Postsecondary Equity & Economics Research Project
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Examining the States' Role in Protecting Online College Students from Predatory Practices

PART I: Background and history of the states' higher education oversight role in the federal regulatory triad

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The views expressed in this paper are solely those of the authors.

I. INTRODUCTION

Higher education oversight and accountability is premised on the Higher Education Act (HEA)'s so-called oversight "triad," whereby the U.S. Department of Education, state licensing authorities, and private accrediting agencies play distinct roles overseeing institutions of higher education and gatekeeping federal student aid.[3] Historically, accrediting agencies have been tasked with providing educational quality assurance, the Department with administration of the federal student aid system, and the states with consumer protection.[4] Much has been written generally about the triad, its shortcomings and strengths, but less is known about the states as student consumer protectors.[5]

As online education (also referred to as "distance education" in this paper) has grown exponentially over the last several years, so too has policymakers' focus on the states' role. According to data collected by the Department, in the fall of 2021, some 4.4 million students, or 28 percent of all undergraduate students, took distance education courses exclusively—a 13 percent increase from pre-pandemic times in 2019.[6] Of the undergraduate students, 1.0 million (23 percent) were enrolled in institutions in a different state.[7] Since 2011, HEA Title IV institutions offering education "to students in a State in which [they are] not physically located . . . must meet any State requirements for [them] to be legally offering postsecondary distance or correspondence education in that state."[8]

The Department's regulations permit institutions offering distance education across state lines to satisfy the HEA's state authorization requirement without obtaining approval from each state in which they offered education *if* those states participate in a "state authorization reciprocity agreement." The scope of the Unified State Authorization Reciprocity Agreement (SARA), the current—and only—state authorization reciprocity agreement, has become a touchpoint for debate because it prohibits state members from enforcing their higher education-specific consumer protection laws against out-of-state member institutions, even when they enroll the state's residents. Thus, SARA creates a two-tiered system whereby, in many states, residents who attend schools with a physical presence in the state receive more protection than those residents who attend out-of-state online schools.[9]

In this paper, we provide background on the states' role as student consumer protector and a brief history of the federal government's fraught efforts to regulate state authorization for distance education. We call on policymakers to keep in mind the states' role as student consumer protector in state authorization and reciprocity rulemaking, particularly with respect to distance education.

II. HISTORY OF THE STATES' ROLE IN THE TRIAD

Under the reserve clause of the Constitution, the primary responsibility for education rests not with the federal government but with the states.[10] States began crafting oversight of postsecondary education with the founding of the first public colleges and universities in the 1700s and early 1800s[11]—a role that evolved significantly after Congress created the first federal-state partnership through the 1941 Servicemen's Readjustment Act (GI Bill). Relying on the states' established oversight of public and private institutions established by charter, incorporation or licensure, Congress directed the Veterans Administration to coordinate with "the appropriate agency of each State" to identify institutions "qualified and equipped to furnish education or training."[12]

Neither the states, nor the federal government, were prepared for what came next. The GI Bill provided financial assistance for tuition, books, supplies, counseling and a living allowance, which led to an explosion of for-profit schools angling to benefit from the stream of federal money. A House select committee found that a staggering 2,000 for-profit schools opened within 18 months of the enactment of the GI Bill,[13] and concluded that many of these fly-by-night schools offered "training of doubtful quality."[14] The Government Accountability Office (GAO) found that new proprietary schools were using "promotional plans and extensive advertising campaigns, which were often misleading and laden with extravagant, unjustifiable claims."[15]

It was clear more oversight was needed, particularly over the burgeoning private for-profit school sector.[16] In 1952, lawmakers amended the GI Bill to reign-in schools' misuse of veterans' benefit funds and assigned much of the new approval and supervision requirements to the states.[17] Under the Veterans Readjustment Assistance Act of 1952, Congress requested the governor of each state to create a "State approving agency" to determine approval of courses and training for purposes of the GI Bill.[18] Congress also directed the VA and the states to exchange information pertaining to the activities of educational institutions and to enforce approval standards to prevent "fraudulent and other criminal activity," noting "the cooperation of the Administrator and the State approving agencies is essential."[19] Specifically, states were tasked with ensuring institutions kept adequate records to show progress of each eligible veteran and that course credit had been given by the institution for previous training.[20] In addition, the State could require a lengthy application for approval, in which schools could demonstrate that they met certain criteria, such as showing the institution is "financially sound," "does not utilize advertising of any type which is erroneous or misleading," "does not exceed its enrollment limitations as established by the State approving agency," and that its "administrators, directors owners, and instructors are of good reputation and character."[21] Lawmakers' efforts to protect the integrity of the GI Bill program—and protect veterans—was largely successful; reports of abuses by for-profit schools shrunk after the passage of the 1952 law.[22]

Under the 1952 GI Bill, Congress allowed state approving agencies to rely on private, nongovernmental accreditation agencies to assess the quality of education or training offered by the participating institutions— thus introducing the concept of what would later be called the higher education oversight triad.[23]

Congress turned to the states again a decade later when it authorized federal student aid programs under the Higher Education Act of 1965.[24] The HEA, which was "[s]oundly based on this concept of State-Federal cooperation," adopted the regulatory "triad," featured in the 1952 GI Bill.[25] In order for an institution to participate in the federal student aid program, the Department must certify that the school is accredited and "legally authorized" by a state to provide a "program of [postsecondary] education" in that state.[26] It would take nearly 40 years for the Department to flesh out in regulation what, exactly, states were expected to do in the state authorization role. In the interim, the triad's efficacy was tested.

Although Congress did not initially extend student loan eligibility under the HEA to students attending for-profit institutions, it did so seven years later under the 1972 Education Amendments.[27] After the HEA opened the door to proprietary institutions, enrollments at for-profit schools swelled and bad actors stormed in (again).[28] A 1976 study commissioned by the Department to define and measure student consumer harm found that the most common abusive practices suffered by students at this time included "inequitable refund policies," "misleading recruiting and admissions practices," "untrue or misleading advertising," and "lack of necessary disclosure in written documents."[29] All sectors were included in the study, yet it was the abuses that occurred in proprietary occupational training schools that received the most attention.[30]

The triad established under the HEA came under fire for not doing enough to prevent the rampant misconduct.[31] The Department's 1976 study credited the states' "more concerted effort to regulate post-secondary vocational education than was heretofore known or acknowledged," noting that "[o]ne salient advantage in using State agencies, when they are efficient and effective, is that they generally can provide closer surveillance and oversight, and can react more quickly, than can a regional or national organization or agency."[32] But it also noted a lack of consistent state laws and understaffed state agencies contributing to the triad's poor oversight.[33] In 1973, model state legislation was introduced that included a state-level complaint review process, and requirements for institutions to provide prospective students with a catalog or brochure describing the programs offered, program objectives, length of program, tuition and other charges, cancellation and refund policies and "other facts in order to obtain state authorization to operate."[34] Several states, such as Tennessee, North Carolina and Montana adopted such provisions.[35]

States also began passing laws more focused on policing for-profit colleges, including through the creation of licensure and oversight commissions and regulations to better protect students. For example, in 1978 the Massachusetts Attorney General created regulations "designed to protect Massachusetts consumers seeking to enroll in any course of instruction or educational service offered by certain private business, vocational, career schools."[36] That same year, California created the first Student Tuition Recovery Fund ("STRF"),[37] which was later expanded under the Maxine Waters School Reform and Student Protection Act of 1989.[38] In 1981, the Colorado legislature passed the Private Occupational Education Act for "the general improvement of the educational programs available to the residents of the state of Colorado . . . to prevent misrepresentation, fraud, and collusion in offering such educational programs to the public [and] . . . to eliminate those practices relative to such programs which are incompatible with the public interest. . . ."[39]

III. CONGRESS FURTHER DEFINES THE STATES' CONSUMER PROTECTION ROLE

Through a Senate subcommittee investigation, and the resulting reauthorization of the HEA in 1992, Congress further defined the triad, including the state role. Leading up to reauthorization, in 1989 the Senate Permanent Subcommittee on the Investigations of the Committee on Government Affairs began an 18-month investigation into the cause of a spike in federal student loan defaults.[40] The Subcommittee determined that the increase was caused by the "complete breakdown in effective regulation and oversight," which had opened the door for "major fraud and abuse . . . , particularly at proprietary schools."[41] The investigative hearings included testimony from Subcommittee Counsel Kim Wherry, who explained that even though the states don't have a financial interest in the federal student aid program, they do have an interest in protecting their "citizens that are being harmed."[42] In comparing the State's role to that of accreditors, one state board of education witnesses explained "if you look at the . . . law . . . in most . . . States, you will find that the law was written to provide . . . basic consumer protection. It does not really speak to the question of quality of program. It speaks to full disclosure of students about what the school is all about, the kinds of jobs they might secure, truthfulness. . . ."[43] In its final investigative report, the Subcommittee recommended requiring schools to publicly disclose information to "be used by prospective students to make informed decisions about where to enroll."[44] The Subcommittee called on the Department to assist the states in their role by "recommending uniform minimum licensing requirements" that address "recruitment, advertising, admissions . . . completion and placement data."[45]

In subsequent hearings to reauthorize the HEA, the Senate Committee on Labor and Human Resources in 1991 echoed the Subcommittee's concern about "lax" gatekeeping of Title IV programs, but contended the triad concept was a "sound one" as it divides responsibility on the basis of the strengths that the Department, the States and accreditors each bring to the process, specifying again that the states are "primarily responsible for consumer protection functions."[46] The Senate Committee called for "tough standards for institutional eligibility as promulgated and enforced by the 'triad,'" with the "States to protect the student consumer."[47] Proposed amendments to the HEA established "minimum federal standards for state licensure" of Title

IV institutions set in the areas of "consumer protection" and "consumer information" and touched on areas such as refund policies, prompt investigation of student complaints, and standards for advertising.[48]

Similarly, the House Committee on Education and Labor noted in a 1992 hearing to reauthorize the HEA that many states had already initiated regulatory reform to improve the licensing of postsecondary institutions that are recipients of state aid. The House Committee supported the HEA amendments that strengthened the "traditional state role of serving as a consumer protection advocate for students."[49]

Based on these findings, in 1992 Congress reauthorized and amended the HEA to include Subpart 1 of Title IV, Part H (20 U.S.C. § 1099a). Part H requires the states to provide the Secretary with various information about the licensing and authorization process used by the state, if the state has revoked the authority of an institution to operate, and if the state has evidence that an institution has committed fraud related to Title IV programs or substantially violated a Title IV provision.[50] The Higher Education Amendments of 1992 also substantially expanded—and funded—state oversight through the creation of State Postsecondary Recognition Entities (SPREs), which were tasked with identifying higher risk institutions based on certain criteria, such as cohort default rates, and reviewing those institutions against more than a dozen standards including completion rates, employment outcomes, refund policies, advertising and student and recruitment practices, complaint process, and graduate licensure pass rate.[51] Later, in 1995 amid measures to cut federal spending, the SPREs were killed and states were each left to formulate and fund their respective higher education approval and oversight.[52]

The addition of Part H to Title IV was considered to be one of the "major components…to ensure integrity and accountability in the Federal student financial assistance programs."[53]

IV. HOW THE DEPARTMENT REGULATES STATE OVERSIGHT OF DISTANCE EDUCATION

For more than 40 years, federal regulations were silent on what the HEA's "legally authorized by a state" (20 U.S.C. § 1001(a)(2)) meant in terms of Title IV eligibility. The Department started a rulemaking process in 2009 with the expectation that the states should take "an active role in approving an institution and monitoring complaints . . . and responding appropriately."[54] The Department recognized that the states' role in the triad was to protect students and taxpayers from fraud, and pointed to the movement of substandard institutions and diploma mills from state to state in response to changing state-level requirements.[55] The Department issued final rules in 2010, providing that an institution is legally authorized by a state for the purposes of Title IV eligibility if the state has a "process to review and appropriately act on complaints concerning the institution including enforcing State laws."[56]

The Department also addressed online programs operated by out-of-state schools. State laws often restricted oversight to schools with a physical in-state presence. As a result, out-of-state schools that lacked a physical in-state presence, but offered online programs, were not subject to any state authorization or oversight and were often not covered by state laws.[57] Concerned about the lack of state oversight of such schools, the Department created a final rule requiring that any school offering education "to students in a State in which it is not physically located . . . must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State."[58] Implementation of this provision was delayed by a legal challenge.[59]

In 2016, the Department revised and issued new state authorization regulations. The 2016 rule allowed institutions offering distance education across state lines to satisfy the state authorization requirement without obtaining approval from each state in which they offered education, but lacked a physical presence, if those states participate in a "state authorization reciprocity agreement."[60] The Department then defined a reciprocity agreement in 34 C.F.R. § 600.2 as an agreement "between two or more states that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education . . . to students residing in other States covered by the agreement" as long as the agreement did not prohibit states from enforcing their own "statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions."[61] Under such an agreement, an institution located and authorized in one participating state could provide distance education programs in other participating states where it lacked a physical presence without having to obtain separate authorizations from each of those states. In this case, however, the institution would still be subject to each state's consumer protection laws specifically directed at institutions of higher education.

During the 2016 rulemaking, the Department had initially proposed language that no state would be prohibited from enforcing its "consumer protection laws," which triggered institutions to raise concerns about complying with additional state requirements besides the conditions required under a reciprocity agreement.[62] Commenters asked the Department to clarify that the definition prohibited waiver of a state's "general consumer protection laws," meaning the ones that applied to all entities, which would allow a reciprocity agreement to require states to waive their higher education specific consumer protection laws.[63] The Department declined this request, reasoning that such decisions to exempt schools from higher education specific consumer protection laws were best left to each individual state to such an agreement.[64]

However, in 2019, under a new administration, the Department reversed its position and agreed to carve out state higher education specific consumer protection laws.[65] The Department removed the requirement that a reciprocity agreement may not prohibit states from enforcing their higher education specific consumer protection laws, without any discussion regarding the purpose of the state authorization requirement of the HEA.[66] It left only the provision requiring that such agreements may not prohibit states from enforcing "general-purpose State laws and regulations."[67] The Department expressed concern about a state advantaging its own public institutions and applying additional or alternate state authorization requirements to out-of-state institutions.[68]

V. THE CURRENT STATE RECIPROCITY AGREEMENT FOR DISTANCE EDUCATION

At the time of the 2016 and 2019 rulemakings, a reciprocity agreement already existed, and effectively ended up the winner in the debate over defining reciprocity. That agreement, the Unified State Authorization Reciprocity Agreement (SARA), is currently the sole reciprocity agreement available to states.[69] As of December 2023, 49 states (all but California), the District of Columbia, Puerto Rico and the U.S. Virgin Islands are members. SARA is administered by a nonprofit organization, the National Council for State Authorization Reciprocity (NC-SARA). The decision regarding which states may join SARA and its requirements are determined by four regional higher education compacts: the New England Board of Higher Education (NEBHE), the Midwestern Higher Education Compact (MHEC), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).[70] These compacts, which are nonprofit organizations, were each formed by a specific geographic region of states.[71] The member states are represented by individuals, often appointed by each state's governor, to collaborate on higher education initiatives.[72] The individuals are typically people who work for higher education institutions, public higher education systems, nonprofit organizations involved in higher education, state legislators, industry, and others.[73] The compacts are not state regulators that must answer to legislators or voters in carrying out a statutory oversight scheme, nor do they have experience promulgating, investigating or enforcing consumer protection requirements aimed at protecting the public, students and taxpayers from deceptive, unfair or abusive practices most commonly engaged in by for-profit businesses.[74]

To implement the agreement, NC-SARA and the regional compacts developed the SARA Policy Manual, which specifies the policies and procedure for member states and institutions.[75] SARA operates in the following manner: An institution applies for membership in the state where it has its legal domicile, defined as the state ("Home State") in which the institution's main campus holds its institutional accreditation and, if applicable, its federal OPEID number.[76] Upon approval by that state, the institution becomes authorized to offer online educational programs in any other SARA member state ("Distant State") without having to apply for authorization from that state. SARA places all regulatory authority over a member institution in the hands of the institution's Home State, which is limited to applying the standards and requirements of SARA to protect out-of-state students.[77]

Except for its financial responsibility standard, which only applies to private institutions,[78] SARA's policies make no distinction between public, private nonprofit, and private for-profit institutions, despite the fact that many states (and the federal government) regulate the for-profit sector differently due to risks inherent in for-profit education. In addition, Distant States are only allowed to enforce “general-purpose laws” against SARA institutions.[79] The SARA Policy Manual defines general-purpose laws as those which apply to all entities of any type doing business in the state, such as laws that prohibit unfair and deceptive acts and practices, false advertising, and breach of contract.[80] SARA policy prohibits states from enforcing consumer protection laws that are only applicable to higher education institutions, even if those institutions are harming students within their borders.[81] Although NC-SARA provides a set of policies to guide states and institutions in its Policy Manual, it includes few of the substantive consumer protection requirements found in many state higher education specific consumer protection laws.[82]

VI. DISTANCE EDUCATION STUDENTS FACE FINANCIAL RISK ACROSS ALL HIGHER EDUCATION SECTORS

Although for-profit institutions were the early adopters of distance education,[83] all sectors—private for-profit, private non-profit, and public—eventually embraced it. According to data collected by the Department, some of the biggest providers of exclusively online education are *non-profit* institutions, such as Western Governors University and Southern New Hampshire University.[84]

Despite the ubiquity of distance education across sectors, it is the for-profit sector that wields significant influence. Many traditional non-profit and public schools hire for-profit online program managers to run their exclusively online programs of study.[85] In other instances, traditional non-profits and publics have acquired entire for-profit, fully online institutions as a turn-key approach to expanding their distance education presence. In 2018, for example, Purdue University, a top public research institution, acquired for-profit Kaplan University and created Purdue Global, becoming one of the “largest online degree-granting systems in higher education.”[86] Following suit, two years later the University of Arizona acquired for-profit and fully-online Ashford University.[87] In 2023, noting the “demand for online programs” continuing to grow, the University of Idaho created a non-profit entity that acquired for-profit online chain University of Phoenix.[88]

These arrangements with for-profit institutions don’t come without risk to students. As discussed in our companion paper, the risk of fraud and low-quality education is highest when the profit motive is involved. Research shows that four-year degree online programs in all higher education sectors have lower completion and student loan repayment rates.[89] Many of the approved borrower defense claims based on deceptive school behavior are tied to fully online for-profit institutions.[90] With respect to Kaplan, Ashford and University of Phoenix, all three for-profit institutions were the subject of numerous government investigations and settlements for deceiving and harming their own students[91] It’s worth noting that these three for-profit schools were—and continue to be under their new arrangements—SARA participating schools.[92]

VII. CONCLUSION

Even on the triad’s worst days leading up to the 1992 HEA reauthorization, Congress called the concept a “sound one” as it divides responsibility on the basis of the strengths that the Department, the states and accreditors each bring to the process, specifying repeatedly that the states are “primarily responsible for consumer protection functions.”[93] Through rulemaking the Department has an opportunity to consider and potentially strengthen oversight of distance education institutions that pose the greatest risk to students and taxpayers.

ENDNOTES

1 Libby Webster is Senior Counsel at National Student Legal Defense Network (Student Defense), a non-profit, non-partisan organization that uses research, litigation, and advocacy to promote accountability in higher education. Libby also co-directs the Postsecondary Equity & Economics Research (PEER) Project, which is a joint initiative on accountability between academics at George Washington University and Columbia University and policy experts and attorneys at Student Defense. Prior to joining Student Defense, Libby served for 15 years as a Senior Assistant Attorney General in Consumer Protection at the Colorado Attorney General's Office. In that role, she litigated numerous law enforcement actions under state consumer protection laws against a variety of industries, including for-profit colleges. In 2017, Libby led Colorado's team in a four-week bench trial against Center for Excellence in Higher Education (CEHE) for engaging in deceptive trade practices. The case resulted in findings of widespread deceptive conduct, and ultimately led to CEHE shuttering its schools. Libby also worked closely with other state and federal partners to investigate predatory colleges on a national scale, obtaining roughly $600 million in student relief.

2 Robyn Smith is Of Counsel with the National Consumer Law Center and is also a senior attorney at a public interest organization in Los Angeles, California, where she has focused exclusively on financial aid and higher education policies impacting low-income students. In this work, Robyn has provided legal assistance to hundreds of financially-distressed student loan borrowers and has worked on state and federal policies to strengthen oversight of higher education institutions. Ms. Smith is a co-author of the National Consumer Law Center's *Student Loan Law* legal treatise, the leading student loan law treatise in the country. Ms. Smith previously worked for the California Attorney General's office, where she investigated and prosecuted businesses engaged in deceptive practices, including higher education institutions, and worked on state higher education policy. She received her J.D. from University of Southern California in 1992.

3 *See* Secretary's Procedures and Criteria for Recognition of Accrediting Agencies, 59 Fed. Reg. 22,250-01 (April 29, 1994) ("Thus, the HEA provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the 'gate' to Title IV, HEA programs is opened only to those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three 'gatekeepers' sharing this responsibility have traditionally been referred to as 'the triad.'").

4 *The Triad: Promoting a System of Shared Responsibility. Issues for Reauthorization of the Higher Education Act Before the S. Comm. On Health, Educ., Lab., & Pensions*, 113th Cong. 2 (2013) (opening statement of Sen. Tom Harkin, Chairman, S. Comm. on Health, Educ., Lab., & Pensions).

5 *See, e.g.*, Clare McCann & Amy Laitinen, New America, *The Bermuda Triad: Where Accountability Goes to Die* 5–6 (Nov. 2019) (discussing the triad), https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Bermuda_Triad_2019-11-20_022701.pdf.

6 *See* Nat'l Center for Educ. Stats., *Undergraduate Enrollment Fall 2021*, at Figure 6 (May 2023), https://nces.ed.gov/programs/coe/indicator/cha#fn6 (last visited Sept. 19, 2023).

7 *See id*.

8 34 C.F.R. § 600.9(c) (2011).

9 Some states have strong higher education specific consumer protection laws that apply to the riskiest sectors of postsecondary institutions, while others have weaker laws. As we describe in Part II of this series, SARA's consumer protections are akin to the weakest state higher education consumer protection laws, lacking most of the consumer protections that are typically included in state laws. Robyn Smith & Libby Webster, Postsecondary Equity & Economics Research Project, *Examining the States' Role in Protecting Online College Students from Predatory Practices – Part II* (Jan. 2024), available at*

10 The federal government played little to no role in education, largely because the Constitution did not delegate such authority to it. *See*, U.S. Const., 10th Amt. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." David Tandberg, Ellie Bruecker & Dustin D. Weeden, State Higher Education Executive Officers Association (SHEEO), Improving State Authorization: The State Role in Ensuring Quality and Consumer Protection in Higher Education 7 (July 2019), https://sheeo.org/wp-content/uploads/2019/07/SHEEO_StateAuth.pdf.

11 *See* Tandberg, Bruecker & Weeden, *supra* note 10, at 7.

12 *See* Servicemen's Readjustment Act of 1944, Pub. L. No. 346, ch. 268, 58 Stat. 284, 289 (June 22, 1944) ("GI Bill"). The VA was authorized to enter into agreements with state departments and agencies in order to administer education benefits. 58 Stat. at 289–290.

13 David Whitman, The Profits of Failure at 158 (2021).

14 *Id*.

15 *Id*. at 159–160. Indeed, several government entities launched investigations and found that many of the operators of the programs and schools created after the GI Bill was enacted had no educational background and experience, charged unreasonable and excessive fees, faked attendance records and offered training with little potential for jobs. *See also* Antoinette Flores, Center for American Progress, Hooked on Accreditation: A Historical Perspective (Dec. 14, 2015), https://www.americanprogress.org/article/hooked-on-accreditation-a-historical-perspective/.

16 The VA discovered that "veterans were wasting their GI Bill funds and other benefits at accredited schools that often failed to provide adequate education." *See Abuses in Federal Student Aid Programs*, 101st Cong. 14 (1990) (testimony of Kim Wherry, Counsel, Permanent Subcommittee on Investigations), https://files.eric.ed.gov/fulltext/ED334956.pdf.

17 Veterans Readjustment Assistance Act, Pub. L. No. 550, §§ 241–243, 66 Stat. 663, 671–672 (July 16, 1952) ("1952 GI Bill").

18 *Id*. at §241.

19 *Id*. at § 243.

20 *Id*. at § 253.

21 *Id*. at §§ 253-254.

22 Whitman, *supra* note 13, at 166. The state/federal model envisioned in 1952 evolved and still largely relies on the states. For example, today the VA is specifically charged with utilizing the services of a state approving agency for conducting a "risk-based survey" and "other such

oversight purposes as the Secretary, in consultation with the State approving agencies, considers appropriate without regard to whether the Secretary or the agency approved the courses offered in the State concerned." 38 U.S.C. § 3673(d). Under this authority, the Secretary has promulgated regulations that specify Secretary-state approving agency cooperation (38 C.F.R. § 21.4151), address course and licensing and certification test approval (*id*. at § 21.4250), and explain the evaluation of state approval agency performance (*id*. at § 21.7200).

23 *See* 1952 GI Bill, *supra* note 17, at 675.

24 Pub. L. No. 89-329, 79 Stat. 1220 (1965).

25 *Hearing on S. 600 Before the Subcomm. on Educ. of the S. Comm. on Lab. & Pub. Welfare,* 89th Cong. 1004 (1965) (statement of Gov. Richard J. Hughes, Gov. of N.J.); HEA §§ 101 and 102, codified at 20 U.S.C. §§ 1001, 1002; 34 C.F.R. §§ 600.4, 600.5, 600.6.

26 HEA § 101, 20 U.S.C. § 1001.

27 1972 Education Amendments, Pub. L. No. 92-318, § 417, 86 Stat. 235, 258 (1972).

28 *See* Whitman, *supra* note 13, at 174.

29 Steven Jung et al., *Improving the Consumer Protection Function in Postsecondary Education,* Final Technical Report AIR-52800-10/76-FR, American Institutes for Research 8–10 (Oct. 1976).

30 *Id*. at 8.

31 For example, in 1972 the Federal Interagency Committee on Education (FICE) created the Subcommittee on Educational Consumer Protection to examine the "major problems and issues confronting the educational consumer." The Subcommittee noted in a 1975 report a grim situation for the "educational consumer" where "[s]afeguards against outright fraud and abuse are weak. Few agencies have systematic procedures for handling complaints from students and parents, or for redressing valid claims." Office of the Assistant Secretary of Educ., U.S. Dep't of Health, Education and Welfare, *Toward a Federal Strategy for Protection of the Consumer of Education*, Report of the Subcommittee on Educational Consumer Protection, at iv and 1 (July 1975), https://files.eric.ed.gov/fulltext/ED115173.pdf.

32 Steven Jung et al., *supra* note 29, at 26.

33 *Id*. at 9.

34 *Id*. at 19, 29.

35 *Id*. at 29.

36 *See* 940 Mass. Code Regs. § 31.01. Many years later, the Massachusetts legislature created oversight by the Division of Professional Licensure in 2012. *See* Mass. Gen. Laws ch. 112, § 263, added by 2012 Mass. Acts 106 (eff. Aug. 1, 2012). Licensure regulations were put into place in 2014. *See* 230 Mass Code Regs. § 13.01 (regulations added Feb. 28, 2014).

37 1978 Cal. Stat. 3039.

38 2005 Cal. Educ. Code § 94850–82.

39 Colo. Rev. Stat. § 23-2-101.

40 *See* Permanent Subcomm. on Investigations of the S. Comm. on Gov't Affs., Abuses in Federal Student Aid Programs, S. Rep. No. 102-58, at 1 (1991).

41 *Id*. at 11. *See also*, *Abuses in Federal Student Aid Programs*, 101st Cong. 20 (1990) (testimony of Kim Wherry, Counsel, Permanent Subcommittee on Investigations). Kim Wherry, Counsel, Permanent Subcommittee on Investigations, testified that "We found that serious shortcomings in the current oversight system, specifically the licensing, accreditation and certification processes, have encouraged unscrupulous school owners to take advantage of the availability of Title IV funds, because they know that the system is not set up to detect or catch fraud and abuse."

42 See *Abuses in Federal Student Aid Programs*, 101st Cong. 20 (1990) (testimony of Kim Wherry, Counsel, Permanent Subcommittee on Investigations).

43 *Id*. at 115.

44 *See* Permanent Subcomm. on Investigations of the S. Comm. on Gov't Affs., Abuses in Federal Student Aid Programs, *supra* note 40 at 4.

45 *Id*. at 35–36.

46 *See* Comm. on Lab. and Hum. Res., Reauthorizing the Higher Education Act of 1965, S. Rep. No. 102-204, at 4, 44 (1991).

47 *Id*. at 4.

48 *Id*. at 44, 118.

49 Comm. on Educ. and Lab., Higher Education Amendments of 1992, H.R. Rep. No. 102-447, at 86 (1992).

50 *See* 20 U.S.C. § 1099a.

51 *See* Pub. L. No. 102-325, 106 Stat. 526 §§ 494B, 494C (July 23, 1992).

52 *See* McCann & Laitinen, *supra* note 5.

53 *See* Comm. on Educ. and Lab., Higher Education Amendments of 1992, *supra* note 49, at 85.

54 75 Fed. Reg. 34,806, 34,813 (June 18, 2010).

55 *See id.*

56 34 C.F.R. § 600.9(a).

57 *See* McCann & Laitinen, *supra* note 5.

58 34 C.F.R. § 600.9(c) (2011).

59 A court struck down the 2011 version of 600.9(c) after a higher education industry group challenged it, alleging the Department failed to give

adequate notice during rulemaking. *See Career Coll. Ass'n v. Duncan*, 796 F. Supp. 2d 108, 133–35 (D.D.C. 2011), *aff'd in part, rev'd in part sub nom. Assoc. of Private Sector Colls. and Univs. v. Duncan*, 681 F.3d 427 (D.C. Cir. 2012).

60 34 C.F.R. § 600.9(c).

61 81 Fed. Reg. 92232, 92234 and 92262 (Dec. 19, 2016); 34 C.F.R. § 600.2 (July 1, 2015 – May 25, 2019).

62 81 Fed. Reg 92,232, 92,234.

63 *Id.*

64 *Id.*

65 84 Fed. Reg. 58,834, 58,842 (Nov. 1, 2019) (Final 2019 Rule), 34 C.F.R. § 600.2 (eff. July 1, 2020).

66 34 C.F.R. § 600.2.

67 *Id*.

68 84 Fed. Reg. 58,834, *supra* note 66, at 58,842.

69 Unified State Authorization Reciprocity Agreement (Dec. 1, 2015), https://nc-sara.org/sites/default/files/files/2019-07/UNIFIED_SARA_AGREEMENT_2015-FINAL_Approved_120115.pdf.

70 *See* Nat'l Council for State Authorization Reciprocity Agreements, SARA Policy Manual at ¶ 1.37 (Ver. 22.1, June 27, 2022), https://nc-sara.org/sites/default/files/files/2022-08/SARA_Policy_Manual_22-1_6-27-2022.pdf.

71 *See* Nat'l Council for State Authorization Reciprocity Agreements, Regional Education Compacts, *available at* https://nc-sara.org/regional-education-compacts.

72 *See id*.

73 *See* https://www.mhec.org/about/commissioners (MHEC Commissioners), https://nebhe.org/about/board/ (NEBHE Board of Delegates), https://www.sreb.org/about-board (SREB Board), and https://www.wiche.edu/about/wiche-commission/#all-commissioners (WICHE Commissioners).

74 *See* https://www.mhec.org/about/commissioners (MHEC Commissioners), https://nebhe.org/about/board/ (NEBHE Board of Delegates), https://www.sreb.org/about-board (SREB Board), and https://www.wiche.edu/about/wiche-commission/#all-commissioners (WICHE Commissioners). The individuals are appointed by governors of the member states.

75 Nat'l Council for State Authorization Reciprocity Agreements, SARA Policy Manual (Ver. 22.1, June 27, 2022), *available at* https://nc-sara.org/sites/default/files/files/2022-08/SARA_Policy_Manual_22-1_6-27-2022.pdf.

76 *Id*. at ¶¶ 1.24, 3.1(f).

77 *See id*. at ¶¶ 2.5(k), (l).

78 *Id*. at ¶¶ 2.5(b), 3.2, 3.3, 3.8(c), 4.7.

79 *Id*. at ¶ 2.5(l)

80 *Id*. at 41, note 8.

81 *Id.* at ¶ 2.5(k).

82 *See* Smith & Webster, *supra note 9*.

83 *See* David Whitman, *The Cautionary Tale of Correspondence Schools*, New America (Dec. 2018), https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Cautionary_Tale_of_Correspondence_Schools_2018-12-10_132917.pdf. *See also* Stephanie Riegg Cellini, *The alarming rise in for-profit college enrollment*, Brookings.Edu, (Nov. 2, 2020), https://www.brookings.edu/articles/the-alarming-rise-in-for-profit-college-enrollment/.

84 *See* Nat'l Center for Education Statistics, "Table 9. Unduplicated headcount enrollment at Title IV institutions by control of institution, student level, level of institution, distance education status of student: United States, 2021-22," (last visited on Dec. 22, 2023), https://nces.ed.gov/ipeds/search?query=&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=35953. *See also* Doug Lederman, *The Biggest Movers Online*, Inside Higher Ed (Dec. 16, 2019), https://www.insidehighered.com/digital-learning/article/2019/12/17/colleges-and-universities-most-online-students-2018. Yet students who attend four-year for-profit institutions are far more likely to attend exclusively online than students attending four-year public colleges. Pre-Pandemic, 72% of students in four-year for-profits were attending exclusively online, compared to just 12% of students in four-year public colleges. *See* Cellini, *supra* note 81.

85 U.S. Government Accountability Office (GAO) reported in 2022 that at least 550 colleges—most of which are nonprofit and public—contract with for-profit online program managers to support at least 2,900 education programs. U.S. Gov't Accountability Off., GAO-22-104463, *Higher Education: Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers* (April 2022), https://www.gao.gov/products/gao-21-89.

86 Press Release, Purdue University, Transaction complete for Purdue Global (March 23, 2018), https://www.purdue.edu/newsroom/releases/2018/Q1/transaction-complete-for-purdue-global.html. *See also* Hallie Busta, *How Purdue Global is expanding Purdue U's access to adult learners*, Higher EdDive (Jan. 9, 2019), https://www.highereddive.com/news/how-purdue-global-is-expanding-purdue-us-access-to-adult-learners/545554/.

87 Lindsay McKenzie, *University of Arizona's Big Online Push*, Inside Higher Ed (Aug. 3, 2020), https://www.insidehighered.com/news/2020/08/04/university-arizona-acquires-ashford-university#.

88 Press Release, Nat'l Student Legal Defense Network, Students File Lawsuit Against USC and 2U for Deceptive Enrollment Scheme, (Dec. 20, 2022), https://www.defendstudents.org/news/students-file-lawsuit-against-usc-and-2u-for-deceptive-enrollment-scheme; Press Release, University of Idaho, U of I Given Go Ahead to Create Not-For-Profit to Acquire Online University (May 18, 2023), https://www.uidaho.edu/news/news-articles/news-releases/2023/051823-affiliation.

89 Laura T. Hamilton, Amber Villalobos, Christian Michael & Charlie Eaton, The Century Foundation, How Online College Hurts More Than It Helps (June 8, 2022), https://tcf.org/content/commentary/how-online-college-hurts-more-than-it-helps/.

90 For example, the Department of Education recently cancelled millions of dollars in loans for students who attended for-profit online programs based on evidence that the school recruited students using misleading advertising. U.S. Dep't of Educ., Biden-Harris Administration Approves $37 Million in Borrower Defense Discharges for Over 1,200 Students Who Attended University of Phoenix (Sept. 20, 2023), https://www.ed.gov/news/press-releases/biden-harris-administration-approves-37-million-borrower-defense-discharges-over-1200-students-who-attended-university-phoenix.

91 *See*, *Purdue Global/Kaplan – Recent Actions and Concerns*, Veterans Education Success (last visited Sept. 1, 2023), https://vetsedsuccess.org/purdue-global-kaplan-recent-actions-and-concerns/. *See also*, *University of Phoenix – Recent Actions and Concerns*, Veterans Education Success, (last visited Jan. 8, 2024), https://vetsedsuccess.org/university-of-phoenix-recent-actions-and-concerns/; *see*, Press Release, State of California Department of Justice, Attorney General Bonta: Ashford University Must Pay $22 Million in Penalties for Defrauding California Students (March 7, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-ashford-university-must-pay-22-million-penalties.

92 *See* NC-SARA, SARA-Participating Institution Directory (last visited Jan. 8, 2024), https://nc-sara.org/directory. To be a SARA participating school, the school must be located in a SARA member state, be a degree-granting institution, institutionally accredited by a recognized accrediting agency and otherwise meet the institutional eligibility requirements detailed in the SARA Policy Manual, Sec. 3.1. *See* NC-SARA, Eligibility for Participation (last visited Jan. 16, 2024): https://www.nc-sara.org/eligibility-participation.

93 *See* Comm. on Lab. and Hum. Res., Reauthorizing the Higher Education Act of 1965, *supra* note 46, at 4, 44.

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Examining the States' Role in Protecting Online College Students from Predatory Practices

PART II: State higher education consumer protection laws and interstate reciprocity

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The views expressed in this paper are solely those of the authors.

I. INTRODUCTION

In the last decade, online higher education has exploded. In 2021, 61% of all undergraduate students were enrolled in online programs, and 28% of these students were enrolled in programs provided exclusively online.[3] However, online education may be a risky investment for students. Research shows that students who attended four-year degree online programs in all higher education sectors—public, private non-profit, and private for-profit—have lower completion and student loan repayment rates than their in-person peers.[4] Research also indicates a greater concentration of Black and Pell Grant students in online education, suggesting these students may be disproportionately impacted.[5]

In 2021, 58% of undergraduate students enrolled in exclusively online programs attended for-profit schools.[6] These students in particular face risk of fraud, given the well-documented history of deceptive practices in the for-profit education sector.[7] Research also shows that students who attend for-profit four-year institutions typically have lower completion rates than students who attend public and private non-profit four-year institutions.[8] In addition, the profit motive is increasingly leaking into the public and private non-profit education sectors through acquisition of for-profit institutions and, in other instances, arrangements with for-profit entities to provide a range of services, from operating higher education programs to recruiting and enrolling students.[9].

Given the risks posed by online education, strong consumer protection laws are crucial to protecting both students and taxpayers. However, as described in this paper, many online students are not protected by the same state higher consumer protection laws as students who attend in-person programs, due in part to federal regulations that allow interstate reciprocity agreements that prohibit signatory states from enforcing such laws against out-of-state distance education schools. This is a grave concern, as one million (23 percent) of undergraduate students enrolled exclusively online were enrolled in institutions outside their home state.[10]

As discussed in our companion paper,[11] by enacting the state authorization provisions in the Higher Education Act (HEA), Congress intended that states take on primary responsibility for consumer protection within the "triad," composed of the U.S. Department of Education (Department), states, and accreditors.[12] The statute requires, as a condition of financial aid eligibility, that schools be legally authorized by a state to provide to postsecondary education in that state.[13] Through their state authorization laws, each state has enacted a variety of consumer protection provisions applicable to various higher education institutions.[14]

Federal regulations currently allow for state authorization of out-of-state distance education schools that lack an in-state physical presence through "state reciprocity authorization agreements."[15] For the purposes of this paper, we refer to a state where a school has its legal domicile or main campus (according to its accreditor and/or the Department) and has state authorization as the "home state," while we refer to states where a school offers distance education but lacks a physical presence (for example, a brick-and-mortar campus) as "distant states." The federal regulations provide that as long as a school is authorized by a home state that is a member of a state authorization reciprocity agreement, the institution need not individually obtain authorization from each signatory distant state to offer distance education to students in those states. The reciprocity agreement essentially provides that the home state's authorization stands in for the distant state's authorization for purposes of Title IV eligibility.

As discussed in the companion paper, the Department has defined the criteria required for state authorization reciprocity agreements on several occasions.[16] Current federal regulations, however, allow state authorization reciprocity agreements that prohibit member states from enforcing their higher education specific consumer protection laws against out-of-state distance education schools, even though consumer protection is the primary purpose of the HEA's state authorization requirement.[17]

This is exactly what the sole state authorization reciprocity agreement currently in existence, called the Unified State Authorization Reciprocity Agreement requires.[18] This agreement and the SARA Policy Manual, with which member states must also comply,[19] are collectively referred to in this paper as "SARA" unless otherwise specified. SARA only allows distant member states to enforce "general-purpose laws" against covered out-of-state schools, while the home states may only enforce SARA requirements to protect out-of-state students.[20] This means distant states that join SARA—which currently include the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and all states except California—may only enforce laws that apply to "all entities doing business of any type in the state," such as false advertising laws and laws prohibiting unfair and deceptive acts and practices (UDAP laws), against covered out-of-state schools.[21] It also means that distant states are prohibited from enforcing laws that are limited in application to "entities delivering postsecondary education in the state," even if institutions are harming students within their borders.[22]

SARA could also be read to prohibit states from enforcing laws that are limited in application to other business sectors, such as higher education financing. SARA defines a "general-purpose law" as "one that applies to *all* entities doing business of any type in the state, not just institutions of higher education."[23] Many state laws do not apply to all entities doing business of any type, but are also not limited to institutions of higher education. For example, some states have laws apply only to entities that arrange, make, and/or collect on private student loans, which can include institutions of higher education.[24] As a result, SARA may also prohibit states from enforcing these types of laws. Throughout this paper, we refer to state laws that are only applicable to a subset of businesses, collectively, as "state higher education consumer protection laws."

Although SARA replaces these specific state higher education laws with a set of policies to guide states and institutions, this paper will explain how these policies contain few similar consumer protection requirements.[25] Indeed, as demonstrated below, in comparison to state higher education specific consumer protection laws, SARA's consumer protection standards are either non-existent or far weaker than many state's laws.

In the prior federal rulemaking negotiations regarding the state authorization reciprocity regulation between 2010 and 2019,[26] neither the Department nor stakeholders meaningfully considered the specific provisions that make up state higher education consumer protection laws or the reasons they are needed. The Department commenced another negotiated rulemaking proceeding in January 2024 to reconsider the state authorization and reciprocity agreement regulations.[27] To better inform this and future policy discussions about the scope of state authorization reciprocity, we provide a detailed description of the variety of state laws that are specifically limited to institutions of higher education or a subset of related businesses that often include such institutions. Given the risks posed by online education to students and taxpayers, any future rulemaking around state authorization and reciprocity should carefully consider whether reciprocity agreements may prohibit states from applying their state higher education specific consumer protection laws against covered schools and, if so, to what extent.[28]

II. HOW STATES REGULATE HIGHER EDUCATION TO PROTECT STUDENTS

States rarely have a state higher education consumer protection scheme that applies to all postsecondary institutions. Instead, in any given state one or more statutes and agencies may govern oversight of different types of schools.[29] In addition, authorization and oversight requirements vary from state to state. For the purposes of brevity, we provide example provisions from various states, but do not specify the types of institution subject to each provision. As explained in the next section, the most rigorous provisions typically apply to for-profit schools.

A. Types of Schools Subject to Oversight

As discussed above, due in large part to the conflict posed by the profit motive,[30] the for-profit education sector has proven far more likely than other sectors to harm students and the federal financial aid program by engaging in fraud. For this reason, the strongest state higher education consumer protection laws tend to govern for-profit schools. With respect to public and non-profit private schools, states are typically more hands off, relying instead on the governing and financial structures of these types of schools, which theoretically make them less likely to engage in abuses.[31] Some states, however, apply their higher education consumer protection laws to nonprofit schools as well.[32]

In order to benefit from the more lenient laws, some for-profit schools have converted to non-profit status.[33] In some cases, the new non-profit schools continue to act as for-profit businesses, spending the majority of their revenues on advertising, recruiting, and executive compensation and providing financial benefits to their owners.[34] In response, Maryland and California have enacted laws to combat "sham" non-profit schools attempting to dodge oversight. Both states require a newly converted non-profit private school to be treated as a for-profit school if the governing body and/or the former owners receive improper financial benefits from the conversion or business transactions with the school.[35]

For the most part, SARA makes no distinction between the risks posed by public, non-profit, and for-profit institutions. All three sectors are subject to the same SARA standards and requirements and member states are not allowed to opt out for any sector that they deem pose greater risk to consumers and taxpayers.[36] The only exception is for public schools, which are not subject to minimum financial responsibility standards because of the (perceived) lower risk for schools backed by a state government.[37] Since all sectors are treated the same, other than this one exception, SARA contains no provisions regarding the conversion of a for-profit school to a non-profit entity.

B. Approval and Ongoing Oversight

Initial Approval Process. As noted above, schools must be approved by the states in which they offer higher education programs to obtain federal financial aid. State approval requirements have myriad consumer protection purposes, including ensuring that schools have the financial, academic, and administrative capacity to offer quality education and do not engage in deceptive or unfair practices aimed at students.[38]

The rigor of state approval standards and processes varies widely across states. For approval in South Dakota, for example, schools need only show that they are either accredited or affiliated with an accredited institution and submit a short application to the secretary of state detailing its name, address, contact person, locations, and classification.[39] Other states approve for-profit schools only after they determine the school meets extensive minimum standards[40] through a process that, according to a 2015 study, can take between three months and a year.[41] Schools must typically submit voluminous information showing that they meet minimum standards regarding academic programs and resources, financial and administrative capability, corporate governance, accreditation, records maintenance, student services, and policies regarding various matters such as admission, attendance, withdrawal, refunds and credit transfer policies.[42] Schools must often also provide their tuition and fee schedules, catalogs, enrollment agreements, advertisements, and/or information about recruiting practices.[43] Applications are then subject to investigation and site visits, which were mandatory in 19 states as of 2019.[44]

Comparatively, SARA requires that home states approve schools for participation based on a few minimum standards, as follows: (1) the school must be authorized in the home state; (2) it must offer degrees; (3) in most cases, it must be accredited by an accrediting agency recognized by the Department with a scope of recognition that includes distance education; (4) if it is a non-public school, it must have a minimum federal financial responsibility composite score of 1.0;[45] and (4) it must agree to provide a "reasonable alternative for delivering the instruction or reasonable financial compensation" in the event the school does not "fully deliver the instruction for which the student has contracted," such as in the case of school closure.[46]

In addition, the school must agree that it will comply with SARA and the Interregional Guidelines for the Evaluation of Distance Education created by the Council of Regional Accrediting Commission (C-RAC Guidelines).[47] The C-RAC Guidelines are accreditation guidelines narrowly applicable to the development, provision, and evaluation of online learning programs.[48] They do not cover the broad range of operational issues commonly reviewed under state law, such as financial and administrative capability, corporate governance, records maintenance, and admission, attendance, withdrawal, refunds and credit transfer policies.[49]

In most cases, SARA does not permit home states to require additional documentation, beyond that which schools must submit with their initial applications, before they approve a school.[50] A home state must approve a school based on its "self-certification that it will meet the policies set forth in the SARA Policy Manual and commitments contained in the institutional application . . . ."[51] Only after it has approved a school may a home state require additional documentation.[52]

Fees, Bonds and Student Protection Funds. As a condition of approval, schools typically pay annual fees, calculated in a number of ways. Some are flat fees, others are calculated as percentages of tuition revenue.[53] Many states rely on such fees as their sole or primary source of funding.[54] Thus, these fees must be high enough to fund an adequate number of well-trained staff—high ratios of state agency staff to school (and student) numbers can lead to lax oversight and enforcement.[55]

Many states also require schools to post either a bond or letter of credit to indemnify students damaged by a school's illegal conduct.[56] And, as discussed below, 20 states require that schools pay into student protection funds, which provide debt relief in a number of circumstances,[57] including when a school closes.[58]

SARA requires member schools to pay an annual fee to the non-profit organization that administers SARA.[59] Only home states may charge fees to member schools.[60] As a result, distant states do not receive any fees from out-of-state member schools and are therefore likely to lack the funding necessary to conduct their own investigations when they have evidence that an out-of-state SARA school may be violating their general-purpose consumer protection laws, such as UDAP laws.

Under SARA, homes states must have laws that require schools to provide a bond, pay into a student tuition protection fund, provide for a teach-out or provide for some other "practice sufficient to protect consumers" in order "to deal with the unanticipated closure of an institution" for out-of-state students.[61] Many SARA member states with bonds or student protection funds, however, exclude out-of-state students from coverage.[62] Some SARA states lack any bond or student protection fund requirements to protect closed school students.[63]

Licensure of Recruiters. Because most for-profit school fraud occurs during student recruitment, some states require permits for employees or independent contractors who recruit at a location other than the school.[64] A few states require a permit even for recruitment on campus.[65] Some of these states also prohibit schools from hiring independent contractors for recruitment.[66] In addition, some states require the posting of a bond for each licensed recruiter[67] and subject schools to liability for their illegal actions, even when they are independent contractors.[68]

SARA does not provide for the registration or licensure of member school recruiters, nor does it provide that schools are liable for the illegal actions of third-party recruiters.

Substantive Changes. Organizational and operational changes can imperil the financial health of a school, the quality of education programs, and the ability of students to complete their programs. These types of changes are often referred to as "substantive changes." Many states require licensed schools to seek approval before initiating one or more such changes, including change in ownership, merging of programs, suspension of programs, changes to a program schedule, and offering a new program.[69]

SARA requires that home states approve changes of ownership.[70] It does not require schools to seek pre-approval for any other substantive changes, including the merging, suspension, or offering of new programs.

Continuing School Accountability. After approval, most state agencies continue to monitor school compliance in a variety of ways, although requirements vary by state. First, while many states require an institution to seek reapproval every one or more years,[71] others lack any reapproval requirement.[72] Second, many states require schools to submit annual reports detailing their financial health[73] and student outcome metrics, such as withdrawal rates, completion rates, average time to completion, licensure rates, graduate wages, and/or graduate placement and transfer rates.[74] Third, many states require and/or allow periodic site visits, including unannounced visits, which can provide crucial information not available through application forms or annual reports.[75] Among other things, site visits allow the state to observe true day-to-day operations, including recruitment, classes and student services, to interview or take the testimony of students, faculty and staff, and to inspect financial aid, student and accounting records.[76]

SARA schools must seek reapproval from their home state annually.[77] While a home state must review the renewal application to confirm a school's past compliance with SARA policies,[78] schools are not required to report any data regarding their out-of-state student outcomes.[79] Instead, schools must only annually report the number of exclusively distance education students enrolled in the school and the number of students engaged in "certain experiential learning placements."[80] As a result, home states do not receive any student outcome data which would be useful in evaluating whether a school should continue to be authorized under SARA.

Moreover, SARA does not provide for any announced or unannounced school visits. For online schools, these could include site visits to the school's main campus to review its records and accounts and interview administrators. It could also include remotely monitoring a school, including through recruiter, faculty, student, financial aid administrator, or management interviews or observing online classes, recruiting calls, or other online/phone interactions between the school and students.

Many states require that schools notify them of events that indicate increased risk to students, outside of their annual reporting requirements. Kentucky requires schools to notify the state agency if any of its personnel have owned or directed another school that had its license revoked or closed without paying refunds owed to students or the state.[81] Other states require schools to notify them of any pending accreditation and/or government investigation or adverse action,[82] loss of federal financial aid eligibility,[83] and/or planned closures.[84]

It appears that SARA only requires schools to notify home states about negative changes to accreditation status.[85] Home states are required to monitor the Department's publication of institutional financial responsibility composite scores and take appropriate action against nonpublic schools with scores under 1.0.[86]

Grounds for Denial of Approval or Other Disciplinary Action. If a state agency obtains information that indicates a school may not be in compliance with the state's higher education consumer protection law or poses a high risk to students—through application processes, annual reports, site visits, school notifications, student complaints, or other sources—it may conduct an investigation or take other appropriate action.

State laws typically authorize agencies to take a wide variety of disciplinary actions, tailored to the seriousness of violations or risk to students.[87] Some states prohibit approval, or allow the agency to deny approval, based on circumstances indicating high risk of future fraud. Common circumstances include when the school has experienced revocation or suspension of accreditation;[88] had its approval denied or revoked by another state;[89] was found to have violated the state higher education consumer protection laws;[90] failed to pay closed school refunds[91] or a judicial or administrative fine;[92] or operated a closed school whose students received federal financial aid discharges or payments from the state's student protection fund.[93] State law may also require or grant agencies discretion to deny or revoke approval when the school's owner, officers, and/or managers were found to have committed fraud,[94] were convicted of specified crimes involving "moral turpitude" or fraud,[95] or operated a school that had its approval revoked.[96]

Some states also prohibit enrollments or require heightened agency scrutiny based on poor performance metrics and/or other indicia of risk. Maryland, for example, prohibits a school from enrolling new students if it obtained less than 10% of its revenue from non-federal sources for two consecutive years or the preceding two out of three years.[97] California requires its agency to develop priorities for investigation and enforcement based on a number of indicia, including schools that receive over 70% of their revenue from government sources, have federal cohort default rates exceeding 15.5%, report student outcome measures that are far higher or lower than those at comparable schools, report a dramatic increase in enrollment, fail financial stability standards, or have been subjected to adverse actions by accreditors or other agencies.[98]

Under SARA, home states are required to revoke a nonpublic school's approval to participate if it has an institutional federal financial responsibility composite score below 1.0.[99] States also have discretion to revoke approval for schools that fail to meet C-RAC Guidelines or other SARA policies.[100] In addition, for schools on provisional status, the home state must "disallow any . . . enrollments under SARA [and] [r]emove the institution from SARA participation" if it determines that the school does not meet SARA requirements.[101] For such schools, however, the home state must allow the school "a period of time not to exceed 12 months [and in some circumstances longer] in which to come into compliance . . . ."[102]

For the most serious violations, state higher education specific consumer protection laws allow states to limit approval, grant provisional or conditional approval, or put a school on probation.[103] While in this status, agencies typically closely monitor their performance and revoke approval if they do not rectify compliance issues.[104]

SARA allows home states to approve schools on a provisional basis when a school: (1) has a federal financial responsibility composite score between 1.0 and 1.5 (nonpublic schools only); (2) is on probationary or equivalent status with is accreditor; (3) is required by the Department to post a letter of credit or enter a cash management agreement; (4) is subject to a public investigation by a government agency regarding its "academic quality, financial stability, or student consumer protection;" (5) is subject to investigation for one of the same by its home state; (6) failed to comply with SARA data reporting requirements; (7) changed ownership; or (8) failed to comply with SARA policies.[105] SARA does not specify the oversight measures a home state should take to monitor provisionally approved schools, leaving such measures to the home state's discretion.[106] It is therefore unclear what actions home states take, if any, to monitor provisionally approved schools.

Investigative and Enforcement Powers. Many state oversight agencies have an expansive arsenal of investigative tools at their disposal. In Massachusetts, for example, the state agency may conduct site inspections, issue subpoenas for the testimony of witnesses and the production of evidence, administer oaths and affirmations, examine witnesses, and receive evidence.[107]

State agencies can also take a wide variety of actions based on the seriousness and pervasiveness of violations. In Arizona, for example, the state agency may file a letter of concern, restrict enrollments or other activities, issue a cease-and-desist order, require a refund to a student, impose a civil penalty, put the school on probation, suspend or revoke approval, seek a court injunction, and require the school to pay the agency's reasonable costs and expenses, including attorneys' fees, if it prevails.[108] Some states, such as California, also authorize agencies to take emergency action, before conducting a hearing and appeals process, when necessary to protect students or the public or prevent the loss of public funds.[109]

Under SARA, only the home state may take action against a school for failure to comply with SARA requirements. The home state may put a school on provisional status or revoke its SARA approval.[110] For schools on provisional status, the home state may subject the school to additional oversight measures, including limits on enrollments.[111] SARA, however, does not provide for other home state actions against schools, such as ordering a school to pay a refund to a student or to rectify specific violations. SARA does not address whether home states may use their investigative powers with respect to SARA schools.

Of additional importance, home states' decisions to deny or revoke a school's approval to participate in SARA or place a school on provisional status may be overturned by private, non-governmental entities. Schools may appeal these decisions to their regional compact.[112] The regional compacts are the New England Board of Higher Education (NEBHE), the Midwestern Higher Education Compact (MHEC), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).[113] These compacts, which are nonprofit organizations, were each formed by a specific geographic region of states.[114] The member states are represented by individuals, often appointed by each state's governor, to collaborate on higher education initiatives.[115] The individuals are typically people who work for higher education institutions, public higher education systems, nonprofit organizations involved in higher education, state legislators, industry, and others.[116] The compacts are not state regulators that must answer to legislators or voters in carrying out a statutory oversight scheme, nor do they have experience promulgating, investigating or enforcing consumer protection requirements aimed at protecting the public, students and taxpayers from deceptive, unfair or abusive practices most commonly engaged in by for-profit businesses.

C. Student Complaint Systems

A state agency's power to investigate and resolve student complaints is a key component of state higher education consumer protection laws. Indeed, as part of its state authorization requirements, federal law mandates that all Title IV schools be subject to a meaningful state complaint process.[117] Student complaints are an invaluable way for state agencies to identify patterns of misconduct and take appropriate action early, before many students are harmed. State agency complaint systems are also the primary way that students who have been harmed can seek relief. Students, who have far less power, financial capacity, and knowledge than the schools, often do not understand state consumer protection laws, nor do they typically have access to legal assistance. Even if they do, sole reliance on private lawsuits or attorney general actions, typically brought long after a school has engaged in years of illegal practices, does not provide adequate or timely policing of school non-compliance and fraud.

Most states provide a student complaint process, although they differ in one key aspect. Some states require that students first exhaust their school's grievance process before submitting a complaint,[118] while others do not in certain circumstances[119] or in any circumstances.[120] This is an important decision for states to make. In most circumstances, schools are unlikely to provide an unbiased and independent process for resolving student disputes, especially when those disputes involve deceptive and illegal practices.[121] Some students also suffer retaliation when they try to resolve disputes through a school's internal grievance process.

Most state higher education consumer protection laws provide schools with a wide range of investigatory and law enforcement powers that they may use to investigate and take appropriate action to resolve complaints.[122] State agencies usually also have the power to mediate an informal resolution between the school and the student.[123] If the agency determines that the school has violated state law or, for example in the case of Nevada, substantially failed to furnish the services covered by the enrollment agreement, they may order the school to pay the student a refund.[124]

SARA requires students to first exhaust their school's internal grievance process.[125] After exhaustion, the student may then submit a complaint regarding violations of SARA policies to the school's home state.[126] Home states must investigate complaints alleging "dishonest or fraudulent activity" or that the school is not operating in compliance with the C-RAC Guidelines "in such a way that a student is harmed."[127] While the distant state where the student resides may "assist as needed," only the home may resolve the complaint.[128] A school may appeal the home state's decision to the applicable regional compact and the non-profit organization that administers SARA, called the National Council for State Authorization Reciprocity Agreements (NC-SARA), both of which may reverse the home state's decision if the state did not abide by SARA policies.[129]

D. Refund and Cancellation Rights

Refund Rights. Many state laws require refunds when a student withdraws. These are essential complements to mandatory federal refund requirements. In most circumstances, federal law requires that a school provide a *pro rata* financial aid refund, to the federal government, for students who attend less than 60% of their term.[130] However, without a state refund law, schools can (1) keep non-Title IV funds paid for the incomplete term; and (2) seek to collect full payment for the entire term and even the entire program—including for students who only attend for a brief period of time. State refund laws prevent schools from keeping funds for services they have not provided to students and pursuing students for payment for the entire program. They also discourage schools from misrepresenting their programs to students, then pursuing the student for full tuition after they withdraw when they discover that the school is not providing the services promised.

State refund laws vary from requiring a *pro rata* refund to allowing the school to implement its own refund policy. For example, Minnesota requires that a student be provided a *pro rata* refund of tuition, regardless of the source of funding, if the student withdraws before completing 75% of their program.[131] California requires that a student be provided a *pro rata* refund, regardless of the source of funding, if the student withdraws before completing 60% of the term.[132] Arizona, Colorado and Maryland require a refund, based on a published schedule of percentages, if a student withdraws before completing no more than 50% or 75% of the program.[133] Utah and Massachusetts, on the other hand, require only that a school have a refund policy.[134]

Cancellation Rights. Some state laws also grant students the right to cancel their enrollment agreements before incurring liability. This kind of cancellation right, or "cooling-off period," is important because many for-profit colleges pressure students to enroll the first time they inquire about a program, without allowing them time to carefully consider whether a program is worth the investment of significant student debt.

States typically allow the student to cancel within a certain amount of time after signing the enrollment agreement. Cancellation periods range from three days, in the case of Colorado, Delaware and Georgia,[135] to five days in the case of Minnesota and Washington,[136] to seven days in the case of Maryland and North Dakota.[137] California provides that students may cancel through the first day of attendance or seven days after enrollment, whichever is later.[138]

SARA does not contain any refund or cancellation requirements. Indeed, the Unified State Authorization Reciprocity Agreement specifically prohibits states from imposing their refund requirements.[139]

E. Clear and Accurate Student Information

Disclosures. Many state laws require schools to provide pre-enrollment disclosures, which can be useful to promote comparison shopping. Some states require that schools disclose some or all of the following student outcomes: graduate completion rates, average time to completion, graduate job placement rates, graduate licensure rates, graduate salaries, and the cost of the program.[140] While some of these states leave these calculations to the school's discretion, others define how each outcome measure must be calculated.[141]

This information is particularly important for students who are enrolling in programs that are represented to lead to employment in a particular profession, as their decision to enroll often hinges on whether they can obtain full-time employment after graduation and how much they should expect to be paid. Some states also require that schools disclose warnings that credits may not transfer and whether completion of the program will meet licensure, certification, or registration requirements to practice a particular profession.[142] These are the criteria most often falsified by schools to attract enrollments.[143]

Catalogs. Many states also require that schools provide students with catalogs containing information regarding each program (length, curricula, graduation requirements, etc.), a schedule of all tuition and fees, and important school policies—including polices governing admission, refunds, cancellation, attendance, leaves of absence, grading systems and student complaints.[144] The catalog is often incorporated into the terms of the enrollment agreement. Making sure that this information is in writing, and school policies are included as terms of enrollment agreements, ensures that schools consistently apply policies and prevents them from changing graduation requirements before students complete their programs.

Language. Some state laws also require that the catalog, enrollment agreement and/or disclosures be provided in the primary language of students who cannot speak or read English when the program is taught in a language other than English, or when another language is used in recruitment.[145]

SARA does not require schools to provide students with catalogs, disclosures, or with documents in the primary language of a student who does not speak English.

F. Fair Enrollment Agreements

In order to ensure that students are treated fairly by institutions, many state laws require that schools enter an enrollment agreement with each student. These state laws often require that enrollment agreements clearly identify some or all of the following: all charges and fees that will be assessed to the student if they complete on time, the program enrolled in, the number of credits or clock hours of instruction required for completion, the expected date of completion, and cancellation and withdrawal refund information and forms.[146] Enrollment agreements provide enforceable contract rights if a school attempts to increase tuition, change graduation requirements, or change or cancel a program. They also ensure that the student can exercise their right to cancel or withdraw and obtain a refund.

State laws often prohibit schools from including unconscionable contract terms in enrollment agreements. They prohibit clauses requiring students to waive any consumer protections, as well as clauses providing for wage assignment, confessions of judgment, or requiring exhaustion of a school grievance process before they may file a state agency complaint.[147]

SARA does not require schools to enter enrollment agreements, nor does it prohibit unconscionable or unfair clauses when schools do so.

G. False Advertising and Unfair and Deceptive Practices

Every state has a consumer protection statute that broadly prohibits deceptive practices. Many also prohibit unfair, unlawful or unconscionable practices, and a few prohibit abusive practices.[148] These statutes are called unfair and deceptive acts and practices or "UDAP" laws. They are general-purposes laws, in that they typically apply to all types of businesses.

Many states have supplemented their UDAP laws with specific prohibitions regarding the most deceptive and abusive practices that are commonly engaged in by higher education institutions or that motivate recruiters to engage in such practices. Common state higher education consumer protection law prohibitions include all of the following:

- Implying or misrepresenting government affiliation, including affiliation with the military;[149]
- Promising or guaranteeing employment;[150]
- Misrepresenting metrics important to a student's evaluation of the school/program, including expected earnings, graduate job placement rates, completion rates, time to completion, cost to completion, licensure rates, and the ability of graduates to repay student loans;[151]
- Misrepresenting the qualifications of the faculty, instructional equipment, facilities, the availability of for-credit internships, financial aid, etc.;[152]
- Misrepresenting accreditation;[153]
- Misrepresenting the transferability of credits;[154]
- Anonymous advertising or advertising in help-wanted ads;[155]
- Misrepresenting the urgency to enroll or making limited-time offers;[156]
- Making money-back guarantees;[157]
- Recruiting students outside welfare or unemployment offices;[158]
- Paying compensation to students to sign enrollment agreements or recruit others;[159]
- Paying incentive compensation, bonuses, or commissions to recruiters based on enrollment numbers or quotas except in limited circumstances (i.e., when student completes);[160]
- Enrolling students who are reasonably unlikely to successfully complete their program or students who are either unlikely to qualify for employment or are ineligible for licensure in the field to which the program is represented to lead;[161]

- Offering a program in a profession that requires licensure if the program does not make students eligible to sit for the licensure exam in the student's state;[162]
- Requiring up-front payment of all tuition and fees in most circumstances;[163] and
- Changing the manner of program delivery, the program schedule, or the program location except under certain circumstances.[164]

Many state higher education consumer protection laws also provide that the violation of any specified provision is *per se* a violation of the state's UDAP statute.[165] This means that a student, the state attorney general, and sometimes the state oversight agency does not have the burden of proving that a school's violations are unfair or deceptive if they file an action pursuant to a UDAP statute, as the legislature has already made this determination.

In addition to specific prohibitions, to the extent that schools make any representations regarding student outcomes, such as placement rates, graduation rates, and licensure rates, state laws often require that schools possess data that supports or substantiates these metrics.[166] Some states also specifically require that schools maintain the data to back up their metric calculations and make them available upon request.[167] These laws are important because state agencies can request this data to monitor schools' representations regarding student outcomes and the quality of their programs.

The Department recently acknowledged that state consumer protection laws regarding misrepresentations and deceptive recruiting practices are critical to protecting students and taxpayers from higher education fraud in online education. Citing concerns "about past situations in which States have raised concerns about institutions that are physically located outside of its [sic] borders and taking advantage of students while the State is limited in its ability to apply its own consumer protection laws . . . to protect its residents," the Department proposed a rule that would have required institutions to certify that, in each state where they enroll students, they comply with all state consumer protection laws related to misrepresentation and recruitment, "including both generally applicable state laws and those specific to higher education institutions."[168] As examples, it cited cases where schools pressured students into enrollment or misled them about key elements of the education.[169]

The Department did not enact this proposal.[170] The Department reasoned that state UDAP laws, which SARA allows member states to enforce against out-of-state SARA schools, sufficiently address misconduct tied to recruitment and misrepresentations.[171] The Department's cursory conclusion fails, however, to address the reasons that state higher education specific consumer protection laws exist and the purpose of HEA's state authorization requirement. First, by enacting specific prohibitions against deceptive and unfair practices commonly engaged in by schools, state legislatures ensure that state agencies, attorneys general, and students do not have to provide extensive evidence to prove that those practices are unfair or deceptive, which would otherwise be required in a UDAP action.[172] Instead, specific prohibitions allow state oversight agencies to take appropriate and swift action against offending schools to resolve student complaints or take other necessary action.[173] The specific prohibitions also allow courts (based on actions by state attorneys general or the students themselves) to more quickly resolve actions against schools and provide greater certainty to schools regarding what types of conduct are prohibited.

Second, relying solely on attorneys general to enforce UDAP statutes to stop misrepresentations and abusive recruiting practices does not square with the underlying purpose of the HEA's state authorization provision.[174] The state authorization requirement is, at its core, a licensure requirement. The underlying purpose of licensure is to create a state agency that can closely monitor the operations of businesses in order to detect misconduct before it causes harm to large numbers of consumers and taxpayers. Licensure is also beneficial to the licensed schools because state agencies often have the authority to allow a school to rectify misconduct, rather than taking the extreme action of revoking authorization, when the school continues to be able to provide a quality education. If state agencies cannot enforce higher education specific consumer protections against out-of-state online schools, then in most circumstances the Department must rely on attorneys general to investigate and take action against fraudulent schools, even though they do not have any state statutory mandate to do so. By the time attorneys general typically pursue UDAP cases against schools, the schools have engaged in years of massive fraud costing the students and taxpayers millions (if not billions) of dollars in losses. This was the case with actions regarding Corinthian Colleges, among others.

Third, many state higher education consumer protection statutes do not authorize agencies to enforce general UDAP laws. This means that unless state attorneys general take action against schools engaging in misrepresentations or other deceptive conduct, the misconduct will continue unless the Department itself takes action. To rectify this problem, many state higher education specific consumer protection statutes include a general catch-all prohibition of false, deceptive, misleading or unfair practices, thus providing state agencies with the authority to take action against such practices when they do not fall under one of the specific prohibitions. Georgia, Massachusetts, and Nevada, for example, prohibit these practices in "advertising, sales, collection, credit, or other practices."[175] Many states, including Colorado, Georgia, Massachusetts, Minnesota, and Utah, also prohibit the school or any of its employees from making any statements that they know, or should have reason to know, to be false, substantially inaccurate, or misleading.[176]

SARA contains no prohibitions against any specific deceptive or abusive practices. Instead, it includes a broader requirement that the home state "investigate and resolve allegations of dishonest or fraudulent activity by the state's SARA-participating institutions, including the provision of false or misleading information," listing a few example issues where "fraudulent activity" may arise.[177] These listed issues are (1) veracity of marketing and recruiting materials, (2) accuracy of job placement data, information about tuition, fees, and financial aid, admission requirements, accreditation, whether a program meets a state's licensure requirements, and transferability of credits, and (3) institutional operation consistent with accreditation and the C-RAC Guidelines.[178]

SARA's requirement that a home state investigate "dishonest or fraudulent activity," including the provision of "false or misleading information," is weaker than a typical state UDAP law. Most state UDAP laws prohibit deceptive and unfair business practices.[179] A broad deception prohibition typically covers a representation, omission, act, or practice that misleads or is likely to mislead a consumer whose interpretation is reasonable under the circumstances.[180] A broad prohibition against unfairness covers practices such as harassment, high-pressure sales tactics, and one-sided contract terms that do not involve deception but are unfair to consumers.[181] In addition, most state UDAP laws do not require proof that a business engaged in deceptive or unfair practices intentionally or knowingly.[182] Decades of state court decisions have further specified the scope of conduct that is considered deceptive or unfair.[183]

SARA does not define the terms dishonest, fraudulent, false or misleading. It does not specify, among other things, whether any false or misleading information can include an omission of information or whether the school must engage in the practice intentionally or knowingly. SARA also does not prohibit unfair business practices. And, although SARA also allows distant and home states to enforce their UDAP statutes on behalf of their own residents, it does not allow the home state to enforce its UDAP statute on behalf of out-of-state students.[184]

H. Fair Lending Practices

Some state higher education consumer protection laws provide state agencies with the power to protect students from predatory loans and lending practices. For example, to prevent schools from pushing predatory loans on vulnerable students, Washington prohibits schools from making or arranging student loan products that financially benefit any person or entity that has an ownership in the school.[185]

Other state laws provide that tuition debts and educational loans made by a school are not enforceable in certain circumstances. For example, some states prohibit the enforcement of unpaid enrollment agreements or loans originated by a school when the school closes without providing a refund or the school is unapproved.[186] California and Oregon also prohibit schools from originating or arranging financial products unless the loan agreement includes a clause entitling the student to assert a school's state law violations as a defense to repaying the loan.[187] In some circumstances, state laws provide that even if the loan agreement does not include this clause, the student may raise school violations against subsequent loan assignees when the school originated the loan.[188] Thus, if the school induces the student to enroll through misrepresentations, for example, the student can assert those misrepresentations as a defense to repaying the school loan—even if the school sells the loan to another entity, such as a debt buyer. Without such a clause, the loan holder may force the student to pay even though the fraudulent school could not have.

SARA contains no provisions to protect students from predatory loans offered by SARA schools, nor does it provide that debts owed to a school or subsequent debt holder are void and unenforceable in certain circumstances, such as sudden school closures, or require that loans made or accepted by the school include language that allows the student to assert the school's state law violations as a defense to repayment.

I. Student Relief

State relief laws are critical for students who are harmed by abusive school practices because federal law provides relief in only very limited circumstances. Federal law authorizes Title IV loan discharges and Pell Grant restoration when (1) a school closes; (2) a school falsely certifies a student's financial aid eligibility; and (3) a school engages in other misconduct, such as breaching its enrollment agreement or engaging in substantial misrepresentations defined by federal law.[189] These discharges are often difficult for borrowers to obtain due to high evidentiary standards and complicated application processes. In addition, they rarely provide full financial relief to students impacted by school closures or fraud. As college costs continue to rise, increasing numbers of students rely on private loans to fund college educations and living expenses. Many students also receive Workforce Investment and Opportunity Act funds, state grants, employer grants, G.I. bill funds, Department of Defense funds, and other types of financial aid, none of which are covered by Department of Education discharges.

Fortunately, state laws provide for student relief when a school violates state law through several methods. First, many state statutes require that schools refund students all tuition and fees in a number of circumstances including when a school closes,[190] discontinues a program,[191] procures enrollment using misrepresentations,[192] and/or loses accreditation.[193] Many state laws also grant state agencies the authority to order a school to pay a refund when it violates state law or in other circumstances,[194] such as when the school has substantially failed to furnish the services covered by the enrollment agreement.[195]

Second, some state statutes provide a private cause of action against the school for state law violations pursuant to which a student may seek damages, restitution, an injunction and/or reasonable attorneys' fees. These states include Illinois, Massachusetts, New York, North Dakota, and Utah.[196]

Third, some states require that schools post bonds which will redress students in a variety of circumstances. Arkansas and Maryland, for example, require schools to post a performance bond to guarantee that they will perform on the enrollment agreement and comply with state law.[197]

Finally, as of January 2021, 20 states had established student protections funds that provide for student relief in a number of circumstances.[198] Students, and sometimes their parents, are eligible for relief from these funds when a school closes, a program is discontinued, a school fails to pay a judgment or arbitration monetary award based on state law violations, or a school fails to pay a refund ordered by a state agency.[199]

In lieu of student protection funds, 25 states require schools to post bonds to provide relief to students impacted by school closures.[200] Bonds, however, differ from student protection funds in ways that limit relief to students.[201] Bonds in most states are far too low to cover student claims. The minimum bond amount per school or campus can be as low as $5,000 or $10,000.[202] Some states cap bonds at a maximum amount as little as $10,000 or $20,000.[203] In light of the high cost of college (average student debt of 2020 graduates ranged from $18,350 (Utah) to $39,350 (New Hampshire)), these bonds are woefully inadequate—one can be exhausted by the claim of just one closed school student who is unlikely to even receive enough from the bond to provide full financial relief.[204]

Three states—North Dakota, Rhode Island, and Vermont—have neither a bond nor a student protection fund to closed school students.[205]

SARA does not (and could not) provide any private cause of action to students, nor does it require schools to pay refunds to students after a school has either violated state law, failed to meet one or more SARA requirements, or failed to provide the services promised to the student. The only student relief provision that SARA contains is both weak and likely unenforced against non-compliant states. SARA requires that each member state have laws, policies and/or processes regarding the

> unanticipated closure of an institution and [that each member state] make every reasonable effort to assure that students receive the services for which they have paid or reasonable financial compensation for those not received. Such laws . . . and/or processes may include tuition assurance funds, surety bonds, teach-out provisions or other practices deemed sufficient to protect consumers.[206]

Thus, SARA leaves to each member home state's discretion how it will ensure that students in distant states are able to finish their programs or receive "reasonable financial compensation for [the services] not received" due to school closure. To comply with this requirement, home states need only:

- Ensure that students are offered a teach-out. As long as a teach-out is offered, the state is not required to offer financial compensation as an alternative; *OR*
- Offer the student compensation for the portion of the program they were not able to complete—even if they must start their program over because they are unable to transfer any or only a few of the credits earned at the closed school.

It is likely that many SARA states are not in compliance with this requirement. As noted in a report from 2021, many SARA member states that have student protection funds do not cover out-of-state students.[207] We are not aware of any actions taken by the regional compacts or NC-SARA against non-compliant member states.

Recently, the Department enacted a new regulation that requires schools to certify, for each state in which students are located, that they are in compliance with "all State laws related to closure, including . . . teach-out plans or agreements, and tuition recovery funds or surety bonds . . . ."[208] The Department reasoned that closed school discharges, in addition to borrower defense discharges, are "the biggest sources of taxpayer liabilities generated by institutional actions."[209] They further reasoned that because states "are a key part of the regulatory triad of postsecondary education," reciprocity agreements should not prevent them from protecting their students from closure.[210] In this regulation, the Department leaves to each state the decision of whether to require an out-of-state school to comply with its closed school requirements regarding teach-outs, bonds, and tuition recovery funds.[211]

Thus, whether out-of-state SARA schools must comply with the closed school requirements of distant SARA states depends on state law. Many SARA states' higher education specific consumer protection laws, including the closed school requirements, apply only to schools with an in-state physical presence.[212] Other states explicitly exempt SARA schools from their higher education specific consumer protection laws, including the closed school provisions.[213] In these states, despite the new federal regulation, out-of-state SARA schools still have no obligation to comply with the distant states' closed school requirements.

J. Criminal Penalties

Many state laws provide that intentional or willful violations of their higher education consumer protection laws merit criminal penalties. The punishments vary and may include fines and imprisonment of up to one year.[214] The most egregious violations are sometimes deemed felonies. In Illinois, for example, a person is guilty of a misdemeanor who knowingly and with intent to induce a person to enroll makes any false or misleading misrepresentations regarding, among other things, employment opportunities upon graduation. A person is also guilty of a misdemeanor who knowingly and with intent to defraud retains a refund that is due to a student who cancelled. After a person has been convicted of one misdemeanor, any subsequent offenses are considered felonies.[215]

SARA's provision prohibiting states from enforcing state higher education specific consumer protection laws does not exclude such criminal provisions. Moreover, SARA does not (and could not) include criminal penalties for violations of its provisions or state laws.

K. Record Retention

Federal law's record retention requirements focus primarily on financial aid-related records. For this reason, states have the responsibility of ensuring that schools retain other records essential to students. Students need records—including many years after they attended a school—for a number of reasons. Among other things, they need transcripts to transfer credits, obtain a higher degree, obtain a job, or demonstrate eligibility for professional licensure or certification. Students need a variety of other documents—such as student ledgers, enrollment agreements, private loan agreements, and loan certifications—to dispute debt liability with the school, a lender, debt collectors, or even the federal government. Students need documents regarding leaves of absences, withdrawals, ability-to-benefit test results, and disclosures to demonstrate eligibility for various types of federal discharges, including closed-school, borrower defense-to-repayment, unpaid-refund, and false-certification discharges. All of these documents are also relevant to asserting school misconduct as defenses to repayment for private student loans. Finally, these types of documents are often necessary for state oversight agency or state attorney general investigations and actions.

For these reasons, many state higher education consumer protection laws contain record retention requirements. For example, Maryland requires schools to maintain student records, including transcripts and tuition and financial records, for 5 years.[216] Minnesota requires schools to retain school academic and transcript documents, as well as records regarding attendance, for either 10 (or a lesser period required by an accreditor) or 50 years, depending on the type of school.[217] Utah requires that schools maintain transcripts for 60 years, and academic credentials and enrollment agreements for 10 years.[218]

Minnesota, similar to other states, also requires that the school provide a record retention plan to ensure that the records are held in a safe and secure depository and are provided to students upon request.[219] If the school lacks such a plan, Minnesota requires that the school post a bond or irrevocable letter of credit that the state may use to maintain the documents in the event of a school closure.[220]

SARA only requires that states have "adequate disaster recovery plans . . . with respect to the protection of student records."[221] While a new Department regulation requires that a school certify that, for each state in which students are located, they are in compliance with "all State laws related to closure, including record retention requirements . . . . ,"[222] out-of-state distant education schools that are exempted by state law from a state's higher education specific consumer laws, including record retention requirements, will still not have to comply with those laws under this new regulation.[223]

L. School Closures and Teach-Outs

Many states have detailed requirements to protect students impacted by school closures. Typical state laws require closing schools do some or all of the following:

- notify the state agency prior to closure;[224]
- provide contact information and data for all students enrolled at the time of closure or who withdrew within 120 days prior to closure, so the state may reach out to students, educate them about their rights, and investigate any school misconduct;[225]
- identify a custodian of student records paid for by the school or transfer student records to the state agency; [226]
- provide a teach-out plan and/or teach-out agreement;[227]
- report or arrange for student refunds.[228]

States also have laws that deem a school as closed in certain circumstances. For example, Minnesota law deems a school closed if it has an unscheduled closure of classes for more than 24 hours without prior notice to the agency, announces it is closing, files for bankruptcy, or fails to submit an application for renewal of its approval.[229]

SARA contains no such provisions, except as noted in Sections II(I) and II(K) above.

M. Other State Consumer Protection Laws Applicable to Higher Education Institutions that Are Not Laws of General Applicability

States have enacted laws to protect borrowers from predatory student loan financing and unfair debt collection practices. Because many of these laws only apply to a subset of entities that engage in specific types of business, they typically do not meet the definition of "general-purpose" laws under SARA.[230] As a result, SARA precludes member states from enforcing these specific consumer protection laws against SARA schools that engage in lending or debt collection. Yet SARA does not replace these laws with any requirements concerning lending or debt collection. This section briefly highlights the wide variety of such lending and debt collection laws that may be precluded by SARA.

Schools are increasingly originating or arranging a variety of educational financing products.[231] While many are private student loans offered by traditional lenders, they also include retail installment contracts, income-share agreements, and a wide range of evolving financial products.[232] The range of state lending laws are necessary to protect borrowers from predatory, abusive, deceptive, and unfair lending practices.[233]

Schools that originate or arrange loans must often comply with non-general-purpose state laws that require the licensure of businesses that originate or arrange any type of financing product[234] and often prohibit deceptive, abusive and unfair lending practices.[235] In addition, some states, including California, Colorado, Illinois, Maine and Louisiana, have enacted laws subjecting any person who originates or holds private student loans, including schools, to registration, reporting, disclosure and/or deceptive practices requirements.[236] Schools that originate loans are also subject to retail installment sales laws,[237] fair lending laws, small loan laws, state usury laws, laws governing the assignment or collection of wages,[238] and the Uniform Consumer Credit Code.[239] To the extent these laws only apply to a subset of businesses, they likely fall outside the scope of SARA's definition of general-purpose laws.

Similarly, schools that collect on private and state educational debts[240] are subject to a range of state laws specifically and only applicable to loan servicers and debt collectors. At least thirteen jurisdictions—Connecticut, California, Colorado, District of Columbia, Illinois, Louisiana, Maryland, Nevada, New Jersey, New York, Rhode Island, Washington, and Virginia—have passed laws to strengthen the rights of student borrowers against their loan servicers, which are often defined to include debt collectors.[241] Schools are also subject to laws applicable only to private student loan collectors or loan holders.[242] These laws prohibit collection or the initiation of lawsuits in a number of circumstances, including when the creditor or collector lacks specified loan documentation or the statute of limitations has expired.[243] Some of these laws also require licensure and/or provide extensive remedies to the borrower when the law is violated.[244] In some states, schools are also subject to fair debt collection laws which typically only apply to businesses, including creditors, that collect debt.[245]

In addition, a growing number of states now prohibit schools from withholding transcripts to collect on debts, including California, Colorado, Ohio, Illinois, Maryland, Maine, Minnesota, New York, and Washington.[246] These laws, applicable only to higher education institutions, remain necessary despite a new federal regulation requiring Title IV institutions to provide transcripts to students for payment periods during which the student received financial aid.[247] This regulation allows schools to continue to withhold transcripts if the student has not paid all institutional charges for the applicable payment period.[248] It also does not protect students who do not receive federal financial aid.[249]

To the extent that any of the above-described laws only apply to some subset of businesses, they are not general-purpose laws and therefore are likely precluded by SARA. SARA does not include any provisions regarding school lending or debt collection practices, nor does it address the withholding of transcripts to collect on unpaid tuition or other debt.

III. CONCLUSION

Many states have chosen to protect their residents from predatory higher education through laws that impose extensive minimum standards, ongoing oversight requirements, fair contract requirements, prohibitions on deceptive, misleading and unfair practices, and student relief provisions. The need for these laws is based on a well-documented history of multi-billion dollar harms caused by predatory higher education schemes against hundreds of thousands of students and federal taxpayers alike.

As described in this paper, the consumer protections in SARA, the only state authorization reciprocity agreement currently available, are either non-existent or weak when compared to the higher education specific consumer protection laws of member states. Despite this, SARA prohibits member states from enforcing such laws against out-of-state SARA schools and allows the home states only to enforce SARA requirements to protect out-of-state students. Given the history of higher education fraud, particularly in the for-profit college sector, the federal government's recognition of this or any other reciprocity agreement that prohibits states from enforcing their higher education specific consumer protection laws, for purposes of Title IV state authorization, is extremely risky and likely to lead to millions in student and taxpayer losses.

The Department recently commenced a rulemaking proceeding to revisit the federal definition of "state authorization reciprocity agreement."[250] In this and any other future discussions regarding the federal state authorization regulations, policymakers should base their decision regarding whether (and which) state higher education consumer protection laws should apply to out-of-state distant education school on the actual content and purpose of such laws. This paper provides information that will allow more informed discussions that lead to reciprocity agreements—alternatives to SARA—that better balance the institutional and state agency needs to reduce regulatory burdens with the federal financial aid system's, state governments', and students' needs for strong consumer protection. In any rulemaking, stakeholders should examine whether current reciprocity policies undermine states' ability to fulfill their role in the HEA oversight triad.

ENDNOTES

1 Robyn Smith is Of Counsel with the National Consumer Law Center and is also a senior attorney at a public interest organization in Los Angeles, California, where she has focused exclusively on financial aid and higher education policies impacting low-income students. In this work, Robyn has provided legal assistance to hundreds of financially-distressed student loan borrowers and has worked on state and federal policies to strengthen oversight of higher education institutions. Ms. Smith is a co-author of the National Consumer Law Center's *Student Loan Law* legal treatise, the leading student loan law treatise in the country. Ms. Smith previously worked for the California Attorney General's office, where she investigated and prosecuted businesses engaged in deceptive practices, including higher education institutions, and worked on state higher education policy. She received her J.D. from University of Southern California in 1992.

2 Libby Webster is Senior Counsel at National Student Legal Defense Network (Student Defense), a non-profit, non-partisan organization that uses research, litigation, and advocacy to promote accountability in higher education. Libby also co-directs the Postsecondary Equity & Economics Research (PEER) Project, which is a joint initiative on accountability between academics at George Washington University and Columbia University and policy experts and attorneys at Student Defense. Prior to joining Student Defense, Libby served for 15 years as a Senior Assistant Attorney General in Consumer Protection at the Colorado Attorney General's Office. In that role, she litigated numerous law enforcement actions under state consumer protection laws against a variety of industries, including for-profit colleges. In 2017, Libby led Colorado's team in a four-week bench trial against Center for Excellence in Higher Education (CEHE) for engaging in deceptive trade practices. The case resulted in findings of widespread deceptive conduct, and ultimately led to CEHE shuttering its schools. Libby also worked closely with other state and federal partners to investigate predatory colleges on a national scale, obtaining roughly $600 million in student relief.

3 Nat'l Center for Educ. Statistics, U.S. Dep't of Educ., Undergraduate Enrollment, Undergraduate Enrollment by Distance Education Participation (May 2023), *available at* https://nces.ed.gov/programs/coe/indicator/cha.

4 Laura T. Hamilton, Amber Villalobos, Christian Michael & Charlie Eaton, The Century Foundation, *How Online College Hurts More Than It Helps* (June 8, 2022), *available at* https://tcf.org/content/commentary/how-online-college-hurts-more-than-it-helps/.

5 *Id.*

6 Nat'l Center for Educ. Statistics, *supra* note 3.

7 For example, the Department of Education recently cancelled millions of dollars in loans for students who attended for-profit online programs based on evidence that the school recruited students using misleading advertising. U.S. Dep't of Educ., Biden-Harris Administration Approves $37 Million in Borrower Defense Discharges for Over 1,200 Students Who Attended University of Phoenix (Sept. 20, 2023), *available at* https://www.ed.gov/news/press-releases/biden-harris-administration-approves-37-million-borrower-defense-discharges-over-1200-students-who-attended-university-phoenix.

8 Justin C. Ortagus, Rodney Hughes, & Hope Allchin, *The Role and Influence of Exclusively Online Degree Programs in Higher Education*, EdWorkingPaper No. 23-879, at 21 (Nov. 2023), *available at* https://edworkingpapers.com/ai23-879.

9 *See* Libby Webster & Robyn Smith, *Examining the State's Role in Protecting Online College Students from Predatory Education—Part I* (Jan. 2024), Postsecondary Equity & Economics Research Project, *available at* *; U.S. Gov't Accountability Office, *Education Needs to Strengthen Its Approach to Monitoring Colleges' Arrangements with Online Program Managers*, GAO-22-104463 (Apr. 5, 2022), *available at https://www.gao.gov/products/gao-22-104463*.

10 Nat'l Center for Educ. Statistics, *supra* note 3.

11 *See* Webster & Smith, *supra* note 9.

12 *See id. See also* 81 Fed. Reg. 48,598, 48,598 (July 25, 2016) ("The HEA established what is commonly known as the program integrity 'triad' under which States, accrediting agencies, and the Department act jointly as gatekeepers for the Federal student aid programs mentioned above. This triad has been in existence since the inception of the HEA; and as an important component of this triad, the HEA requires institutions of higher education to obtain approval from the States in which they provide postsecondary educational programs. This requirement recognizes the important oversight role States play in protecting students, their families, taxpayers, and the general public as a whole.").

13 20 U.S.C. § 1001(a).

14 *See, e.g.,* Children's Advocacy Inst., Univ. of San Diego School of Law, *Failing U: Do state laws protect our veterans and other students from for-profit postsecondary predators?* (Jan. 2018), *available at* http://www.caichildlaw.org/Misc/Failing_U.pdf.

15 34 C.F.R. § 600.9(c).

16 *See* Webster & Smith, *supra* note 9.

17 34 C.F.R. § 600.2 (eff. July 1, 2020).

18 Unified State Authorization Reciprocity Agreement at ¶¶ 5.1.5–5.1.7, 7.2.2(A)(7) (Dec. 1, 2015), *available at* https://nc-sara.org/sites/default/files/files/2019-07/UNIFIED_SARA_AGREEMENT_2015-FINAL_Approved_120115.pdf.

19 Nat'l Council for State Authorization Reciprocity Agreements, SARA Policy Manual (Ver. 22.1, June 27, 2022), *available at* https://nc-sara.org/sites/default/files/files/2022-08/SARA_Policy_Manual_22-1_6-27-2022.pdf.

20 *See id.*at ¶¶ 2.5(b), (k), (l) . *See also id.* at ¶ 5.1(b) ("SARA does not affect the applicability of general-purpose state laws such as business registries, general-purpose consumer protection laws, worker's compensation laws, criminal statutes and the like.")

21 *Id.* at 24, note 6, and 41, note 8 ("A 'general-purpose law' is one that applies to *all* entities doing business of any type in the state, not just institutions of higher education.") (emph. added). *See also id.* at ¶¶ 4.4(e), (f) ("SARA member states retain the ability to use any of their general-purpose criminal or consumer protection laws . . . .").

22 *Id*. at ¶ 2.5(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 [sic] (out-of-state) institution that participates in SARA . . . instead the state will apply those specifically prescribed in or allowed by SARA policies.").

23 *Id*. at 41, note 8 (emph. added).

24 These types of laws are discussed in § II(M), *infra*.

25 *See also*, Robyn Smith & Joanna K. Darcus, Nat'l Consumer Law Center, *How States Can Help Students Harmed by Higher Education Fraud* at 41-44 (Jan. 2021) (showing that some SARA states' student protection fund laws do not cover out-of-state students); Angela Perry & Debbie Cochrane, The Inst. for College Acess & Success, *Going the Distance: Consumer Protection For Students Who Attend College Online* (Aug. 18, 2018) (showing that SARA lacks many consumer protections found in state higher education oversight schemes, including a strong student complaint process), *available at* https://ticas.org/accountability/going-distance/; Robyn Smith, Nat'l Consumer Law Center, *Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-Profit Schools* at 60-62 (June 2014) (brief description of lack of consumer protections in SARA), *available at* https://filearchive.nclc.org/pr-reports/for-profit-report.pdf.

26 The Department is required to negotiate most of its regulations with stakeholders before it proposes and enacts them. 20 U.S.C. § 1098a.

27 88 Fed. Reg. 74,568 (Oct. 31, 2023).

28 State oversight faces other limitations that policymakers should address. Current federal regulation permits states to exempt institutions from state higher education laws by delegating their authority back to accreditors. Many states take advantage of this "loophole," which threatens the effectiveness of the oversight triad. *See* National Student Legal Defense Network, *When a Three-Legged Stool Loses a Leg: How the U.S. Department of Education Forfeited State-Level Oversight of Higher Education* (Nov. 2023), *available at*: https://www.defendstudents.org/news/body/Student_Defense_3LeggedStool.pdf.

29 A 2012 SHEEO survey of higher education agencies identified 70 authorizing agencies across the 50 states and Washington, D.C. David Tandberg, Ellie Bruecker, & Dustin D. Weeden, State Higher Educ. Exec. Officers Assoc. *Improving State Authorization: The State Role in Ensuring Quality and Consumer Protection in Higher Education* at 9 (July 2019), *available at* https://sheeo.org/wp-content/uploads/2019/07/SHEEO_StateAuth.pdf.

30 Robert Shireman, The Century Foundation, *The Covert For-Profit: How College Owners Escape Oversight through a Regulatory Blind Spot* (Sept. 22, 2015), *available at* https://tcf.org/content/report/covert-for-profit/.

31 Public schools are typically governed by appointed or elected state officials who are not allowed to personally profit from the schools' operations. Nonprofit schools are usually operated by independent trustees who do not benefit financially from the schools' operation and invest their net revenues on furthering their charitable educational mission. Robert Shireman, The Century Foundation, *How For-Profits Masquerade as Non-Profit Colleges* (Oct. 7, 2020), *available at* https://tcf.org/content/report/how-for-profits-masquerade-as-nonprofit-colleges/; Debbie Cochrane & Bob Shireman, *For-Profit Postsecondary Education: Encouraging Innovation While Preventing Abuses* at 8 (Dec. 13, 2017), *available at* https://tcf.org/content/report/encouraging-innovation-preventing-abuses/.

32 *See, e.g.*, Cal. Educ. Code § 94858 (California, however, exempts both non-profit and for-profit schools accredited by the Western Association of Schools and Colleges from approval and oversight, *see* Cal. Educ. Code § 94874(i)).

33 *See* Shireman, *How For-Profits Masquerade as Non-Profit Colleges*, *supra* note 31.

34 *Id*. *See also* U.S. Gov't Accountability Office, *Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions*, GAO-21-89 (Dec. 31, 2020) (in about third of 59 for-profit conversions over last decade, former owners either financially benefitted from the conversion or retain control of the non-profit organization), *available at* https://www.gao.gov/products/gao-21-89.

35 Cal. Educ. Code § 94874.1(a); Md. Code Ann., Educ. §§ 10-101(o), 11-407.1, Md. Code Regs. 13B.01.03.04.

36 SARA Policy Manual, *supra* note 19, at ¶ 2.5(b).

37 Unified State Authorization Reciprocity Agreement, *supra* note 18, at ¶ 7.3(A).

38 *See, e.g.*, Or. Rev. Stat. § 345.020.

39 S.D. Codified Laws Ann. § 13-48-37, S.D. Admin. R. 5:04:08:01.

40 *See, e.g.*, Ariz. Rev. Stat. Ann. §§ 32-3021-3022, 32-3025, Ariz. Admin. Code § R4-39-103; Or. Rev. Stat. §§ 345.030, 345.325, Or. Admin. R. 715-045-0009, 715-045-0012, 715-045-0063.

41 Andrew P. Kelly, Kevin J. James, & Rooney Columbus, Am. Enter. Inst., *Inputs, Outcomes, Quality Assurance: A Closer Look at State Oversight of Higher Education* at 9 (Aug. 2015), *available at* https://www.aei.org/wp-content/uploads/2015/08/Inputs-Outcomes-Quality-Assurance.pdf.

42 *See, e.g.*, Ariz. Admin. Code §§ R4-39-103(D), R4-39-104(D); Or. Admin. R. 715-045-0006(11), 715-045-009. *See also* Tandberg, Bruecker, & Weeden, *supra* note 29, at 9-11.

43 *See, e.g.*, Ariz. Admin. Code § R4-39-103(D), R4-39-104(D); Or. Admin. R. 715-045-0006(11).

44 Tandberg, Bruecker, & Weeden, *supra* note 29, at 9. *See, e.g.*, Md. Code Regs. 13B.01.01.04(4); 610 Mass. Code Regs. 2.07(1).

45 Although, for a school with an institutional federal responsibility score between 1.0 and 1.5, the home state "may, in its discretion, determine if there is sufficient evidence of financial stability to justify the institution's participation in SARA." SARA Policy Manual, *supra* note 19, at ¶ 2.5(c).

46 *Id*. at ¶ 3.1(b).

47 *Id*. at ¶¶ 2.5(b), note N1, 2.5(p), 4.7.

48 Council of Regional Accrediting Comm'ns, Interregional Guidelines for the Evaluation of Distance Educ. (2011), *available at* https://nc-sara.org/resources/council-regional-accrediting-commissions-c-rac-guidelines.

49 *See* Tandberg, Bruecker, & Weeden, *supra* note 29, at 9-11.

50 SARA Policy Manual, *supra* note 19, at ¶ 2.5(b), note N1. However, a state shall consider "additional information regarding financial stability" if the school has a federal financial responsibility composite score between 1.0 and 1.5. *Id*. at ¶ 2.5(c).

51 *Id*. at ¶ 2.5(b), note N1.

52 *Id*. *See also* Nat'l Council for State Authorization Reciprocity Agreements, SARA Quick Start Guide: Institution Applications ("It is the state's purview to determine what, if any, documentation is required after initial application review."), *available at* https://nc-sara.org/sara-quick-start-guides.

53 *See, e.g.,* Cal. Educ. Code §§ 94930, 94930.5 (flat fee); Or. Admin. R. 715-045-0007 (percentage of tuition revenue); Ariz. Rev. Stat. Ann. § 32-3027 (percentage of tuition revenue).

54 *See, e.g.,* Cal. Educ. Code § 94930; Or. Rev. Stat. § 345.080(5).

55 *See* Deanne Loonin, Nat'l Consumer Law Center, *State Inaction: Gaps in State Oversight of For-Profit Higher Education* (Dec. 2011), *available at* https://filearchive.nclc.org/pr-reports/state-inaction-for-profit-higher-edu.pdf.

56 *See, e.g.,* Ariz. Rev. Stat. Ann. § 32-3023 (for non-accredited schools).

57 Smith & Darcus, *supra* note 25, at 38-40.

58 *See* § II(I), *infra*.

59 SARA Policy Manual, *supra* note 19, at ¶ 3.6(a)

60 *Id*. at ¶¶ 2.5(k), 3.6(b).

61 *Id*. at ¶ 2.5(h)(2).

62 *See* Smith & Darcus, *supra* note 25, at App. B; § II(I), *supra*.

63 *Id*.

64 *See, e.g.,* Idaho Code Ann. § 33-2404.

65 *See, e.g.,* Del. Code Ann. tit. 14, § 8509; Minn. Stat. Ann. §§ 136A.821, subd. 3, 136A.825; Nev. Rev. Stat. Ann. §§ 394.009, 394.470.

66 *See, e.g.,* Md. Code Regs. 13B.01.01.08(C)(2); Ohio Rev. Code Ann. §§ 332.01(A), 332.10(A);

67 *See, e.g.,* Ky. Rev. Stat. Ann. § 165A.350(3); Minn. Stat. Ann. § 136A.825, subd. 3.

68 *See, e.g.,* Ky. Rev. Stat. Ann. § 165A.350(12); Or. Rev. Stat. § 345.040 (providing that school's bond covers actions of school's recruiters).

69 *See, e.g.,* Ariz. Admin. Code §§ R4-39-103(D), R4-39-104(D); Mass. Gen. Laws ch. 112, § 263(e); Md. Code Ann., Educ. § 11-206(b)(2); Nev. Rev. Stat. Ann. § 394.460(5); N.Y. Educ. Law § 224(1)(b); Or. Admin. R. 715-045-0006, 715-045-0009(5).

70 SARA Policy Manual, *supra* note 19, at ¶ 3.4(a) ("A change of ownership will be determined by the home state. . . . A new application for institutional approval may be required.").

71 *See, e.g.,* Ariz. Admin. Code § R4-39-102(F) (1-year reapproval); 610 Mass. Code Regs. § 2.07(4)(c) (5-year reapproval); Or. Admin. R. 715-045-0062 (1-year reapproval).

72 Tandberg, Bruecker, & Weeden, *supra* note 29, at 13 (as of 2019, 7 states did not require reapproval or exempted some schools from seeking reapproval).

73 *See, e.g.,* Ariz. Admin. Code § R4-39-108(F)-(I); Or. Admin. R. 715-045-0032.

74 *See, e.g.,* Cal. Educ. Code § 94934; 610 Mass. Code Regs. § 2.07(4)(b); Or. Admin. R. 715-045-0062, 715-045-0064; Tenn. Admin. Reg. 1540-01-02-.18(1). *See also* Tandberg, Bruecker, & Weeden, *supra* note 28, at 13.

75 *See* Ariz. Rev. Stat. Ann. § 32-30212(D), Ariz. Admin. Code §§ R4-39-102(I), R-39-103(G); Cal. Educ. Code § 94932.5; Ohio Rev. Code Ann. § 3332.09(D); Or. Admin. R. 715-045-0065.

76 *See, e.g.,* Ohio Rev. Code Ann. § 3332.09(D).

77 SARA Policy Manual, *supra* note 19, at ¶ 3.7(a).

78 *Id*. at ¶ 3.7(b).

79 *Id*. at ¶ 6.1.

80 *Id*.

81 Ky. Rev. Stat. Ann. § 165A.330(4).

82 *See, e.g.,* Ariz. Admin. Code § R4-39-103(F); Md. Code Regs. 13B.01.01(C); Wash. Rev. Code Ann. § 28C.10.050(a).

83 *See, e.g.,* Ariz. Admin. Code § R4-39-103(F).

84 *See id*.

85 While this requirement does not appear in the SARA Policy Manual, it is mentioned in a SARA Quick Start Guide, *supra* note 52.

86 SARA Policy Manual, *supra* note 19, at ¶ 2.5(c).

87 As one example, Arizona law authorizes the state agency to take disciplinary action against a school for a number of reasons, including violating its higher education consumer protection law, other state laws, or federal laws, "[e]ngaging in false or misleading advertising, solicitation or recruitment practices," failure to meet financial responsibility requirements, failure to maintain records, failure to comply with an order, stipulation, or investigative request, or failure to comply with minimum academic standards. Ariz. Rev. Stat. Ann. § 32-3051.

88 *See, e.g.*, Colo. Rev. Stat. Ann. § 23-2-103.3(1)(a).

89 *See id*.

90 *See, e.g.*, Del. Code Ann. tit. 14, § 8516(1); Utah Code Ann. § 13-34-106(1).

91 *See, e.g.*, Ariz. Admin. Code §§ R4-39-103(B)(4), R4-39-406(D).

92 *See, e.g.*, Utah Code Ann. § 13-34-106(1).

93 *See, e.g.*, Ariz. Admin. Code § R4-39-103(B)(5).

94 *See, e.g.*, Minn. Stat. Ann. § 136A.822, subd. 8; Utah Code Ann. § 13-34-106(1).

95 *See, e.g.*, Ariz. Admin. Code § R4-39-103(B); Del. Code Ann. tit. 14, § 8516(3); Minn. Stat. Ann. § 136A.822, subd. 8; Ohio Rev. Code Ann. § 3332.091 (A)(3); Utah Code Ann. § 13-34-106(1).

96 *See, e.g.*, Ariz. Admin. Code § R4-39-102(F).

97 Md. Code Ann., Educ. § 11-210(d).

98 Cal. Educ. Code § 94941(c). *See also* Or. Admin. R. 715-045-0064 (allowing agency to withdraw program approval if completion and placement rates are not at least 50%).

99 SARA Policy Manual, *supra* note 19, at ¶ 2.5(c).

100 *Id*. at ¶ 3.8(c).

101 *Id*. at ¶ 3.2(g).

102 *Id*. at ¶ 3.2(g)(2).

103 *See, e.g.*, Cal. Educ. Code § 94937; Ohio Rev. Code Ann. § 3332.09; Or. Rev. Stat. § 345.030(8).

104 *See, e.g.*, Or. Admin. R. 715-045-0006(5)(c), 715-045-0062(9) (requiring school to agree to program improvement plan).

105 SARA Policy Manual, *supra* note 19, at ¶ 3.2(a).

106 *Id*. at ¶ 3.2(c).

107 Mass. Gen. Laws ch. 112, § 263(h).

108 Ariz. Rev. Stat. Ann. §§ 32-3052, 32-3057; *see also* Cal. Educ. Code §§ 94933-94933.5, 94935-94939; Ohio Rev. Code Ann. § 3332.09; Or. Rev. Stat. §§ 345.120, 345.992.

109 Cal. Educ. Code § 94938.

110 SARA Policy Manual, *supra* note 19, at ¶¶ 3.2, 3.8(c).

111 *Id*. at ¶ 3.2(c).

112 *Id*. at ¶¶ 2.6(c), 3.7(b)(7), (b)(9).

113 *Id*. at ¶ 1.37.

114 *See* Nat'l Council for State Authorization Reciprocity Agreements, Regional Education Compacts, *available at* https://nc-sara.org/regional-education-compacts.

115 *See id*.

116 *See* https://www.mhec.org/about/commissioners (MHEC Commissioners), https://nebhe.org/about/board/ (NEBHE Board of Delegates), https://www.sreb.org/about-board (SREB Board), and https://www.wiche.edu/about/wiche-commission/#all-commissioners (WICHE Commissioners).

117 34 C.F.R. § 600.9(a)(1) (state must have "a process to review and appropriately act on complaints concerning the institution including enforcing applicable [s]tate laws").

118 *See, e.g.*, Colo. Rev. Stat. Ann. §§ 23-2-104, 23-64-124(4); Tenn. Code Ann. § 49-7-2011(a)(1).

119 *See, e.g.*, Minn. Stat. § 136A.8295, subd. 2. ("Students do not have to utilize a school's internal complaint process when the student is alleging fraud or misrepresentation.").

120 *See, e.g.*, Cal. Educ. Code § 94941(a); Mass. Gen. Laws ch. 112, § 263(h) (applicable to private educational organizations, as defined by the statute); Neb. Rev. Stat. § 85-1635.

121 *See, e.g.*, U.S. Dep't of Educ., Program Integrity Questions & Answers – State Authorization, C-A3 (Mar. 17, 2011) ("'The State is not permitted to rely on institutional complaint and sanctioning processes in resolving complaints it receives as these do not provide the necessary independent process for reviewing a complaint. A State may, however, monitor an institution's complaint resolution process to determine whether it is addressing the concerns that are raised within it.' A State may rely on a governing board or central office of a State-wide system of public institutions if the State has made the determination the governing board or central office is sufficiently independent to provide successful oversight of complaints for the institutions in that system.") (quoting 75 Fed. Reg. 66,866 (Oct. 29, 2010)), *available at* https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/sa.html#complaints.

122 *See* § II(B), *supra*.

123 *See, e.g.*, Tenn. Code Ann. § 49-7-2011(b)(1).

124 *See, e.g.*, Colo. Rev. Stat. § 23-64-124(3); Minn. Stat. Ann. § 136A.829, subd. 1; Nev. Rev. Ann. Stat. § 394.520(3); N.Y. Educ. Law § 5007; Tenn. Code Ann. §§ 49-7-2011(b)(2), 49-7-2017(e).

125 SARA Policy Manual, *supra* note 19, at ¶¶ 4.4(b), 4.5(a).

126 *Id*. at ¶¶ 4.4(c), 4.5(c).

127 *Id*. at ¶¶ 4.2, 4.7.

128 *Id*. at ¶ 4.5(c). *See also* ¶¶ 4.4(c), (d), 4.5(c).

129 *Id*. at ¶ 4.5(e).

130 34 C.F.R. § 668.22(e).

131 Minn. Stat. Ann. § 136A.827 subd. 4.

132 Cal. Educ. Code §§ 94919(c), 94920(d).

133 Ariz. Admin. Code § R4-39-404(D)(5); Colo. Rev. Stat. § 23-64-120(e); Md. Code Regs. 13B.05.01.12(M).

134 230 Mass. Code Regs. § 15.04(1)(g); Utah Code Ann. § 13-34-109(1)(h).

135 Colo. Rev. Stat. § 23-64-120(c); Del. Code Ann. tit. 14, § 505(a); Ga. Code Ann. § 20-3-250(a)(13).

136 Minn. Stat. Ann. § 136A.827, subd. 2; Wash. Rev. Code § 28C.10.050.

137 Md. Code Regs. 13B.05.01.12(K), N.D. Cent. Code §§ 15-20.4-06, 15-20.4-08.

138 Cal. Educ. Code §§ 94919(d), 94920(b).

139 Unified State Authorization Reciprocity Agreement, *supra* note 18, at § 5.1.5.

140 Cal. Educ. Code § 94910; 105 Ill. Comp. Stat. § 426/37; Ky. Rev. Stat. Ann. § 165A.370; 230 Mass. Code Regs. § 15.05(2), 940 Mass. Code Regs. §§ 31.05(2), (4)(b); Minn. Stat. Ann. § 136A.822, subd. 11(b); Nev. Rev. Stat. Ann. § 394.441(1); N.Y. Educ. Law § 5005(b); Tenn. Code Ann. § 49-7-2019.

141 *See, e.g.*, Cal. Educ. Code §§ 94928, 94929.5; 791 Ky. Admin. Regs. 1:010(11).

142 Tenn. Code Ann. § 49-7-144(a); Or. Rev. Stat. § 348.586(14)(a).

143 *See, e.g.*, U.S. Dep't of Educ., Education Department Approves $5.8 Billion Group Discharge to Cancel All Remaining Loans for 560,000 Borrowers Who Attended a Corinthian (June 1, 2022) (loan discharges based on Corinthian's widespread misrepresentations re employment prospects ad graduate job placement rates), *available at* https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges; U.S. Dep't of Educ., Education Department Approves $1.5 billion in Debt Relief for 79,000 Borrowers Who Attended Westwood College (Aug. 30, 2022) (loan discharges based on inflated graduate salaries and job placement rates), *available at* https://www.ed.gov/news/press-releases/education-department-approves-15-billion-debt-relief-79000-borrowers-who-attended-westwood-college; Findings of Fact, Conclusions of Law, and Judgment, *State of Colo. v. Center for Excellence in Higher Educ., Inc., et al.*, Dist. Court, City and County of Denver, State of Colo., Case No. 14CV34530 (Aug. 21, 2020) (after extensive trial, court found that, among other violations, school had misrepresented completion rates, graduate job placement rates, and graduate starting salaries), *available at* https://coag.gov/app/uploads/2020/08/CollegeAmerica-FINDINGS-OF-FACT-CONCLUSIONS-OF-LAW-AND-JUDGMENT.pdf.

144 *See, e.g.,* Ga. Code Ann. § 20-3-250.6(a)(4); Minn. Stat. Ann. §§ 136A.822, subd. 10, 136A.826, subd. 1; Nev. Rev. Stat. Ann. § 394.441(1).

145 *See, e.g.,* Cal. Educ. Code § 94906; 940 Mass. Code Regs. § 31.06(8); N.Y. Comp. Codes R. & Regs. tit. 8, § 126.15.

146 *See, e.g.,* Cal. Educ. Code §§ 94903, 94911; 105 Ill. Comp. Stat. § 426/40; Minn. Stat. Ann. § 136A.822, subd. 2; Nev. Rev. Stat. Ann. § 394.441; N.Y. Educ. Law § 5005; Or. Rev. Stat. § 345.115(1); Wash. Rev. Code Ann. § 28C.10.050(d).

147 *See, e.g.,* Cal. Educ. Code § 94907; Minn. Stat. Ann. § 136A.822, subds. 3, 8.

148 *See* Carolyn Carter, Nat'l Consumer Law Center, *Consumer Protection in the States: A 50-state Evaluation of Unfair and Deceptive Practices Law* (March 2018), *available at* https://www.nclc.org/resources/how-well-do-states-protect-consumers/. *See also* Nat'l Consumer Law Center, *Unfair and Deceptive Acts and Practices* (10th ed. 2021), *updated at* www.nclc.org/library.

149 *See, e.g.,* Cal. Educ. Code § 94897(i); Or. Rev. Stat. § 348.586(9); Wash. Rev. Code § 28C.10.110(n).

150 *See, e.g.,* Ga. Code Ann. § 20-3-250.7(a)(6); Md. Code Regs. 13B.01.01.15(M); Minn. Stat. Ann. § 136A.828, subd. 3(c); Or. Rev. Stat. § 348.586(1).

151 *See, e.g.,* Cal. Educ. Code § 94987(a); Colo. Rev. Stat. § 23-64-123(1)(h); 940 Mass. Code Regs. § 31.04; Md. Code Regs. 13B.01.15(K), (M), (N); Mich. Admin. Code R. §§ 390.566(1), (2); Minn. Stat. Ann. § 136A.828, subd. 3(e); Ohio Rev. Code Ann. § 3332.091(A)(6); Or. Rev. Stat. § 348.586(2); Wash. Rev. Code § 28C.10.110(2).

152 *See, e.g.,* 940 Mass. Code Regs. § 31.06; Mich. Admin. Code R. §§ 390.566(1), (2).

153 *See, e.g.,* Colo. Rev. Stat. §§ 23-64-123(1)(g), (l); 940 Mass. Code Regs. § 31.04(8)(b); Minn. Stat. Ann. § 136A.828, subd. 3(g); Wash. Rev. Code Ann. § 28C.10.110(2)(f).

154 *See, e.g.,* Colo. Rev. Stat. §§ 23-2-104(4)(d), 23-64-123(1)(f); 610 Mass. Code Regs. § 2.07(3)(g)(2); Ohio Rev. Code Ann. § 3332.091(A)(6); Wash. Rev. Code § 28C.10.110(2)(e).

155 *See, e.g.,* Cal. Educ. Code § 94897(f); Colo. Rev. Stat. Ann. §§ 23-64-123(b), (c); Mich. Admin. Code R. § 390.566(4); Minn. Stat. Ann. § 136A.828, subd. 3(j); Or. Rev. Stat. § 348.586(5); Wash. Rev. Code Ann. § 28C.10.110(2)(c).

156 *See, e.g.,* 8 Colo. Code Regs. § 1504-1-VII(D); Md. Code Regs. 13B.0101.15(E); 940 Mass. Code Regs. § 31.04(10).

157 *See, e.g.,* 940 Mass. Code Regs. § 31.04(11).

158 *See, e.g.,* Wash. Rev. Code Ann. § 28C.10.110(2)(l).

159 *See, e.g.,* Md. Code Regs. 13B.01.01.08(C)(3); Ohio Rev. Code Ann. § 3332.091(a)(13); Or. Rev. Stat. §§ 348.586(7), (8).

160 *See, e.g.,* Cal. Educ. Code § 94897(n); N.Y. Educ. Law § 5004(1)(c); Or. Rev. Stat. § 348.586(12); Md. Code Ann., Educ. § 11-402.1.

161 *See, e.g.,* Cal. Educ. Code § 94905(a); Colo. Rev. Stat. § 23-64-123(1)(i); 940 Mass. Code Regs. §§ 31.06(6), (7); Minn. Stat. Ann. § 136A.828, subd. 5; Md. Code Regs. 13B.01.01.08(A), (B).

162 *See, e.g.,* Cal. Educ. Code § 94899.

163 *See, e.g.,* Cal. Educ. Code § 94899.5.

164 Cal. Educ. Code § 94898.

165 *See, e.g.,* 105 Ill. Comp. Stat. § 426/85(k); Wash. Rev. Code Ann. §§ 28C.10.130(2), 28C.10.210.

166 *See, e.g.,* 8 Colo. Code Regs. § 1504-1(VII)(S); Md. Code Regs. 13B.01.01.15(K), (M), (N); Minn. Stat. Ann. §§ 136A.828, subds. (3)(b), (e); Wash. Rev. Code § 28C.10.110(2).

167 *See, e.g.,* Or. Admin. R. 715-005-0033(5).

168 88 Fed. Reg. 32,300, 32,383, 32,492 (May 19, 2023).

169 *Id*. at 32,383.

170 *See* 88 Fed. Reg. 74,568, 74,570 (Oct. 31, 2023).

171 *Id*. at 74,650.

172 *See* Neal Hutchens, Frank Fernandez, & Macey Edmondson, *State Law and Protecting Students from Predatory For-Profit Colleges and Universities* (June 23, 2023), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4452270.

173 *See* § II(B), *supra*, for a summary of the types of actions that state agencies can typically take.

174 *See* Webster & Smith, *supra* note 9, for a more in-depth discussion about the purpose of the state authorization rule.

175 Ga. Code Ann. § 20-3-250.6(a)(9); 610 Mass. Code Regs. § 2.07(3)(g)(2); Nev. Rev. Stat. Ann. § 394.445.

176 Colo. Rev. Stat. § 23-64-123(1)(a); Ga. Code Ann. § 20-3-250.7(a)(4); 940 Mass. Code Regs. § 31.04(1); Minn. Stat. Ann. § 136A.828, subd. 3(a); Utah Code Ann. § 13-34-108(2)(f).

177 SARA Policy Manual, *supra* note 19, at ¶ 4.2.

178 *Id*. at ¶ 4.3.

179 *See* Carter, *supra* note 148, at 13-14.

180 *See* NCLC, *Unfair and Deceptive Acts and Practices*, *supra* note 148, at § 4.2.3.1.

181 *See* Carter, *supra* note 148, at 14-15.

182 *Id*. at 28-29.

183 *See* NCLC, *Unfair and Deceptive Acts and Practices*, *supra* note 148, at Ch. 4.

184 SARA Policy Manual, *supra* note 19, at ¶ 4.1 ("Only those complaints resulting from distance education courses, activities and operations provided by SARA-participating institutions to students in other SARA states come under the coverage of SARA. complaints [sic] about a SARA institution's in-state operations are to be resolved under the state's normal provisions, not those of SARA.")

185 Wash. Rev. Code Ann. § 28C.10.050(3).

186 *See, e.g.,* Cal. Educ. Code § 94917; Nev. Ann. Rev. Stat. § 394.590(2); Wash. Rev. Code Ann. § 28C.10.180.

187 Cal. Educ. Code § 94916; Or. Rev. Stat. § 345.113.

188 *See, e.g.,* Or. Rev. Stat. § 345.113.

189 *See* Smith & Darcus, *supra* note 25, at 8-9. Note that the standards for federal student relief based on school misconduct are uncertain at this time due to legal challenges. *See Career Colleges and Schools of Texas v. Cardona*, Case No. 23-50491, Order Granting Emergency Motion for Injunction Pending Appeal (5th Cir. Aug. 7, 2023).

190 *See, e.g.,* Cal. Educ. Code § 94927; 105 Ill. Comp. Stat. § 426/70(g); Md. Code Regs. 13B.05.01.12(I); Minn. Stat. Ann. § 136A.827, subd. 12; N.Y. Educ. Law § 5007; Or. Rev. Stat. § 345.115.

191 *See, e.g.,* Del. Code Ann. tit. 14, § 8505(a)(3); Md. Code Ann., Educ. § 11-206(c)(2).

192 *See, e.g.,* Del. Code Ann. tit. 14, § 8505(a)(3); N.Y. Educ. Law § 5004(5).

193 *See, e.g.,* Utah Code Ann. § 13-34-112(2)-(3).

194 *See, e.g.,* Colo. Rev. Stat. § 23-64-124(3); Minn. Stat. Ann. § 136A.829, subd. 4; N.Y. Educ. Law § 5007; Tenn. Code Ann. §§ 49-7-2011(c)(2), 49-7-2017(f).

195 *See, e.g.,* Nev. Rev. Stat. Ann. § 394.520(3).

196 *See, e.g.,* 105 Ill. Comp. Stat. § 426/85(m); Mass. Gen. Laws ch. 112, § 263(n); N.Y. Educ. Law § 5003(8); N.D. Cent. Code § 15-18.1-09; Utah Code Ann. § 13-34-113.

197 Ark. Code Ann. 6-51-620(a)(4); Md. Code Regs. 13B.05.01.12(B).

198 Smith & Darcus, *supra* note 25, at 38-40.

199 *Id*. at 18-19.

200 *Id*. at 5.

201 *Id*. at 12-14.

202 *See, e.g.,* Mass. Gen. Laws ch. 112, § 263(g) (schools must provide bond of $5,000, but may be increased if the state auditor determines that the cash resources of the licensee may not be sufficient to make tuition refunds to students as required); Minn. Stat. § 136A.822, subd. 6 (private career school must provide bond no less than $10,000); Mont. Admin. R. 24.121.605 (schools must post bond of $5000).

203 *See, e.g.,* Wyo. Stat. Ann. § 21-2-405(a); Ala. Code § 16-46-5(f).

204 The Inst. for College Access and Success, Student Debt and the Class of 2020 at 4 (Nov. 2021), *available at* https://ticas.org/affordability-2/student-aid/student-debt-student-aid/student-debt-and-the-class-of-2020/.

205 Smith & Darcus, *supra* note 25, at 5.

206 SARA Policy Manual, *supra* note 19, at ¶ 2.5(h)(2).

207 Smith & Darcus, *supra* note 25, at Appx. B.

208 88 Fed. Reg. 74,568, 74697 (Oct. 31, 2023) (codified at 34 C.F.R. § 668.14(b)(32)(iii)).

209 *Id*. at 74,650.

210 *Id*. at 74,650-74,651 ("Joining a reciprocity agreement should not absolve institutions from doing a better job at managing closures.")

211 *Id*. at 74,652 ("if a State's tuition recovery fund law exempts out-of-State institutions, those institution [sic] would not have to abide by it . . . This provision . . . does not tell States how they can or should structure their laws related to closure . . . .").

212 *See, e.g.*, Ariz. Rev. Stat. Ann. §§ 32-3001(5), 32-3021; Colo. Rev. Stat. §§ 23-64-103(19); 23-64-113(1)(a).

213 *See, e.g.*, Neb. Rev. Stat. § 85-1604(11); Wash. Rev. Code § 440.52(1)(e)(10).

214 *See, e.g.*, Ariz. Rev. Stat. Ann. § 32-3056; Del. Code Ann. tit. 14, § 8526; Ga. Code Ann. § 20-3-250.7(f); Idaho Code Ann. § 33-2409; Nev. Rev. Stat. Ann. § 394.610.

215 104 Ill. Comp. Stat. § 426/85(h)(1), (2).

216 Md. Code Regs. 13B.01.01.11(A)-(B).

217 Minn. Stat. Ann. § 136A.822, subds. 12(a), (b).

218 Utah Code Ann. § 13-34-203.

219 Minn. Stat. Ann. § 136A.822, subd. 12.

220 *Id*.

221 SARA Policy Manual, *supra* note 19, at ¶ 2.5(h)(3).

222 88 Fed. Reg. 74,568, 74697 (Oct. 31, 2023) (codified at 34 C.F.R. § 668.14(b)(32)(iii)).

223 *See supra* § II(I).

224 *See, e.g.,* Cal. Educ. Code § 94926; Minn. Stat. Ann. § 136A.8225(a).

225 *See, e.g.,* Minn. Stat. Ann. § 136A.8225(a).

226 *See, e.g.,* Ky. Rev. Stat. Ann. § 165A.390(5); Minn. Stat. Ann. § 136A.8225(a); Nev. Rev. Stat. § 394.550; 105 Ill. Comp. Stat. § 426/70; Wash. Rev. Code Ann. § 28C.10.160.

227 *See, e.g.,* Minn. Stat. Ann. § 136A.8225(a)(8); 105 Ill. Comp. Stat. § 426/70.

228 *See, e.g.,* Cal. Educ. Code § 94926(b); Minn. Stat. Ann. § 136A.8225(a)(3).

229 Minn. Stat. Ann. § 136A.8225(b).

230 *See* § I, *supra*.

231 *See, e.g.*, Student Borrower Protection Center, *Shadow Student Debt* (July 2020), *available at* https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf; Student Borrower Protection Center, *Pushing Predatory Products: How Public Universities are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt & Credit* (June 2011), *available at* https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf.

232 *See id.;* Sarah Butrymowicz & Meredith Kolodner, *Left in the Lurch by Private Loans from For-Profit Colleges*, New York Times (Mar. 25, 2021); Benjamin Roesch, Student Borrower Protection Center, *Applying State Consumer Finance and Protection Laws to Income Share Agreements* (Aug. 2020), *available at* https://protectborrowers.org/wp-content/uploads/2020/08/ISAs-and-State-Law.pdf.

233 *See, e.g.*, Roesch, *supra* note 232; Shadow Student Debt, *supra* note 231.

234 *See, e.g.*, Cal. Fin. Code § 90003; Fla. Stat. Ann. § 516.02; Minn. Stat. § 56.01; Va. Code Ann. § 6.2-1501.A; Wash. Rev. Code § 31.04.035.

235 Cal. Fin. Code §§ 90003, 90009; Wash. Rev. Code § 31.04.027. *See, e.g.*, *State v. Minn. Sch. of Bus., Inc.*, 899 N.W.2d 467 (Minn. 2017).

236 Cal. Educ. Code § 69800(b) (requiring that before certifying private student loans, schools must inform students about all unused state and federal financial assistance); Colo. Rev. Stat. §§ 5-20-202-203, 5-20-209(1), 5-20-210, 5-20-213-214; 110 Ill. Comp. Stat. §§ 983/5, 938/15, 938/20; Me. Stat. tit. 9-A, §§ 15-101-102, 16-203(2); La. Stat. Ann. §§ 6:2401-:2402.

237 *See, e.g.*, Cal. Civ. Code §§ 1801-1807.

238 *See* Roesch, *supra* note 232, at 10.

239 *See, e.g.,* Colo. Rev. Stat. §§ 5-1-101 to 5-9-102.5.

240 *See, e.g.*, Charlie Eaton, Jonathan Glater, Laura Hamilton, & Dahlie Jimenez, *Creditor Colleges: Canceling Debts that Surged During COVID-19 for Low-income Students* (Mar. 2022), *available at* https://protectborrowers.org/wp-content/uploads/2022/03/Creditor-Colleges.pdf; Consumer Financial Protection Bureau, CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme (Sept. 16, 2014).

241 *See* Nat'l Consumer Law Center, *Student Loan Law Manual* § 5.5.3 (6th ed. 2019).

242 *See, e.g.*, Cal. Civ. Code § 1788.100; Colo. Rev. Stat. § 5-20-202; Me. Stat. tit. 9-A, § 16-109.

243 *See, e.g.*, Cal. Civ. Code § 1788.202, 1788.204-.205; Colo. Rev. Stat. § 5-20-212; Me. Stat. tit. 9-A, § 16-101.

244 *See, e.g.*, Cal. Civ. Code § 1788.208; Colo. Rev. Stat. §§ 5-20-213, 5-20-214; Me. Stat. tit. 9-A, § 16-110.

245 *See, e.g.*, Cal. Civ. Code §§ 1788-1788.33.

246 Cal. Civ. Code § 1788.93; Colo. Rev. Stat. § 23-5-113.5; 110 Ill. Comp. Stat. § 66/15; Me. Stat. tit. 20-A, § 10015; Md. Code Ann., Educ., § 15-118; Minn. Stat. Ann. § 136A.828(6)(g); N.Y. Educ. Law § 640; Ohio Rev. Code Ann. § 3345.027; Wash. Rev. Code § 28B.10.293(2).

247 88 Fed. Reg. 74,568, 74,697 (codified at 34 C.F.R. § 668.14(b)(34)).

248 *Id*. ("we . . . believe that [the Department does] not have the authority to prevent institutions from withholding transcripts in circumstances where . . . the student has not paid for all the institutional charges associated with the credits they have earned.").

249 *Id*. ("we . . . believe that [the Department does] not have the authority to prevent institutions from withholding transcripts in circumstances where the student does not receive Title IV, HEA funds . . . .").

250 88 Fed. Reg. 74,568 (Oct. 31, 2023).