

the institute for  
college  
access & success



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

November 30, 2020

**Re: Call for Policy Revisions for Spring 2021**

Dear President Williams and Members of the Board:

As organizations with 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 worthless degrees and unaffordable debt, whether they enroll in brick-and-mortar programs or in online education, we appreciate the call for proposals to modify NC-SARA policy. NC-SARA's position affords it important opportunities to ensure policies are in place to protect veterans, servicemembers, and low-income students from being cheated and deceived by predatory colleges.

For ease of reference, we attach here the proposals submitted to NC-SARA on April 28, 2020 and September 11, 2020, as well as recommendations shared in 2018 by The Institute for College Access & Success. With the exception of our April 2020 recommendation related to professional licensure, which was reflected in the board's May meeting actions, we believe these recommendations remain relevant and worthy of consideration. We would welcome the opportunity to discuss them further at your convenience.

We appreciate receiving a response to our September 11 comments from President and CEO Lori Williams, dated October 27, 2020, and the invitation to each organization to learn more about efforts currently underway. We look forward to such conversations. In the meantime, we wish to clarify two points made in the letter with respect to our proposals.

First, NC-SARA sought to clarify a preexisting requirement that participating schools "provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education the student did not receive" in the case of program discontinuation, a requirement that is both important and difficult to operationalize given the broad language used. Our suggestions aimed to make the requirement a clearer and more meaningful standard. Given that NC-SARA's goal was to reiterate an existing requirement, we do not understand how clarifying the requirement "would be inappropriate for NC-SARA" to do or how it would "overstep [NC-

SARA's] purview." Further, to the extent that the use of more precise language would create a stronger standard than currently in place at participating institutions, we do not believe these steps to be inappropriate for an entity that aims to promote high-quality educational opportunities. Given that the preeminent function of states' higher education oversight role is consumer protection, we assert that higher standards are in fact necessary for a useful and effective reciprocity agreement that asks states to delegate responsibility and authority.

Second, as you are aware, we have recommended that NC-SARA prohibit participating institutions from including mandatory arbitration clauses in enrollment agreements, given its unique position as a private entity. In response to this recommendation, the letter said that "the issue of when and how mandatory arbitration clauses are employed" is up to states to decide. This is not the case, as the Federal Arbitration Act generally disallows states from placing such restrictions. However, as an independent organization, NC-SARA could legally prohibit mandatory arbitration clauses for member institutions without violating the Federal Arbitration Act. Because NC-SARA prohibits states from enforcing state higher education laws aimed at protecting students, and 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, a prohibition on mandatory arbitration clauses would better protect students from abusive and low-quality predatory schools seeking to use NC-SARA as a shield from accountability.

We sincerely appreciate the opportunity to offer these comments and clarifications. Again, we welcome opportunities to discuss these recommendations at your convenience.

Sincerely,



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**The Institute for College Access and Success**



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