

## STRENGTHENING INTERSTATE OVERSIGHT OF DISTANCE EDUCATION THROUGH IMPROVEMENTS TO NATIONAL COUNCIL FOR STATE AUTHORIZATION RECIPROCITY AGREEMENTS (NC-SARA)

With thousands of colleges now offering distance education, states have sought ways to partner with each other to streamline the approval and oversight of colleges. A “reciprocity agreement” is an agreement between states that they will delegate some amount of oversight authority to the state where the school is located, so that the many states where its students are located do not have to approve and oversee the college. Reciprocity agreements can be important tools in streamlining oversight and promoting educational opportunity, but only so far as the specific terms of the agreement are sufficiently robust.

The National Council for State Authorization Reciprocity Agreements (NC-SARA) is the most prominent example of a state authorization reciprocity agreement. NC-SARA simplifies compliance for institutions by funneling approval and oversight through the state where they are physically located, which in turn reduces the number of out-of-state institutions seeking to enroll students that states must oversee.<sup>1</sup> Rather than apply to each state in which they enroll students for authorization, NC-SARA requires institutions to submit an application for membership in the state where it is located. Upon approval, the institution is authorized to offer online educational programs in any other NC-SARA member state, without additional authorization needed from other states participating in the agreement.<sup>2</sup>

However, NC-SARA's one-size-fits-all system oversimplifies the process, making it too easy for institutions to get approved and reducing states' authority over institutions outside their borders. Although many of NC-SARA's policies are good and may represent a net increase in the regulation of distance education in some states, they also undermine critical safeguards and consumer protections in others.

The following changes to NC-SARA's reciprocity agreement are necessary to protect the rights of states, students, and taxpayers.

1. *Strengthen institutional quality measures, including assessments of colleges' student loan repayment or default rates, completion rates, job placement rates, and raise the required Financial Responsibility score to no lower than 1.5.* Reciprocity offers states and institutions an opportunity to reduce their authorization workloads, but a streamlined approval process should only be available to institutions that do not put students or taxpayers at risk. Approval requirements should establish a high bar, so that only rigorous and financially secure institutions are eligible for this expedited approval process.
2. *Create strong financial security and veracity requirements to require institutions to comply with state refund and cancellation provisions, and require that all states maintain a tuition recovery fund.* School closures can be devastating to students, and states must retain the authority to protect students and taxpayers from a precipitous school closure. States must be confident that institutions approved to operate through a reciprocity agreement are financially secure, and students must be *protected in the event of a school closure*.
3. *Prohibit institutions from enrolling students in programs that will not qualify for state professional licensing requirements where they reside, absent a handwritten request for exemption.* The risk of professional licensing requirements rests almost entirely on students. Current NC-SARA policies require institutions to determine whether a program satisfies state licensure requirements, but allows the institution to enroll the student regardless, requiring only that the student receive some form of notification from the institution.
4. *Develop a complaint process that works well for students, encourages collaboration among states, and assists in identifying problematic patterns of institutional behavior.* Especially in a reciprocity agreement, student complaints serve as an important tool for states to identify problematic patterns at educational institutions. Students must be free to file complaints, states must work collaboratively to investigate and resolve complaints, and complaint data must be collected and transparent at every level. Further, we recommend that NC-SARA prohibit institutions from including mandatory arbitration clauses in their enrollment contracts.
5. *Empower states with the authority to enforce higher education-specific consumer protections, excluding certain agreed upon approval and disclosure provisions, which will be addressed by the reciprocity agreement.* Reciprocity agreements don't need to be all or nothing. NC-SARA can streamline the approval and oversight process for institutions without requiring states to cede authority over out-of-state institutions.
6. *Allow states to limit enrollment at institutions that display specified problematic patterns, as well as based on state policy.* States must be able to make the final determination about whether an institution is permitted to operate within the state, and a reciprocity agreement must ensure that states retain the authority needed to safeguard students and taxpayers.
7. *Modify the existing governance and decision-making processes to afford states more authority within and regarding the agreement, and encourage more collaboration between the states.* Given their key role in the Title IV triad, it is essential that states can create and enforce higher education regulations. For states that join a reciprocity agreement, this process is by definition a collaborative one, but it is imperative that states serve as the key policy and decision makers.

<sup>1</sup> National Council for State Authorization Reciprocity Agreements (NC-SARA). *Key Attributes of SARA*. Available at: <http://www.nc-sara.org/about/key-attributes-sara> (last visited July 26, 2018).

<sup>2</sup> *Ibid.*