

Summary of SARA Concerns Related to *Issue Paper 2: State Authorization* in 2023-2024 Negotiated Rulemaking (January 2024)

Summary #1, January 8, 2024

Introduction and Summary

The U.S. Department of Education's (ED) 2023-2024 negotiated rulemaking process includes six issues; although many could have implications for distance education, NC-SARA is primarily focused on the topic of state authorization. ED has released initial proposed regulatory language, [available here](#). The proposed language includes two items: the first would require additional transparency around student complaints and the second would limit eligibility for the board overseeing a state authorization reciprocity agreement.

Our high-level takeaways are as follows:

1. We are supportive of any efforts to improve transparency and collaboration in ways that benefit students.
2. We believe that states must lead “an agreement among states” such as SARA.
3. There are important principles to consider in these discussions about the appropriate roles and relationships between the federal government and states.

Proposal Summary

ED Proposal #1

We propose requiring reciprocity agreements to require institutions to have a system to report student complaints to the State in which the student resides.

- (i) A State authorization reciprocity agreement must include a process for communicating information received on complaints regarding institutions or programs subject to the State reciprocity agreement to the State in which a student is located at the time of the student's initial enrollment, as determined in accordance with paragraph (c)(2) of this section.
- (ii) If a State authorization reciprocity agreement is administered by an organization, the agreement must require that complaints received by States from institutions subject to the State reciprocity agreement are communicated to the organization. The organization must make information received on complaints public at least annually, including but not limited to the number and type of complaints by institution that is subject to the State reciprocity agreement.

Key SARA Points: We agree that information about student complaints must be effectively communicated throughout the reciprocity ecosystem. It is also worth noting that states themselves are currently developing SARA policy proposals that would improve transparency and usage of complaint information.

State constituents are currently working on a 2024 SARA policy modification proposal that would incorporate some of the items listed in ED's proposal, including the type of complaints by institution that is subject to the State reciprocity agreement. SARA's current system of collecting and reporting SARA student complaints does include the number of complaints and how the complaint was resolved. In

addition, as a critical element of transparency and student consumer protections afforded through SARA policy, NC-SARA collects and shares data on SARA student complaints from SARA-member states ([see website](#)).

It is important to note that there are 2400 degree granting SARA participating institutions and 1800+ degree granting institutions that do not participate (or do not qualify to participate) in SARA.

Summary of Concerns:

Further specificity is necessary about the following:

- a. Types of complaints to be included, such as: SARA vs. non-SARA. How would non-SARA institutions report their complaints to the states?
- b. It is unclear from the proposal if NC-SARA creates the process to which institutions report; or does the institution create a system in which they submit data to the state (or to NC-SARA)?
- c. We have concerns about the term “resides” and “initial enrollment” instead we would propose using the term “student location” throughout the proposal.

ED Proposal #2

We propose that Department regulations governing State authorization reciprocity agreements require that the governing board of any entity that oversees a State authorization reciprocity agreement only include representation from State employees – including regulatory bodies, enforcement agencies, attorneys general, and licensing bodies – and members of the public.

If a State authorization reciprocity agreement is administered by an organization, the governing body of such organization must consist solely of representatives from States, including regulatory bodies, enforcement agencies, attorneys general, and licensing bodies, and members of the general public. Public members must be separate from and independent of States, institutions, and accrediting agencies, and must not be:

- (1) A current or former employee of, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that is subject to the State authorization reciprocity agreement;
- (2) A current or former member of any trade association or membership organization related to, affiliated with, or associated with an institution or program that is subject to the State authorization reciprocity agreement;
- (3) A current or former employee of or consultant to an accrediting agency that accredits an institution or program that is subject to the State authorization reciprocity agreement; or
- (4) A current or former employee of member of the program integrity triad other than States including the Department of Education and accrediting agencies);

Key SARA Points: We agree with the underlying concept that states should lead a state authorization reciprocity agreement. States and their representatives lead the SARA policy process, approve new states’ participation, and hold a majority of seats on the NC-SARA board.

In June 2022, the NC-SARA Board adopted a revised process for making changes to SARA Policy -- the SARA Policy Modification Process. This process went into effect January 2023. This new process reflects the following guiding principles: transparency; collaboration; consistency; and clear and open communication among regional compacts, states, institutions, NC-SARA, and other stakeholders. All proposals are reviewed and approved (or not approved) by the four regional compacts through their

Regional Steering Committees. The proposals receiving approval by all four of the regional compacts through their Regional Steering Committees are then placed on the agenda of the Fall NC-SARA Board meeting for a review and vote of the NC-SARA Board.

Summary of Concerns:

1. Our primary concern is that ED is attempting to regulate a 501(c)(3) entity.
2. This proposal is too specific and prescriptive in ways that would micromanage the operations of one specific entity.
3. The blanket prohibition on former employees of higher education institutions that participate in the agreement is incredibly problematic. As written, this regulation would bar anyone who held any type of position at a college or university (faculty, student affairs, etc.) In addition, this regulation would go further and block those who held a work-study job, served as a teaching assistant/graduate assistant, or was otherwise employed by an institution while they pursued their studies.

What is SARA?

State Authorization Reciprocity Agreements (SARA) is an **agreement** amongst member states, districts, and territories that establishes comparable national standards and streamlines regulations, fees, and approvals for institutions offering interstate distance education programs. More than 2,400 institutions in 49 member states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands all voluntarily participate in SARA.

What is NC-SARA?

The National Council for State Authorization Reciprocity Agreements (NC-SARA) is a private nonprofit **organization** [501(c)(3)] that in partnership with the four regional compacts coordinates the implementation of SARA nationally. NC-SARA supports, facilitates, and serves the regional compacts, the regional steering committees, the State Portal Entities, and SARA participating institutions.

Please note that the first set of issues papers are considered a starting point for the negotiators. Therefore, we will be listening to the negotiations and monitoring any further issues papers. If you have questions, please feel free to contact NC-SARA staff.