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National Council for State Authorization Reciprocity Agreements (NC-SARA)
National Council Meeting ● November 1, 2018 ● 8:30 a.m. – 2:30 p.m. (Eastern Standard Time)
Memphis, TN ● The Peabody Memphis Hotel

AGENDA
Welcome and introductions — Paul E. Lingenfelter, Chair

Agenda Item I (ACTION): Approval of minutes of the May 3, 2018 meeting

Agenda Item II: Update on the progress of the SARA initiative
   a. Marshall A. Hill, NC-SARA
   b. Susan Heegaard, Midwestern Higher education Compact (MHEC)
   c. Michael Thomas, New England Board of Higher education (NEBHE)
   d. Stephen Pruitt, Southern Regional Education Board (SREB)
   e. David Longanecker, Western Interstate Commission for Higher Education (WICHE)

Agenda Item III (ACTION): Report and recommendations of the Executive Committee –
   Paul E. Lingenfelter, Chair
   a. NC-SARA FY 2018 audit
   b. Recommendations for election of Board members

Action Item IV: Finance Committee Report – Leroy Wade, Treasurer

Agenda Item V (ACTION): Additions and modifications to the SARA Manual
   a. Section 8: Responding to Questions and to Requests to Modify SARA Policies, Section 8.3, Significant Modifications
   b. Section 3: Institutions and Participation
      Section 3.2. Provisional status for SARA institutions
      Section 3.3. Provisional status of an institution between renewal periods

Agenda Item VI: SARA’s impact: Spring 2018 enrollment reports – Marshall A. Hill, Marianne Boeke
   a. Distance education enrollments reported in spring 2018
   b. Out-of-state learning placements reported in spring 2018

Agenda Item VII: Information Items – Marshall A. Hill, Mary Larson, Marianne Boeke
   a. U.S. Department of Education negotiated rulemaking
   b. Status of current year work
   c. NC-SARA convening of SARA states (Minneapolis, September 18-20)
   d. Staff activities and presentations, May-November 2018
   e. Dates and location of next meeting
      May 8-9, 2019, Westin Hotel, Denver International Airport

Agenda Item VIII: Executive session

Agenda Item IX: Questions, comments, reflections from council members

Adjourn (ACTION)
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NC-SARA AGENDA ITEM

Welcome and introductions — Paul E. Lingenfelter, Chair

Action Item:  ☐ Yes  ☑ No
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Agenda Item I: Approval of minutes of the May 3, 2018, meeting

Action Item:  ☑ Yes  ☐ No
MINUTES OF THE NC-SARA BOARD MEETING MAY 3, 2018
WESTIN DENVER INTERNATIONAL AIRPORT ● DENVER, COLORADO

NOTICE OF MEETING
Notice of the time and place of the NC-SARA Board Meeting was posted on the NC-SARA website and given to Board members, regional directors, Lumina Foundation, the Bill & Melinda Gates Foundation, and other interested parties.

An agenda is maintained in the NC-SARA office at 3005 Center Green Drive, Suite 130, Boulder, CO 80301; and online at www.nc-sara.org.

Welcome and introductions
Paul E. Lingenfelter, Chair

Board members in attendance:
Kathryn Dodge
Joe Garcia
Dianne Harrison
Larry Isaak
Paul Lingenfelter
Teresa Lubbers
Patricia O’Brien
Pamela Quinn
Kathleen Curry Santora
Paul Shiffman
Peter Smith
Michael Thomas
Larry Tremblay
Leroy Wade
Belle Wheelan

Board members in attendance by phone:
Leah Matthews
Michael C. Zola

Board members not in attendance:
Barbara Ballard
Chris Bustamante
M. Peter McPherson
George E. Ross
David S. Spence

NC-SARA staff present:
Marianne Boeke
Victoria Brieske
Alan Contreras (consultant)
Marshall A. Hill
Mary Larson
Holly Martinez
Jennifer Shanika
Shannon Walker

Regional Compact SARA directors and staff present:
Wanda Barker, SREB SARA
Kris Biesinger, SREB SARA
Emily Jacobson, MHEC SARA
Elisa Jaden, SREB SARA
John Lopez, WICHE SARA
Rachel Stachowiak, NEBHE SARA

Guests:
Cheryl Comstock,
Aims Community College
Heather DeLange,
Colorado Department of Higher Education
Agenda Item I (ACTION): Approve minutes of November 3, 2017, NC-SARA Meeting
Larry Isaak — moved
Michael Thomas — seconded
Approved unanimously.

Agenda Item II: Update on progress of the SARA initiative
Marshall Hill, National Council for State Authorization Reciprocity Agreements Update Marshall Hill reported that 48 states, the District of Columbia, and the U.S. Virgin Islands are now members of SARA. Almost 1,800 institutions participate, with institutional renewal rates above 99 percent. He noted that the agenda materials provide information on institutional characteristics, breaking down participation by institutional enrollment and sector.

He stated his opinion that most institutions with activities outside their own state now realize the benefits of participating in SARA, and that institutions that do not meet SARA requirements are increasingly pressing for SARA to lower its requirements. As for SARA institutions, many are eager for SARA to cover more and more of their out-of-state activities, such as professional licensure reciprocity, which would be an extremely challenging expansion of mission. He said he did not support either lowering requirements or unmanageable expansions of mission.

Larry Isaak, Midwestern Higher Education Compact Update
Larry Isaak and Emily Jacobsen provided the MHEC update, noting that all MHEC states are now members of SARA. The MHEC SARA Steering Committee and the MHEC region SARA Portal Entity staff are active in the initiative.

Michael Thomas, New England Board of Higher Education Update
Michael Thomas reported that all states in the NEBHE region, except Massachusetts, have now joined SARA; though some issues have yet to be resolved, Massachusetts’ application is anticipated within the next few months. He reported that Sandy Doran, who has directed SARA efforts in the region for the past several years, has accepted a position as interim president of Salem Academy and College, located in North Carolina, and will be leaving NEBHE by June.

Wanda Barker for Dave Spence, Southern Regional Education Board Update
Wanda Barker reported in place of Dave Spence, who was unable to attend. All SREB states are now members of SARA. In addition, Pennsylvania, the District of Columbia and the U.S. Virgin Islands have affiliated with SREB to enable their participation in SARA; all are now SARA members. Puerto Rico has also affiliated with SREB for SARA purposes, and its application for membership in SARA will be reviewed by the SREB SARA Regional Steering Committee in early June.

Joe Garcia, Western Interstate Commission for Higher Education Update
Joe Garcia reported that most of WICHE’s 17 members are members of SARA. (North Dakota, a member of both WICHE and MHEC, is a member of SARA through MHEC.) Two remaining WICHE members – the Northern Mariana Islands and Guam – have discussed pursuing SARA membership, but their relatively modest distance education engagement with other SARA states does not at this time justify membership. Discussions about SARA membership continue in California.
Following the national and regional reports, Paul Lingenfelter led a discussion about the scope of SARA efforts going forward. Marshall Hill reported that he is frequently contacted by individuals interested in whether the “SARA approach” could help solve other problems. He said that while he has been very willing to discuss the “what, why and how” of SARA, he has resisted the idea of SARA taking on other worthy but not-directly-related work proposed as additional SARA activities.

NC-SARA staff recommended that the Board direct them to bring forward for Board consideration only those proposed activities that meet all of the following points:

- Related to the interstate delivery of postsecondary distance education
- Serves students, states and/or institutions
- The proposed activity would not be better provided by others
- NC-SARA is in an advantageous (if not unique) position to provide
- External demand is evident
- Financially viable within available resources

During discussion, Larry Isaak drew attention to the Unified Agreement for State Authorization of Distance Education and the respective roles it assigned to the regional compacts and NC-SARA. Following discussion, the addition of an implicit seventh point was proposed, stipulating that all activities of the organization will be fully vetted with stakeholders and approved by the Board.

Motion to approve the specified guidance to staff (with the addition of that seventh point):
Pat O’Brien – motion
Kathryn Dodge -- second
Motion passed unanimously.

Agenda Item III (ACTION): Modification to NC-SARA Bylaws regarding board member and officer term limits
At the November 3, 2017, NC-SARA Board meeting, discussion began on whether NC-SARA’s maturation as an organization should prompt organizational or process modifications. The Executive Committee discussed that topic during phone calls held in February 2018. The Committee decided to recommend that the Board consider modifying its policies regarding term limits of both members and officers and directed the staff to propose modifications consistent with that conversation.

Proposed modifications would limit the terms of members of NC-SARA appointed after June 1, 2018 to a maximum of two three-year terms. The Committee and staff further recommended that NC-SARA officers be limited to serving a maximum of two two-year terms.

Motion to adopt modifications:
Teresa Lubbers — motion
Dianne Harrison — second
Motion passed unanimously.

Agenda Item III(a): Conflict of Interest Policy
Each year, NC-SARA board members and the Executive Director in writing confirm their receipt, understanding and compliance with NC-SARA’s Conflict of Interest Policy. Such a policy, and those annual confirmations, are necessary to satisfy IRS requirements relating to NC-SARA’s federal non-profit status. Two modifications to the Policy were proposed. The two modifications: 1) specify how “Financial
Interests” are to be reported to NC-SARA; and 2) state that failure to disclose an actual or potential conflict of interest may lead to dismissal from the Council or its employ.

Motion to approve policy revisions:
Belle Wheelan — motion
Peter Smith — second
Motion passed unanimously.

Agenda Item IV (ACTION): Additions and modifications to the NC-SARA Manual

a. Staff proposed modifications to Section 6 of the SARA Manual, dealing with data submission requirements for institutions participating in SARA. The two proposed modifications: 1) would require institutions participating in SARA to report their in-state distance education enrollments (in addition to out-of-state enrollments); and 2) annually report to NC-SARA the numbers of their students engaged in certain experiential learning placements (rotations, internships, student teaching, etc.), disaggregated by state and two-digit Classification of Instructional Programs (CIP) codes as assigned by the U.S. Department of Education. Both requirements would become effective with the spring, 2019 data reporting.

Motion to adopt new data reporting strategies:
Peter Smith — motion
Belle Wheelan — second
Motion passed unanimously.

b. Staff recommended the following new language be added to the SARA Manual, Section 5.1 (c):
Institutional participation in SARA does not excuse or exempt institutions that participate in federally funded programs from compliance with the federal rules applicable to such programs. Such programs include, but are not limited to, federal Title IV student assistance programs and military tuition assistance programs.

Motion to make the modification:
Kathryn Dodge — motion
Peter Smith — second
Motion passed unanimously.

Agenda Item V (ACTION): Enhance support for distance education students, SARA states and SARA institutions

a. Progress report on actions approved in May 2017
The Executive Director reported on progress made in providing enhanced support for students, states and SARA institutions. He reported that additional staff have been hired, content development has begun, and vendors have been hired to do the necessary IT and website development. He reported on favorable conversations with leaders of specialized accrediting associations to provide better information about the effects of state authorization on programs and students studying in programs intended to lead to state licensure by sharing information and communications. He further stated that a full re-design of the NC-SARA website has begun, with anticipated launch of the new site in summer, 2018.

b. ACTION: Consideration of creating a student-searchable database of academic programs offered at a distance by SARA institutions

NC-SARA staff recommended that NC-SARA create a searchable database of academic programs offered
at a distance by SARA institutions. Key points:

- Institutional participation would be voluntary and carry no additional cost to participating SARA institutions.
- Institutions could cease participation at any point.
- Available programs would be searchable by discipline, degree level, etc.
- Searching students would be directed from the results of their search (a listing of institutions offering their sought-for programs) to an institutional web page (maintained by the institution) from which additional information about the institution and its available distance education programs could be readily accessed. From that institutional page forward, students would deal with the institution, not NC-SARA.
- Prior to inclusion of their programs, institutions would be required to certify that all programs they list in the database have been approved for institutional offering by whatever approval mechanism their state requires.
- Institutions would be required to maintain accurate, up-to-date information about their listed programs or their programs would be removed from the database.
- Database entries would be coordinated with any existing SARA states’ databases of distance education programs offered by those states’ institutions.
- The database would be maintained by NC-SARA.

The Executive Director used a set of presentation slides, available at: http://nc-sara.org/files/docs/NC-SARA_Board_Presentation_05-03-18.pdf

Staff recommended that the Board direct NC-SARA staff to:

- Create and maintain a searchable database of academic programs available through distance education and offered by SARA institutions that voluntarily choose to list such programs in the database;
- Publicize the availability of the database;
- Include funding for related work in annual NC-SARA operating budgets; and
- Collect, maintain, analyze data and periodically report to the Board on utilization of the database.

Discussion followed, with questions and suggestions from Board members.

Motion to approve the creation of a student-searchable database:
Kathryn Dodge — motion
Peter Smith — second
Motion passed, with 15 voting in favor, one opposed and two abstentions.

BREAK

Agenda Item VI (ACTION): Finance Committee — Leroy Wade, Treasurer

a. Finance Report (FY 2018 third quarter)
Treasurer Wade referred to the FY 2018 third-quarter financial statements provided the Board under separate cover and reported that they indicate the organization is in good financial
state. No action on the Finance Report was required.

b. ACTION: Proposed FY 2019 budget
Mr. Wade referred next to the proposed budget for FY 2019. He indicated that it had been reviewed by the Finance Committee and the Committee recommended approval. He noted that since the Board had just approved the creation of a searchable database of academic programs, the funds for that work (separately identified in the proposed budget) would be part of the budget the Board would now vote to approve. The budget includes inflationary and related increases to the annual allocations ($443,000 for each compact) and reserve funding (an additional $7,000 each) received by the regional compacts, maintains previously approved NC-SARA staffing levels, and provides that NC-SARA reserves be accumulated over FY 2019 to equal one-half of annual operating expenses.

Leroy Wade – moved
(No second was needed, as the motion was made on behalf of the Finance Committee.)
Motion passed unanimously.

Agenda Item VII: Information Items — Marshall A. Hill, Executive Director
a. U. S. Department of Education (ED) rules on state authorization of distance education
The Executive Director reported that new rules on the state authorization of distance education are set to take effect July 1, 2018. He indicated that he and colleagues in the field of distance education have expressed to ED significant concerns about aspects of those rules, and he and many of his colleagues anticipate that ED may delay implementation. (Note: On May 9, the federal Office of Management and Budget indicated that ED plans to delay implementation by two years and once again refer the issue to negotiated rulemaking.)

b. Status of current year work
Provided in agenda materials; no additional comment.

c. Executive Director presentations, November 2017–May 2018
Provided in agenda materials; no additional comment.

d. Dates of remaining 2018 meetings
2018 State Portal Entity Meeting
● September 18-20 in Salt Lake City, Utah
The Executive Director indicated that funds were available to support the participation in the SARA states meeting of any NC-SARA Board member who wanted to attend.

2018 NC-SARA Board Meetings
● October 31-November 1 in Memphis, Tennessee

Agenda Item VIII (ACTION): Executive session
Meeting moved into Executive Session at 1:23 p.m.

Agenda Item IX (ACTION): Questions, comments, reflections from council members
No questions, comments or reflections were offered beyond those already made in the meeting.

Executive Session concluded and meeting adjourned at approximately 2:00 p.m.
NC-SARA AGENDA ITEM

Agenda Item II: Update on the progress of the SARA initiative

Action Item: □ Yes ☑ No

Background: The SARA initiative began inviting states to join in early 2014. As of October 2018, 49 states (all but California) — plus the District of Columbia, Puerto Rico and the U.S. Virgin Islands — are members. Discussions continue in California. Almost 1,900 institutions participate in SARA.

Marshall A. Hill will provide an overall assessment. Regional compact presidents will focus more closely on developments within their regions.

b. Susan Heegaard, Midwestern Higher education Compact (MHEC)
c. Michael Thomas, New England Board of Higher education (NEBHE)
d. Stephen Pruitt, Southern Regional Education Board (SREB)
e. David Longanecker, Western Interstate Commission for Higher Education (WICHE)
Agenda Item II: Update on the progress of the SARA initiative

Current as of September 2018.
Current as of September 2018.

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n/a: State has determined new legislation is not needed to enable participation in SARA. North Dakota & South Dakota are members of both MHHEC & WICHE; chart indicates SARA affiliation.
Current as of September 2018.

Current as of September 2018.
**NC-SARA AGENDA ITEM**

November 1, 2018

**Agenda Item III: Report and recommendations of the Executive Committee – Paul E. Lingenfelter, Chair**

**Action Item:** ☑ Yes ☐ No

- a. NC-SARA FY 2018 audit
- b. Recommendations for election of Board members
Agenda Item III (ACTION): Report and recommendations of the Executive Committee – Paul Lingenfelter, Chair

a. NC-SARA FY 2018 audit (ACTION)

Background
NC-SARA began operation in the summer of 2013, funded through a Lumina Foundation grant administered by WICHE. As states joined SARA and their institutions began participating and paying fees, SARA had a period of reliance on a mixture of grant funding and institutional fees. From 2016, NC-SARA revenues have consisted almost entirely of institutional fees.

When housed within WICHE, NC-SARA’s finances were included in WICHE’s normal annual audits. Since NC-SARA became an independent, 501(c)(3) non-profit entity (effective April, 2015), it has had its own independent audits. The FY 2018 audit is the third audit of NC-SARA’s annual financial statements.

NC-SARA Bylaws call for the Executive Committee to “Identify an auditing firm for periodic audits, receive the audits, and report findings to the Finance Committee and Board.”

The audit was carried out by the Denver office of RubinBrown®, a national accounting and professional consulting firm. RubinBrown® audited the financial statements prepared by Flewelling & Mitton, PC, our external accounting firm located in Louisville, CO. RubinBrown® considers its audit a “draft” audit until it is formally received by the client.

Recommendation
Paul Lingenfelter, Chair, will present the recommendation of the Executive Committee.

b. Recommendations for the election of board members (ACTION)

Background
NC-SARA Bylaws state that the Board “shall be made up of 17 to 23 individual National Council members.” Bylaws further charge the Executive Committee to “Solicit and consider nominations for NC-SARA Board members and recommend candidates to the NC-SARA Board for the Board’s consideration and election.”

Except for the presidents of the regional compacts, whose terms are on-going, Board members may serve a maximum of two, three-year terms. The Bylaws further provide that: “Council members should come from the range of impacted groups to assure a wide range of support as the interstate reciprocity agreements are promoted and implemented, while also taking into consideration the need for those groups to have a permanent voice. Council members should be drawn from all institutional sectors (including large- and small-scale distance education providers), regional and national accreditation agencies, and state officials including state regulators and state higher education executive officers.”

Recommendation
Paul E. Lingenfelter, Chair, will present the recommendations of the Executive Committee.
NC-SARA AGENDA ITEM

November 1, 2018

Agenda Item IV: Finance Committee Report – Leroy Wade, Treasurer

Action Item: □ Yes ☑ No
**Agenda Item IV:** Finance Committee Report – Leroy Wade, Treasurer

NC-SARA ended the first quarter of FY 2019 in a strong financial position. Financial statements relating to the quarter will be distributed separately. Leroy Wade, Treasurer, will present the first-quarter report.
NC-SARA AGENDA ITEM

Agenda Item V: Additions and modifications to the SARA Manual

Action Item: ☑ Yes ☐ No
**Agenda Item V (ACTION): Additions and modifications to the SARA Manual**

a. Section 8: Responding to Questions and to Requests to Modify SARA Policies

*SARA Manual, Section 8.3, Significant Modifications*

**Background**

Section 8: Responding to Questions and to Requests to Modify SARA Policies was added to the SARA Manual in May, 2015; revisions were made in January, 2016.

The WICHE-SARA regional steering committee has recommended additional language be included in Section 8.3. Recommended new language is in red and underlined; language recommended for removal is struck through. Revised recommended language is in blue and underlined.

*SARA Manual, Version 18.2, Section 8: Responding to Questions and to Requests to Modify SARA Policies*

**8.3 Significant modifications**

Ultimately, it is the responsibility of the Executive Director of NC-SARA to ensure broad consultation among the regional compacts, NC-SARA, and the SARA community at large in developing responses to requests for significant modifications to the SARA Manual and/or to the Unified State Authorization Reciprocity Agreement.

Requests for significant changes should may be addressed to the Executive Director of NC-SARA, who will work with the regional compacts, their SARA steering committees, the NC-SARA executive committee, and the NC-SARA Board to ensure consideration and resolution. Persons making such requests should provide a rationale supporting their request.

All proposed significant changes will first be considered by the home state and regional compact of the proposer, either through the compact’s SARA Regional Steering Committee or whatever means the compact determines. NC-SARA and the other regional compacts shall be notified of the proposed change(s), and other compacts may also consider the issue(s). If at least two regional compacts request that the proposed changes be considered by NC-SARA, the Executive Director shall place the proposed changes on the agenda of the next NC-SARA meeting for Board consideration. Nothing in this section precludes the Executive Director’s ability, in consultation with the Board Chair, to propose items for discussion by the NC-SARA Board.

In responding to and ultimately acting on such requests, regional and national SARA staff and oversight committees shall evaluate proposed changes in light of SARA’s fundamental reliance on interstate reciprocity and trust, and on the fundamental purposes of SARA, which are to support high quality distance education, resolve problems encountered by students, and simplify and support the interstate offering of distance education using a model under which an institution’s Home State is primarily responsible for what the institution offers under the aegis of SARA.

Other guiding principles for the review, clarification and modification of SARA Policies and agreements include:

- Broad consultation with key stakeholders;
- Maintaining consistency in policy and procedures;
- Transparency and openness; and
- Responsiveness to stakeholders and emerging policy issues.

**Staff recommendation:** Approve the proposed modifications.
b. **SARA Manual, Section 3: Institutions and Participation**
   Section 3.2. Provisional status for SARA institutions and
   Section 3.3. Provisional status of an institution between renewal periods

**Background**

In December, 2014 the Board added policies enabling institutions, under certain specified circumstances, to participate in SARA on a provisional basis. Additional, related policies were added in November, 2017 and March, 2018.

Current policies allow SARA states to approve institutions for initial or renewal participation in SARA on provisional status under four, specified circumstances (see below). Policies also provide that an institution admitted or renewed on provisional status may not remain in that status for more than a year.

The circumstances enabling provisional status all relate to actions taken by accreditors, states, the U.S. Department of Education or similar entities. Unfortunately, such issues sometimes take more than a year to resolve.

After discussion with state and regional SARA staff, NC-SARA staff recommend the following modifications to current policies. Recommended new language is in red and underlined; language recommended for removal is struck through.

**SARA Manual, Version 18.2**

3.2 Provisional status for SARA institutions

a. A state, at its discretion, may approve an institution applying for initial or renewal participation in SARA to participate on provisional status in any of the following circumstances:

1. The institution is on provisional status or the equivalent with its institutional accrediting association;
2. The institution is currently using a letter of credit or is under a cash management agreement with the U.S. Department of Education (Such institutions must still have a Federal Financial Responsibility Composite Score above 1.0.);
3. The institution is the subject of a publicly announced investigation by a government agency, and the investigation is related to the institution’s academic quality, financial stability or student consumer protection; or
4. The institution is the subject of a current investigation by its Home State related to the institution’s academic quality, financial stability or student consumer protection.

b. States shall notify their regional compact and NC-SARA of their admission or renewal of an institution on provisional status. NC-SARA will provide indication of the institution’s provisional status on the NC-SARA website. The NC-SARA Institution Provisional Participation Form should be completed and submitted by the state. (See Appendix C.)

c. An institution admitted to or renewed for SARA participation on provisional status is subject to such additional oversight measures as the Home State considers necessary for purposes of ensuring SARA requirements are met regarding program quality, financial stability and consumer protection, including enrollment limits if deemed necessary and appropriate by the
Home State. The Home State shall report to its regional SARA steering committee at least once a year on the status of any institution(s) admitted or renewed on provisional status.

d. An institution admitted to or renewed for SARA participation on provisional status shall remain in that status for a period not to exceed one year unless all of the following are true:
   1. a Home State or an external entity whose action has resulted in the institution’s provisional status (see 3.2(a)) has not within the one-year period taken action to resolve the institution’s status with that entity;
   2. the SARA portal entity recommends extension;
   3. the SARA director of the relevant regional compact approves extension; and
   4. to support comparable application across regions, the Executive Director of NC-SARA approves such action.

e. In no event shall such an extension of provisional status exceed one additional year.

ef. In the event that its Home State determines that an institution on SARA provisional status is no longer subject to any of the conditions set forth in Section (a), its Home State shall remove the institution’s designation of provisional status and shall notify the regional compact and NC-SARA.

fg. If an institution on SARA provisional status is found by its Home State to not meet the requirements of SARA, the Home State shall disallow any further enrollments under SARA, shall notify its regional compact and NC-SARA, and:
   1. Remove the institution from SARA participation, or
   2. Allow the institution a period of time not to exceed 12 months in which to come into compliance with SARA policies under state supervision. Only one such time period is allowed in any three-year period.

gh. If an institution on SARA provisional status is found by its Home State not to meet the requirements of SARA, the Home State shall allow any students enrolled in the institution under SARA at the time of the finding of noncompliance a period of six months in which to conclude their work at the institution under SARA provisions, irrespective of the institution’s SARA status.

EXPLANATORY NOTES
N1- SARA staff has received recent inquiries from states and institutions regarding what constitutes a government investigation under SARA Manual Section 3.2(a), for purposes of establishing provisional participation.

Subsections 3 and 4 cannot be applied based solely on a third-party action such as a private lawsuit or news story. If a private lawsuit, news story or other third-party event results in an investigation by a government agency as set forth in the wording of the sections, these sections can be used.

Only an investigation that has been made public can serve as the basis for provisional status. That requirement does not apply to the institution’s home state, but the state has to be taking investigative action, not just waiting for the third-party action to conclude.

Lawsuits by states or the U.S. government are considered to have resulted from a governmental investigation and can be the basis of a determination of provisional status.

3.3 Provisional status of an institution between renewal periods
A state, at its discretion, may place an institution on provisional status at any time if the institution is subject to any conditions set forth in Section 3.2.(a) or if the institution’s federal
financial composite score falls between 1.0 and 1.5. (An institution with a score below 1.0 is not eligible for SARA participation.) An institution placed on provisional status shall remain in that status until its next renewal date, at which time the state will determine if the institution will be removed from SARA participation, renewed for provisional SARA participation for no longer than one year (unless conditions of Section 3.2.(d) are met), or renewed without such provisional designation.

**Staff recommendation:** Approve the indicated modifications.
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NC-SARA AGENDA ITEM

November 1, 2018

Agenda Item VI: SARA’s impact: Spring 2018 enrollment reports – Marshall A. Hill, Marianne Boeke

Action Item:  □ Yes  ☑ No

a. Distance education enrollments reported in spring 2018
b. Out-of-state learning placements reported in spring 2018
Agenda Item VI: SARA’s impact: Spring 2018 enrollment reports – Marshall A. Hill, Marianne Boeke

a. Distance education enrollments reported in spring, 2018

b. Out-of-state learning placements reported in spring, 2018

Background

Each spring, SARA institutions report certain student enrollments to NC-SARA, disaggregating by state the out-of-state distance education enrollment information they submitted to the U.S. Department of Education’s Integrated Postsecondary Education Data System (IPEDS) the previous fall. Essentially, SARA institutions report the numbers of students they enroll via distance education in each state other than their own.

In May-June 2018, SARA institutions submitted their third iteration of these annual reports. This year, 1,791 SARA institutions reported 1,225,022 out-of-state enrollments. Each year, NC-SARA staff engages an external reviewer to analyze and report on those enrollments and the process for obtaining data from the institutions. Staff will summarize findings.

In spring 2018, NC-SARA asked SARA institutions to voluntarily report their out-of-state learning placements (clinical rotations, student teaching placements, etc.), disaggregating them by state and two-digit CIP code (Classification of Instructional Programs, USED). (That reporting will become mandatory in 2019.) Almost 300 SARA institutions voluntarily reported, including institutions large and small, representing every institutional sector. A similar external report was prepared; staff will summarize findings.
NC-SARA AGENDA ITEM

November 1, 2018

Agenda Item VII: Information Items – Marshall A. Hill, Mary Larson, Marianne Boeke

Action Item: □ Yes ☑ No

a. U.S. Department of Education negotiated rulemaking
b. Status of current year work
c. NC-SARA convening of SARA states (Minneapolis, MN, September 18-20, 2018)
d. Staff activities and presentations, May-November 2018
e. Dates and location of next meeting – May 8-9, 2019, Westin Hotel, Denver International Airport
Agenda Item VII: Information Items – Marshall A. Hill, Mary Larson, Marianne Boeke

a. U.S. Department of Education negotiated rulemaking

The U.S. Department of Education on July 3, 2018 delayed implementation of a set of rules affecting state authorization of distance education (and other topics) initially released in December, 2016 and set to take effect July 1, 2018. Implementation was delayed until July 1, 2020. The Department announced that it intends to convene a negotiated rulemaking panel covering state authorization of distance education, along with criteria for the Secretary’s recognition of accrediting agencies, competency-based education, participation in Title IV programs for certain faith-based entities, definition of the credit hour, regular and substantive interaction, and other issues. Marshall Hill commented on the Department’s plans in a public hearing held by the Department in New Orleans on September 11, 2018. A copy of his letter to the Department on these issues follows on pages 39-41.

b. Status of current year work

Mary Larson will provide an oral report on progress in developing additional student and institution support resources, the re-design of NC-SARA’s website, and related matters.

c. NC-SARA convening of SARA states (Minneapolis, MN, September 18-20, 2018)

Marianne Boeke will provide a brief report on the annual convening of SARA states.

d. Staff activities and presentations, May-November 2018

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e. Dates and location of next meeting – May 8-9, 2019, Westin Hotel, Denver International Airport
Dianne Auer Jones
Principal Deputy Under Secretary Delegated to Perform the Duties of
Under Secretary and Assistant Secretary, Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue
Washington, DC 20202

September 7, 2018

Docket ID: ED-2018-OPE-0076

Submitted electronically via www.regulations.gov.

Dear Ms. Jones,

The Education Department on August 31, 2018 requested comments on its intent to convene a negotiated rulemaking committee to develop proposed regulations regarding the Secretary’s recognition of accrediting agencies and a number of other important issues, including state authorization of distance education, regular and substantive interaction, definition of the term “credit hour,” direct assessment and competency-based education, and other related matters.

In response to that request, the National Council for State Authorization Reciprocity Agreements (NC-SARA) offers the following comments.

Our organization

NC-SARA is an independent 501(c)(3) organization that provides a voluntary, regional approach to state oversight of postsecondary distance education delivered across state lines. Forty-nine states (plus the District of Columbia, Puerto Rico and the U.S. Virgin Islands) are members of SARA; about 1,875 institutions participate. Our close partners in this work are the country’s four regional education compacts: the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE).

Support for general intent

The matters identified by the Department are critically important to both students and institutions of higher education, and clear, workable and effective rules best serve all legitimate interests. The issues identified by the Department have all been significantly affected by recent or accumulating changes in higher education, and ensuring that they are addressed in ways that meet the national interest and the needs of students is a goal we support.

State authorization of distance education

I am focusing our substantive comments on one of the “other” areas you propose to address in negotiated rulemaking. NC-SARA supports the Department’s 2016
requirement (now delayed) that institutions participating in Title IV programs must be able to demonstrate to the Department that they have obtained all necessary state authorization to offer distance education in each State in which they enroll students. We appreciate the Department’s determination that institutions may demonstrate that compliance to the Department either by documenting each individual State’s approval or through institutional participation in a state authorization reciprocity agreement covering those States in which the institution enrolls distance education students.

We also support those rules’ requirement of institutional disclosures to students (both general and individualized disclosures) confirming whether the institution’s programs meet educational requirements for professional licensure (e.g., in nursing, physical therapy, teaching, etc.) in the State in which the student would receive the instruction.

We do have concerns about the late 2016 rules’ definition of “state authorization reciprocity agreement,” and we urge that clarification of that definition be addressed during the upcoming negotiated rulemaking process.

Definition of “state authorization reciprocity agreement”

As we have previously commented to the Department, we believe the definition of a “state authorization reciprocity agreement” contained in the now-delayed, late 2016 rules is problematic. That definition is as follows, and we have italicized the text that concerns us:

34 CFR Section 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 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.

Some individuals have interpreted the italicized text to mean that a state authorization reciprocity agreement that is acceptable to the Department must allow a State that is a member of the agreement to enforce its own statutes and regulations even if those statutes and regulations conflict with the provisions of an agreement (e.g., SARA) into which the State willingly entered.

We do not believe the Department intended this particular interpretation. Consequently, we ask that the Department confirm in future rules or accompanying guidance the following points:

- States may enter into a “state authorization reciprocity agreement” to increase the efficiency and effectiveness of regulation of the interstate delivery of postsecondary distance education;
- The Department recognizes an institution’s participation in such an agreement as sufficient documentation of the institution’s having received authorization to enroll via distance education students located in States party to such an agreement;
- If States choose to enter into such agreements, they must work with member States of the agreement to resolve any inconsistencies between the joining State’s statutes and regulations and the terms and conditions of the agreement prior to joining the agreement;
- Such a process demonstrates that the State’s statutes and regulations are not superseded by the terms and conditions of the agreement;
- The State members of such an agreement are not required to accept as members States with statutes or regulations that conflict with the terms of the agreement.
Alternatively, the Department could simply remove the problematic text from future rules, as indicated below:

**34 CFR Section 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 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.

**Scope of the proposed negotiated rulemaking**

Finally, having served on four negotiated rulemaking panels convened by the Department, the number, breadth and complexity of the regulatory issues proposed to be addressed appear to me to be exceptionally daunting. If a reduction in the number of topics to be addressed does not meet the Department’s goals, I suggest you consider establishing several additional subcommittees similar to those you currently propose on direct assessment and the eligibility of faith-based entities for participation in Title IV programs.

We appreciate the opportunity to comment on this matter and would be pleased to work with the Department to resolve our concerns.

Cordially,

[Signature]

Marshall A. Hill  
Executive Director
**NC-SARA AGENDA ITEMS**

**Agenda Item VIII: Executive session**

**Action Item:**
- ☐ Yes
- ☑ No

**Agenda Item IX: Questions, comments, reflections from council members**

**Action Item:**
- ☐ Yes
- ☑ No

**Adjourn**

**Action Item:**
- ☑ Yes
- ☐ No