

Shepherding Change: Creating the State Authorization Reciprocity Agreement (SARA)

Paul H. Shiffman

James W. Hall

Foreword

In 2013, a broad spectrum of our nation's higher education institutional and policy leadership agreed to advance a newly crafted State Authorization Reciprocity Agreement (SARA). SARA is an agreement that will permit each of the States and territories to accept programs and courses offered by higher educational institutions from other participating states without requiring an additional authorization in each. SARA establishes comparable national academic standards for approved participating institutions for all members of the agreement. The agreement is intended to rationalize and make more efficient individual state processes for authorizing colleges and universities, improve the capacity of each state's regulators to manage a demanding workload, save the institutions significant costs, and encourage expanded opportunities for students in all participating states to take online courses offered by postsecondary institutions based in another state. Implementation of SARA is managed by the four regional higher education compacts [*Western Interstate Compact for Higher Education* (WICHE), *New England Board of Higher Education* (NEBHE), *Midwestern Higher Education Compact* (MHEC) and *Southern Regional Education Board* (SREB)] under the aegis of the National Council for State Authorization Reciprocity Agreements (NC-SARA). By Fall, 2016, 42 states and over 1000 postsecondary institutions had opted to participate in SARA. In an environment where any form of change, especially one that fosters the relinquishing of control, is too often met with avoidance, apathy or open hostility, this is a remarkable accomplishment. How did this happen?

Background

Unfortunately, the existing structure for the approval of institutions to operate in each of the fifty States, the District of Columbia, five major territories, and the nation's various

possessions, often hinders the full realization of the benefits offered by online and distance learning. Institutions which seek to offer instruction to students in multiple state jurisdictions are required by law to secure independent authorization in each state. Federal law also requires an institution to hold authorization from each state in which it chooses to operate. But every state maintains its own unique definition of when an institution has established a “physical presence,” as well as widely diverse associated standards and regulations for authorization to operate. Moreover, some states totally ignore online institutions or exercise minimum oversight and qualitative control, reducing their ability to accept and evaluate approvals on an interstate basis. Others have rigorous requirements with high educational standards. These factors present serious complex issues for postsecondary institutions and significant barriers to students, often resulting in reduced educational access and increased costs to both.

The Presidents’ Forum at Excelsior College believed that it was in the best interest of the nation’s goals, and its students’ need for choice in learning, to explore and advance means for states to reform and streamline these processes. SARA emerged as a product of these policy considerations. Excelsior College, originally founded in 1971 as the Regents College of the University of the State of New York, is an independent not-for-profit institution located in Albany, New York. In extending its mission to serve adult learners at a distance, the college created the Presidents’ Forum in 2002 as a collaborative convening body of accredited, national, adult serving institutions and programs that have embraced the power and potential of online distance learning. The Presidents’ Forum serves to advance innovative practice and excellence by convening institutional leaders and stakeholders to share their knowledge, learn from others’ best practices, and frame recommendations for national policy.

At the time of the Forum's creation, postsecondary education confronted the rapidly growing impact of the telecommunications revolution. No longer was the residential campus the sole place for learning. Dramatic new and transformative technologies offered students, wherever they lived or worked, significantly enhanced opportunities to access and attain a college degree and the skills needed to participate in an increasingly competitive workforce. Initially, the nation's online postsecondary sector was dominated by well financed for-profit institutions. Only a limited number of public and independent not-for-profit colleges and universities had invested resources in online learning and the instructional technology necessary to mediate delivery to external students. The Presidents' Forum, seeking to share the knowledge of those most innovative and experienced programs, invited participation from both for-profit and not-for-profit online purveyors of postsecondary learning. The initial Advisory Council to the Presidents' Forum, representing this cross-sector approach, included leadership from Excelsior College, Charter Oak State College, SUNY Empire State College, Western Governors University, Capella University, American Public University, Franklin University, Walden University, Dow Lohnes LLP, and the American Council on Education. The one unifying factor that all had in common was a desire to serve students, absent the boundaries of fixed time and geographic location, that produced student outcomes equivalent to or exceeding the high standards set for campus-based programs.

At the first meeting of the Presidents' Forum (April 16, 2004, Albany, NY), and throughout the years that followed, the most pervasive concern/issue for institutions serving students nationally was the "patchwork of state authorization rules and regulations" that served as costly barriers to serving students across state borders. Though many states had taken steps to introduce and encourage technology mediated teaching and learning at all levels, in most cases

state regulation had not kept pace with the emerging reality of technology driven innovative educational delivery systems that facilitated learning across state and national boundaries.

The Emergence of SARA

Presidents' Forum participants and professional colleagues held many discussions about the barriers to the acceptance and accessibility of online distance learning. An obvious impediment was resistance by states, established campuses, and their residents to "outside intruders" who might compete for students. Whenever the Forum advanced the topic of establishing some form of agreement for inter-state reciprocity with the leadership of such national organizations as the State Higher Education Executive Officers (SHEEO), Western Interstate Commission for Higher Education (WICHE), American Council on Education (ACE), etc., we were instructed that this was a low priority issue, a topic best left to fester, and that our vision was naive, if not foolish, if we thought that any level of consensus or agreement for reciprocity between the states could be achieved.

Given the individual state histories, significantly different approaches to regulation and support, and the plethora of competing interests, it was not surprising that this initial outreach for reform by the Presidents' Forum was met with skepticism. Some of those responding had championed prior attempts to resolve state regulatory diversity, as well as to provide uniform and transparent measures upon which to base judgments for program integrity and consumer protection - none of which had met with lasting success.

Notable among these was the *Project ALLTEL Report*, issued by the Council on Postsecondary Education and the State Higher Education Executive Officers Association (SHEEO) in the 1970's. That report identified disparate and onerous state licensure requirements as posing a significant threat to the ability of institutions to effectively and efficiently offer

telecommunications supported learning. The impact of this earlier attempt at regulatory reform may be assessed through the realization that “the barriers erected a quarter century ago against the most modest incursions wrought by telecourses have become more common and increasingly robust in the face of the growth of online learning.”¹ Another failed attempt at regulatory reform occurred in the 1990’s through federal actions to advance the State Postsecondary Review Entity (SPRE) program. The SPREs, created through the 1992 amendments to the Higher Education Act, were conceived as a federal–state partnership to strengthen regulation and monitoring of postsecondary education and the administration of student financial aid with specific attention to preventing abuses by for-profit institutions. However, when the envisioned regulatory reach of these bodies and the Department of Education’s (USED) proposed implementation measures were perceived as more intrusive than helpful to states and institutions, this initiative was terminated in 1995.

It is not the intent to provide here an in-depth analysis of the lessons learned from these prior efforts at postsecondary regulatory reform. Suffice to say, in each case the demands for accountability and the reporting requirements were advanced as mandates that did not reflect the needs of nor garner the support from the communities they were meant to serve. The continuing downside of these involuntary reforms has been a reflexive avoidance of such collaborative measures by those on the front line of postsecondary institutional authorization; the states and their designated agencies.

Change is too often a product of a chance opportunity rather than genius. In 2008, Paul Shiffman asked Charles S. Lenth, then Vice President for Policy Analysis and Academic Affairs

¹ Michael Goldstein – July 13, 2009-Letter of support to Lumina for Grant #6325

at SHEEO, to provide program time at the SHEEO Annual Meeting for a panel discussion of the costs and issues associated with cross-state offering of online distance postsecondary learning. The intent was to determine if there was interest in elevating this concern to a national policy agenda. The panel presentation did occur and was well received by panel attendees, even as the topic of access to online learning through reciprocity remained below the radar of the gathered postsecondary leaders.

This occasion provided the first big step on the long path that led to SARA. On departing from the SHEEO presentation, Shiffman happened to enter an elevator with Dr. James Applegate, then Vice President of the Lumina Foundation. Still “fired up,” in full presentation mode, and quite effusive about questioning the wisdom of those who did not yet recognize the rationality of reciprocity for state authorization, he subjected Applegate to a full presentation of concerns during the short transit between floors. As a creative listener, he invited further discussion of the issues with his office. From this chance exchange in the elevator, subsequent introductions were made by Applegate to Kevin Corcoran, Strategy Director and Suzanne E. Walsh, Senior Program Director at the Lumina Foundation. The Lumina Foundation recognized that these inquiries held the potential to advance the Foundation’s Goal to boost degree completion by the nation’s citizenry to **60%** by 2025, and invited the Presidents’ Forum to apply for a grant.

The Task Force and Its Report

The resulting report of this inquiry, entitled *Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions: A National Strategy*² focused on the need

² *A report of the Presidents' Forum Task Force*, Excelsior College, Albany, NY, 2008.

to update regulatory systems. Such reform would recognize current changes in the modes of learning, embrace the opportunities offered by innovative technology mediated learning systems, and facilitate the successful outreach of interstate higher education institutions. At a time when both young and adult degree completion continued to decline in the United States, the Foundation's goals could be advanced by addressing these issues.

This report was endorsed by a Task Force³ organized under the convening authority of the Presidents' Forum. Those who comprised the membership of the Presidents' Forum Task Force represented a broad collection of experience across all levels of postsecondary regulation, accreditation, policy and legal affairs, distance learning, institutional leadership, policy development and legal affairs.

The Task Force considered and recommended new models for cooperation and reciprocity among the states, thereby reforming outdated systems for state authorization. In order to accomplish this task, the Forum needed to identify a number of individuals who might be invited to address the question linking many of these issues: *What do states need to know to assure institutional credibility and consumer protection?*

This initial engagement with leaders and practitioners in the field, supported by the Lumina Foundation, reinforced several issues of concern. Although the meeting ranged over a wide and detailed number of related issues, there was remarkable unanimity about the reality of the problems, the need for reform, and the attractiveness of certain pathways to action.

Perhaps the most important, and obvious, was that reform is needed in the policies and processes of state regulatory review and approval for postsecondary educational institutions, and especially for those colleges and universities with a national footprint that offer degrees across

³ Those who accepted the invitation to participate and supported the report are noted in Appendix A.

multiple political boundaries. Current state practices were found to be redundant, inefficient, and costly for both the states and the institutions seeking approval to operate. None denied the importance of and necessity for state regulation. But it was apparent that significant benefits could accrue to students, institutions, and states if the patchwork of state regulation could be reformed through shared policy and processes. The Task Force concluded that states could share in a common, high quality and consistently applied system of processes and standards. Mutual confidence in such a process would be increased with enhanced state participation, and institutions seeking approval to operate in multiple state jurisdictions would participate in a significantly more efficient and consistently demanding process of review for authorization throughout the nation.

The Task Force advanced four recommendations for actions to bring about policy and operational enhancements in the state regulatory environments, encourage acceptance by the states of reciprocal agreements to streamline regulatory processes, while encouraging expanded access to learning for students: 1) *Define a common sharable template of requirements and processes*; 2) *establish collaboratively a model for reciprocal institutional evaluation and approval between states*; 3) *develop new statutory model laws that provide state authority to participate in reciprocal compacts*; 4) *create new financial and consumer protection models*.

As in other areas of public regulation reserved to the individual states, some states are highly effective and efficient in exercising authority over delivery of postsecondary learning. Many others have instituted procedures and rules more recently, often “reinventing the wheel.” And, a number of states continue to exercise very little oversight of higher education, thereby providing a fertile environment for dishonest actors. Ironically, this pattern has had the effect of encouraging even more protective and restrictive barriers to operation in other states. The

challenge before the Forum, and those institutions desiring to serve students across the nation, was not simply one of rationalizing the maze of regulation; it was also one of proposing an appropriate system of regulation acceptable to all states. The Presidents' Forum advanced the belief that movement toward a high degree of inter-state reciprocity would help states to offer effective oversight and consumer protection to their citizens, to build confidence across the nation in the quality of approved educational offerings, and to reduce the substantial costs for administering and staffing regulatory compliance for both states and institutions - costs that were too often passed on to students through increases in tuition and fees.

Validating the Need with Journeyman State Regulators and Stakeholders: The Pathway to the Dallas Convening

As early as April 16, 2004, at the first Presidents' Forum Annual Meeting, the gulf between state authorization rules and innovative online access for students was cited as one area among those that inhibited student access. Some intervention was suggested. The Forum continued to voice this topic of concern to the higher education community at large by convening seminars and webinars involving a broad spectrum of recognized stakeholders from the regulatory, policy and institutional sectors. These activities culminated in the aforementioned *Report of the Presidents' Forum Task Force: Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions: A National Strategy*.

In consideration of this report, the Lumina Foundation expressed continued interest in exploring the relationship between state authorization, student access to academic credentialing and reciprocity. As a result, on September 1, 2009, the Lumina Foundation awarded a grant “to convene The Presidents' Forum to develop recommendations for demonstration projects in order to improve efficiency and encourage better alignment of individual state regulatory

requirements, as well as support increased reciprocal agreements among states in order to offer instruction across multi-state boundaries.” (Grant No. 6325, September 4, 2009.) We now needed to find an appropriate audience to further validate the findings of the Task Force and to delineate strategies to realize its recommendations. Moreover, it was now incumbent upon us to demonstrate in greater detail that our plan for action would advance the stated goals of the Lumina Foundation.

As a practical matter, we made a clear choice to consult with those individuals whose daily work at the state level would provide the hands on information and detailed experience essential to undertaking a successful effort. During our initial inquiries, members of the Forum Task Force attended meetings of The National Association of State Administrators and Supervisors of Private Schools (NASASPS), the professional association serving the majority of state regulators, and found that this organization provided a vehicle for ongoing consultation and dialogue with a broad representation of the state officials currently charged to oversee institutional authorization processes. Based upon the discussions and assessments provided by these individuals, we decided that the Presidents’ Forum convening should center upon eliciting more detailed information regarding institutional authorization practices and processes at the state level, and that state regulators should constitute the core of attendees. The convening was held on September 21-22, 2010 in Dallas, Texas. (Attendees and regulators are listed by title in Appendix A.)

The Dallas convening was a critical step in understanding more fully the barriers posed by state authorization for students, states, and educational institutions. In preparation for this gathering, Kevin Corcoran, Strategy Director at Lumina, suggested that, in addition to state regulatory personnel, we invite participants with specific expertise in law and policy related to

interstate agreements. He recommended outreach to John Mountjoy, Director of Policy, Research & Special Projects, from the *Council of State Governments* (CSG). The constituencies of CSG span all the major areas of state government policy, he noted. Moreover, the mission of CSG is to help state officials shape public policy through interstate collaboration and problem-solving partnerships. Much of this expertise is exercised through CSG's National Center for Interstate Compacts, which has overseen or assisted in the development of numerous interstate agreements. That office was headed by Crady deGolian, who later became the moderator for drafting panel meetings. The decision to partner with CSG was pivotal in broadening the appeal of the Forum's inquiries to the national postsecondary education and state regulatory communities, and in exploring the specialized issues associated with the development of an interstate reciprocity compact, eventually leading to SARA.

The importance of the Dallas meeting cannot be overstated. It has often been cited by SARA project participants as “the turning point where policy makers, regulators, and institutional representatives, often averse to collaboration, agreed to work together to explore SARA.” This convening essentially allowed Forum to establish a network with representative stakeholders in state authorization, to engage in a continuing partnership with CSG in the proposed project, and to strengthen our commitment to engage state regulators in subsequent policy development.

The following narrative summarizes the issues, findings, and information gained from the participants in Dallas, as well as the prior seven years of discussions, outreach and development led by the Presidents' Forum, all of which established the foundation upon which the current SARA initiative rests:

State employees who hold positions that are tasked to monitor and enforce rules created by legislatures and governors have a rough road to travel. As regulators and invigilators, they must establish working rules that support existing legislation. They must establish procedures that allow the applicable individuals and organizations to understand requirements, to apply and maintain compliance with these requirements, and to enforce due process in identifying and disciplining those who fall short. In many cases, perhaps most, they are expected to find individuals or organizations that are operating in their state but which have avoided compliance, through ignorance of the law or purposeful obfuscation. Such are the tasks assigned by the state regulators of whom we speak and who played a central role in the development of SARA.

Needless to say, regulators tend not to be the most popular of public employees. Especially in higher education, where traditions of institutional self-governance in matters of academic purport are long-standing, the whole concept of external regulation is generally unwelcome. Colleges and Universities have long-standing private arrangements with regional accreditation associations, themselves organizations of, by and for the institutions. They expect approval of new programs of study leading to degrees, and periodic review of the qualitative characteristics of existing programs, to be a collegial process, conducted by teams of peers with a common purpose of continuous improvement. Actions that inhibit a member organization or second guess its own professional judgments are not common, and, at least in the past, issued only in fairly extreme cases of institutional malperformance. Given this predilection, the addition of an additional layer of regulation from the resident campus's state is especially onerous.

There is an important exception to this state of mind. When a new institution suddenly intends to offer its services, or when an existing institution opts to offer a new program that is highly competitive with existing similar programs of study, then external regulation takes on a more

benign attractiveness. When state regulators seek to regulate such intruders, they are perceived as protectors of turf, an important member of the team.

Perversely, this factor does not endear state regulators with leaders of new postsecondary educational programs. Such intruder organizations often bring special attributes that could, in certain cases, serve the citizens of a state. They may be highly innovative, offering new and needed services. They may be well funded through private equity, able to move quickly in offering services. They may be extended branches of very strong out-of-state universities with powerful attractive reputations. Conversely, they may be entrepreneurial operators who seek out needy but poorly qualified potential student who are nonetheless able to access federal financial aid. They may be the product of a single person's creativity, with little sustainable capability. They may, in too many cases, be completely fraudulent, profiting from unsuspecting students and student aid systems. In such cases, we were told, regulators do not become aware of these organizations until some student complaint is referred to the office of the regulator. Such intruders, in surprisingly large numbers, operate beneath the regulatory screen. Ultimately, regulators spend an inordinate amount of their time on this aspect of their daily work.

The matter is even more difficult in some states. Many states compartmentalize postsecondary regulation, assigning regulatory authority to different offices or divisions. Thus public institutions may fall under one authority; two-year community colleges under another; independent non-profit or for-profit institutions under yet another; and typically religious or Native American institutions operate under yet another authority. Professional licensure, whose applicants may prepare for licensure through specific programs of study in every kind and level of institution, may appear in yet more diffuse offices or related organizations. State postsecondary regulatory officials thus face difficult but essential assignments.

Given the detailed insights gained from the Dallas meeting, the Forum, the Council of State Governments, and the Lumina Foundation were persuaded that these issues were important to states, institutions and students, both immediately and into the future. When Lumina provided a second substantial grant⁴ “to explore the potential for a voluntary, interstate agreement to broaden the availability of accredited online degree programs by reducing state regulatory barriers while ensuring strong consumer safeguards”, Forum, in partnership with CSG, moved forward to implement the proposal.

The Federal Mandate for State Authorization

Even as the Dallas meeting was examining state authorization practices, the USED clarified its existing rules about state authorization, creating for the FORUM project an immediacy that stimulated a broad concern across all of the higher education establishment. As noted earlier, from the 1980’s through the present, the federal interest in curbing perceived abuse of student financial aid programs has emerged frequently. In the view of policy makers and consumer rights advocates, some postsecondary institutions abuse student aid programs by collecting and retaining the student's financial aid award whether or not the student drops out or proves incapable of college-level study. Students too often become “victims” of loan programs that leave them saddled with debt and no credential of value. These federal interests were reflected in the 1992 reauthorization of the Higher Education Act (HEA) that called for reforms to address student loan default rates, abuses of student loan programs, unscrupulous conduct by proprietary institutions, and enhanced accountability for postsecondary education by the “Triad” of the federal U.S. Department of Education, states, and recognized accrediting bodies.

⁴ (ID#7100, Making Opportunity Affordable - \$300,000 - November 5, 2010)

Following the HEA reauthorization, a perception developed that *for-profit* postsecondary providers are a primary source abuse of federal student financial aid programs and a threat to public support for their continuance. These concerns continue through highly publicized congressional/state legislative hearings and exposés in the media. Much of this heightened scrutiny has occurred in parallel with the rapid expansion of the availability of online postsecondary courses of study. As technology mediated learning systems have matured, entrepreneurs and innovators have invested resources in creating access to online distance learning for students who have been underserved by traditional campus-based institutions. But this has amplified the challenges to consumer protection and maintenance of institutional and program integrity.

The federal constitution leaves regulation to the individual states. The federal Department of Education requires state authorization of any organization that seeks to qualify for federal financial aid. The result, historically and practically, is a patchwork of state regulation. Every state has established its own particular version of requirement and processes for state authorization. Every state determines how and in which offices regulation occurs.

Some states choose to not regulate at all. Some have modest regulation, or may simply require that institutions hold regional voluntary accreditation. Many states have substantial, often complex, requirements that must be reviewed at periodic intervals. And some states have very demanding and qualitatively challenging requirements. The result is 54 different state and territorial demands.

All of this worked reasonably well in years past, when with a few unique exceptions, all post-secondary offerings within a state were also offered by in state residential or campus-based instruction. Regulators knew their institutions and where the trouble spots were likely to occur.

Over time, experienced regulators also came to know other regulators in a loose national network. They could deal, often informally, with student complaints when the student happened to live in another state, or moved to another state. One of the most common were students in the military services and corporations, who moved frequently.

In the past few years, there have been many developments in the area of state authorization. On October 29, 2010, The USED published fourteen new regulations intended to prevent abuses of federal financial aid programs by establishing new consumer protections, ensuring that only eligible students have access to federal student financial aid programs, and by defining courses and programs of study approved for student use of federal financial aid. These “Program Integrity Rules”, focusing on the integrity of federal student financial aid programs under Title IV of the Higher Education Act of 1965, as amended, addressed five areas of concern: institutional eligibility to participate in Title IV student financial aid programs, recruiting and admissions, eligibility of specific programs of learning for Title IV assistance, student eligibility to receive Title IV assistance, and Title IV aid disbursements and refund policies. Although largely directed towards curbing perceived abuses of federal student financial aid programs by for-profit postsecondary institutions, and especially those extending their footprint and student demand for federal financial aid through online offerings, it quickly became apparent that there were also significant implications for non-profit, independent, and public postsecondary institutions.

In order to be eligible to receive federal student financial aid for students, an institution must be legally authorized to provide an educational program beyond secondary education in the state in which the institution is physically located. In an attempt to define what constitutes sufficient state authorization for purposes of compliance with this requirement, a new *State*

Authorization Rule was advanced. The rule required that an institution must be authorized to provide *both educational programs beyond secondary education in the state in which it is physically located and in the state in which a student resides*. In its proposed application, institutions administering Title IV student financial aid for their students would now be required to show evidence of compliance with state rules and regulations to serve students wherever they resided. The possible institutional penalties for noncompliance with this rule were draconian and could possibly result in the loss of eligibility for administration of all Title IV funds.

The evolution of the state authorization requirements caused significant consternation and confusion. At the onset of this rule, institutions were faced with the massive challenge to acquire knowledge of the physical location of all of their students, as well as an in depth understanding of each state's rules, regulations, and administration of institutional authorization. For states, there was a corresponding need to address increasing numbers of non-resident institutions serving students within their geographic boundaries, as well as to respond to requests for authorization approvals from these institutions now required by federal mandate.

In 2012, the U.S. Court of Appeals for the District of Columbia affirmed a district court decision vacating the portion of the program integrity regulations related to the state authorization requirements for distance education. However, the "wake-up call" to states and institutions served to clarify that institutions have been, and will remain, subject to state laws that may require authorization for distance education programs independent of any ancillary federal requirements. As a result, state authorization agencies have become more aggressive and active in requiring comprehensive compliance by non-resident institutions serving their citizenry at a distance. In addition, there is nothing to prevent the U.S. Department of Education from seeking to reinstate and enforce its state authorization rule at any time. All of these considerations served

to support the Presidents' Forum's contention that a state authorization reciprocity agreement was now possible and essential to the future success of institutions and their students.

Deliberation and Design: The Drafting Panel

During the several stages of inquiry described earlier, we had met and engaged in conversation with a number of individuals who appeared to have the requisite knowledge and experience and a demonstrated ability to work together with others. We had established no rigid expectations for either the number of panelists nor the several characteristics that would enrich the panel's deliberations. Clearly, however, from the outset we had placed considerable value on engagement with those most immersed in the daily authorization for and regulation of higher education institutions at the state level. Moreover, the ongoing Forum discussions had emphasized that the most successful approach would be to work from the grass roots, avoid the usual Washington professional association tendency to politicize the process, and, above all, avoid a federally dictated process. Alan Contreras underlined that decision, saying "Well-meaning education organizations with little knowledge of the practicalities of how state approvals actually work will decide that they should simply invent such a system without bothering to involve actual regulators. To preclude this kind of bumblehandedness, we need the states to simply get to work ..." (Inside Higher Education, March 1, 2009.) The later USED interventions into *state authorization* were not as yet on the screen. Shiffman personally discussed the project with individuals, many of whom had attended the earlier Dallas convening, issuing invitations to participate as mutually agreed. The final makeup of the Drafting Panel included twelve members and remained unchanged, remarkably, throughout the several years of SARA development that followed. (For the list of Drafting Panel members, see Appendix B.)

In Summer 2011, the Drafting Team completed a draft *white paper* that presented much of the panel's current thinking, including some important new approaches to reciprocity. Key new policies were proposed, importantly including a clear definition of "home state", fixing responsibility for the recommendation of eligible institutions for participation in SARA with the state of origin or charter. The purpose of this provision was to overcome the confusion among students, state regulators and attorney generals as to who would be responsible for dealing with student complaints, legal issues, and oversight. Another key decision defined a governance model for SARA, initially calling for an interstate compact as the basis for authority. The white paper went on to propose in a listing of the kinds of qualitative factors that states would agree to consider in recommending an institution for participation. Among these were expectations for faculty, curricula, credit, admissions and finances. Finally, a financial model was proposed that would provide adequate support to the governance mechanisms, while assuring a very modest institutional fee, clearly a significant savings from the enormous costs in travel, personnel and authorization fees under the prevailing practices. The white paper was clearly a first draft, to submit a number of Panel decisions for critical review.

Under the Gun: the UMUC Conversations

Common to collaborative efforts in the philanthropic community, the representatives of the Lumina Foundation apprised Thomas C. Dawson, senior policy officer for the Bill & Melinda Gates Foundation, of possible joint interest in the Forum's activities. As a result, the Gates Foundation had been following with interest the work of the drafting panel. In March, 2010 we joined a one-day seminar in Washington DC, hosted by the Gates Foundation, to share information regarding the reciprocity project with Gates staff and representatives of Washington-based postsecondary associations. Although no special outcome emerged from the meeting, it

indicated the Gates interest, no doubt stimulated by approaches from at least three other national educational organizations (SHEEO, APLU, AASCU).

In July 2011, Gates sponsored an assembly of interested parties held at the University of Maryland University College, hosted by Chancellor William C. Kirwan of the University of Maryland. While the aim of the meeting was unclear, it appeared to be an opportunity to allow the various “perceived stakeholder” parties from the public institutional sector, who expressed grave misgivings about the Forum/CSG project, to vent their concerns. The majority of comments centered on the assumption that non-profit public institutions would be immunized from state authorization requirements imposed by the federal government or other states. Though the pending USED rules on state authorization had also increased the concerns of the Washington-based associations in the topic, the “hell no we won’t go” message was clearly advanced. Many had perhaps hoped that their attendance at the meeting might portend a larger interest from Gates in funding one of their organizations with a "more national" approach.

The meeting elicited a number of concerns about the White Paper; an early model for discussion purposes only. Among these concerns was that an interstate compact might foster a new level of standards of performance for institutions that might supplant or result in an additional level of institutional accreditation. Also, institutions currently were constituents of a number of representative associations competing for dues based revenue, and the outlined compact model might add to institutional costs and disrupt existent revenue streams. The unspoken concern, however, was how our panel of regulators, lacking direct institutional representation, could possibly be qualified to produce such a far reaching project plan at all. We took the concerns and criticisms to heart, promising that a revised draft would take their concerns into consideration.

The Emergence of Other Possible Approaches *W-SARA*:

The Regional Higher Education Compacts.

Although David Longanecker, President of WICHE, participated in the earliest task force discussions and report, he announced that he was preparing WICHE's own reciprocity plan entitled W-SARA. In testimony offered at a special open hearing for comments from the public at large, Longanecker appeared again and spoke in the most definitive terms about his plan to prepare a proposal for the Regional Higher Education Compacts to consider. In doing so, he accepted many of the key innovations and language of the model Forum/CSG model. He assumed leadership of this reciprocity effort on behalf of the other three regional higher education compacts (SREB, MHEC, NEBHE). Both groups, Presidents' Forum/CSG and WICHE, eventually agreed that the introduction of multiple models to policy makers and stakeholders would result in a fragmented community unable to achieve the necessary changes sought in the state institutional authorization process. Kevin Corcoran had counseled, "Don't let the perfect be the enemy of the good." We resolved to seek unity.

As a result of these parallel initiatives and the desire to put forward a singular model, the groups had a series of meetings, made compromises, and agreed to implement a limited time - 3 year – transitional approach (referred to by both groups as *the SARA Implementation Plan*) that resulted in a unified and single SARA model with oversight of implementation vested in the regional compacts.

One step toward achieving this goal was an "in the passageway" meeting between Hall and Longanecker, who was moving between our meeting and another in the same location (Lumina headquarters in Indianapolis, IN). After the discussion, a compromise plan was offered to the Drafting Panel. Basically, the panel gave up the central governance concept of an interstate

compact, and agreed to support a unified plan that included governance by the regional compacts, organizations that would later seek implementation funding from Lumina. Forum's panel, with much reluctance, recognized that its early hopes that between 5 and 10 states might participate after a year or two could be significantly enhanced if the regional compacts, whose members included all but three of the states, took the lead in implementation. Longanecker had indeed edited the core of the Presidents' Forum/CSG proposal into a more acceptable format, and all concurred that the resultant unified approach to SARA would enhance education and outreach to the growing number of affected constituencies.

Combining All Prior Efforts: The Commission on the Regulation of Postsecondary Distance Education.

On May 2, 2012, Paul Lingenfelter, President of the State Higher Education Executive Officers Association (SHEEO) and M. Peter McPherson, President of the Association of Public and Land-grant Universities (APLU), convened *The Commission on the Regulation of Postsecondary Distance Education*, with former Secretary of Education Richard W. Riley as Chair. The twenty-one Commissioners, the majority from institutions, represented leadership from a broad spectrum of stakeholders in postsecondary distance education policy. Paul Shiffman and Marshall A. Hill, Executive Director, Nebraska Coordinating Commission for Postsecondary Education and a member of the Presidents' Forum/CSG SARA Drafting Team, were invited to serve as Commissioners.

At its inaugural meeting, the direction for the Commission was proposed by its two primary proponents. Lingenfelter expressed strong interest in strengthening the traditional higher education "Triad" of state, accreditation, and federal roles to address the changing environment of postsecondary education wrought by online distance learning. McPherson, concerned about

the effect of expanding regulatory demands on institutions, expressed a need for a greater institutional voice in any proposal that would diminish institutional flexibility. Shiffman and Hill presented and summarized the unified SARA model to the Commission and invited this body to adopt and validate this work as a guide to their exploration of the regulatory environment for postsecondary distance learning. Both promoted their belief that the prior work of the Forum/CSG and WICHE teams had already revealed that the primary immediate concern was the regulation of institutional authorization by the states, and that the Commission was the appropriate body to further validate this finding, as well as to provide input from and unify the postsecondary community to advance implementation of SARA.

Ultimately, the Commission shaped its mission “*to develop and provide recommendations that will address the costs and inefficiencies faced by postsecondary institutions that must comply with multiple (often inconsistent) state laws and regulations as they endeavor to provide educational opportunities to students in multiple state jurisdictions.*” On April 15, 2013 the Commission released its final report, *Advancing Access through Regulatory Reform: Findings, Principles, and Recommendations for the State Authorization Reciprocity Agreement (SARA)*. The report built upon and enhanced the earlier proposed SARA models. It explored key issues, not yet fully addressed in the prior versions of SARA, associated with appropriate government regulation and oversight, consumer protection, quality assurance of distance education offered by institutions across the nation, and a methodology for funding and administering implementation of SARA.

On April 16-17, 2013, immediately following the release of the Commission Report, The Presidents’ Forum and the Council of State Governments convened a Reciprocity Symposium, in collaboration with the Commission and the four regional higher education compacts, to invite

state teams to review the proposed SARA and to explore the implementation processes recommended for states and their designated authorization agencies, institutions, and accreditors to advance and implement SARA. Representatives from 47 states came to Indianapolis, Indiana to review SARA and to meet in region-specific groups to explore implementation issues and establish collaborative approaches. The collaboration and harmony of approach evident in this meeting had rarely, if ever, been achieved across all sectors of the higher education community.

The Indianapolis Reciprocity Symposium marked the movement of the all of the parties involved in the creation of SARA from “development” to “implementation.” The initial state engagements with the partnering organizations suggested that there was strong interest in SARA, but also a good deal of confusion and misinformation about necessary steps and their impact. Because the issues raised relating to SARA were complex and revealed that state participation would often require legislative action to permit participation, the need for clear, consistent, and accurate information emerged as a critical concern. The Presidents’ Forum/CSG team engaged in ongoing conversation with Travis Reindl, Program Officer with the Bill and Melinda Gates Foundation, seeking support to develop informational and messaging materials that could increase the understanding of and participation in SARA, thereby allowing states, institutions and students to realize the benefits of SARA. On 04/01/2014, the Presidents’ Forum/CSG partnership received a \$200,000 award from the Bill and Melinda Gates Foundation to direct their efforts to address this need through 2016.

Summary

Following the completion and publication of the generic model by the Forum/CSG

Drafting Panel in January, 2014,⁵ and a regionally tailored implementation proposal by NC-SARA, a substantial proposal for initial funding was submitted to the Lumina Foundation by the four participating regional higher education compacts. Lumina, building upon the report of The Commission on the Regulation of Postsecondary Distance Education focused its continuing support upon the establishment of a National Council for State Authorization Reciprocity Agreements (NC-SARA) incorporating many of the participants from the PF/CSG SARA project, the W-SARA initiative, as well as the Commission. The National Council is a policy body assisting the regional compacts in developing and implementing consistent SARA policy and procedures and formulating legislation and procedures to permit states' participation in SARA in their regions.

That proposal provided for support of a small staff at each of the regional compacts, and, with Forum's insistence, a national council that would develop shared policy, procedural and qualitative consistency across the nation. In 2014 Lumina provided a substantial award for an initial two-year development cycle, assuming that SARA would become self-supporting after that period. The NC-SARA Board appointed Marshall Hill, earlier a member of the Drafting Panel, as SARA's first Executive Director. Paul Shiffman serves as a Commissioner and member of the Executive Committee.

Although some time must pass before the full understanding of what SARA means for students, educational institutions and states, the initial successes suggest some early observations. First, a very high level of interest has been expressed by the states. By Fall, 2016, 42 states had applied for, been recommended by their home states and regional SARA, and been accepted for membership. Many have gained legislative law changes in order to join SARA.

⁵ The final report of the SARA Drafting Panel is called: *Model for State Authorization Reciprocity Agreement*, the Presidents' Forum, January, 2014.

Additional states are in communication with SARA and should join in the coming years. Second, the initial financial plan proposed in the Forum/CSG model has proven to be viable. By setting the annual fees for the institutions at a three-tiered modest level based upon total enrollment, over 1000 member colleges and universities now provide sufficient support for the regional and national organization to operate successfully. It appears that the institutions are saving very large sums of money compared to the former level of expense for state authorization. The individual home states for these institutions are able to charge reasonable fees in state to support the costs of periodic evaluation and review. And, state regulatory staff may be experiencing a more rational flow of work, given that it is no longer necessary for each state to authorize every out-of-state institution that wishes to offer courses of study.

What cannot be known at this point in time is how effective the network of NC-SARA is in maintaining strong and comparable performance standards. Most recently, several challenges have been raised from external groups concerned with performance quality, in particular of for-profit corporate institutions. Consumer groups have questioned whether SARA merely opens the door to some low performing institutions, thereby disadvantaging enrolled students who may lose substantial financial aid funds they have borrowed, or gain worthless degrees. In our view, these concerns are valid questions that have been addressed and carefully vetted by NC-SARA and its staff.

Only institutions carefully certified as meeting required high performance standards are accepted into SARA membership, and provision is made for addressing directly any student issues that may appear. Moreover, every member institution must hold full regional accreditation as a prerequisite to membership. In addition, the home states also require institutions to meet their established standards prior to recommendation to SARA.

In conclusion, the grand experiment called NC-SARA seems likely to achieve all of the hopes and expectations described in the model defined by the FORUM/CSG Drafting Panel. Truly, the design constitutes one of the most significant changes in higher education in the USA in some years. It provides the companion structures to address the radically changed and challenging issues of the technology revolution- a revolution that makes it possible for students to learn wherever and whenever they are able and ready. For many years, institutions have lagged behind in meeting these challenges. SARA has opened that door with a design, structure and safeguards that can ensure its success to an extent once only imagined.

APPENDIX A: The First Presidents' Forum Task Force

Bruce Chaloux, Director, Electronic Campus, Southern Regional Education Board

Steven Crow, Past President, The Higher Learning Commission

John F. Ebersole, President, Excelsior College

Richard Garrett, Program Director and Senior Research Analyst, Eduventures, LLC

Michael B. Goldstein, Co-chair, Higher Education Industry Practice, Dow Lohnes,
PLLC

James W. Hall, Chancellor *emeritu*, Antioch University/President *emeritus*, SUNY
Empire State College

Darcy Hardy, Assistant Vice Chancellor and Executive Director, University of Texas
Telecampus

Edward Klonoski, President, Charter Oak State College

Alan Davis, President, SUNY Empire State College

Charles Lenth, Vice President, State Higher Education Executive Officers

Paul Lingenfelter, President, State Higher Education Executive Officers

Bernard Luskin, CEO, Touro University Worldwide

David Longanecker, Executive Director, Western Interstate Commission for Higher
Education

Gary W. Matkin, Dean, UCI Extension, University of California, Irvine

Linda Thor, President, Rio Salado College

Michael Offermen, President, Capella University

Julie Porosky Hamlin, Executive Director, Maryland Online

Joseph Porter, Vice President and General Counsel, Excelsior College

Terry Rawls, Vice Chancellor, Jones International University

John Sabatini, Vice President, Walden University

Paul Shiffman, CEO, The Presidents' Forum

Roger Sublett, President, Union Institute and University

Terrance Thompson, Director of Congressional and Public Affairs, US Chamber of
Commerce

APPENDIX B: The Drafting Panel

Bruce Chaloux, Executive Director Sloan Consortium, and Director SREB Electronic University

Alan Contreras, Director Oregon Office of Degree Authorization, and Member NASASPS

Shane DeGarmo Associate Vice-Commissioner, Ohio Board of Regents

Crady deGolian, Director, National Center for Interstate Compacts, Council of State Governments

James W. Hall, President emeritus, SUNY/Empire State College; Chancellor emeritus, Antioch University

Marshall Hill, Executive Director of the Nebraska Coordinating Commission of Higher Education

Russell Poulin, Director, Policy and Analysis, WCET

George Roedler, Manager Institutional Registration and Licensing, Minnesota Office of Higher Education.

Paul Shiffman, CEO, The Presidents' Forum (Lumina Grant Project Director)

Sharyl Thompson, State Authorization Compliance Officer, Capella University

LeRoy Wade, Deputy Commissioner Missouri Department of Higher Education, and past President of NASASPS.