



**Larry Hogan**  
Governor

**Boyd K. Rutherford**  
Lt. Governor

**Ian D. MacFarlane**  
Chair

**James D. Fielder, Jr., Ph. D.**  
Secretary

April 14, 2020

Wanda Barker  
Director, Education Technology and Multistate Cooperative Programs  
Southern Regional Education Board  
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Jeannie Yockey-Fine, J.D.  
Director for Regulatory Relations and Policy Support  
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Dear Ms. Barker and Ms. Yockey-Fine:

During its 2020 legislative session, the Maryland General Assembly passed Senate Bill 294, the Veterans' Education Protection Act. Senate Bill 294 prohibits certain for-profit institutions of higher education from enrolling students if, beginning in fiscal year 2023, the institution's revenue sources from a defined set of federal funds reach or exceed 90 percent of annual revenues for two consecutive years.

Under the federal Higher Education Act of 1965, institutions of postsecondary education must attract at least 10 percent of their revenue from a private source (the "90/10 Rule"). The 90/10 Rule was established as a market viability test to protect taxpayers from artificially propping up failing institutions incapable of attracting a threshold of private revenue. The 90/10 Rule excludes funds of the United States Department of Veterans Affairs and the United States Department of Defense in the cap on federal funds that institutions of postsecondary education otherwise collect. Senate Bill 294 is designed to close this loophole by defining "federal funds" to include these sources of funds.

As drafted, Senate Bill 294 applies to "a for-profit institution of higher education that enrolls Maryland residents in a fully online distance education program in the State," among other for-profit institutions. Concerns have been raised about the bill's application to this subset of institutions based on Maryland's participation in the National Council for State Authorization Reciprocity Agreements (NC-SARA). NC-SARA is an agreement among member states that establishes comparable national standards for interstate offering of postsecondary distance education. Generally, under the reciprocity standards of NC-SARA, participating postsecondary institutions are not required to gain approval to offer interstate distance education in member states. The NC-SARA manual expressly provides that "[t]he State agrees that, if it has

requirements, standards, fees, or procedures for the approval and authorization of non-domestic Institutions of higher education providing Distance Education in the State, it will not apply those requirements, standards, fees or procedures to any Non-domestic (out-of-state) Institution that participates in SARA.” See 2.5(k) of the NC-SARA Manual: [https://www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA\\_Manual\\_20.1\\_Final\\_2.6.20.pdf](https://www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA_Manual_20.1_Final_2.6.20.pdf).

Maryland’s participation in NC-SARA and the State’s agreements thereunder, in addition to the lack of any legislative history suggesting Senate Bill 294 was intended to impact Maryland’s participation in NC-SARA, make it clear that the Commission is not required to apply Senate Bill 294 to NC-SARA schools that enroll Maryland students. Indeed, the Fiscal and Policy Note’s discussion of institutions that will be affected by Senate Bill 294 omits any mention of NC-SARA participating institutions or even any discussion of institutions offering interstate distance education that are not located in Maryland. Accordingly, the Commission has no intention of enforcing the prohibition in Senate Bill 294 against NC-SARA participating institutions.

If you have any further questions regarding this matter, please contact Dr. Emily A. A. Dow, Assistant Secretary for Academic Affairs ([emily.dow@maryland.gov](mailto:emily.dow@maryland.gov)). Thank you for your ongoing partnership.

Thank you,

A handwritten signature in blue ink, appearing to read "James D. Fielder".

Dr. James D. Fielder  
Secretary

CC: Christopher J. Madaio, Assistant Attorney General, Consumer Protection Division, Office of the Attorney General