



September 10, 2021

Beth Grebeldinger  
U.S. Department of Education  
Federal Student Aid  
830 First Street NE  
Room 113F4  
Washington, DC 20202

RE: Joint Federal State Oversight (Docket ID ED-2021-OS-0107)

Dear Ms. Grebeldinger:

Thank you for the opportunity to provide input on the Department's Notice of Interpretation published in the August 12, 2021 *Federal Register*. The Institute for College Access & Success (TICAS) commends the Department on reversing the 2018 Notice of Interpretation that hamstrung states from fully exercising their enforcement authority. As the current Notice indicates “states have an important role to play in this area and it is appropriate to pursue an approach marked by a spirit of cooperative federalism.”

We agree with the Department’s Notice of Interpretation’s emphasis on the historical powers of the states to protect higher education consumers. This approach further aligns with Supreme Court and federal appellate court decisions which “emphasized the need to begin ‘with the assumption that the historical police powers of the States are not to be superseded by Federal Act unless that is the clear and manifest purpose of Congress.’” (2021 Fed. Reg. 17021 citing *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992)).

We believe the same respect for state enforcement power should guide Department policies related to the regulation of institutions of higher education operating across state borders. The National Council for State Authorization Reciprocity Agreements (NC-SARA), a distance learning reciprocity agreement created in 2013, undermines that respect. In effect, its policies weaken state consumer protection and enforcement powers in ways similar to the Department’s 2018 preemption interpretation.

Within the higher education triad, states, not the federal government, have the primary responsibility of protecting consumers and establishing the criteria for authorizing institutions to operate and enroll students within the state. State legislators and regulators have created a wide variety of consumer protections for higher education students, including some specifically applicable to private institutions. These rules include minimum standards, such as minimum completion placement and licensure rates and minimum number of credit hours for degrees or certificates; quality measures, such as financial responsibility, instructor qualifications, library requirements, equipment quality; and other consumer protection powers, including the power to execute subpoenas, perform audits, perform unannounced inspections, adjudicate student complaints and order refunds to students, condition and revoke approval

and limit enrollments, and require reporting of student outcomes, revenues, and contracts with third parties, etc.<sup>1</sup>

Despite the essential consumer protection function state regulation serves within the triad, NC-SARA policy requires member states to cede their authority to regulate institutions educating students within their borders if the institution is physically located elsewhere. Specifically, the NC-SARA manual permits states to enforce only their “general-purpose laws” against out-of-state institutions, and specifies that a “general-purpose law” is one that applies to *all entities*,<sup>2</sup> not just institutions of higher education. In other words, NC-SARA policy preempts all higher education specific consumer protection and oversight laws of the state where the student is located, and allocates sole responsibility for oversight and enforcement to the state where the institution is headquartered. This weak oversight system created by NC-SARA is contrary to the purpose of the state authorization requirements of the Higher Education Act.

Ultimately, NC-SARA represents a regulatory ceiling, and the agreement’s policies have a dampening effect that disincentivize states from creating better regulations or policies that evolve with the times to protect the students residing within their jurisdiction. It also limits the ability of states to protect students from the devastating impact of predatory conduct or sudden closure, as the circumstances surrounding the Center for Excellence in Higher Education (CEHE) demonstrate. CEHE operated Stevens-Henager College and its branch campus Independence University. It was an institutional member of NC-SARA headquartered in Utah that enrolled thousands of students in distance education courses in other states. As a result of NC-SARA policies, the states where the students lived had no authority to enforce their own consumer and financial laws to protect students, even when it became clear the school was on an irreversible path to closure. Now that CEHE’s schools have shuttered, the only recourse available to the thousands of students who attended them must come from Utah, which has no student tuition recovery fund and has done little to assist harmed students.

NC-SARA's creation was enabled by the Department’s state authorization regulations and implementing guidance. The Department therefore bears responsibility for ensuring that NC-SARA policy does not undermine the efficacy of the higher education triad or prevent states from taking action to protect students. We believe the Department’s current posture on state authority to enforce state consumer

---

<sup>1</sup> Additional examples of state consumer protections include (1) student rights (refund rights, cancellation rights); (2) affirmative requirements (disclosures, contents of enrollment agreements, notices, language of important documents when student does not speak English, etc.); (3) prohibitions targeted at recruiting practices that private institutions commonly engage in (enrolling student in program that does not qualify student for licensure when that is required by student’s state, falsely implying government affiliation, promising employment, use of common misrepresentations, failing to offer or place student in internships as represented; solicitation with help wanted ads, etc.); (4) student tuition recovery funds and/or bonds for student relief, including for students impacted by school closure, nonpayment of an attorney general or private judgment or arbitration award against a school, discontinuance of a program, failure to pay a required refund, and other circumstances; (5) loan related requirements when school is involved in arranging or making private loans; (6) licensure requirements for recruiters; (7) liability provisions, including private causes of action and/or criminal penalties for some violations; (8) limitations on who may own and operate a school; (9) pre-approval requirements for substantive changes, including change in ownership, control, home state, name, merging of programs, establishment of new programs, etc.; (10) record retention requirements; and (11) orderly closure requirements.

<sup>2</sup> NC-SARA (May 28, 2021). “State Authorization Reciprocity Agreements Policy Manual,” p. 25. Available at: [https://nc-sara.org/sites/default/files/files/2021-05/SARA\\_Policy\\_Manual\\_21.1.pdf](https://nc-sara.org/sites/default/files/files/2021-05/SARA_Policy_Manual_21.1.pdf).

protection laws is inconsistent with the recent decision regarding servicing. Steps should be taken to address these irreconcilable positions. Twenty-five state Attorneys General recently released a set of bipartisan comments indicating their shared concern about this issue.<sup>3</sup> States must be empowered to act as they deem necessary to protect the students within their borders, whether in relation to student loan servicing or state authorization and reciprocity.

We urge the Department to take steps to address the deficiencies of NC-SARA and make improvements in state-level accountability and oversight efforts either through negotiated rulemaking or regulatory guidance. Those steps should include: (1) ensuring that participation in a state authorization reciprocity agreement does not preempt states' rights to enforce important state higher education specific consumer protections with respect to their residents, including refund rights, cancellation rights, student tuition recovery funds, and other important protections; (2) defining the governmental entities which are authorized to enter states into and govern reciprocity agreements; (3) improving interstate communication, especially regarding any institution that is potentially violating law, including ensuring students are served by robust complaint systems; (4) creating state-specific data systems to provide information about institutions to authorizers; (5) lifting the floor for the state authorization processes and ensuring that states have the capacity to adequately oversee institutions; and (6) ensuring online programs lead to licensure in students' states where applicable.

We are happy to answer any questions or address any concerns. Please feel free to contact Kate Tromble at [ktromble@ticas.org](mailto:ktromble@ticas.org) or Angela Perry at [aperry@ticas.org](mailto:aperry@ticas.org).

Sincerely,



---

Richard Kazis  
Interim President  
**The Institute for College Access & Success**



---

Carrie Wofford  
President  
**Veterans Education Success**



Robyn Smith  
Of Counsel  
**National Consumer Law Center**  
On behalf of its low-income clients

---

<sup>3</sup> Office of the Maryland Attorney General (Aug. 2, 2021). "State Attorneys General Policy Change Recommendations to Improve NC-SARA Student Protections." Available at: [https://www.marylandattorneygeneral.gov/news%20documents/080321\\_NC\\_SARA.pdf](https://www.marylandattorneygeneral.gov/news%20documents/080321_NC_SARA.pdf).