

Proposal to Elevate SARA's Consumer Protection Standards

The State Authorization Reciprocity Agreement (SARA), administered by the National Council for State Authorization Reciprocity Agreements (NC-SARA), lowers barriers for schools to offer online programs in multiple states, easing the way for institutions to expand the reach of their online programs. SARA's impact is immense - almost 6 million students were enrolled in online programs at more than 2,300 SARA participating schools in Fall 2020, including 1.6 million students enrolled in online programs based outside of their state.¹ Every state except for California is a SARA member.² However, the agreement's standards set an extremely low bar for consumer protection, leaving millions of online students vulnerable to abuse by unscrupulous schools.

SARA schools are subject to two sets of requirements: any requirements applied by the state where the school has a physical presence for in-state institutions, and the standards for participation in SARA. State requirements for in-state school authorization vary widely, with some states having almost no requirements at all, while others have many, at least for for-profit schools. The second set of standards, those required for participation in SARA, are minimal, and offer inadequate protections to online students.

Compounding the problem, SARA prohibits member states from enforcing stronger state consumer protection requirements with respect to out-of-state SARA schools operating in their state. For states with strong consumer protection laws, this creates a two-tiered system where students at brick-and-mortar schools and online schools based in the state are afforded more protection than online students at SARA schools based out of state. Because the SARA requirements are so minimal, and SARA prohibits states from enforcing their state requirements with respect to out-of-state SARA schools, states with stronger regulations are forced to leave online students vulnerable to out-of-state schools based in low-regulation states.

A related problem is that many states' oversight mechanisms for public institutions are minimal. States understandably rely on state control of their own public institutions for oversight, and therefore the state's oversight systems are not structured to apply the state's private college oversight requirements to their public institutions. But states do not have similar control over out-of-state public institutions that participate in SARA. Low SARA standards mean that out-of-state public institutions that participate in SARA can potentially prey on students in SARA member states without adequate oversight. This risk increases when public schools purchase and/or partner with for-profit institutions, which pose higher risks to students.³

¹ See "NC-SARA Fast Facts," <https://www.nc-sara.org/fast-facts>.

² See *id.*

³ For example, in 2020, the public University of Arizona acquired Ashford University, which was facing allegations of egregious misconduct, and entered a long-term contract with the for-profit owner that provided that the company would help run the school as a "nonprofit" carrying the public institution's name, the University of Arizona Global Campus. See Robert Shireman, *How For-Profits Masquerade as Nonprofit Colleges*, Oct. 7, 2020, <https://tcf.org/content/report/how-for-profits-masquerade-as-nonprofit-colleges/>. Other examples include Purdue University, which purchased the for-profit Kaplan University and rebranded it as Purdue University Global, and the University of Arkansas, which purchased for-profit Grantham University.

Another significant problem with SARA is that member states do not have full control over setting SARA's standards. Although recent changes have made the SARA policy-modification process more transparent and elevated involvement by the regional compacts that represent states, NC-SARA's Board retains veto power over any proposed changes to SARA policy. States do not hold the majority of positions on the Board, and therefore lack control over the Board's decisions. In fact, the NC-SARA Board includes representatives of regulated institutions, representatives of accreditors, and various other individuals.⁴ States' lack of control over the Board raises concerns that the Board could veto states' efforts to improve consumer protections for SARA institutions. Authority over setting policy for a reciprocity agreement should be reserved to the member states or their representatives, the regional compacts, not to regulated institutions.⁵

Finally, SARA has no mechanism to assure member states have adequate resources to properly oversee SARA institutions and enforce SARA standards in their states. States need to have sufficient staff to review institutions' applications for authorization, investigate and resolve complaints about SARA schools, monitor schools' ongoing compliance with SARA standards, and take action, when necessary, to enforce the standards. When any member state lacks such capacity, students in that state and all other SARA member states are at risk.

The solution to these problems is for SARA member states and NC-SARA's governing Board to strengthen consumer protection standards for participating SARA schools, modify NC-SARA's governance structure so that states are in control of setting such standards, and take steps to ensure SARA member states' enforcement capacity.

SARA sets a very low bar for consumer protection

SARA sets a very low consumer protection bar for participating schools. Participating institutions have to be accredited, authorized by a state or U.S. territory, and if a non-public institution, meet certain financial responsibility requirements.⁶ While SARA schools must agree to compensate or provide reasonable alternative options for students harmed by school closures,⁷ there is no mechanism, such as a surety requirement or tuition recovery fund, to assure that the resources will exist to make good on that promise. Further, SARA schools must agree to meet the Interregional Guidelines for the Evaluation of Distance Education of the Council of Regional Accrediting Commissions (C-RAC Guidelines), but those are aspirational guidelines that are primarily related to program quality (such as "online learning is appropriate to the institution's mission and purpose," and "the institution assures the integrity of its online offerings").⁸ The Guidelines do not include consumer protection measures such as prohibitions on common types of misconduct, refund or cancellation rights, or protections from the effects of a precipitous closure.

⁴ See "NC-SARA's Board of Directors," <https://nc-sara.org/nc-saras-board-directors>

⁵ In addition, SARA's policies give the president of the relevant regional compact and the president of the NC-SARA authority to overrule decisions by member states about in-state schools' provisional authorization status. See SARA Policy Manual 22.1 § 3.2(d)(3) and (4). SARA's policies should not permit non-state actors to have veto power over state agencies' oversight actions with respect to schools located in their state.

⁶ SARA Policy Manual 22.1 § 3.1(b)(3) - (5).

⁷ SARA Policy Manual 22.1 § 3.1(b)(6).

⁸ SARA Policy Manual 22.1 § 4.7 and Appendix B.

Importantly, adopting higher consumer protection standards for SARA schools would not require member states to enact new state laws or regulations. Rather, member states would simply incorporate the higher standards into SARA's requirements for institutional participation.

As far as requirements on states, the SARA Policy Manual also requires that participating states have a “process for consumer protection” that includes a process for resolution of consumer complaints.⁹ However, as described below, SARA's complaint system is flawed and may impede member states' ability to learn of schools' misconduct. SARA states are also required to have a process to deal with unanticipated school closures and are required to make “every reasonable effort” to assure that students affected by abrupt closures receive compensation.¹⁰ However, as noted above, SARA does not include a requirement that all SARA schools post a bond, pay a surety, or contribute to a student tuition reimbursement fund, raising the risk that students will not be compensated after a closure.¹¹

Moreover, the “Unified State Authorization Reciprocity Agreement,” which states enter into to join SARA, explicitly prohibits states from applying any state requirements to provide refunds to students to out-of-state SARA schools.¹² Yet SARA itself fails to establish any alternative, SARA-wide refund requirement, and further, SARA does not require member states to have refund policies for in-state SARA schools.¹³ This leaves SARA students vulnerable to abuse.

What additional consumer protections are needed to protect SARA students?

Outside of SARA, many states have different standards and different oversight regimes for public, private nonprofit, and for-profit schools. These different standards or processes reflect states' recognition of the different levels of risk to students posed by the different types of institutional control. SARA policy, however, prohibits member states from recognizing and acting on these different risks in their oversight.¹⁴ As long as SARA continues to include for-profit institutions, SARA's standards must be strong enough to counter the financial incentives for misconduct found in the for-profit school sector.

To adequately protect online students, including those at higher-risk for-profit colleges, SARA's consumer protection standards must include at least the following protections:

⁹ SARA Policy Manual 22.1 § 2.5 and § 4.4.

¹⁰ SARA Policy Manual 22.1 § 2.5(h)(2). The Unified State Authorization Reciprocity includes stronger language, requiring member states to have “processes to ensure that students receive the services for which they pay, or reasonable financial compensation for those not received. This may include tuition assurance funds, surety bonds, teach-out provisions or other practices deemed sufficient to protect consumers.” However, this language is not included in the SARA Policy Manual.

¹¹ Examples of SARA schools that have closed abruptly include [Stratford University](#), which closed in 2022, and [Stevens-Henagar](#), which closed its campuses in 2020 and 2021. See *Stevens-Henager College (SHC) Closure: Frequently Asked Questions*,

<https://boardofed.idaho.gov/resources/stevens-henager-college-shc-closure-frequently-asked-questions/>

¹² Unified State Authorization Reciprocity Agreement (USARA) (Dec. 1, 2015), § 5.1.5.

¹³ *Id.*

¹⁴ SARA Policy Manual 22.1 § 2.5(b).

- States must be permitted to protect students in their state by enforcing state-level consumer protection laws with respect to out-of-state SARA member schools.
- SARA states must be permitted to apply more stringent requirements appropriate to the greater risks posed by for-profit institutions.
- SARA states must control policy-making and standard-setting for participating institutions.
- SARA policies must ensure that SARA students are protected in the event of an abrupt closure.
- SARA states must be permitted to require institutions to provide evidence of compliance with SARA standards when authorizing in-state institutions.
- SARA states must be required to maintain adequate staffing levels for oversight, and SARA must include funding support to states to support state capacity.
- SARA must address the flaws in its consumer complaints process.
- SARA member states must have the authority to deny or revoke participation for schools that pose a risk to students.
- SARA’s policy regarding placing schools into “Provisional Status” should be strengthened.
- SARA policies should incorporate consequences short of expulsion for states that fail to meet their obligations under SARA.

SARA must permit states to enforce state consumer protection laws

While a reciprocity agreement necessarily requires some exemptions from state laws for participating schools, SARA’s blanket prohibition on enforcement of education-specific or sector-specific consumer protection standards¹⁵ is not necessary and undermines states’ ability to protect online students in their state. In states with strong consumer protection laws, SARA students at schools based out of state are left without the protections afforded to other online and brick-and-mortar students. The requirement to waive state protections also significantly limits state regulators’ oversight tools with respect to out-of-state SARA schools. And because there are few protections included in the SARA policies, students deprived of state protections are not afforded comparable protections under SARA.

The rule requiring states to waive enforcement of education-specific and sector-specific consumer protection laws, which is included in the Unified State Authorization Reciprocity Agreement (USARA)¹⁶ as well as the SARA Policy Manual, also creates uncertainty for both

¹⁵ SARA policy provides that member states must agree not to apply state standards for authorization to out-of-state SARA schools operating in their state. SARA Policy Manual 22.1 § 2.5 (k). Member states further agree to waive enforcement of state laws that pertain specifically to colleges or to particular sectors of colleges (*i.e.*, for-profit colleges), with respect to out-of-state SARA schools operating in their state, but “continue to have authority to enforce all their *general purpose* laws” (emphasis added) against out-of-state schools providing distance education in their state. SARA Policy Manual 22.1 § 2.5(l). A “general purpose law” is defined in the SARA Policy Manual as one that applies to all businesses, not one that applies only to educational institutions. *See id.*, footnote 6. Accordingly, member states retain the ability to enforce laws prohibiting fraud and unfair and deceptive practices where such laws apply to all business, but waive enforcement of any consumer protection laws that are specific to the education sector or that apply to a particular subcategory of higher education institutions, such as for-profit colleges.

¹⁶ *See* Unified State Authorization Reciprocity Agreement (USARA) at §§ 5.1.5 and 5.1.6. Accordingly, changes need to be made to both the USARA and the SARA Policy Manual to address this problem.

schools and state regulators concerning which state laws apply, and which state laws are waived, with respect to out-of-state SARA schools. States should be permitted to enforce critical state consumer protection laws, such as prohibitions on typical types of misconduct; cancellation and refund requirements; disclosure requirements, and other protections. SARA states should be required to waive only those state requirements that directly relate to the procedures for institutional authorization, such as application or fee requirements. Moreover, to address uncertainty concerning which state laws apply and which laws are waived, SARA member states should be required to publicly declare which state laws are waived with respect to out-of-state SARA schools.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 2.5 Functional responsibilities of SARA States

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k. The state agrees that, if it has requirements, standards, fees, or procedures for the approval and authorization of non-domestic institutions of higher education providing distance education in the state, it will not apply those requirements, standards, fees or procedures to any Non-domestic (out-of-state) institution that participates in SARA; instead, the state will apply those specifically prescribed in or allowed by SARA policies. **Member states must identify which state laws are waived pursuant to this section.**

l. Except as precluded by Section 2.5(k) above, SARA member states continue to have authority to enforce all their ~~general-purpose~~ laws⁶ against Non-domestic, out-of-state institutions (including SARA participating institutions) providing distance education in the state, including, but not limited to, those laws related to consumer protection and fraudulent activities.

~~“A “general-purpose law” is one that is not limited to entities delivering postsecondary education in the state but applies to a larger category of entities is one [sic] that applies to all entities doing business of any type in the state, not just institutions of higher education.”~~

SARA must permit states to apply more stringent authorization standards to for-profit institutions seeking SARA membership.

Many states have different standards and different oversight regimes for public, private nonprofit, and for-profit schools. These different standards or processes reflect states’ recognition of the different levels of risk to students posed by different sectors. Public schools provide the lowest risk because they are under the most direct control by states. As a result, some states exempt public schools from most standards and oversight at the state level. The next level of risk is private nonprofit institutions. As nonprofit entities, these institutions are required to reinvest all of their net revenue into their educational mission, and decision-making authority is vested in an independent board that is subject to rules on conflicts of interest. Despite these protections, private nonprofits may still pose risks to students, and are generally subject to more state-level standards and oversight than public institutions.

Finally, many states subject for-profit institutions to the highest levels of state oversight and the most stringent standards. This reflects states' recognition of the greater risk that for-profit institutions pose to consumers because the schools are operated to extract profits for corporate or individual owners or shareholders. For-profit school owners have a private financial incentive to generate profits, even when doing so may come at the expense of students' interests. As a result, for-profit schools have demonstrably worse student outcomes relative to public and private nonprofit schools, in terms of graduation rates, employment rates, debt burden, and repayment rates.¹⁷ In addition, investigations and oversight actions by state and federal agencies have revealed widespread fraud and deceptive and abusive practices by for-profit colleges.¹⁸ Moreover, the private incentive to minimize losses has led numerous for-profit schools to close without warning, leaving tens of thousands of students without good options for completing their education.¹⁹

Despite the significantly higher risks posed to students by for-profit institutions, SARA's policy prohibits member states from applying more stringent standards to institutions in any sector for purposes of authorizing in-state institutions participating in SARA.²⁰ This prohibition should be eliminated. States should be permitted to apply more stringent rules to for-profits, which lack the public control and legal safeguards of public and nonprofit governance structures, as well as institutions that have acquired, merged with, and/or outsourced substantial portions of their operations to for-profit companies. Alternatively, SARA could be modified to exclude such institutions. If SARA were modified to exclude for-profit institutions from participation, a lower level of consumer protections would be required to protect SARA students. However, as long as SARA continues to include for-profit institutions, SARA's standards must be strong enough to protect students from the greater risks posed as a result of the financial incentives for misconduct found in the for-profit school sector.

¹⁷ See Ariel Gelrud Shira and Richard V. Reeves, *The for-profit college system is broken and the Biden administration needs to fix it*, Jan. 12, 2021,

<https://www.brookings.edu/blog/how-we-rise/2021/01/12/the-for-profit-college-system-is-broken-and-the-biden-administration-needs-to-fix-it/>; Luis Armona, Rajashri Chakrabarti, and Michael F. Lovenheim, *How Does For-profit College Attendance Affect Student Loans, Defaults and Labor Market Outcomes?*, Dec. 2018,

<https://www.nber.org/digest/dec18/effects-profit-colleges-student-outcomes-and-debt>

¹⁸ See, eg. California Attorney General, *Borrowers Defrauded by Corinthian Colleges Will Receive \$5.8 Billion in Student Loan Debt Relief*, June 1, 2022,

<https://oag.ca.gov/news/press-releases/attorney-general-bonta-borrowers-defrauded-corinthian-colleges-will-receive-58>;

FTC Sends Nearly \$50 Million in Refunds to University of Phoenix Students, March 24, 2021,

<https://www.ftc.gov/news-events/news/press-releases/2021/03/ftc-sends-nearly-50-million-refunds-university-phoenix-students>;

Consumer Financial Protection Bureau Settles Lawsuit Against ITT Education Services, Aug. 12, 2019,

<https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-lawsuit-against-itt-educational-services/>

¹⁹ See Kathryn Vasel and Katie Lobosco, *For-Profit college ITT shuts down: Tens of thousands of students in the lurch*, Sept. 9, 2016, <https://money.cnn.com/2016/09/06/pf/college/itt-shuts-down/index.html>; *Corinthian Closes for Good* April 27, 2015; Michael Stratford, *Corinthian Closes for Good*, April 27, 2015,

<https://www.insidehighered.com/news/2015/04/27/corinthian-ends-operations-remaining-campuses-affecting-16000-students>;

Hannah Tiede, *'I basically have to start over': Students Left Reeling After Quest College Abruptly Closes*, Dec. 9, 2022.

<https://universitybusiness.com/i-basically-have-to-start-over-students-left-reeling-after-quest-college-abruptly-closes/>

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²⁰ SARA Policy Manual 22.1 § 2.5(b) "The state considers applications ... on the same basis regardless of control or structure."

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 2.5 Functional responsibilities of SARA States

~~b. — The state considers applications from degree-granting institutions of all sectors (i.e. public, independent not-for-profit and independent for-profit) on the same basis regardless of control or structure and approves institutions that meet institutional eligibility policies set forth in the SARA Policy Manual and agree to SARA processes and commitments without differentiating by institutional sector or structure.~~

b. When authorizing in-state higher education institutions for SARA participation, states may apply stricter standards to institutions based on the risk profile of their sector (i.e., public, independent not-for-profit and independent for-profit).

States must control SARA policy-making and standard-setting for participating schools.

SARA standards for participating institutions must be established by the member states. Although recent changes to the policy modification process have given a greater voice to the states through empowering states' representatives, the regional compacts, NC-SARA's Board retains veto power over all proposed changes to SARA policy. The Board's veto power is problematic because the Board is not controlled by the member states – states do not hold the majority of positions on the Board, and therefore lack control over the Board. The Board is composed of representatives of regulated institutions, representatives of accreditors, and other individuals, as well as representatives of member states and regional compacts.²¹ Under the new policy modification procedure, the Board has authority to veto proposals, even if the regional compacts have all reached a consensus in favor of the proposal.²² The Board's veto power creates the risk that the Board could veto states' decisions to improve consumer protections or to make other critical changes. Authority over setting standards for institutional and state participation in a reciprocity agreement should be reserved to the member states or their representatives, the regional compacts, and should not be shared with regulated institutions or other entities. Accordingly, all members of the NC-SARA Board should be member states or their representatives, the regional compacts. At minimum, the majority of positions on the Board should be reserved for member states or their representatives, particularly representatives of state regulatory and enforcement agencies.²³

²¹ See "NC-SARA's Board of Directors," <https://nc-sara.org/nc-saras-board-directors>

²² SARA Policy Manual 22.1 § 8.2(f)(6).

²³ The NC-SARA Bylaws would need to be amended to reflect this change. See National Council for State Authorization Reciprocity Agreement Bylaws, https://nc-sara.org/sites/default/files/files/2019-07/NC-SARA_Bylaws_revised_08MAY19_FINAL.pdf.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 2.7 Member State Control of Standard Setting

After the conclusion of the terms of members of the Board as of January 1, 2024, all positions on NC-SARA's Board shall be reserved for representatives of member states, including but not limited to representatives of regional compacts.

SARA must ensure that students are protected in the event of an abrupt closure.

While SARA has several policies aimed at protecting students in the event of an abrupt closure, SARA does not specifically require that participating schools pay into a tuition recovery fund or that schools at high risk of closing (indicated by having a low financial responsibility composite score or other indicia of risk) provide protections such as a letter of credit, surety, or other protection. Member states make a “reasonable effort to assure that students receive the services for which they have paid or reasonable financial compensation for those not received” which “may” include tuition assurance funds, teach-out provisions, “or other practices deemed sufficient to protect consumers.”²⁴ SARA should establish requirements that provide a stronger assurance of refunds to students affected by precipitous closures. This could be done by either imposing a requirement that all SARA-participating schools pay into a SARA-administered tuition reimbursement fund. Alternatively, or in addition, schools with indicia of risk could be required to provide SARA-administered protections such as a letter of credit, surety, or other form of protection.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 3.6 Participation Fees

- a. NC-SARA Fee (required of all institutions)

Institutions may have to pay two fees to participate in SARA. **Institutions also have to pay an assessment for the SARA Student Tuition Reimbursement Fund.**

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- c. **Institutions of higher education that participate in SARA are responsible for annual assessments, proportional to the institution's total full-time equivalent (FTE) enrollment, to mitigate or relieve losses suffered by students in the event of a participating institution's precipitous closure. Renewal of SARA participation shall be contingent on payment of the annual assessment. The assessment shall be equal to two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of institutional charges to the applicable students, rounded to the nearest thousand dollars, from each FTE enrollment.**

²⁴ SARA Policy Manual 22.1 § 2.5(h).

SARA must permit member states to require evidence of compliance with SARA standards when considering whether to authorize an in-state institution.

Current SARA policy requires member states to authorize in-state institutions based on self-certification and prohibits states from asking for evidence beyond self-certification, even if the state has reason for concern.²⁵ SARA policy permits states to investigate compliance with SARA standards after authorizing the school, but states should not be forced to wait until after authorizing a school to investigate a potential problem. Permitting states to request evidence of compliance beyond self-certification would enable states to be more effective regulators and would help states protect students.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 2.5 Functional responsibilities of SARA States

(b) EXPLANATORY NOTES

N1 - Can a SARA State Portal Entity (SPE) require a SARA applicant institution to provide additional evidence that it will meet policies for operating under SARA before allowing it to participate in SARA?

~~No. 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 worth through SARA meets the C-RAC Guidelines or other SARA requirements and must investigate any claims that the institution does not meet these requirements.~~

Yes. A state may require an institution to provide evidence that it meets SARA requirements, and a state must investigate any claims that the institution does not meet those requirements.

SARA must ensure states' enforcement capacity.

Some SARA states have almost no staff assigned to the state agencies that authorize and oversee in-state SARA institutions. Yet these states are responsible for determining whether these institutions are eligible for authorization and remain in compliance with SARA standards. SARA should include capacity requirements for state oversight, with a funding mechanism to support states' oversight capacity. Increasing annual SARA fees on member institutions would provide additional funds that could be distributed to states to fund member state oversight, to

²⁵ See SARA Policy Manual 22.1 § 2.5(b) N1, which provides: "Can a SARA State Portal Entity (SPE) require a SARA applicant institution to provide additional evidence that it will meet policies for operating under SARA before allowing it to participate in SARA? No. 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 . . . meets the C-RAC Guidelines or other SARA requirements and must investigate any claims that the institution does not meet these requirements."

help ensure that member states have adequate resources to monitor compliance with SARA standards. NC-SARA should conduct a review of states' current capacity to determine appropriate increases that will support adequate oversight across all states.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 3.6 Participation Fees

a. NC-SARA Fee (required of all institutions)

1. This annual fee is based on an institution's full-time equivalent (FTE) enrollment as submitted to the U.S. Department of Education's Integrated Postsecondary Education Data System (IPEDS) each fall as 12-month FTE enrollment. The NC-SARA fee is assessed as follows:

Enrolled FTE	Annual Fee
Under 2,500	\$2,000 increase to be determined (TBD)
2,500 - 9,999	\$4,000 TBD
10,000 or more	\$6,000 TBD

SARA must improve its flawed complaints process.

SARA's current complaint process is significantly flawed. The policy requires that student complaints related to SARA policies must first be directed to an institution for resolution before they can be appealed to the state regulator. This creates unnecessary hurdles for students and impedes state oversight agencies' ability to learn about problems at schools. This is evident in the extremely low number of complaints reported for SARA institutions. For example, in Arizona, where there are over 300,000 online students enrolled in 36 SARA schools,²⁶ SARA's website reports that there were *no* SARA consumer complaints for all of 2021.²⁷

The requirement that students first attempt to resolve a complaint with their school before they can appeal it to the state creates the risk that some important information will never get to regulators. Consumer complaints are one of the only ways for regulators to find out about deceptive or abusive practices, and requiring students to go through their school before they can submit a complaint means that regulators may not learn of institutions' misconduct, or will be delayed in their ability to act against the misconduct.

Under the current SARA complaints system, there is also a lack of transparency about the content and disposition of the complaints. There are also concerns that states may not receive complaints about out-of-state member schools operating in their states. SARA complaint policies should permit students to make complaints directly to the state. SARA should also make

²⁶ See Data Dashboards, <https://www.nc-sara.org/data-dashboards>.

²⁷ See Complaint Reports, <https://www.nc-sara.org/complaint-reports>.

sure that complaint data is transparent - prospective and current students should be able to visit the SARA website to see how many complaints have been received for their school in the last year, and whether the complaints were resolved.

To correct the flawed complaints process, SARA must amend both the SARA Policy Manual and the Unified State Authorization Agreement, which provides that complaints must first go through an institution's internal process before being investigated or resolved by the SARA member state.²⁸

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 4.5 Process for Resolving Complaints

- a. ~~Complaints against an institution operating under SARA policies go first through the institution's own procedures for resolution of grievances. Allegations of criminal offenses or alleged violations of a state's general-purpose laws may be made directly to the relevant state agencies.~~

SARA must implement a refund policy for all SARA schools

As noted above, the "Unified State Authorization Reciprocity Agreement," which SARA member states enter to join SARA and which serves as the basis for SARA's policy, explicitly prohibits states from applying any state refund requirements to out-of-state SARA schools.²⁹ However, SARA does not establish any alternative, SARA-wide refund requirement, and further, SARA does not require member states to have refund policies for in-state SARA schools.³⁰ This leaves SARA students vulnerable.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 3.1 Eligibility

- (b) In order to be eligible to participate in SARA, an institution must:

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7. Have a withdrawal, cancellation, and refund policy that applies to any student enrolled at a SARA participating school who is not protected by a substantially similar, or stronger, state refund requirement, as follows:

- a. The institution shall advise each student that a notice of cancellation shall be in writing, and that a withdrawal may be effectuated by the student's written notice or by the student's conduct, including, but not necessarily limited to, a student's lack of attendance.
- b. The institution shall refund 100 percent of the amount paid for institutional charges (where "institutional charges" mean charges for an

²⁸ USARA § 5.1.4.

²⁹ USARA § 5.1.5.

³⁰ *Id.*

educational program paid directly to an institution), less a reasonable deposit or application fee not to exceed two hundred fifty dollars (\$250), if notice of cancellation is made through attendance at the first class session, or the seventh day after enrollment, whichever is later.

- c. The institution shall have a refund policy for the return of unearned institutional charges if the student cancels an enrollment agreement or withdraws during a period of attendance. The refund policy for students who have completed 60 percent or less of the period of attendance shall be a pro rata refund.
- d. The institution shall pay or credit refunds within 45 days of a student's cancellation or withdrawal.

SARA member states must have the authority to deny or revoke participation for schools determined to pose a risk to students

SARA policy and procedures must ensure that institutions that pose a risk to students face tangible, mandatory consequences. However, the current SARA policy manual does not explicitly state that member states may deny or revoke participation in SARA by home state schools based on evidence that the school has engaged in deceptive, abusive, fraudulent, or otherwise illegal conduct.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 4.4 Responsibilities for resolving complaints

e. No SARA member state, gives up its ability to investigate misrepresentation, fraud or other illegal activity by institutions based in other states, including SARA-participating institutions. States may revoke SARA participation or deny renewal of an institution's participation in SARA on the basis of the state's determination that a school has violated state or federal consumer protection standards related to misrepresentation, fraud, or other illegality. In making this determination, state may consider state or federal government investigations or actions brought against the institution or the institution's corporate parent or affiliate; state or federal government investigations or actions against a school's institutional partners or contractors, including lead generators, online program managers (OPMs), and/or other third-parties providing marketing/recruiting service or other services; adverse actions by accreditors; and other evidence of misconduct, such as consumer complaints; private lawsuits, settlements, or judgments; information from whistleblowers; U.S. Department of Education Borrower Defense to Repayment student loan discharges, program reviews, or audits; or the placement of the school into provisional or temporary provisional Title IV certification status or heightened cash monitoring status by the U.S. Department of Education.

SARA's policy regarding "Provisional Status" should be strengthened

The policy regarding "provisional status" should clarify that SARA member states may look at evidence of risk to students from multiple sources when evaluating whether a school

should be admitted under provisional status. In addition, states need more clarity on what conditions may be imposed on schools in provisional status.

In addition, SARA's policy manual must be changed so that it no longer purports to provide non-state actors with veto power over SARA states' oversight actions with respect to home-state schools. The SARA Policy Manual provides that the NC-SARA Board President and the President of the relevant regional compact must approve a decision by a SARA state authorizer to extend provisional status for schools beyond one year for schools that have not resolved the issue that led to the school's provisional status. SARA Policy Manual 22.1 § 2.5(d)(3) - (4). This provision improperly vests authority over states' home-state school oversight decisions onto non-state actors. The provision is highly problematic and of dubious legality because it purports to provide authority to non-state actors over state authorization decisions about home-state schools. Such decisions are properly reserved to state oversight agencies, which are accountable to state officials and invested with legal authority to authorize schools.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 3.2 Provisional admission or renewal of an institution

- a. A state, at its discretion, may approve an institution applying for initial or renewal participation in SARA to participate in provisional status in any of the following circumstances:
 1. The institution is on provisional or probationary status or the equivalent with its institutions accrediting agency **or has been subject to other adverse action by an accreditor, including but not limited to being placed on sanction or being subject to a "show-cause order" or similar action.**
 2. The institution is currently required by the U.S. Department of Education to post a letter of credit or is under a cash management agreement with the U.S. Department of Education (such institutions must still have a federal financial responsibility composite score of 1.0 or above);
 3. The institution has a federal financial responsibility composite score between 1.0 and 1.5;
 4. The institution **or its corporate parent or affiliate** is the subject of an **publicly announced investigation, enforcement action, judgment, or settlement** by a government agency; and the investigation, **enforcement action, judgment, or settlement** is related to the institution's academic quality, financial stability or student consumer protection **or the institution has been placed on temporary provisional certification status or provisional certification status for receipt of Title IV by the U.S. Department of Education;**
 5. The institution is the subject of a current investigation by its home state related to the institution's academic quality, financial stability or student consumer protection;
 6. **The institution is the subject of a private lawsuit that is related to the institution's academic quality, financial stability or student consumer protection. A third-party**

~~action such as a private lawsuit or news story does not by itself establish a government investigation. If such a third-party event results in an investigation by a government agency as set forth in subsections 3 and 4 above, these subsections become applicable. Lawsuits by government entities are considered to have resulted from a governmental investigation and can be the basis of a determination of provisional status.~~

7. Lack of compliance with SARA policies related to data reporting.
8. The institution has a change of ownership as determined by the home state. Additional changes of ownership of the same institution constitute a separate basis for a state's determination of provisional status. Each such determination begins a new period of provisional status under Section 3.2(e).
9. The **member state has evidence that the** participating institution is in violation of, or noncompliance with, SARA policies **and/or is engaging in deceptive, abusive, fraudulent, or otherwise illegal conduct. Evidence may include consumer complaints; U.S. Department of Education Borrower Defense discharges; information from whistleblowers; private lawsuits, settlements, or judgments, U.S. Department of Education program reviews or audits; or other evidence of misconduct.**
10. **The institution's partner or contractor, including lead generators, online program managers (OPMs), and/or other third-parties providing marketing/recruiting services, is the subject of an investigation, enforcement action, judgment or settlement by a government agency; and the investigation, enforcement action, judgment or settlement is related to the institution's academic quality, financial stability or student consumer protection.**

c. An institution admitted to or renewed for SARA participation on provisional status is 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 **but not limited to: limits on its distance learning enrollments, limits on adding new online programs, limits on expanding to new locations through SARA participation, requirements to post a bond or surety, additional reporting or disclosure requirements, discontinuance of identified misconduct, remediation of harm to students caused by identified misconduct, submission of a teach-out plan or teach-out arrangement, or other conditions,** if deemed necessary and appropriate by the home state. The home state shall report to its regional SARA steering committee and NC-SRA at least once a year on the status of any institution(s) admitted or renewed on provisional status.

d. An institution admitted to or renewed for SARA participation on provisional status shall remain in that status for a period not to exceed one year unless all of the following are true:

1. **The condition leading to the institution's provisional status has not been resolved** ~~A home state or an external entity whose action has resulted in the institution's provisional status (see 3.29a)) has not within the one-year period taken action to resolve the institution's status with that entity;~~ and
2. The SARA State Portal Entity recommends extension.

- ~~3. The President of the relevant regional compact approves extension; and~~
- ~~4. To support comparable application of this policy across regions, the President of NC-SARA approves such action.~~

SARA policies should incorporate consequences short of expulsion for states that fail to meet their obligations under SARA

SARA policies should also incorporate consequences short of expulsion from SARA for SARA states that fail to meet their obligations as SARA members. For example, SARA member states could be subject to warnings or other measures to put the state on notice of concerns from other member states.

Proposed amendments to the SARA Policy Manual:

SARA Policy Manual 22.1 § 2.4 Member removal

- a. A member state may be removed from SARA membership by its regional compact **or may face sanctions short of expulsion** if the state has been determined by the regional compact to have ceased to abide by the requirements of SARA. The effect of removal on students and institutions will follow the same policies set forth for Member withdrawal in the SARA Policy Manual, subsection 2.3 above.
- b. **Sanctions may include a notice of non-compliance issued by a regional compact specifying the member state's failure to abide by SARA requirements and/or a warning provided in writing by a regional compact notifying the member state that the state will be expelled if the state cannot come into compliance with SARA requirements within a specified time-frame as determined by the regional compact. Such notices of non-compliance will be distributed to all SARA member states.**
- c. **Member states may submit complaints to regional compacts related to another member state's noncompliance with SARA requirements.**

We appreciate the opportunity to submit these proposals for your consideration. These proposals are submitted jointly by:

Carolyn Fast, Senior Fellow, The Century Foundation
American Federation of Teachers AFL-CIO
Americans for Financial Reform Education Fund
Arnold Ventures
California Low-Income Consumer Coalition
Center for American Progress
Consumer Federation of California
David Halperin, Attorney
National Student Legal Defense Network
Project on Predatory Student Lending
Public Good Law Center
The Institute for College Access & Success
Veterans Education Success