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**National Council for  
State Authorization  
Reciprocity Agreements**

MHEC • NEBHE • SREB • WICHE

March 11, 2022

Dear Negotiated Rulemaking Committee:

This letter is in response to the March 8, 2022 Issue Paper 6: *Certification Procedures – Session 3* regarding § 668.14 Program Participation Agreement, Subsection (32)(iii) (on page 7) that may be considered during your committee's Session 3 on March 14-18, 2022.

The proposed change in language in this subsection would **significantly and negatively impact the efficacy of reciprocity** among the 52 states and territories that are members of State Authorization Reciprocity Agreements (SARA) and for the more than 2,300 participating institutions – the majority of which are public colleges and universities.

Of utmost concern, the proposed language would significantly **limit access to quality distance education** for the millions of postsecondary students and prospective students of SARA-participating institutions. Simply stated: SARA students would not be allowed to enroll in or continue their educational programs unless their institutions meet additional requirements for authorization, if required, from each individual state in which they have students. The resources that institutions would need to allocate in state fees, human time, and bureaucracy management would be tremendous. This past year alone, for example, \$155 million dollars were saved in renewal fees across all SARA-participating institutions.

For the majority of states that are members of SARA, **state oversight would decrease**. Almost half the states do not have the regulatory authority to oversee distance education for out-of-state institutions reaching students in their state. SARA policies, however, ensure that all member states are applying a consistent set of guardrails equally to all participating institutions, thus ensuring a level of consumer protection that does not exist outside of SARA.

In this letter, we will state our recommended language for this subsection, clarify the purpose of State Authorization Reciprocity Agreements (SARA), and make clear **the critical role of states as provisioned in SARA policy** to ensure and promote student consumer protections, while respecting and retaining states' rights to oversee distance higher education.

.....  
Boulder, CO 80301

NC-SARA.org

## RECOMMENDED LANGUAGE

If Subsection (32)(iii) is not withdrawn prior to finalization, NC-SARA strongly recommends the following language replace (32)(iii) in order to preserve the value and benefits of State Authorization Reciprocity Agreements (SARA):

*(iii) Complies with all State consumer protection laws, including both generally applicable State laws and those specific to educational institutions, except where inapplicable pursuant to a State authorization reciprocity agreement.*

## BACKGROUND INFORMATION

SARA was established in 2013 in order to provide greater access to distance education programs across state lines and as an alternative path for oversight of distance education programs and consumer protection.

Prior to SARA, uneven state requirements led to added costs and stress to students, institutions, and states. Should this proposed language be adopted, the outcome will be uneven, unequal, and will resurrect barriers to student access to learning opportunities that SARA ameliorated.

The current federal definition for SARA is located in 34 CFR 600.2:

*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 located in other States covered by the agreement and cannot prohibit any member State of the agreement from enforcing its own general-purpose State laws and regulations outside of the State authorization of distance education.*

Currently, SARA has 49 states and 3 territories that have volunteered to become members; more than 2,300 institutions voluntarily participate in SARA. **Under SARA policy, an institution's home state authorization is a prerequisite for SARA participation; no institution may participate in SARA without first being authorized in its home state.** Additionally, institutions must be accredited and meet federal financial responsibility requirements, among others, to participate in SARA. Furthermore, SARA provides additional consumer protection requirements, as detailed in the *SARA Policy Manual* and summarized below.

### ***SARA's Requirements for States***

SARA's requirements for states to be approved for membership by the four higher education regional compacts (SREB, WICHE, NEBHE, MHEC) and NC-SARA include but are not limited to:

1. SARA policy ensures that states can enforce their general-purpose laws for consumer protection. Per the *SARA Policy Manual*, Section 2.5 Functional Responsibilities of SARA States:
  - 2.5(k) The 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; instead, the state will apply those specifically prescribed in or allowed by SARA policies.

Although this policy may limit some additional application of regulations aimed at certain institutions in a handful of states, for the vast majority, it adds distance education requirements

that do not exist in almost half of the states in the US, including the requirement in a third of the states that an institution be accredited.

2.5(l) Except as precluded by Section 2.5(k) above, SARA member states continue to have authority to enforce all their general-purpose laws against Non-domestic, out-of-state institutions (including SARA participating institutions) providing distance education in the state, including, but not limited to, those laws related to consumer protection and fraudulent activities.

2. In regard to education-specific consumer protection laws, for SARA purposes, education-specific consumer protection laws are first enforced by an institution's home state through home state authorization. States have to agree, as part of their membership application, to address issues of institutions in their own states. Per the *SARA Policy Manual*, Section 2.5 Functional Responsibilities of SARA States:

2.5(e) The state has a clearly articulated comprehensive state process for consumer protection in regard to SARA activities, both with respect to initial institutional approval and on-going oversight, including the resolution of consumer complaints in all postsecondary sectors

3. SARA member states are also required, per SARA policy, to have documented policies and procedures to ensure student consumer protections in the case of catastrophic events, including institutional closures. Per the *SARA Policy Manual*, Section 2.5 Functional Responsibilities of SARA States:

2.5(h) The state has clear and well-documented policies and practices for addressing catastrophic events to include school closures.

4. Through SARA, states agree to accept the review and authorization of educational institutions by the home state of the institution. The home state approval, along with SARA policy, creates a system of assurance for state oversight. Additionally, states, as part of their approval as SARA members, ensure consumer protection. Per the *SARA Policy Manual*, Section 2.5 Functional Responsibilities of SARA States:

2.5(j): The state agrees that it will work cooperatively with other SARA states, regional compacts and NC-SARA to enable success of the SARA initiative. The state will follow up on requests for information or investigation from other SARA member states or any SARA regional or national office, providing such data or reports as are required

5. Finally, a state's membership in SARA may be revoked if it does not abide by SARA's policies. Per the *SARA Policy Manual*:

2.4 A member state may be removed from SARA membership by its regional compact if the state has been determined by the regional compact to have ceased to abide by the requirements of SARA.

### ***SARA's Requirements for Institutions***

Per SARA policy, institutions that are approved to participate in SARA must be approved to operate in their home states as a prerequisite to SARA participation. States, through their approval as SARA members, must utilize their own approval requirements and procedures first. SARA also includes multiple layers of institutional oversight provided by the triad: institutions must be appropriately authorized (by Congress, a U.S. state, territory or district, or a federally recognized Indian tribe) to award associate degrees or higher, and must be accredited by an accrediting body recognized by the U.S.

Department of Education and whose scope of recognition, as specified by the U.S. Department of Education, includes distance education.

Per the *SARA Policy Manual*, Section 3.1 Eligibility:

### 3.1 Eligibility

- a. An eligible institution may apply to its home state to participate in SARA if that state is a SARA member state.
- b. In order to be eligible to participate in SARA, an institution must:
  1. Be a degree-granting institution, awarding associate degrees or higher;
  2. Be physically located in a SARA member state;
  3. Hold proper Authorization from Congress, a U.S. state, territory or district, or a federally recognized Indian tribe to award degrees; and
  4. Hold accreditation as a single entity from an accrediting agency recognized by the U.S. Department of Education and whose scope of recognition, as specified by the U.S. Department of Education, includes distance education.
  5. If a non-public institution, meet the institutional financial responsibility requirements for SARA participation set forth in Section 2.5(c and d) herein.
  6. Agree that, in cases where the institution cannot fully deliver the instruction for which a student has contracted, it will provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education the student did not receive.

Once approved for SARA participation, institutions must re-apply to renew their participation annually. **States thus provide continuous oversight to ensure ongoing compliance to SARA policy and attention to consumer protection.**

It is through this consistent and ongoing reciprocity authorization process, in addition to the eleven consumer protection requirements detailed in SARA policy and on the Application and Approval Form for Institution Participation in SARA, that provides the numerous protections for student consumers.

Thank you for your consideration of these important SARA policy elements in your committee meetings. We trust that this information has informed your consideration of *Issue Paper 6: Certification Procedures* so that any language adopted does not, in essence, eliminate state authorization reciprocity for distance education in our country. Doing such would be a step backwards at a time when access to quality distance education is needed more than ever.

Sincerely,



Lori Williams, PhD  
President and CEO, NC-SARA

cc: NC-SARA Board Members