



# Postsecondary Equity & Economics Research Project

A joint initiative of  
George Washington University,  
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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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By Robyn Smith<sup>1</sup> and Libby Webster<sup>2</sup>

*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.<sup>3</sup> 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.<sup>4</sup> Research also indicates a greater concentration of Black and Pell Grant students in online education, suggesting these students may be disproportionately impacted.<sup>5</sup>

In 2021, 58% of undergraduate students enrolled in exclusively online programs attended for-profit schools.<sup>6</sup> These students in particular face risk of fraud, given the well-documented history of deceptive practices in the for-profit education sector.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

As discussed in our companion paper,<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> Through their state authorization laws, each state has enacted a variety of consumer protection provisions applicable to various higher education institutions.<sup>14</sup>

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.”<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

This is exactly what the sole state authorization reciprocity agreement currently in existence, called the Unified State Authorization Reciprocity Agreement requires.<sup>18</sup> This agreement and the SARA Policy Manual, with which member states must also comply,<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

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.”<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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,<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

## 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.<sup>29</sup> 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,<sup>30</sup> 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.<sup>31</sup> Some states, however, apply their higher education consumer protection laws to nonprofit schools as well.<sup>32</sup>

In order to benefit from the more lenient laws, some for-profit schools have converted to non-profit status.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> Other states approve for-profit schools only after they determine the school meets extensive minimum standards<sup>40</sup> through a process that, according to a 2015 study, can take between three months and a year.<sup>41</sup> 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.<sup>42</sup> Schools must often also provide their

tuition and fee schedules, catalogs, enrollment agreements, advertisements, and/or information about recruiting practices.<sup>43</sup> Applications are then subject to investigation and site visits, which were mandatory in 19 states as of 2019.<sup>44</sup>

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;<sup>45</sup> 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.<sup>46</sup>

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).<sup>47</sup> The C-RAC Guidelines are accreditation guidelines narrowly applicable to the development, provision, and evaluation of online learning programs.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> 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 . . . .”<sup>51</sup> Only after it has approved a school may a home state require additional documentation.<sup>52</sup>

**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.<sup>53</sup> Many states rely on such fees as their sole or primary source of funding.<sup>54</sup> 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.<sup>55</sup>

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

SARA requires member schools to pay an annual fee to the non-profit organization that administers SARA.<sup>59</sup> Only home states may charge fees to member schools.<sup>60</sup> 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, home 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.<sup>61</sup> Many SARA member states with bonds or student protection funds, however, exclude out-of-state students from coverage.<sup>62</sup> Some SARA states lack any bond or student protection fund requirements to protect closed school students.<sup>63</sup>

**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.<sup>64</sup> A few states require a permit even for recruitment on campus.<sup>65</sup> Some of these states also prohibit schools from hiring independent contractors for

recruitment.<sup>66</sup> In addition, some states require the posting of a bond for each licensed recruiter<sup>67</sup> and subject schools to liability for their illegal actions, even when they are independent contractors.<sup>68</sup>

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.<sup>69</sup>

SARA requires that home states approve changes of ownership.<sup>70</sup> 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,<sup>71</sup> others lack any reapproval requirement.<sup>72</sup> Second, many states require schools to submit annual reports detailing their financial health<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup>

SARA schools must seek reapproval from their home state annually.<sup>77</sup> While a home state must review the renewal application to confirm a school’s past compliance with SARA policies,<sup>78</sup> schools are not required to report any data regarding their out-of-state student outcomes.<sup>79</sup> 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.”<sup>80</sup> 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.<sup>81</sup> Other states require schools to notify them of any pending accreditation and/or government investigation or adverse action,<sup>82</sup> loss of federal financial aid eligibility,<sup>83</sup> and/or planned closures.<sup>84</sup>

It appears that SARA only requires schools to notify home states about negative changes to accreditation status.<sup>85</sup> 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.<sup>86</sup>

**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.<sup>87</sup> 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;<sup>88</sup> had its approval denied or revoked by another state;<sup>89</sup> was found to have violated the state higher education consumer protection laws;<sup>90</sup> failed to pay closed school refunds<sup>91</sup> or a judicial or administrative fine;<sup>92</sup> or operated a closed school whose students received federal financial aid discharges or payments from the state's student protection fund.<sup>93</sup> 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,<sup>94</sup> were convicted of specified crimes involving "moral turpitude" or fraud,<sup>95</sup> or operated a school that had its approval revoked.<sup>96</sup>

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.<sup>97</sup> 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.<sup>98</sup>

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.<sup>99</sup> States also have discretion to revoke approval for schools that fail to meet C-RAC Guidelines or other SARA policies.<sup>100</sup> 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.<sup>101</sup> 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 . . ."<sup>102</sup>

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.<sup>103</sup> While in this status, agencies typically closely monitor their performance and revoke approval if they do not rectify compliance issues.<sup>104</sup>

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 its 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.<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup>

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.<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup> For schools on provisional status, the home state may subject the school to additional oversight measures, including limits on enrollments.<sup>111</sup> 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.<sup>112</sup> 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).<sup>113</sup> These compacts, which are nonprofit organizations, were each formed by a specific geographic region of states.<sup>114</sup> The member states are represented by individuals, often appointed by each state’s governor, to collaborate on higher education initiatives.<sup>115</sup> 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.<sup>116</sup> 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.<sup>117</sup> 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,<sup>118</sup> while others do not in certain circumstances<sup>119</sup> or in any circumstances.<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> State agencies usually also have the power to mediate an informal resolution between the school and the student.<sup>123</sup> 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.<sup>124</sup>

SARA requires students to first exhaust their school's internal grievance process.<sup>125</sup> After exhaustion, the student may then submit a complaint regarding violations of SARA policies to the school's home state.<sup>126</sup> 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."<sup>127</sup> While the distant state where the student resides may "assist as needed," only the home may resolve the complaint.<sup>128</sup> 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.<sup>129</sup>

## 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.<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup> 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.<sup>133</sup> Utah and Massachusetts, on the other hand, require only that a school have a refund policy.<sup>134</sup>

**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,<sup>135</sup> to five days in the case of Minnesota and Washington,<sup>136</sup> to seven days in the case of Maryland and North Dakota.<sup>137</sup> California provides that students may cancel through the first day of attendance or seven days after enrollment, whichever is later.<sup>138</sup>

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

## 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.<sup>140</sup> While some of these states leave these calculations to the school’s discretion, others define how each outcome measure must be calculated.<sup>141</sup>

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.<sup>142</sup> These are the criteria most often falsified by schools to attract enrollments.<sup>143</sup>

**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 policies governing admission, refunds, cancellation, attendance, leaves of absence, grading systems and student complaints.<sup>144</sup> 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.<sup>145</sup>

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.<sup>146</sup> 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.<sup>147</sup>

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.<sup>148</sup> 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;<sup>149</sup>
- Promising or guaranteeing employment;<sup>150</sup>
- 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;<sup>151</sup>
- Misrepresenting the qualifications of the faculty, instructional equipment, facilities, the availability of for-credit internships, financial aid, etc.;<sup>152</sup>
- Misrepresenting accreditation;<sup>153</sup>
- Misrepresenting the transferability of credits;<sup>154</sup>
- Anonymous advertising or advertising in help-wanted ads;<sup>155</sup>
- Misrepresenting the urgency to enroll or making limited-time offers;<sup>156</sup>
- Making money-back guarantees;<sup>157</sup>
- Recruiting students outside welfare or unemployment offices;<sup>158</sup>
- Paying compensation to students to sign enrollment agreements or recruit others;<sup>159</sup>
- Paying incentive compensation, bonuses, or commissions to recruiters based on enrollment numbers or quotas except in limited circumstances (i.e., when student completes);<sup>160</sup>
- 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;<sup>161</sup>

- 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;<sup>162</sup>
- Requiring up-front payment of all tuition and fees in most circumstances;<sup>163</sup> and
- Changing the manner of program delivery, the program schedule, or the program location except under certain circumstances.<sup>164</sup>

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.<sup>165</sup> 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.<sup>166</sup> Some states also specifically require that schools maintain the data to back up their metric calculations and make them available upon request.<sup>167</sup> 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.”<sup>168</sup> As examples, it cited cases where schools pressured students into enrollment or misled them about key elements of the education.<sup>169</sup>

The Department did not enact this proposal.<sup>170</sup> 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.<sup>171</sup> 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.<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> 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.”<sup>175</sup> 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.<sup>176</sup>

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.<sup>177</sup> 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.<sup>178</sup>

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.<sup>179</sup> 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.<sup>180</sup> 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.<sup>181</sup> In addition, most state UDAP laws do not require proof that a business engaged in deceptive or unfair practices intentionally or knowingly.<sup>182</sup> Decades of state court decisions have further specified the scope of conduct that is considered deceptive or unfair.<sup>183</sup>

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.<sup>184</sup>

## 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.<sup>185</sup>

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.<sup>186</sup> 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.<sup>187</sup> 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.<sup>188</sup> 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.<sup>189</sup> 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,<sup>190</sup> discontinues a program,<sup>191</sup> procures enrollment using misrepresentations,<sup>192</sup> and/or loses accreditation.<sup>193</sup> 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,<sup>194</sup> such as when the school has substantially failed to furnish the services covered by the enrollment agreement.<sup>195</sup>

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.<sup>196</sup>

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.<sup>197</sup>

Finally, as of January 2021, 20 states had established student protections funds that provide for student relief in a number of circumstances.<sup>198</sup> 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.<sup>199</sup>

In lieu of student protection funds, 25 states require schools to post bonds to provide relief to students impacted by school closures.<sup>200</sup> Bonds, however, differ from student protection funds in ways that limit relief to students.<sup>201</sup> 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.<sup>202</sup> Some states cap bonds at a maximum amount as little as \$10,000 or \$20,000.<sup>203</sup> 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.<sup>204</sup>

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

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.<sup>206</sup>

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.<sup>207</sup> 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 . . ." <sup>208</sup> The Department reasoned that closed school discharges, in addition to borrower defense discharges, are "the biggest sources of taxpayer liabilities generated by institutional actions."<sup>209</sup> 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.<sup>210</sup> 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.<sup>211</sup>

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.<sup>212</sup> Other states explicitly exempt SARA schools from their higher education specific consumer protection laws, including the closed school provisions.<sup>213</sup> 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.<sup>214</sup> 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.<sup>215</sup>

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.<sup>216</sup> 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.<sup>217</sup> Utah requires that schools maintain transcripts for 60 years, and academic credentials and enrollment agreements for 10 years.<sup>218</sup>

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.<sup>219</sup> 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.<sup>220</sup>

SARA only requires that states have “adequate disaster recovery plans . . . with respect to the protection of student records.”<sup>221</sup> 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 . . . ,”<sup>222</sup> 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.<sup>223</sup>

## 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;<sup>224</sup>
- 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;<sup>225</sup>
- identify a custodian of student records paid for by the school or transfer student records to the state agency;<sup>226</sup>
- provide a teach-out plan and/or teach-out agreement;<sup>227</sup>
- report or arrange for student refunds.<sup>228</sup>

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.<sup>229</sup>

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.<sup>230</sup> 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.<sup>231</sup> 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.<sup>232</sup> The range of state lending laws are necessary to protect borrowers from predatory, abusive, deceptive, and unfair lending practices.<sup>233</sup>

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<sup>234</sup> and often prohibit deceptive, abusive and unfair lending practices.<sup>235</sup> 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.<sup>236</sup> Schools that originate loans are also subject to retail installment sales laws,<sup>237</sup> fair lending laws, small loan laws, state usury laws, laws governing the assignment or collection of wages,<sup>238</sup> and the Uniform Consumer Credit Code.<sup>239</sup> 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<sup>240</sup> 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.<sup>241</sup> Schools are also subject to laws applicable only to private student loan collectors or loan holders.<sup>242</sup> 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.<sup>243</sup> Some of these laws also require licensure and/or provide extensive remedies to the borrower when the law is violated.<sup>244</sup> In some states, schools are also subject to fair debt collection laws which typically only apply to businesses, including creditors, that collect debt.<sup>245</sup>

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.<sup>246</sup> 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.<sup>247</sup> This regulation allows schools to continue to withhold transcripts if the student has not paid all institutional charges for the applicable payment period.<sup>248</sup> It also does not protect students who do not receive federal financial aid.<sup>249</sup>

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."<sup>250</sup> 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*, Ed-WorkingPaper 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](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](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](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 § 11(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 Access & 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.defend-students.org/news/body/Student\\_Defense\\_3LeggedStool.pdf](https://www.defend-students.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](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 § 11(l), *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; § 11(l), *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 and 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](http://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](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(1); 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. §§ 32–300(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(1).
- 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](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).