



February 14, 2022

## RE: State Authorization Reciprocity

Dear Negotiated Rulemaking Institutional and Programmatic Eligibility Committee:

Thank you for the opportunity to provide public comment in response to the February 1, 2022, [Issue Paper 6: Certification Procedures - Proposed Language](#) memo from Carolyn Fast, et al. and [Issue Paper 6: Certification Procedures – Proposed Language](#) memo from Barmak Nassirian. We appreciate the thoughtfulness and commitment of the negotiators and the U.S. Department of Education staff who are engaged in this important work. The similar proposals submitted are regarding the expectations for institutions participating in a state authorization reciprocity agreement. While we applaud the intention of enhanced consumer protection, the proposed language has the potential to cause unintended consequences and undermine the necessary input states should have into their own reciprocity agreement.

Ms. Fast's language would place in the Program Participation Agreement for Title IV financial aid that the institution must:

*“comply with all state consumer protection laws, including both generally-applicable state laws and those specific to educational institutions, except for state requirements for obtaining state authorization that are inapplicable pursuant to a state authorization reciprocity agreement.”*

This proposed language would reconceptualize the current [“state authorization reciprocity agreement” definition](#) found in Chapter 34, § 600.2. With respect to granting institutions the authority to offer postsecondary courses and services across state lines, the purpose of a reciprocity agreement is to have a standard set of regulations and rules that provide consistent consumer protection across states and apply a standard set of institutional authorization and complaint processes to institutions. The expectation is that the institution's state of domicile will assess whether the institution meets the standards set in the reciprocity agreement. It is this standardization that provides the principal benefit to students served through this reciprocity agreement. Should they wish, each state can add additional requirements of institutions domiciled within its borders.

States vary greatly in the consumer protections they offer distance education students, meaning that outside of SARA, students across the country have very different levels of recourse when they are negatively impacted by a higher education provider. The proposed language would enshrine that disparity. SARA's current framework—which states voluntarily opt into—offers a consistent baseline of consumer protection for students that all member states have agreed to and jointly enforce. While all individual states' policies are not incorporated, the broad-based adoption of the current agreement allows for a much more widely applicable system. Moreover, states can work together to evolve and strengthen reciprocity policies over time, as member states develop strong evidence bases around specific elements of consumer protection that garner widespread support, they can be incorporated into the agreement's policies.

The Regional Compacts are formal, legislatively enacted interstate agreements in which participating states and territories are signatory members and statutorily committed; and through that relationship, states and territories may voluntarily join the SARA agreement through their Regional Compact, at which time states and territories agree to a common set of standards for regulating distance education in which they have a strong voice in determining and rely on the broader standards imposed by each institution's home state. Notably, statutes and constitutional provisions of several states authorize them to join a state authorization reciprocity agreement only through their Compact. Once approved by a state, the other states agree to honor that assessment and consider the institution authorized in their own state for the specific activities allowed through the agreement. For SARA, the activities allowed relate to recruiting, advertising, offering distance education programs, and a limited number of in-person activities (e.g., field trips, very short courses).

In SARA's development, the distinction between "institutional authorization" regulations and "generally applicable" regulations is important. SARA includes a specific list of "institutional authorization" requirements that member states have agreed to be included in the rights granted to an institution that is approved by another state participating in the agreement. Additionally, the institution is still subject to other state regulations that are "generally applicable" to any business, such as misrepresentation, fraud, registering with the Secretary of State's office as a business, and adhering to state Department of Labor rules for those completing internships in some states.

While the proposal is well-intentioned in that it aims to enhance consumer protection, a value on which we agree, there are some meaningful misconceptions:

- The statement is made that NC-SARA "requires member states to waive enforcement of education-sector-specific consumer protection laws with respect to participating schools that only offer distance education in their state." SARA is a voluntary agreement among states, and NC-SARA does not have the authority to require states to waive protections. Only states have such authority. It is important to note that states have voluntarily chosen reciprocity as a method for authorizing institutions serving students within their borders. In most states, SARA participation required legislative action that was signed by the governor and became law.
- The statement is made that a "two-tiered system" of protection for students participating in distance education courses versus students participating in face-to-face courses. However, the states voluntarily agreed to enter into this reciprocity structure to ensure consistent oversight of distance education in all member states and territories. It is also common in states to have different agencies, rules, and protections for students attending different types of institutions. The proposal guarantees that rather than a two-tier level of protection, there would be multiple levels of protection depending on where the student is located. Replacing a two-tiered system with multiple tiers in this fashion would be considerably more confusing and inequitable.
- Under the proposed language, "schools would be exempt from compliance with state authorization requirements, such as requirements to submit an application to state authorizing agencies or pay a fee to a state authorizing agency. This would permit reciprocity agreements to fulfill their purpose of reducing the cost and burden on schools to obtain authorization to operate in multiple states, while ensuring that distance education students are afforded the same protections as brick-and-mortar students." Unstated is that this would diminish necessary state capacity for oversight, and the costs and staffing required for institutions to comply across the many states would grow dramatically. For example, institutions would now be required to contribute to tuition recovery funds (used to reimburse students at closed institutions) and would need to administer multiple refund requirements. Additionally, institutions would likely

be forced to add staff and costs for compliance or decide to enroll students only from select states.

While the proposed language has consumer protection at its heart, it might not be the appropriate strategy. An unintended consequence would be that the smaller, rural, and less resourced institutions would be unable to comply while the wealthier or for-profit institutions would be better positioned to weather such a storm. Prior to reciprocity, it was primarily for-profit institutions that could afford to be authorized in every state.

If adopted, the remaining benefits of participating in a reciprocity agreement would be few, and it would create significant barriers to reciprocity for states, resulting in a patchwork of reciprocity at best. What would remain is incomplete reciprocity with students receiving inconsistent protections depending on the state where the student is located. Many institutions and perhaps some states would leave the agreement.


While we concur that additional consumer protections would be beneficial, we recommend that the proposed protections not be placed as a component to the PPA. Instead, we recommend that the four regional compacts, WCET, and WCET/SAN commit to working with consumer protection advocates to elevate some of the specific consumer protection (e.g., student mediation requirements, tuition and fee refund policies) proposals that they have recommended to the parties to the SARA agreement in the past. The timing is fortuitous, as the Regional Compacts are working with SARA member states to develop an improved policy revision process that will provide an avenue for meaningful state input and transparency. The purpose would be to develop SARA policy through the SARA policy review process that includes the states, who have the authority and responsibility to protect students, to come together to agree on additional oversight responsibilities across member states and territories.

We hope this feedback informs the negotiated rulemaking process in a productive and useful manner. We would like to partner on improving SARA that all students benefit rather than just those in a few states. We are available for further discussion and look forward to continued partnership for the benefit of students, states, and institutions.

Sincerely,



Susan Heegaard  
President, MHEC



Michael Thomas  
President, NEBHE



Stephen Pruitt  
President, SREB



Demarée Michelau  
President, WICHE



Russ Poulin  
Executive Director, WCET



Cheryl Dowd  
Senior Director, Policy  
Innovations, WCET/SAN