

National Council for State Authorization Reciprocity Agreements  
President/CEO and Board of Directors  
3005 Center Green Drive  
Suite 130  
Boulder, Colorado 80301

April 28, 2020

**Re: Proposed NC-SARA Manual Modification Comments**

Dear President Williams and Members of the Board:

Our organizations have a shared goal of ensuring that higher education students are protected from predatory schools and have access to high quality education that does not leave them with unmanageable debt, no matter whether they enroll in brick-and-mortar programs or in online education. As colleges across the country transition to remote learning, the role of the National Council for State Authorization Reciprocity Agreements (NC-SARA) is of increasing important.

Reciprocity agreements can be important tools in streamlining oversight and promoting quality educational opportunity, but only so far as the specific terms of the agreement are sufficiently robust. In the case of NC-SARA, its terms represent a net increase in the regulation of distance education in some states, but they also undermine safeguards and consumer protections in others. Some of our organizations have previously offered recommendations for how NC-SARA could be strengthened to facilitate the provision of quality online educational opportunities across state lines while supporting robust oversight structures to ensure consumer protection.

In recent months, several of the signatories to this letter have had encouraging conversations with President and CEO Lori Williams about short- and long-term opportunities to address our concerns about NC-SARA's structure and terms. Our recommendations have taken on new urgency in recent weeks as the coronavirus pandemic appears likely to encourage broader use of online education next year and beyond. In this letter, we focus on the proposed changes to be discussed by the Board during its May 2020 meeting, as well as offer additional suggestions for how NC-SARA could be responsive to the higher education community's needs during this time of crisis. We welcome opportunities to discuss our broader recommendations for NC-SARA, not fully encapsulated in this letter, with any interested Board member.

We appreciate that NC-SARA shared details on proposed changes to its manual and extended an invitation to submit comments on those proposals in advance of the May Board meeting at which they will be discussed.<sup>1</sup> However, despite these commendable shifts towards greater transparency in decision-making and governance, we are disappointed by NC-SARA's decision to disallow members of the public from viewing the discussion. At a time when oversight of online education and NC-SARA's role are of particular importance, we urge the Board to

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<sup>1</sup> National Council for State Authorization Reciprocity Agreements (NC-SARA) (March 17, 2020). "Proposed SARA Manual Changes for the May 2020 Board Meeting." Available at: <https://zoom.us/rec/play/upEvdr-oqWo3GoCRtgSDV6UvW47rLPms23QcrPUPzkvmVCZVOwGhMrtDa-PKQK5Me29LAn7mt-DUTfO-?continueMode=true>. (Hereafter referred to as "NC-SARA Webinar.")

reverse course and allow members of the public to attend the virtual May meeting, as has been past practice for in-person meetings.

## ***Recommendations on NC-SARA Proposed Manual Changes***

### **I. Professional Licensure**

NC-SARA facilitates the approval and operation of out-of-state online education. However, not all educational opportunities are equally meaningful when provided across state lines. Programs designed to lead to specific careers may prepare students for licensure or certification in one state but not others, rendering the education – and the costs associated with it – of questionable value for residents of the states where certification prerequisites have not been met.

Relative to federal standards, NC-SARA has taken a middle-ground approach to addressing this challenge to-date. NC-SARA schools are currently required to determine whether programs meet requirements in each state from which students enroll and share that information with students and prospective students.<sup>2</sup> If unable to determine whether programs meet requirements after “making all reasonable efforts” to do so, the school may instead provide additional contact information for professional licensing boards to the student for their own inquiries. Notably, the NC-SARA standard does not prohibit schools from enrolling students from states in which licensure or certification prerequisites have not been met, as did the now-rescinded 2014 gainful employment rule.<sup>3</sup>

However, new federal state authorization rules require only that colleges disclose whether or not they know if programs meet state requirements, with no obligation on the part of the school to seek out the information.<sup>4</sup> Rather than maintaining its existing requirement, or proposing to strengthen its existing requirement to mirror the prior gainful employment rule standard, NC-SARA is proposing to *weaken* its requirement to match the new federal standard (Section 5.2).

The justification provided in the Board materials for making this change – that retaining the requirement “will only cause confusion for [] participating institutions” by requiring them to comply with “similar, yet slightly different requirements” – does not withstand scrutiny.<sup>5</sup> There is no conflict between NC-SARA and federal state authorization requirements, and any school complying with NC-SARA’s longstanding requirement will have more than met the new federal standard. As a result, there should be no confusion, nor additional burden placed on NC-SARA schools if the existing standard is left in place. Lowering the NC-SARA standard to match the newly weakened federal standards will only place students at heightened risk of spending time and money on education that will not pay off.

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<sup>2</sup> NC-SARA (Jan. 1, 2020). “State Authorization Reciprocity Agreements Manual, Version 20.1,” P. 36. Available at: [www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA\\_Manual\\_20.1\\_Final\\_2.6.20.pdf](http://www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA_Manual_20.1_Final_2.6.20.pdf). (Hereafter referred to as “NC-SARA Manual.”)

<sup>3</sup> See U.S. Department of Education (Dec. 4, 2014). “Program Integrity: Gainful Employment; Correction,” Sec. 668.414. (“...each eligible program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment *in that State* qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter.”) Available at: <https://www.federalregister.gov/documents/2018/08/14/2018-17531/program-integrity-gainful-employment>.

<sup>4</sup> U.S. Department of Education (Nov. 1, 2019). “Student Assistance General Provisions, The Secretary’s Recognition of Accrediting Agencies, The Secretary’s Recognition Procedures for State Agencies,” Sec. 668.43. Available at: <https://www.federalregister.gov/documents/2019/11/01/2019-23129/student-assistance-general-provisions-the-secretarys-recognition-of-accrediting-agencies-the>.

<sup>5</sup> NC-SARA (March 12, 2020). “Draft Documents for May 2020 NC-SARA Board Meeting.” Available at: [www.nc-sara.org/sites/default/files/files/2020-03/DRAFT\\_Documents\\_for\\_May\\_2020%20NC-SARA\\_Board\\_Meeting.pdf](http://www.nc-sara.org/sites/default/files/files/2020-03/DRAFT_Documents_for_May_2020%20NC-SARA_Board_Meeting.pdf). (Hereafter referred to as “NC-SARA May 2020 Board Meeting Materials.”)

Importantly, while the Board meeting materials seem to suggest that this requirement would newly apply to schools that do not receive federal financial aid, the existing, stronger standard already applies to all NC-SARA schools, regardless of whether they are Title-IV eligible.<sup>6</sup> Ultimately, this proposed change amounts to a weakening of standards for all NC-SARA schools, and a higher standard for none of them.

We understand that there are concerns about the extent to which NC-SARA institutions are complying with the current NC-SARA standard, as well as Portal Entities' capacity to monitor school compliance. These are questions of critical import, and about which we make recommendations below. However, they do not justify removing this critical student protection.

NC-SARA is well positioned to raise the bar for online education, in terms of both quality and consumer protection, but this cannot happen if it believes that raising the bar – by definition, setting “different requirements” – is something to avoid, or if it handles institutional non-compliance by rescinding requirements that colleges choose not to comply with.

We therefore recommend that the Board reject this proposed change to weaken the professional licensure requirement that is currently in the NC-SARA manual, and instead consider strengthening it to align with the prior gainful employment rule standard.

## **II. Branch Campuses and Student Complaints**

The meeting materials indicate that the Board will consider three different changes to the way branch campuses are overseen.<sup>7</sup> The proposal would:

- Allow students to file complaints in either the institution's Home State or the state in which the branch campus is located (Section 4.4(d));
- Specify that Home States are responsible for resolving complaints against programs operated by branch campuses located in Host States (Section 2.5(i)(7)); and
- Limit the authority of Host States to regulate online programs operated by branch campuses (Section 2.5(o)).

There is little in these proposals that would make filing complaints easier or more effective for students, and much that would put students at risk and limit state authority to act even when an institution has physical presence within the state.

Although the proposal to allow students enrolled in online programs operated by branch campuses to file complaints either in the Home State or the Host State is framed as giving the student a choice, neither of these options necessarily represents a better process for the student. If a student enrolls in a program operated by a branch campus in Michigan, from a college headquartered in Arizona, but the student himself lives in Iowa, offering him the opportunity to file a complaint in Michigan offers little or no benefit.

Further, although the proposed changes to Section 4.4 would permit students to file a complaint in the Host State, the changes in Section 2.5(i)(7) make it clear that it is the Home State which is ultimately responsible for handling the complaints, no matter where they are filed. Requiring Host State Portal Entities to accept student complaints against branch campuses, while simultaneously removing their authority to act on the complaint, will reduce the likelihood of students' complaints being effectively resolved. These changes are further complicated by the proposed changes to Section 2.5(o) which would “clarify that the Host State will not regulate distance activity outside the state.”

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<sup>6</sup> NC-SARA Manual, P. 36.

<sup>7</sup> NC-SARA May 2020 Board Meeting Materials.

With regard to Host State regulation, the materials say that the modification to section 2.5(o) “will provide clarity about the ability of a Host State to regulate online and distance education activity within its state, when physical presence is established. It will also clarify that the host state will not regulate distance activity outside the state.”<sup>8</sup> However, if physical presence requirements are met, the Host State must retain authority to regulate the branch campus’s activity, even if the program has enrolled students from other states. Regulating a branch campus’s activity includes investigating and resolving student complaints about that branch. To remove that authority, as these proposed changes would do, would undermine the authority of the Host State to regulate colleges that operate within their borders and as such undermines NC-SARA’s core notion of shared oversight.

NC-SARA staff has provided assurances that the Portal Entities are in communication with each other regularly, and that they are able to express concerns and collaborate on responses in that way,<sup>9</sup> but in the interests of consumer protection and transparency those communication and collaboration processes should be formalized. Host States should be notified anytime a complaint is filed against a program with physical presence in their state, as should students’ states, and they should be part of the process to resolve complaints about programs based within their borders.

We therefore recommend that the Board reject the proposed changes, and instead strengthen the authority of Host States to receive and respond to complaints against programs operated by branch campuses.

### **III. Provisional Status**

According to the materials, schools on provisional status are “...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 limits on its distance learning enrollments if deemed necessary and appropriate by the Home State.”<sup>10</sup> However, the materials also acknowledge that at least one state has no procedures in place that apply to institutions on provisional status, meaning that it is not consistently true that schools on provisional status are subject to additional oversight.<sup>11</sup>

The suggested addition to manual Section 2.5(q) would require states to have a process for considering institutions’ applications for provisional status, on the occasions when specified circumstances arise that may be cause for concern. In addition, the proposed change to Section 2.5(c) would clarify that such a process must include required review of institutions with Financial Responsibility Composite Scores (FRCS) that fall below 1.5.<sup>12</sup>

We agree with these recommendations and urge NC-SARA to go further.

First, states should have mandatory review processes for all of the circumstances detailed in Section 3.2(a) of the NC-SARA manual, not only for FRCS.<sup>13</sup> Second, Section 3.2(a)(7) allows Portal Entities to consider provisional status for institutions that are not complying with NC-SARA’s data reporting requirements, but, because lack of compliance with regulations is an important way regulators can identify problems at an institution, *any* breach of NC-SARA policies should be sufficient to trigger a provisional status review.

Third, Portal Entities should have more discretion to determine whether an institution remains on provisional status, and the authority to revoke an institution’s membership if they determine there is a significant risk to students not specifically listed in the NC-SARA manual. To illustrate the problem with current NC-SARA policy,

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<sup>8</sup> NC-SARA May 2020 Board Meeting Materials, P. 9.

<sup>9</sup> NC-SARA Webinar.

<sup>10</sup> NC-SARA May 2020 Board Meeting Materials., P. 9.

<sup>11</sup> *Id.*, P. 10.

<sup>12</sup> *Id.*

<sup>13</sup> NC-SARA Manual, P. 22.

consider an institution placed on provisional status due to a government investigation in 2019 and ultimately found guilty. Despite the school's known wrongdoing, and irrespective of how egregious the wrongdoing was, the Portal Entity would currently have no authority to keep that institution on provisional status unless another investigation was opened in 2020. The same would be true if the institution had settled the claim, agreeing to provide financial relief to students, but making no admission of fault; the NC-SARA Portal Entity would have no choice but to reapprove the institution's NC-SARA membership in full because the institution would no longer be the subject of a current investigation. This is just one example that highlights the importance of allowing Portal Entities to use their judgment and discretion when evaluating institutions for NC-SARA membership. No state should be forced to approve institutions which they do not believe warrant membership in NC-SARA.

Finally, we urge the Board to work with states to articulate processes for what evaluation of institutions should entail whenever one of the red flags detailed in this section is identified. The concern is not simply about the need for a process, but rather the need for a substantive, meaningful process. It is thus critical that NC-SARA clarify that states must have a process for assessing provisional status, but also ensure that this process provides meaningful oversight and attention to problematic schools. NC-SARA should work with states to determine a uniform set of monitoring requirements and restrictions that institutions on provisional status should be subject to, in order to provide states with the confidence that problematic schools outside their borders are being monitored and that sufficient safeguards are in place. Further, NC-SARA must take responsibility for monitoring states' compliance with this process, along with other membership requirements.

### ***Other Urgent Recommendations for NC-SARA Given COVID-19 Crisis***

#### **I. Address Deficiencies in State Portal Entity Capacity**

NC-SARA's theory of action rests on member states fulfilling all of the agreement's requirements and performing sufficient state oversight so that other states can trust in the quality of each others' institutions. Yet NC-SARA has acknowledged that state Portal Entity capacity varies widely, with some states so severely understaffed and underresourced that they are unable to perform the monitoring and oversight functions required of them under NC-SARA. Troublingly, these deficiencies in Portal Entity capacity are being used to justify some of the proposals to weaken standards.

In instances where state Portal Entity shortcomings are challenging states' compliance with NC-SARA requirements, the answer cannot be to reduce the requirements. Solving a problem of regulatory noncompliance with less regulation will only hasten a regulatory race to the bottom. Instead, NC-SARA should institute capacity standards for Portal Entities as a requirement for state membership in the agreement, to ensure that only states able to perform the functions delegated to them by other member states are able to participate in NC-SARA.

#### **II. Raise Standards for Stronger Consumer Protection**

In addition to concerns about state capacity, the extent to which states can feel comfortable delegating oversight to other states is also a function of the standards to which regulated entities will be held. Many states share concerns about whether the NC-SARA standards are sufficiently high. In 2018, the Attorneys General of 15 states plus the District of Columbia expressed concern that NC-SARA's terms restricted students' access "to information about programs and to refunds and other state-level protections," and states' "ability to bring enforcement actions against predatory for-profit schools offering online programs in their states."<sup>14</sup>

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<sup>14</sup> State of New York Office of the Attorney General (June 11, 2018). Letter to U.S. Secretary of Education Elisabeth DeVos. Available at: [https://ag.ny.gov/sites/default/files/state\\_authorization\\_rule\\_comments\\_for\\_submission.pdf](https://ag.ny.gov/sites/default/files/state_authorization_rule_comments_for_submission.pdf).

The lack of sufficiently high consumer protection standards is one reason why California has declined to join NC-SARA, and the differences are clear. NC-SARA provides Portal Entities with next to no discretion in determining which schools may join, and – with the very limited and inconsistent exception discussed above with respect to provisional status – member schools can enroll students nationally, without limit and without concern for other states’ views.<sup>15</sup> In contrast, California law allows the state to prohibit schools, irrespective of where they are located, from enrolling Californians if the school is believed to be a risk.<sup>16</sup> In another example, California’s fund requires that out-of-state for-profit colleges pay into its Student Tuition Recovery Fund for the Californians they enroll,<sup>17</sup> but NC-SARA includes no comparable protection. As a result, Californians have greater access to financial relief if their college or even their program closes than do students from other states.<sup>18</sup> Were the state to join NC-SARA, Californians would lose these protections, as the state’s more protective higher education rules would be superseded by NC-SARA’s comparatively lax ones.

If unwilling to allow states to fully enforce their laws specifically targeted at the deceptive practices of higher education institutions against out-of-state schools, we urge the Board to raise consumer protection standards, in ways and to levels that minimize concerns about delegating oversight of questionable institutions and putting students at risk. Whereas NC-SARA engages frequently with state Portal Entities, including through the state compacts which are designated to represent them, it is imperative that these discussions include substantial engagement of state attorneys general and other consumer protection stakeholders who bring expertise regarding, and who focus on preventing and mitigating, student abuses and harms. While state Portal Entities often have the most direct contact with the institutions being regulated, state attorneys general representatives and other consumer protection stakeholders have direct contact with the students whose education and protection is in question.

The establishment of different, higher standards for NC-SARA membership than those required under other regulatory schemes would set NC-SARA schools apart and help facilitate student access to the highest quality and value in online education. The arguments in the Board meeting materials against creating standards that differ from federal requirements fundamentally misunderstand the function state overseers play in higher education oversight; we assert that higher standards are in fact necessary for a useful and effective reciprocity agreement among states, given that the preeminent function of states’ oversight role is consumer protection. Rather than expressing “concerns” about state legislative proposals aimed at preventing abusive behavior, as NC-SARA recently did in response to Maryland lawmakers’ proposal to close the well-known “90/10” loophole in federal law, NC-SARA should embrace such proposals as opportunities to evaluate whether there is wisdom in NC-SARA raising its own standards, in the name of promoting high-quality educational opportunities.<sup>19</sup> If signed, the

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<sup>15</sup> NC-SARA Manual, P. 19.

<sup>16</sup> Assembly Bill 1344 (2019). California State Legislature. Available at: [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1344](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1344).

<sup>17</sup> California Department of Consumer Affairs. “Order of Adoption.” Available at: [https://www.bppe.ca.gov/forms\\_pubs/order\\_adoption.pdf](https://www.bppe.ca.gov/forms_pubs/order_adoption.pdf).

<sup>18</sup> See Strayer University (2015). “STRF Assessment (California Students Only).” Available at <https://strayer.smartcatalogiq.com/en/2019-2020/Catalog/Financial-Information/Books-and-Fees/STRF-Assessment-California-Students-Only>. (Strayer University’s course catalog includes a description of the program for “California students only.”) Capella University (Aug. 1, 2017). “University Policy 4.03.01.” Available at: <https://alliance.capella.edu/content/dam/capella/PDF/policies/4.03.01.pdf>. (Capella University’s Tuition and Fee Policy similarly articulates STRF rights for Californians exclusively.)

<sup>19</sup> Jeremy Bauer-Wolf (March 18, 2020). “Maryland could be the first state to close a loophole on federal aid to for-profit colleges.” Education Dive. Available at: <https://www.educationdive.com/news/maryland-could-be-the-first-state-to-close-a-loophole-on-federal-aid-to-for/574519/>

law, which was passed unanimously by the Maryland legislature,<sup>20</sup> cannot and will not be enforced against NC-SARA member institutions due to NC-SARA policy.<sup>21</sup>

### **III. Attorney General, Consumer Advocate, and Student Membership on Board of Directors**

A serious defect of NC-SARA's governance is that – while framed as a joint agreement of states – a small number of seats on the Board are filled with state representatives. In fact, there are more seats filled by college and university representatives than by states, giving the regulated entities themselves a larger role than states in approving new regulations.<sup>22</sup>

At a minimum, we recommend the immediate creation of four additional Board positions, two for state attorneys general, one for a consumer advocate, and one for a student. This inclusion will bring fresh perspectives to the Board in this time of crisis, and will ensure that law enforcement and student-focused voices will be part of the discussion.

### **IV. Increase Complaint Transparency**

When students enroll in a distance education program, it is important that there is a complaint procedure in place to ensure that students' concerns are reviewed and addressed under the law. Complaints serve a dual purpose: They allow students to address concerns and seek resolution to issues relating to their education, and they also allow states to identify patterns of predatory or misleading practices at institutions. The existing complaint system utilized by NC-SARA unfortunately suffers from a lack of transparency, and limits authority to resolve complaints to the institution and the Home State where the institution is located.<sup>23</sup>

Currently, NC-SARA policies require students to exhaust complaint procedures at their institution before they are permitted to raise their complaint to the state level,<sup>24</sup> a process requirement that undoubtedly has a dampening effect on complaint submission given administrative burden as well as concerns about school retaliation.<sup>25</sup> Once they have done so, students are only permitted to file a complaint in the state where the institution is located, rather than the state where they live. Although the NC-SARA complaint process encourages the Home State to notify the Portal Entity of the student's state when they receive a complaint,<sup>26</sup> there is no expectation that the student's state will have a role in resolving the complaint nor transparency to provide other states with information about the complaint. That means that states may not know if their residents are frequently filing complaints about a particular school, or if that a particular school has a pattern of abuse affecting residents of several states. The NC-SARA manual makes clear that member states all remain able to enforce general-purpose laws (though not higher-education specific laws) against member schools, regardless of where the institution is located.<sup>27</sup> Yet identifying patterns of problematic or abusive behavior across state lines - behavior which may

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<sup>20</sup> Senate Bill 294 (2020). Maryland General Assembly. Available at: <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0294>.

<sup>21</sup> Danielle Douglas-Gabriel (March 18, 2020). "Maryland General Assembly Moves to Tighten Federal Aid Restrictions on For-Profit Colleges." The Washington Post. Available at: <https://www.washingtonpost.com/education/2020/03/18/maryland-general-assembly-moves-tighten-federal-aid-restrictions-for-profit-colleges/>.

<sup>22</sup> "NC-SARA Board Members." NC-SARA. Available at: <https://nc-sara.org/national-council-board>.

<sup>23</sup> "Student Complaints Process." NC-SARA. Available at: <https://www.nc-sara.org/student-complaints-process>.

<sup>24</sup> NC-SARA Manual, P. 30.

<sup>25</sup> See Department of Consumer Affairs (April 19, 2016). "Decision after Opportunity to be Heard." Available at: [https://www.bppe.ca.gov/enforcement/actions/ncic\\_decision.pdf](https://www.bppe.ca.gov/enforcement/actions/ncic_decision.pdf). ("NCIC threatened to sue or dismiss students who complained or did not give the school a good review to BPPE.")

<sup>26</sup> NC-SARA. "SARA Student Complaint Process." Available at: [https://www.nc-sara.org/sites/default/files/files/2019-08/student\\_complaints\\_process.pdf](https://www.nc-sara.org/sites/default/files/files/2019-08/student_complaints_process.pdf).

<sup>27</sup> NC-SARA Manual, P. 17.

violate general consumer laws - is far more challenging when the structures designed to identify abusive behavior do not facilitate the communication of relevant information.

We urge the Board to take steps to develop a complaint process that works well for students, requires collaboration among states, and assists in identifying problematic patterns of institutional behavior. Students must be free to file complaints in their own state where it is most convenient to them, states must share complaint information freely and transparently, and complaint data must be centrally collected and tracked at every level.

## **V. Prohibit Mandatory Arbitration Clauses**

The combination of loosened federal regulation and an economic downturn triggered a boom in for-profit college enrollment after the Great Recession.<sup>28</sup> The current economic crisis is likely to lead to another enrollment boom, and with the for-profit college sector now predominantly online and enrolling students from states outside of the institution's state,<sup>29</sup> the risks to students are now greater.

One step NC-SARA is uniquely positioned to take is to prohibit mandatory arbitration clauses in member school enrollment agreements. Mandatory arbitration clauses were widely and long used by for-profit schools, including some of the largest institutions within NC-SARA, to limit students' recourse if they have been harmed by their school.<sup>30</sup> Such agreements have not typically been included in enrollment agreements of public and nonprofit colleges, which compose the vast majority of NC-SARA membership, and are currently prohibited by federal regulation until June 30, 2020. However, due to the weakening of these federal rules in 2019, institutions will soon be able to employ them once again.<sup>31</sup> As an independent organization rather than a state compact, NC-SARA could legally prohibit mandatory arbitration clauses outright for member institutions without violating the Federal Arbitration Act; however, the NC-SARA manual does not currently prohibit mandatory arbitration agreements.<sup>32</sup>

NC-SARA prohibits states from enforcing state higher education laws aimed at protecting students. It also precludes students' states from investigating and acting on the complaints of their residents or taking action against a school for violating NC-SARA policies. NC-SARA should take steps to ensure that students are able to protect themselves and seek restitution when they are harmed, including by seeking redress in a court of law. By prohibiting arbitration clauses, abusive and low quality for-profit schools will be less able to use NC-SARA as a shield to accountability.

We urge the Board to prohibit institutions operating within NC-SARA from including mandatory arbitration agreements in their enrollment agreements.

### ***Response to Financial Responsibility Composite Score Concerns***

Separate from the proposed manual changes, the crisis has prompted institutions to ask NC-SARA to waive entirely FRCS requirements for the next three years, and NC-SARA has announced that the issue will be

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<sup>28</sup> Stef W. Knight (Sep. 15, 2018). "How the Great Recession Fueled For-Profit Colleges." Axios. Available at: <https://www.axios.com/great-recession-for-profit-college-education-debt-d6d33ec8-b4ac-47ae-aeec-c5e39a3a9447.html>.

<sup>29</sup> "The Evolution of the For-Profit College Industry" (Dec. 2019). The Institute for College Access and Success. Available at: <https://ticas.org/wp-content/uploads/2020/01/the-evolution-of-the-for-profit-college-industry.pdf>.

<sup>30</sup> Robert Weissman and Julie Murray. (Feb. 24, 2016). Citizen Petition to the U.S. Department of Education on Title IV Arbitration Clauses. Available at <https://www.citizen.org/sites/default/files/citizen-petition-to-ed-title-iv-arbitration-clauses.pdf>.

<sup>31</sup> The Institute for College Access and Success (Sept. 2019). "The Top 10 Ways That the New Borrower Defense Rule is Worse for Borrowers." Available at: [https://ticas.org/wp-content/uploads/2019/09/BD\\_Side-by-Side.pdf](https://ticas.org/wp-content/uploads/2019/09/BD_Side-by-Side.pdf).

<sup>32</sup> NC-SARA Manual, P. 32.



discussed at the upcoming Board Meeting.<sup>33</sup> We concur with Dr. Williams that the FRCS – although an imperfect indicator – is the only nationally-recognized tool available to monitor institutions’ financial stability.<sup>34</sup>

Further, in light of the fact that FRCS will not reflect the current crisis for nearly three years given the lag in reporting of financial statements, waiving the requirement at this time would serve to benefit primarily those institutions which are already suffering financial difficulties as opposed to those which were financially stable prior to the pandemic.

We urge the Board to maintain or strengthen NC-SARA’s FRCS requirement in response to the current crisis, rather than weaken it in any way. If anything, as recent events have heightened the risk of financial collapse for many institutions, NC-SARA should be identifying more robust and timely indicators that a school is financially unstable and thus vulnerable to closure, over-aggressive enrollment efforts, and cost-cutting measures that undermine educational integrity. Many of our organizations would also be eager to participate in any efforts to consider improved measures of financial viability moving forward, as suggested by Dr. Williams.<sup>35</sup>

Thank you for your time and attention to these issues. We welcome opportunities to discuss these recommendations at your convenience.

Sincerely,



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**The Institute for College Access and Success**



Robyn Smith  
Of Counsel  
**National Consumer Law Center**



Clare McCann  
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Bob Shireman  
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<sup>33</sup> Lori Williams (March 26, 2020). “NC-SARA Responds to COVID-19 Concerns from Participating Institutions.” NC-SARA. Available at: <https://www.nc-sara.org/news-events/nc-sara-responds-covid-19-concerns-participating-institutions>.

<sup>34</sup> NC-SARA (April 7, 2020). “NC-SARA Sends Letter to Higher Education Stakeholders Regarding Continued Use of Financial Responsibility Scores.” Available at: [https://www.nc-sara.org/sites/default/files/files/2020-04/NC-SARA\\_PressRelease\\_NAICU\\_ACE\\_Letters\\_07Apr2020.pdf](https://www.nc-sara.org/sites/default/files/files/2020-04/NC-SARA_PressRelease_NAICU_ACE_Letters_07Apr2020.pdf).

<sup>35</sup> Lori Williams (April 6, 2020). “Letter to NAICU Regarding Continued Use of Financial Responsibility Scores.” NC-SARA. Available at: [https://nc-sara.org/sites/default/files/files/2020-04/NC-SARA\\_Letter\\_to\\_NAICU\\_06Apr2020.pdf](https://nc-sara.org/sites/default/files/files/2020-04/NC-SARA_Letter_to_NAICU_06Apr2020.pdf).