brick-and-mortar), those authorized only for distance education (non-SARA), and total (encompassing both distance and brick-and-mortar)—varied greatly between states, as illustrated in *Table 1*. Brick-and-mortar authorizations

3. If there are multiple offices responsible for authorization duties in a state, individual offices may report that they do not authorize specific types of institutions because another office in the state does. These results report authorizations from individual offices not entire states.

4. Survey items 4-5 (see *Appendix*).

range from as low as none (citing statutory exemptions) to as many as 967, with a mean of 130 and the median number of authorized institutions coming in at 52.

Across the board, non-SARA participating out-of-state institutions offering distance education represented the lowest proportion of authorized institutions for responding offices (mean 42.3; median 17.5). In the case of Florida, there is no statutory difference between an out-of-state institution with a physical presence and an out-of-state institution offering only distance education, so all out-of-state institutions are treated as if they have a physical presence. In other agencies, only those out-of-state institutions authorized through SARA are authorized through the responding office. Of note, three respondents explained that their states did not regulate online-only distance education (those not triggering physical presence) from out-of-state institutions at the time of collection, though Virginia passed legislation to address this during the 2020 legislative session (Postsecondary Schools; Distance Learning, Certification and Reciprocity, Effective Date, 2020).

**TABLE 1**  
**NUMBER OF INSTITUTIONS AUTHORIZED<sup>5</sup>**

INSTITUTIONS	RANGE	MEAN	MEDIAN
Total	14-967	203.6	137
Brick-and-Mortar	0-967	130	52
Distance Only (non-SARA)	0-684	42.3	17.5

The total number of institutions authorized by responding offices range from as few as 14 to as many as 967. Those offices and agencies on the lower end of the spectrum noted that they are only responsible for authorization through SARA with another office or agency in their state handling the rest of the authorizations. Even those offices and agencies authorizing large numbers of institutions note that the institutions they oversee are largely private, for-profit, non-degree-granting, and/or out-of-state, again noting that the in-state public institutions are authorized by a provision of the state constitution or statute.

## STAFFING

Similar to the number of institutions authorized by respondents, the number of employees who have some or all of their time dedicated to the work of authorization varies greatly between offices, as illustrated in *Table 2*. Survey responses indicated that the median number of employees engaged in authorization work across agencies is three, while four offices dedicate less than one full-time equivalent staff member solely to authorization work, and three offices reported employing more than 25 employees dedicated in some part to the agency’s authorizing capacity. Other than at 10 offices operating exclusively as authorizing offices, respondents indicated that most employees whose jobs included authorization work did so in addition to other job duties, with one respondent noting, “Not all six FTE staff are deployed only for state authorization-related work. The percentage of time dedicated [to] authorization varies based on the individual employee’s functions.” Of note, five respondents employ retirees in various capacities throughout the authorization process.

5. Survey items 25-30 (see *Appendix*).

The distribution of staff between the four main authorization tasks (legal analysis, academic analysis, financial analysis, and investigative tasks including site visits and complaints) highlights the focus of each authorizing office. Legal analysis was the task least likely to have dedicated, in-house FTE staff (median 0.3) solely dedicated to authorization work, with many offices outsourcing legal tasks to the state’s attorney general’s office or contracted private law firms. In-house legal analysis, when available, was primarily conducted by agency legal counsel. Academic analysis was the authorization task with the highest median number of FTE staff at 1.5 (mean 2.83), while investigative tasks had a median FTE of 1 (mean 3). Despite increasing concerns about the financial viability of institutions across the country, fiscal analysis also had a median FTE staff count of 1 (mean 2.29). Only five agencies employed 10 or more FTE staff in any one authorization task. If all institutions authorized by an office were divided equally among FTE authorization staff, the median number of institutions per FTE would be 42 (mean 74). While individual staff members in one agency would have caseloads as manageable as seven institutions, staff at another agency would be responsible for as many as 834.

**TABLE 2**  
**FTE DEDICATED TO AUTHORIZATION TASKS<sup>6</sup>**

AUTHORIZATION TASK	RANGE	MEAN	MEDIAN
Legal Analysis			
Internal FTE	0-3	0.62	0.3
External FTE	0-3	0.58	0.25
Academic Analysis			
Internal FTE	0-21	2.83	1.5
External FTE	0-1	0.03	0
Financial Analysis			
Internal FTE	0-21	2.3	1
External FTE	0-21	0.55	0
Investigative/Field Staff			
Internal FTE	0-38	3	1
External FTE	0-2	0.11	0
Institutions Authorized per FTE <sup>7</sup>	7-834	74	42

## BUDGET

The budgets of state authorization offices vary widely across states, with reported authorization budgets as low as \$7,200, where authorization duties fall among the list of many duties assigned to a single staff person, and as high as \$4.3 million in an office with a staff of 33 FTE. The median reported budget size dedicated to authorization duties for all respondents came to \$525,005.

6. Survey items 6-19 (see *Appendix*).

7. Total institutions authorized divided by total FTE staff in authorization office.

The wide variation in budgets can likely be attributed to the fact that the majority of respondents are largely dependent on institutional authorization fees for the main source of funding for authorization operations. Nineteen of respondents' authorization budgets are funded solely by fees, with an additional seven having more than 60% of their budget funded by fees. Twenty-two of the offices that responded to the survey are left to the work of institutional authorization with zero financial investment from their state government with nineteen of those offices wholly reliant on fees, two dependent on a combination of fees and other sources, and one funded exclusively with funds from other sources. Only seven agencies reported receiving the entirety of their authorization budget in the form of state appropriations.

The dependence on fees also leads to budget uncertainties as applications and reauthorization requests can vary from year to year. Two respondents mentioned operating at a fee deficit forcing them to dip into agency reserve funds to maintain staffing which was still lower than what they would consider full staffing. One respondent noted:

“The unit has a revenue shortfall (fee deficit) and is only able to maintain current staffing due to a surplus of funds in a special revenue account (reserves). Our funding currently only covers for two staff people, but our resources are strained. We need four people [to] be at minimum staffing.”

At the state level, the median authorization operating budget per institution authorized was \$3,636 (mean \$5,313). If one were to consider the operating budgets of authorization offices as a percentage of the total state support for higher education, authorizing duties would average 0.16% of the total state higher education budget (median 0.04%). It would comprise more than 1% of budgets in two states.

**TABLE 3**  
**AUTHORIZATION OPERATING BUDGET**

BUDGET	RANGE	MEAN	MEDIAN
Total Authorization Operating Budget <sup>8</sup>	\$7,200-\$4,309,271	\$793,879	\$525,005
Operating Budget per Institution <sup>9</sup>	\$92-\$26,721	\$5,313	\$3,636
Authorization Budget as a Percentage of Total State Support for Higher Education <sup>10</sup>	0.0009%-1.89%	0.16%	0.04%

## LIMITATIONS

Though this is the first attempt to quantify the capacity of state authorization offices, a few limitations should be noted. The initial invitation to participate in the survey was sent shortly after the first cases of COVID-19 were detected in the United States, when agency priorities shifted dramatically into crisis management mode. Additionally, in some states that noted multiple offices responsible for authorization duties, responses were received from only one of those offices. These factors led to an incomplete picture of the state authorization agency landscape.

8. Survey item 21 (see *Appendix*).

9. Total authorization operating budget divided by total number of institutions authorized.

10. Total authorization operating budget divided by total state support as reported in the SHEEO State Higher Education Finance report (SHEF FY2019).

## CONCLUSION

As more attention is paid to consumer protection in higher education, it is vital that the states' role as authorizer receives more attention than it has in the past. While the U.S. Department of Education has the power to regulate certain funds sought by institutions and accrediting agencies are responsible for ensuring academic quality, it is states that have the original and final authority on whether an institution is permitted to operate within their borders. Authorizing agencies and offices are tasked with tremendous responsibility, and it is imperative that they are operating at a capacity that allows them to fully engage in the process. The results of this study indicate that these offices and agencies are understaffed, underfunded, and generally dependent on fees rather than state appropriations to operate. SHEEO (1991) previously recommended employing one FTE for every 25 institutions. Since that recommendation was made, postsecondary enrollments and the number of providers have increased, and with the rise and expansion of online education, the environment has grown more complex. If states are truly dedicated to protecting their citizens from unsavory characters in higher education and ensuring a baseline level of quality, they need to invest in the offices and agencies responsible for carrying out those duties.

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## APPENDIX

### SURVEY INSTRUMENT

1. State.
2. Agency name.
3. Office name.
4. Types of institutions/providers authorized (approved, licensed), select all that apply.
  - a. Public (2-year).
  - b. Public (4-year).
  - c. Private nonprofit (2-year).
  - d. Private nonprofit (4-year).
  - e. Private for-profit (2-year).
  - f. Private for-profit (4-year).
  - g. Non-degree.
  - h. Degree granting (2-year).
  - i. Degree granting (4-year).
  - j. Distance education.
  - k. Other (please explain).
5. Please provide any necessary context or explanation for question 4.
6. Total full-time equivalent (FTE) staff in the authorization office (number of staff within the agency who have all or a portion of their time officially assigned to the work of authorization).
7. Please provide any necessary context or explanation for question 6.
8. FTE staff outside the agency who support the work of the authorization office (those not included above).
9. Please provide any necessary context or explanation for question 8.
10. FTE staff within the office who conduct legal analysis.
11. FTE staff within the office who conduct academic analysis.
12. FTE staff within the office who conduct financial analysis.
13. FTE investigative/field staff within the office (those who conduct site visits, investigate complaints, etc.).
14. Please provide any necessary context or explanation, including whether your offices engage periodic temporary help (contractors, retirees, etc.) for specific cases or tasks (please explain).



15. FTE staff from outside the office who conduct legal analysis.
16. FTE staff from outside the office who conduct academic analysis.
17. FTE staff from outside the office who conduct financial analysis.
18. FTE investigative/field staff from outside the office (those who conduct site visits, investigate complaints, etc.).
19. Please provide any necessary context or explanation.
20. Total authorization office operating budget (resources dedicated for the authorization functions) (\$\$).
21. Please provide any necessary context or explanation for question 20.
22. What percentage share of the authorization office operating budget comes from (please have it add up to 100%).
  - a. Fees.
  - b. State appropriation.
  - c. Other (please explain in question 23).
23. Explain other from question 22.
24. Please provide any necessary context or explanation for question 22.
25. Total number of institutions/providers authorized by your office.
26. Please provide any necessary context or explanation for question 25.
27. Total number of in-state institutions/providers authorized by your office (brick-and-mortar institutions/providers physically located within your state).
28. Please provide any necessary context or explanation for question 27.
29. Total number of non-SARA participating out-of-state institutions authorized for distance education activity.
30. Please provide any necessary context or explanation for question 29.
31. Please provide any final comments on the capacity of your office.

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