

Admin.

November 13, 2020

First Supplement to Memorandum 2020-60

**Interstate Reciprocity for Higher Education Distance Learning**

The Commission<sup>1</sup> has received a number of letters commenting on the possible study of Interstate Reciprocity for Higher Education Distance Learning that is discussed in Memorandum 2020-60. They are attached in an Exhibit as follows:

	<i>Exhibit p.</i>
• Michelle A. Starkey, EdD, Mount Saint Mary’s University, (10/28/20) .....	1
• Glenn M. Pfeiffer, Ph.D., Chapman University (11/9/20) .....	3
• Beverly Wade, University of the Pacific (11/9/20) .....	5
• Larry Nuti, Saint Mary’s College of California (11/11/20) .....	7
• David M. Smith, Ph.D., Pepperdine (11/12/20).....	9
• Debbie Cochrane & Angela Perry, The Institute for College Access and Success (11/12/20) .....	11

The first five letters were forwarded to the Commission by the Association of Independent California Colleges and Universities (“AICCU”). They were written by member institutions to explain their experiences and challenges dealing with interstate reciprocity.

The last letter is from The Institute for College Access & Success (TICAS). TICAS reached out to the staff to share their perspective on the proposed study.

Respectfully submitted,

Brian Hebert  
Executive Director

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.



October 28, 2020

Dear California Law Revision Commission,

I am writing this letter to share my experiences with distance education and interstate reciprocity. California not belonging to a distance education reciprocity agreement has forced my institution to research each state where we have students residing and taking courses from us. Those students may be fully online students or students who are located in another state temporarily (e.g. for an internship, fellowship, or study away experience). Once the global pandemic hit in March, this pretty much became all of our students.

COVID-19 has really highlighted the shortcomings of not belonging to SARA. With Los Angeles County not allowed to offer in-person classes for the majority of our students, we have had to quickly identify where our students are located (using their home addresses, and then following up to determine if they are at home or staying locally), researching which states require authorization for distance education, researching whether those states that do require authorization during normal times have any state authorization exceptions for COVID, and then applying for authorization for the states that do not have any exceptions. As you can imagine this process is very time consuming. Furthermore, since most other states are allowing in-person classes, many states only had COVID exceptions for the end of the Spring 2020 semester (i.e. through June 2020). Exasperating the issue is the fact that most of the state agencies we reach out to ask about exceptions and process for becoming authorized, never respond to our emails.

At Mount Saint Mary's University (MSMU), Los Angeles, we are lucky to be able to contract with Higher Education Regulatory (HER) Consulting to help us navigate the complex issues of state authorization. In March, when all institutions moved to remote learning, HER immediately began contacting the states which regulate distance education to determine what exceptions they may have in place. HER determined that nine states had no provisions in place for the COVID disruption, and three states never replied to emails, leaving us confused as to what their protocol would be. In late August, the consultant tried to receive updates on the COVID exceptions, but most regulators did not respond to requests for updated information. The consult costs MSMU \$18,000 annually.

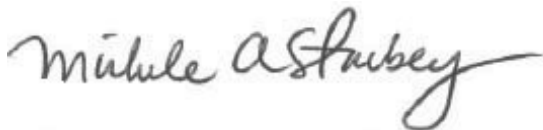
One specific example which highlights the process non-SARA California institutions must go through is Maryland. In August we learned that we had three students residing in Maryland and were taking their Fall 2020 courses remotely. We knew from previous work that Maryland requires institutions to apply for authorization when teaching distance education to students in Maryland. We reached out to the Maryland Higher Education Commission to see if they would

allow an exception, since the only reason the three students were in Maryland was because of COVID. We also knew that they had provided exceptions in Spring 2020. On September 21, 2020 we found out that Maryland does not have any exceptions and that we must apply for registration with Maryland. The annual cost would be a \$500 registration fee, along with a surety bond in the amount of \$2,900 – all for temporary solutions for 3 students. In addition, we had to complete an application, including a narrative regarding how MSMU practices align with the Guidelines for the Evaluation of Distance Education developed by the Council of Regional Accrediting Commissions (C-RAC). The process of gathering the surety bond, having a check for \$500 printed, and completing the C-RAC guidelines took about a month for 8 staff members to complete. We just submitted our application this week and are now awaiting a response from Maryland.

In normal times, we have had to turn potential students away when they reside in states such as Oregon, New York, and the District of Columbia since those states require exorbitant annual fees (e.g. \$7,000-\$14,000 per state). Furthermore, we have had to turn down existing students' requests to take an online course while doing a fellowship in DC or while doing an exchange in New York with one of our sister schools. This puts a barrier on our students' efforts to graduate on time.

I strongly urge the Commission to look at a path forward regarding distance education reciprocity with the other states. This is essential in order to support California students and California institutions. I fully support the Commission undertaking this sooner rather than later due to the ongoing disruption created by COVID-19.

Sincerely,

A handwritten signature in black ink that reads "Michele A Starkey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michele A Starkey, EdD  
Associate Provost &  
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**Office of the Provost**

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Glenn M. Pfeiffer, Ph.D.  
Provost  
pfeiffer@chapman.edu

November 9, 2020

Dear California Law Revision Commission,

I am writing to express an urgent need for legislative action authorizing California colleges and universities to enter into interstate reciprocity agreements that permit the delivery of distance learning programs in other states. We encourage the California Law Revision Commission to study potential legislative solutions to this issue that would place California higher education institutions on equal footing with colleges and universities across the country.

Currently, California is the only state in the nation that does not have a program that permits interstate reciprocity and, as a result, California colleges and universities must receive authorization from each state in which they wish to operate distance learning programs.

This places California institutions such as Chapman University at a significant competitive disadvantage and requires us to expend significant time and resources in seeking distance learning authorization in each state where the University intends to offer distance learning. This process is extremely complicated, costly, and time consuming because each state has unique authorization requirements with varying fees and costs, which increases uncertainty, delay, and expenses associated with the authorization process.

Every state except California participates in the National Council for State Authorization Reciprocity Agreement (SARA), which is a national framework that establishes common standards for online distance education for participating states and territories. California has, to date, declined to participate in SARA due to concerns that SARA standards do not sufficiently protect students enrolled in distance education. Without SARA as an option, California universities need an alternative pathway that will facilitate reciprocity agreements and better position state institutions to provide distance learning during a critical time of need for this service.

This issue has taken on a higher level of urgency this year due to the severe budgetary and programmatic impacts caused by COVID-19. As you are aware, California universities have had to restrict or shut down in-person academic programs due to the health risks and governmental restrictions caused by the pandemic. While Chapman University has, when permitted, offered in-person options consistent with local and state COVID-19 guidelines, on-campus instruction is still severely limited. Most students have stayed home, and with

many students located outside California, we have had to bring our academic programs to them, triggering the need for out-of-state authorizations. If the University enjoyed reciprocity with other states and was pre-authorized to provide distance learning, it would eliminate the significant roadblocks and expenses caused by the decentralized system currently in place.

California needs a framework that provides state universities the same opportunity as out-of-state schools to offer distance learning alternatives to students. With the COVID-19 pandemic severely impacting university budgets and in-person delivery opportunities, the time for a change is now. I urge the Commission to consider this issue and explore legislative options for interstate reciprocity in distance education.

I appreciate your time and effort in addressing this pressing issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Pfeiffer', written in a cursive style.

Glenn M. Pfeiffer, Ph.D.

Provost and Executive Vice President for Academic Affairs

November 9, 2020

Brian Hebert, Executive Director  
California Law Revision Commission  
c/o UC Davis School of Law  
400 Mrak Hall Drive  
Davis, California 95616

Subject: California Law Revision Commission – Distance Education Reciprocity

Dear Executive Director Hebert:

For institutions located in California, the effort to be in compliance with state authorization requirements can be labor and financially intensive. In addition to identifying distance students taking credit bearing courses, institutions must determine what their activities are in various states. A few of the potentially regulated activities include whether or not they are recruiting students and where; for distance students, are proctored exams being administered and by whom; do they have faculty and/or staff in states conducting official postsecondary education and/or services, as well as where they have advertisements about the educational opportunities they provide. The application process with the higher education agency responsible for state authorization can be as simple as a two page application that may take a few weeks to process and approve or can be as lengthy as a full-scale institutional review and can take eighteen months to process and approve. Further, application fees can range from no cost to \$17,000 with additional fees being assessed when an institution applies for authorization.

To help streamline regulations State Authorization Reciprocity Agreement (SARA) was implemented. SARA establishes a common definition of what institutional activities constitutes physical presence and will fall under regulations in addition to managing the cost associated with being in compliance. SARA also places ceilings on how robust an institutions activities can be in SARA-member states. SARA has an annual reporting mandate based on the most recent IPEDS data that is submitted to the Department of Education. Once an institution has either established physical presence or reached the ceilings of their SARA membership, then they will need to seek authorization through the established process that the state has outlined.

California not being part of a reciprocity agreement, such as SARA, puts its institutions at a disadvantage. First, it makes it harder for institutions to be in compliance with state and federal regulations, jeopardizing Title IV funding if an institution is out of compliance with state regulation, one of the key components for eligibility. Second, it puts California institutions at a competitive disadvantage. Specifically, non-profit postsecondary private institutions are the fastest growing segment of distance education.

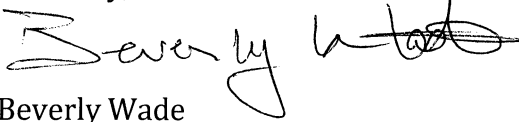
To approach compliance on a state-by-state basis compromises how extensively California institutional programs can grow as well as how rigorously our students can engage in experiences that not only benefit them but increase California educational brand and reach. Therefore, I encourage the Commission to move forward on interstate reciprocity. This pursuit will serve as a

welcome response as California educational institutions continue to grapple with the ongoing disruptions created by COVID-19.

In conclusion, I thank AICCU for your work ensuring that WASC-accredit private, nonprofit colleges and universities are not subject to overly burdensome oversight. Reciprocity implementation in California will allow institutions to enhance the student experience by allowing students to have internships in states that are currently inaccessible to them. This accessibility will ensure that California can attract and retain more students by increasing our branding and reach.

Thank you for the consideration.

Sincerely,

  
Beverly Wade



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**Office of the General Counsel**

November 11, 2020

Brian Hebert, Executive Director  
California Law Revision Commission  
c/o UC Davis School of Law  
400 Mrak Hall Drive  
Davis, California 95616

Re: Distance education programs and California participation in SARA

Dear Executive Director Hebert:

I am writing today on behalf of Saint Mary's College of California, a private university located in the Town of Moraga in the San Francisco East Bay. Saint Mary's requests that the Commission review potential legislation related to distance education programs with the goal of removing barriers to participation in the National Council's State Authorization Reciprocity Agreement ("SARA").

As the Commission is well aware, the nation's response to the emergence of the COVID-19 pandemic resulted in a move by the higher education community to online and distance learning in order to reduce campus populations and allow students to shelter at home with their families. By and large, these efforts have successfully allowed enrolled students to maintain their academic progress despite the extreme strain placed on businesses and families resulting from the pandemic. These efforts were supported by a number of temporary relief measures from distance learning and accreditation regulations at both the state and federal level. However, continued reliance on unpredictable temporary relief measures leaves the College's students vulnerable to an abrupt interruption in their studies should such temporary relief expire. Additionally, and notwithstanding the pandemic, California's decision not to participate in SARA is hampering California institutions in their ability to expand their programs by offering programs in an online format to out of state students. Though there are means of entry into the education markets of our sister states, the barriers to such alternate means of entry are quite high.

Presently, California colleges and universities are faced with a daunting challenge. With students still sheltering at home, many of whom live out of state, and with the pandemic still ongoing, colleges and universities will have to engage in expensive and resource consuming activities related to state by state distance education registration, unless the Commission is able to find a path to participation in SARA.

Based on Saint Mary's own investigation, it appears that the current cost of applying for just a single program in all 50 states could be in excess of \$70,000. In addition, many states have a per-program cost

Executive Director Hebert  
California Law Revision Commission  
November 11, 2020  
Page 2 of 2

and annual or biannual reauthorization. Saint Mary's is estimating that it could cost an additional \$100,000 in staff time and benefits to write the separate applications for each state, and this is based on the assumption that the process for applying for a single degree program is the same for applying for multiple degree programs. Saint Mary's has over 300 students who are from other states who are not currently residing in California due to the pandemic. The College is still in the process of investigating these costs and the precise application procedures, but it is obvious that participation in SARA would be beneficial to domestic institutions as well as the students they serve. Certainly, the College's goal is to continue to serve all its students regardless of their present location. SARA is the cleanest, clearest and most efficient means of achieving this goal.

Saint Mary's understands that California has declined to participate in SARA due to its concerns about maintaining control over consumer protection laws for the benefit of its citizens that choose to engage in distance learning with providers from other states. However, this concern should be balanced with California's own colleges and universities being able to best serve the students who have chosen to come to California to study, but who may be precluded from continuing such study if California colleges and universities are unable to rapidly and efficiently obtain state authorization in the states from which these students hail.

Saint Mary's urges the Commission to consider this request to evaluate the legislative landscape pertaining to distance education in order to find a path for California's participation in SARA- for the good of the colleges and universities of this state, the communities in which they conduct business and the students who choose California.

Respectfully submitted,



Larry Muti  
General Counsel  
Saint Mary's College of California

Cc: Margaret Kasimatis, Executive Vice President



November 12, 2020

Brian Hebert, Executive Director  
California Law Revision Commission  
c/o Association of Independent California Colleges and Universities (AICCU)  
1121 L Street, Suite 802  
Sacramento, California 95814

Subject: Support for AICCU's Request for Study of Interstate Distance Education and Potential State Legislative Solutions

Dear Executive Director Hebert:

On behalf of Pepperdine University, I respectfully submit this letter of support of AICCU's request to the California Law Revision Commission (CLRC) to consider potential legislative solutions for distance education programs offered by California colleges and universities in other states that also maintain the state's strong consumer protection laws for students. As you know, all states except California participate in the National Council for State Authorization Reciprocity Agreement (NC-SARA), which creates significant challenges for all institutions of higher education in California, which we detail below as they relate to Pepperdine. In sum, we agree with AICCU's conclusion that a legislative solution is needed to help preserve critical resources for the academic programs and student services that California institutions, both public and private nonprofit, offer to students.

California's lack of participation in state reciprocity agreements for distance education is costly for Pepperdine University. We have a dedicated team of 1.5 FTEs, which is primarily focused on state authorization issues, along with a full-time external consultant. We are required to navigate the authorization process in each state (along with Puerto Rico, Guam, and the District of Columbia), staying up-to-date with state laws and regulations that can – and do – change year-to-year. If we participated in a reciprocity agreement, our staff time dedicated to state authorization would decrease by more than half, freeing up resources for other university priorities, such as student support.

State authorization fees are costly, along with bond requirements. For example, initial application and annual renewal fees for the state of New York are \$17,000. The clear financial benefits of joining NC-SARA would obligate the University to pay NC-SARA annual fees instead of state authorization fees, a tremendous savings for the University. The cost of compliance is also not trivial. One state (Alabama) requires us to become authorized with two separate agencies. Another state (North Carolina) has required site visits for initial state authorization (although these have been suspended during COVID). The District of Columbia requires in-person representation at state authorization hearings, which could involve the review of minor program amendments. DC also requires that all changes in faculty be submitted for

approval to their regulatory agency. The total of all of these costs (which do not include staff costs) is greater than \$100,000 per year for Pepperdine.

There is also an impact on students and prospective students. Participation in NC-SARA would eliminate any potential disruption to students' educational pursuits should they decide to move from one state to another. Additionally, there will no longer be a need to deny students' admittance to Pepperdine based on the constraints of our authorization status state-by-state.

It is also rare to find that our standards and policies are not sufficient for state authorization outside of California. Generally, all that is required for us is to add some state-specific disclosure requirements to our academic catalogs. Thus, the review process, though costly, does not materially impact our policies and procedures, but it does add a lot of administrative burden.

For all of these reasons, we would urge policymakers to forge a pathway for California educational institutions to be able to participate in NC-SARA. We are convinced that the resource savings would lead to better educational outcomes for all of our students, whether in-state or out-of-state.

Sincerely,



David M. Smith, PhD  
Associate Provost for Online Learning

Brian Hebert, Executive Director  
California Law Revision Commission  
c/o UC Davis School of Law  
400 Mrak Hall Drive  
Davis, California 95616

November 12, 2020

Subject: Interstate Distance Education and Potential State Solutions

Dear Executive Director Hebert:

The Institute for College Access & Success (TICAS) is a trusted source of research, design, and advocacy for student-centered public policies that promote affordability, accountability, and equity in higher education. We have been working on the issue of distance education in California and with respect to federal policy for several years. We write to offer our expertise and assistance as needed should you undertake to explore how California can best facilitate interstate oversight of distance education without compromising consumer protection authority or enforcement.

Although online education has become a central feature of American higher education, especially now, the challenges in assessing academic rigor and student outcomes can be even greater in online programs than in traditional programs. As the request from the Association of Independent California Colleges and Universities (AICCU) indicated, distance education is a complex issue, and one not limited to the pandemic. We share AICCU's desire to prevent unnecessary regulatory burdens for quality institutions. However, although online education has promise, it also has perils. Fueled by the availability of federal financial aid, the rapid growth of online education illustrates the need for policymakers to oversee these programs carefully.

Reciprocity agreements can be important tools in streamlining oversight and promoting quality educational opportunity, but only so far as the specific terms of the agreement are sufficiently robust. In the case of the National Council of State Authorization Reciprocity Agreements (NC-SARA), its terms represent a net increase in the regulation of distance education in some states, but they also undermine safeguards and consumer protections in others, including California. While we have offered many recommendations for how NC-SARA could be strengthened to facilitate the provision of quality online educational opportunities across state lines while supporting robust oversight structures to ensure consumer protection,<sup>1</sup> joining the agreement as it

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<sup>1</sup> See "Going the Distance Consumer Protection for Students Who Attend College Online" (2018). The Institute for College Access and Success (TICAS). Available at: [https://ticas.org/files/pub\\_files/going\\_the\\_distance.pdf](https://ticas.org/files/pub_files/going_the_distance.pdf).  
"Oversight of Out-of-state Online Colleges: California's Students Need More Protection, Not Less" (2018). TICAS. Available at: [https://ticas.org/wp-content/uploads/legacy-files/pub\\_files/nc-sara\\_ca.pdf](https://ticas.org/wp-content/uploads/legacy-files/pub_files/nc-sara_ca.pdf).

stands today would lower protections for Californians and undermine the state’s authority and autonomy to protect its residents at a vulnerable time.<sup>2</sup>

As the October Commission staff memorandum correctly summarized, NC-SARA “sets a regulatory ceiling, above which member states cannot go. In other words, member states appear to cede their regulatory control to an external policy-making body.”<sup>3</sup> As the subsequent November Commission staff memorandum noted, it is not clear that objections to joining NC-SARA on the basis of ceding consumer protection standards can be resolved.

The lack of sufficiently high consumer protection standards is one reason why California has thus far declined to join NC-SARA. NC-SARA provides member states with next to no discretion in determining which schools may join. Further, with very few exceptions, participating schools can enroll students nationally, without limit and without concern for other states’ views.<sup>4</sup> In contrast, California law allows the state to prohibit schools, irrespective of where they are located, from enrolling Californians if the school is believed to be a risk.<sup>5</sup> Another example of how California’s standards differ from NC-SARA’s is related to student relief, standards that California has strengthened given its unique history with for-profit college abuses. California requires that out-of-state for-profit colleges pay into its Student Tuition Recovery Fund for the Californians they enroll,<sup>6</sup> but NC-SARA includes no comparable protection. As a result, Californians have greater access to financial relief if their college or even their program closes than do students from other states. Were the state to join NC-SARA, Californians would lose these protections, as the state’s more protective higher education rules would be superseded by NC-SARA’s comparatively lax ones.

Despite some common misunderstandings, the reality is that the terms of the NC-SARA agreement do not permit states to strengthen standards that apply to all schools operating in their states. For example, when Maryland lawmakers sought to close the well-known “90/10 loophole” in federal law for colleges operating in Maryland – a law (Senate Bill 294) later passed unanimously by the state legislature – NC-SARA expressed “concerns” and signaled that enforcing the law against NC-SARA participating schools based in other states could be grounds

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<sup>2</sup> For more on how the COVID-19 recession, on the heels of federal deregulation by the Trump Administration, may lead to surges in for-profit college enrollment and put students at greater risk, see: “As the coronavirus speeds colleges’ move online, what happens to oversight?” (April 14, 2020). The Hechinger Report. Available at: <https://hechingerreport.org/opinion-as-coronavirus-speeds-colleges-move-online-what-happens-to-oversight/>. “The Risk to Students in the Wake of COVID-19 and Red Flags that Authorizers Should Watch For” (July 7, 2020). TICAS and Student Defense. Available at: <https://ticas.org/wp-content/uploads/2020/07/Letter-to-States-on-For-Profits.pdf>.

<sup>3</sup> “New Topics and Priorities: Suggestion Submitted by the Association of Independent California Colleges and Universities” (Oct. 9, 2020). California Law Revision Commission (CLRC). Available at: <http://www.clrc.ca.gov/pub/2020/MM20-52s1.pdf>.

<sup>4</sup> NC-SARA Manual (2020), at 19. National Council for State Authorization Reciprocity Agreements.

<sup>5</sup> Assembly Bill 1344 (2019). California State Legislature. Available at: [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1344](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1344).

<sup>6</sup> California Department of Consumer Affairs. “Order of Adoption.” Available at: [https://www.bppe.ca.gov/forms\\_pubs/order\\_adoption.pdf](https://www.bppe.ca.gov/forms_pubs/order_adoption.pdf).

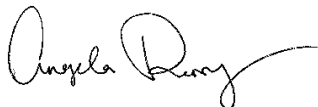
for Maryland's NC-SARA membership to be revoked.<sup>7</sup> In response, the Maryland Higher Education Commission sent a letter to NC-SARA, reassuring the organization that "the Commission has no intention of enforcing the prohibition in Senate Bill 294 against NC-SARA participating institutions." (See letter attached.) Indeed, while the bill's passage has been cited by proponents of California joining the agreement as an example of states' continued ability to regulate higher education institutions even within NC-SARA, the example is instead a cautionary tale that underscores the limits placed on states by NC-SARA membership and the resulting political forces that contribute to a regulatory chilling effect at the state level.

For these reasons, should the Commission move forward with the request to examine this issue, we support the proposal in the October staff memorandum to study the issue of interstate reciprocity broadly, rather than limit your consideration to NC-SARA.<sup>8</sup> California is well positioned to lead the charge for stronger standards for online colleges, both within California and in partnership with other states. We would be happy to offer our assistance and look forward to the opportunity to work with the Commission further as you consider this issue.

Sincerely,



Debbie Cochrane  
Executive Vice President  
**The Institute for College Access and Success**



Angela Perry  
Senior Policy Analyst  
**The Institute for College Access and Success**

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<sup>7</sup> "A New State Bill Could Challenge Key Interstate Distance Learning Pact" (March 4, 2020). Education Dive. Available at: <https://www.educationdive.com/news/a-new-state-bill-could-challenge-key-interstate-distance-learning-pact/573513/>.

<sup>8</sup> "Interstate Reciprocity for Higher Education Distance Learning" (November 5, 2020). CLRC. Available at: <http://www.clrc.ca.gov/pub/2020/MM20-60.pdf>.



Larry Hogan  
Governor

Boyd K. Rutherford  
Lt. Governor

Ian D. MacFarlane  
Chair

James D. Fielder, Jr., Ph. D.  
Secretary

April 14, 2020

Wanda Barker  
Director, Education Technology and Multistate Cooperative Programs  
Southern Regional Education Board  
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Jeannie Yockey-Fine, J.D.  
Director for Regulatory Relations and Policy Support  
NC-SARA  
3005 Center Green Drive, Suite 130  
Boulder, CO 80301  
jyockey-fine@nc-sara.org

Dear Ms. Barker and Ms. Yockey-Fine:

During its 2020 legislative session, the Maryland General Assembly passed Senate Bill 294, the Veterans' Education Protection Act. Senate Bill 294 prohibits certain for-profit institutions of higher education from enrolling students if, beginning in fiscal year 2023, the institution's revenue sources from a defined set of federal funds reach or exceed 90 percent of annual revenues for two consecutive years.

Under the federal Higher Education Act of 1965, institutions of postsecondary education must attract at least 10 percent of their revenue from a private source (the "90/10 Rule"). The 90/10 Rule was established as a market viability test to protect taxpayers from artificially propping up failing institutions incapable of attracting a threshold of private revenue. The 90/10 Rule excludes funds of the United States Department of Veterans Affairs and the United States Department of Defense in the cap on federal funds that institutions of postsecondary education otherwise collect. Senate Bill 294 is designed to close this loophole by defining "federal funds" to include these sources of funds.

As drafted, Senate Bill 294 applies to "a for-profit institution of higher education that enrolls Maryland residents in a fully online distance education program in the State," among other for-profit institutions. Concerns have been raised about the bill's application to this subset of institutions based on Maryland's participation in the National Council for State Authorization Reciprocity Agreements (NC-SARA). NC-SARA is an agreement among member states that establishes comparable national standards for interstate offering of postsecondary distance education. Generally, under the reciprocity standards of NC-SARA, participating postsecondary institutions are not required to gain approval to offer interstate distance education in member states. The NC-SARA manual expressly provides that "[t]he 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 (out-of-state) Institution that participates in SARA.” See 2.5(k) of the NC-SARA Manual: [https://www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA\\_Manual\\_20.1\\_Final\\_2.6.20.pdf](https://www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA_Manual_20.1_Final_2.6.20.pdf).

Maryland’s participation in NC-SARA and the State’s agreements thereunder, in addition to the lack of any legislative history suggesting Senate Bill 294 was intended to impact Maryland’s participation in NC-SARA, make it clear that the Commission is not required to apply Senate Bill 294 to NC-SARA schools that enroll Maryland students. Indeed, the Fiscal and Policy Note’s discussion of institutions that will be affected by Senate Bill 294 omits any mention of NC-SARA participating institutions or even any discussion of institutions offering interstate distance education that are not located in Maryland. Accordingly, the Commission has no intention of enforcing the prohibition in Senate Bill 294 against NC-SARA participating institutions.

If you have any further questions regarding this matter, please contact Dr. Emily A. A. Dow, Assistant Secretary for Academic Affairs ([emily.dow@maryland.gov](mailto:emily.dow@maryland.gov)). Thank you for your ongoing partnership.

Thank you,



Dr. James D. Fielder  
Secretary

CC: Christopher J. Madaio, Assistant Attorney General, Consumer Protection Division, Office of the Attorney General