



# National Council for State Authorization Reciprocity Agreements

*A voluntary, regional approach to state oversight of distance education*

**Marshall A. Hill**  
Executive Director

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Chair, NC-SARA Board

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\*Member of NC-SARA Executive Committee

June 24, 2014

Willard P. Ogburn  
Executive Director

Robyn Smith  
Of Counsel

National Consumer Law Center  
7 Winthrop Square  
Boston, MA 02110-1245

Dear Mr. Ogburn and Ms. Smith,

This letter is a response to *Ensuring Educational Integrity* (2014), a report from the National Consumer Law Center, on issues relating to the SARA project. SARA staff considers this report valuable for advancing the agenda we share – the necessity to ensure good protections for students as consumers. That said, we think that the report contains some misunderstandings about SARA which should be addressed. For that reason, we are sharing this response broadly.

We have both been directly involved in the authorization and regulation of for-profit institutions. One of us (Alan) spent twelve years as a state regulator in Oregon, dealing with degree mills and a wide variety of issues and problems related to postsecondary providers. He has forced colleges to give refunds and helped send people to prison for selling bogus credentials. The other (Marshall) supervised regulation in Texas and Nebraska, and was from time to time sued by institutions against which his agency was taking action. We both know that the problems are real and that bad behavior by some colleges results in significant harm to students. All of us involved with SARA are concerned about these issues.

Let us clarify what SARA does and does not do. SARA allows member states to recognize each other's work as postsecondary oversight entities, providing that each member state is actually performing that function. It is worth noting that SARA allows *no* exemptions from home state responsibility for the enforcement of standards—a significant net *increase* in state oversight responsibility and student protection for many distance education courses.

Most states currently exempt “pure” postsecondary distance education activity from state oversight. Fewer than ten states actively review and license providers that are based in another state. Therefore, the level of consumer protection for students enrolled in such courses in the large majority of states is now quite low. SARA has the effect of *increasing* consumer protection in those states by requiring such distance education activity to be overseen by the institution's home state. Going from no protection to the significant standards required of institutions participating in SARA is a major improvement.

In SARA, oversight of distance education courses offered across state lines requires an increased assumption of responsibility on the part of the institution's home state, rather than the responsibility of the many states in which the SARA institution may offer courses. This doesn't mean that there is less protection for a student in a given situation, it simply means that the protection is centralized in the state that knows the most about the institution and has the best opportunity to require good behavior by that institution. This is both an increase in efficiency *and* an increase in student protection.



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Does this structure mean some states that currently provide limited oversight and minimal attention to some issues will need to step up and improve what they do? Yes, it does. We see this as another “net plus” resulting from SARA: a state that wants to participate will need to take its oversight role seriously or it will not be allowed to join or stay in SARA. That role includes timely and appropriate responses to student complaints, including potential complaints about many of the state’s institutions that are currently “exempt” from oversight under their state’s laws. Those exemptions do *not* carry over into SARA. Every institution that chooses to participate in SARA (SARA is a voluntary initiative, for both states and institutions) must agree to abide by SARA standards, and it must agree to come under its state’s jurisdiction for that purpose. There are no exceptions.

We agree with NCLC that states need to have “meaningful minimum performance standards as requirements for state approval.” SARA has established a set of standards that all SARA states will agree to enforce and all participating institutions agree to meet. These include the *Interregional Guidelines for the Evaluation of Distance Education* that are currently used by the regional accrediting associations. We think these are good expectations for all institutions offering distance education. All institutions, whether regionally or nationally accredited, that are approved to operate under SARA must agree to comply with them. And moving forward, SARA institutions are subject to state investigative and enforcement action in regard to their compliance with the *Guidelines*, even if for their other activities they are “exempt” from state oversight.

In addition, the National Council for SARA has approved the following specific standards for all participating institutions, which require appropriate institutional behavior regarding:

1. Veracity of recruitment and marketing materials;
2. Accuracy of job placement data;
3. Accuracy of information about tuition, fees and financial aid;
4. Complete and accurate admission requirements for courses and programs;
5. Accuracy of information about the institution’s accreditation and/or any programmatic/specialized accreditation held by the institution’s programs;
6. Accuracy of information about whether course work meets any relevant professional licensing requirements or the requirements of specialized accrediting bodies;
7. Accuracy of information about whether the institution’s course work will transfer to other institutions; and
8. Operation of distance education programs consistent with practices expected by institutional accreditors (and, if applicable, programmatic/specialized accreditors) and/or the C-RAC *Guidelines* for distance education.

These are also good standards. Any institution that fails in its duty to respect these standards will not be allowed to continue in SARA. Home states must enforce them. Institutions must abide by them. Again, there are no “exemptions” based on accreditation or anything else.

SARA does not require states to waive their requirements specifically applicable to for-profit schools, as the report suggests. States that join SARA retain all of their consumer protections applicable to students except for those expressly relating to the licensure of nondomestic institutions that offer courses via distance education (including some specialized cases such as clinical placements and practica). And importantly, SARA in no way reduces the ability of an Attorney General or other state consumer protection agencies to act against a school that defrauds a student.

Addressing the specific items in Appendix B of *Ensuring Educational Integrity*, we offer the following comments.

**Accreditation in Lieu of State Standards.** It is true that SARA builds on institutional accreditation as the baseline for SARA participation. However, SARA institutions must also meet the standards of their home state and abide by SARA standards, some of which are discussed above. Accreditation does not generate an “exemption” from SARA standards.

**Treatment of Public, Private Non-Profit and Private For-Profit Schools as if They are the Same:** SARA allows any accredited degree-granting institution that meets SARA requirements to participate, but a home state may charge schools different in-state fees, require different recovery funds, and apply other standards to its own providers if, in the state’s opinion, the state incurs a greater risk of enforcement costs or damage because of the nature or size of the offerings of one provider versus another. States are obliged to demonstrate a rational basis for such classifications.



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For example, a state that requires a \$100 application fee and a \$50,000 recovery bond for a provider that has 5,000 in-state students could require a much larger fee and bond if the institution has 50,000 out-of-state distance education students, because the state's potential workload in handling complaints is much larger and the potential for recovery payouts is much higher. This SARA fee is separate from any authority the state has under general state laws. We think this is a reasonable compromise that allows for state oversight to vary based on state workload and exposure. We are actively considering other ways to make sure that students are appropriately protected.

**Waiver of State Consumer Protection Laws.** It is true that SARA requires a state to waive the laws it normally applies to out-of-state distance education providers, but only if the institution's home state agrees to apply its own laws to all of its SARA-participating providers in other SARA member states. No student will lack a state enforcement agency to turn to for help. Again, this is a net *increase* in student protection, as most states don't apply all of their laws to distance education providers today.

**Lack of Consumer Protections.** Many of these issues are discussed above, but it is worth noting that a state cannot join SARA unless it agrees to apply its refund rights and other provisions to all students taking courses under SARA. It can't exclude students from other states. This is an issue in some states, which will have to revise their laws to join SARA. We included this provision specifically to ensure that no student was treated differently because of geographic location. All SARA students have the same rights as domestic students of the same institution. It is true that these rights vary by state, but keep in mind that right now most states don't cover these students *at all* – SARA therefore results in a *net gain in consumer protection*. This is also true of some of the issues raised under the **Enrollment Agreements** section.

**Programs that Lead to Licensure.** Right now most states have no notice requirement at all. SARA adds one. We think this is a net gain for students. Also, it is often impossible to tell which state a student plans to license in, especially in border situations such as Portland-Vancouver, Kansas City, the District of Columbia and so on. We think our notice requirement will work well, but we recognize that the entire subject of professional licensure is very complex. We are forming a working group to review this topic on a regular basis.

**Inadequate Student Complaint Procedures.** We disagree that requiring a student to go through an institution's internal procedures first is unusual or problematic. This is a standard practice in education oversight.

Some of the issues suggested for SARA revisions in your report are addressed above. Others relate to subjects that are ongoing discussions by SARA staff and board members. We are convinced SARA is a quality solution to current issues. Our primary interest is in making sure SARA works well for everyone involved, especially the students for whom the entire enterprise is designed.

We look forward to continued dialogue regarding the future of SARA.

Marshall A. Hill, Executive Director

Alan Contreras, Coordinator

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