

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

July 26, 2021

**Re: Proposed 21<sup>st</sup> Century Guidelines for Distance Education**

Dear President Williams and Members of the Board:

The undersigned organizations are committed to ensuring access to high-quality postsecondary distance education and believe that one of the primary functions of state oversight of education, including distance education, is to protect students from predatory schools and programs that leave them with unmanageable debt and credentials and degrees of questionable quality. We appreciate the opportunity to provide comments on the 21<sup>st</sup> Century Guidelines for Distance Education (Guidelines), commissioned by the National Council for State Authorization Reciprocity Agreements (NC-SARA) and developed by the National Center for Higher Education Management Systems (NCHEMS). In addition to providing specific comments regarding the proposed guidelines, we reiterate earlier comments regarding deficiencies in the structure and implementation of the reciprocity agreement and continue our offer to provide support to NC-SARA to work collaboratively to improve the agreement and ensure adequate student protection.

***Proposed 21<sup>st</sup> Century Guidelines for Distance Education***

The Proposed 21<sup>st</sup> Century Guidelines for Distance Education rightly acknowledge that the COVID-19 pandemic and abrupt shift to virtual education has heightened the urgency to ensure that distance education meets robust quality standards. Recognizing the advancements in technology and learning pedagogy, we agree with NC-SARA that it is necessary and timely to address the issue of distance education program quality. However, while we appreciate that the Guidelines cover an array of elements, including institutional capacity, student support, academic quality, ongoing program review and improvement, and academic/institutional integrity, that are necessary to ensure overall institutional capacity and program quality, we find that they are insufficient to ensure adequate enforcement of a common standard of consumer protection across NC-SARA participating states. Below we have detailed as examples some of the ways in which

the Guidelines fail to meet the need for strong consumer protections, and fail to provide adequate guidance to states.

The Guidelines are vague and unmeasurable, for example:

“Financial support for distance learning is sufficient given the scope of programming, enrollment, student body, method of delivery, and support.” (Institutional Capacity #2)

This Guideline does not provide any detail as to how this would be measured, by whom, or against what standards. Under what circumstances would the student body or method of delivery require additional financial support for distance learning? How much additional financial support is necessary? Would private loans with predatory terms constitute “financial support”? What is even considered “sufficient?”

“Online program management (OPM) and other contractual and consortial arrangements are reviewed to ensure that the institution retains appropriate authority and responsibility for the academic program and student privacy.” (Institutional Capacity #7)

This Guideline does not make clear who is charged with reviewing OPM and other contractual and consortial arrangements, nor does it provide criteria for determining whether an institution has retained *appropriate* authority and responsibility. College and university reliance on OPMs has steadily increased in the past ten years, and in the wake of the pandemic outsourcing agreements with such companies is a seemingly quick and easy way for institutions to create new programs and to move existing ones online.

Unfortunately, students—and institutions—are on the losing side of these agreements. Students are often unaware that they are communicating or dealing with a third party, for example during the recruitment process, or that a contractor has designed their course and handles their instruction. Students are also unaware of the conflicts of interest that are created when institutions sign away large portions of their revenue to OPMs. There is clear evidence that in many OPM arrangements, institutions are handing over “authority and responsibility for the academic program” via the number of program services that are contracted out and sometimes via the establishment of decision-making bodies giving the OPM voting or de facto power over curriculum, course offerings, enrollment targets, and financial matters. As NC-SARA aims to stand in for the third-prong of the triad - student and consumer protection that would otherwise be afforded by an institution’s home state - it is essential for the organization to reject vague conceptions of institutional capacity as is found in this Guideline and instead insist on meaningful oversight of outsourcing.

“Programs offered through distance learning are reviewed on a regular cycle that includes external perspectives. Reviews are informed by empirical evidence including feedback from students and graduates about the academic program and information about graduates’ success (e.g., employment and further education).” (Program Review #18)

“The institution documents improvements made as a result of the program reviews and other feedback.” (Program Review #19)

It is unclear from this Guideline whether institutions are expected to make improvements based on information collected during program review, or simply document *if* improvements are made. There also are no clear standards as to *how* graduate success will be measured and evaluated; there are no specific expectations for students attaining employment and/or experiences promotional opportunities or wage increases.

“Distance learning programs are appropriately integrated into the academic, administrative, and governance systems of the institution. (Academic and Institutional Integrity #21).”

What does it mean to be “*appropriately*” integrated into the institution? By what standards will this be measured?

“The institution demonstrates its understanding of the requirements and obligations of participation in NC-SARA, such as NC-SARA consumer protection provisions. Note: This item is the responsibility of the states.” (Academic and Institutional Integrity #23)

This is the only Guideline that explicitly indicates states are responsible for its application, which raises questions as to the intent in terms of application of the other Guidelines. According to the statement issued by the Council for Regional Accrediting Commissions (C-RAC), each accrediting commission is responsible for adopting and implementing distance education guidelines and will independently determine how to use the Guidelines developed by NC-SARA.

States are currently required to use the existing C-RAC Guidelines in their NC-SARA work, however there is no information available on how states are utilizing the C-RAC guidelines, nor about how NC-SARA is facilitating a consistent interpretation of the current requirements and ensuring that states are in fact evaluating institutions according to C-RAC Guidelines. Absent additional details regarding the newly proposed standards, clarification regarding application and oversight expectations, and transparent evaluation and enforcement processes, consumer protection standards will not be achieved by the proposed update. Further, there remains no mechanism to evaluate whether states are enforcing the Guidelines, and there is no improvement

in transparency that would assure state regulators that the Guidelines are being consistently enforced across NC-SARA-participating institutions.

### *Process and Participants for Guideline Creation*

The updated Guidelines were developed by NCHEMS by first reviewing existing distance education standards and guidelines of C-RAC and accrediting organizations, and then reviewing those findings with practitioners, researchers, and quality assurance professionals. According to NCHEMS, the Guidelines were shaped by criteria that they be “developed in partnership with accreditors and other organizations and experts in the field; applicable to a wide range of institutions; congruent with the standards used by many of the institutional accreditors; relevant to accreditors and NC-SARA in assuring distance education quality; and accessible and useful to institutions for planning and continuous improvement purposes.”

It is deeply concerning that NC-SARA anticipates that states will enforce these guidelines as part of an approach to ensuring consumer protections for students enrolled in distance education programs, and has repeatedly asserted that state oversight agencies, attorneys general, and student and consumer advocates are valued stakeholders, yet these groups do not appear to have been included in the development of the Guidelines, nor were their roles considered as criteria for the Guidelines – only the role of accreditors. If these Guidelines are intended to be used to ensure consumer protection, these constituencies would need to be involved in their development and in establishing implementation structures.

We have repeatedly stated that consumer protection standards should be clear, measurable, and implemented consistently across NC-SARA participating states. However, as written, these Guidelines cannot be uniformly applied by states. In fact, according to NCHEMS, the Guidelines are designed to be “sensitive to the enormous variation in institutions offering distance education (e.g., in size, public/private, degree levels, programs), in students enrolled, in program design and delivery, in faculty model, and in the extent of preparedness and resources students have to study at a distance. Thus, the 21st Century Guidelines are designed to inform, but not limit, accreditors and states in their judgment of satisfactory levels of quality in the offering of programs through distance education.”

These proposed Guidelines were drafted with the intention that they would be implemented by accrediting agencies. NC-SARA’s proposed adoption of these Guidelines would instead require states to enforce these standards. States and accrediting agencies have very different roles to play in the triad of higher education accountability and oversight. It is entirely inappropriate to use the types of vague guidelines that accreditors impose through a peer review and improvement process, and expect the state to impose them as consumer protections. Instead, NC-SARA should create bright-line, strong consumer protections, similar to those typically included in state laws

that are applicable to private institutions. States should enforce meaningful and clearly defined standards and protections, so that institutions understand what is expected for compliance. As proposed, these Guidelines are insufficient to ensure adequate student protection for all students enrolled through NC-SARA participating institutions.

### ***Ongoing Structural Deficiencies in NC-SARA***

As we have previously stated, reciprocity agreements can be important tools in streamlining oversight and promoting quality educational opportunity, but only if the specific terms of the agreement are sufficiently robust. For NC-SARA, the terms may represent an increase in regulation of distance education in some states, but they also undermine important safeguards and consumer protections in others.

The overall lack of enforceable guidelines within NC-SARA has meant that consumer protection and quality assurance standards are simply nonexistent. For example, current C-RAC Guidelines require institutional integrity, but several law enforcement actions point to unlawful, unfair, and deceptive practices by private and for-profit schools that were nevertheless accredited and approved to operate in their home state. Further, failure to meet the federal government's formulaic standard for financial responsibility is one of the only circumstances that has led to the placing of a school on provisional status, and even this bright-line rule has gone unenforced by NC-SARA. Debating whether NC-SARA adopts a new set of standards is meaningless if NC-SARA participants are not truly required to enforce whatever standards are in place. Adopting vague and unenforceable standards only serves to obscure this failure of oversight.

We remain concerned that State Portal Entities lack capacity to perform sufficient state oversight and provide assurances to other states that they can trust in the quality of each other's institutions. As it relates to these Guidelines, the NC-SARA manual states that "states that join SARA need to base their oversight of SARA activity and their investigative actions on the [guidelines]," but no guidance is given on *how* to evaluate any of the guidelines, or what action should be taken if an institution is not in alignment.

Further, according to the NC-SARA manual, "A state must accept an institution's self-certification that it will meet the policies set forth in the SARA Policy Manual and commitments contained in the institutional application to participate in SARA once it is allowed to participate. However, as soon as an institution is accepted into SARA, the State Portal Entity has a right to evaluate whether the institution in its work through SARA meets the C-RAC Guidelines or other SARA requirements and must investigate any claims that the Institution does not meet these requirements." This standard means that, even if a State Portal Entity desires to evaluate institutional compliance with these vague and unmeasurable standards, it would not be allowed

to do so until after granting an institution's admission to NC-SARA, inherently opening students up to possible, unknowable risk.

As a result of the above concerns, we recommend that instead of adopting the unenforceable and vague Proposed 21<sup>st</sup> Century Guidelines for Distance Education, NC-SARA establish strong and sufficient consumer protection standards by undertaking a rulemaking process with participation and input from states, including states' attorneys general and state oversight agencies, student and consumer organizations, and other stakeholders. Our organizations would welcome opportunities to discuss these issues and work collaboratively to establish meaningful standards that protect students and ensure quality of distance education programs.

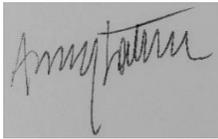
Sincerely,



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