

# Going the Distance

Consumer Protection for  
Students Who Attend College Online



the institute for  
**college**  
access & success

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# Out-of-State Distance Education Enrollment

**Fall 2016 Total Enrollment**  
20.5 Million

**No Distance Education**  
14.2 Million

**Some Distance Education**  
3.4 Million

**Exclusively Distance Education**  
3.0 Million

**Enrolled in Foreign Location**  
.1 Million

**Enrolled In-State**  
1.7 Million

**Enrolled Out-of-State**  
1.3 Million

**For-Profit**  
577K

**Nonprofit**  
461K

**Public**  
214K

**Institutions with Largest Out-of-State Distance Education Enrollments**

**University of Phoenix**  
(122,700)

**Grand Canyon University**  
(46,900)

**Walden University**  
(46,700)

**Western Governor's University**  
(78,500)

**Southern New Hampshire University**  
(56,000)

**Liberty University**  
(47,800)

**Arizona State University**  
(18,900)

**Pennsylvania State University**  
(7,500)

**University of Maryland – University College**  
(6,900)

Notes: Calculations by TICAS using data from the Integrated Postsecondary Education Data System (IPEDS) Fall 2016 Enrollment by Distance Education Status and Level of Student file and data from NC-SARA 2016-2017 Enrollments. Calculations of in- and out-of-state enrollment include students enrolled domestically, with students located in different state from the institution or an unknown state considered out-of-state. Other students of unknown location are grouped with foreign locations. Subtotals may not sum to totals due to rounding.

# Going the Distance

## Consumer Protection for Students Who Attend College Online

Online education has become a central feature of American higher education, with three in 10 students enrolled partially or exclusively in distance education. Some policymakers hope that online education can help many more students earn college degrees through its geographic reach, flexible scheduling, and potential to scale. Yet while online education has promise, it also has perils. The challenges in assessing academic rigor and student outcomes can be even greater than in traditional programs, and there is a long history of overpriced and poor-quality programs leaving students with debts they cannot afford to repay. Fueled by the availability of federal financial aid, the rapid growth of online education illustrates the need for policymakers to oversee these programs carefully.

The popularity of online education poses distinct new challenges to states, which are tasked with protecting students against abusive and unsuccessful colleges. States have inherent authority to regulate colleges and universities, and Congress has required colleges to be authorized by their state to receive federal financial aid funding under the Higher Education Act of 1965. While states can and do regulate commerce conducted by companies headquartered out-of-state, higher education oversight has traditionally been focused on in-state schools, not those offering educational programs across state lines. However, with the growth of online education, additional vigilance is required to safeguard states' ability to protect their residents who are enrolled in distance education from colleges in other states.

Rules released by the U.S. Department of Education (the Department) in 2016 recognized states' desire to develop agreements for "reciprocal" regulation of online distance education, wherein states mutually recognize each other's authorization process for higher education institutions. The goal of such an agreement is to reduce the amount of review and oversight the state in which the student resides (hereafter the "Student State") must conduct, by requiring the state in which the institution is physically located (hereafter the "Institution State") to authorize only distance education institutions that meet minimum agreed-upon standards. The National Council for State Authorization Reciprocity Agreements (NC-SARA) is an example of such a reciprocity agreement. It was established in 2013 in order to provide much-needed structure and consistency to the growing online postsecondary education market, at a time when states had barely begun to grapple with approvals and oversight of institutions outside of their borders. Yet, while the impetus for the agreement was sound, its specific terms undermine states' authority to protect their own residents.

The 2016 federal regulations have been put on hold, providing states a new opportunity to improve the way that the existing system works. Moving forward, policymakers need to do more to guard against a "race to the bottom" in consumer protections and protect states' authority to regulate institutions as they deem necessary.

Any distance education regulatory system should possess the following eight essential characteristics:

1. Facilitate coordination between states to reduce unnecessary administrative burden where appropriate, while simultaneously improving the oversight and quality of online education.

2. Enable students to enroll at high-quality educational institutions and create safeguards and requirements beyond accreditation.
3. Require institutions to be financially secure, including mandatory tuition recovery funds and prohibitions on conflicts of interest.
4. Prohibit institutions from enrolling students in programs that will not qualify for state professional licensing requirements where they reside.
5. Create a complaint process that focuses on students, encourages collaboration among states, and contains transparency requirements to assist in identifying problematic institutional behavior patterns.
6. Allow states to retain the authority to enforce their own state laws on higher education-specific consumer protections.
7. Permit states to limit problematic institutions from enrolling residents, and to enforce state policy limitations on enrollment.
8. Give states authority over the creation and modification of distance education regulations.

Under each category, the paper provides a discussion of the characteristics, as well as an analysis of the two most prominent attempts to regulate online distance education—the 2016 Federal Rule and NC-SARA—and delineates the strengths and deficiencies of these systems. It concludes with recommendations for ways states can build a better state authorization reciprocity agreement and opportunities for the Department to further strengthen the rules relating to state authorization and distance education.

## How NC-SARA Works

NC-SARA is the most prominent example of a state authorization reciprocity agreement. Rather than apply to each state in which they enroll students for authorization, NC-SARA requires institutions to submit an application for membership in the Institution State (NC-SARA refers to this as the “Home State”). Upon approval, the institution is authorized to offer online educational programs in any other NC-SARA member state, and is not required to apply for additional authorization from the Student State (NC-SARA refers to this as the “Distant State”).<sup>1</sup> Unfortunately, NC-SARA also requires states to grant full institutional oversight and regulatory reciprocity as part of the agreement, waiving their authority to enforce state laws regarding higher education and oversight of out-of-state NC-SARA institutions. Additionally, in an effort to support the growth of distance education no matter the type of institution, NC-SARA makes no distinction between public, nonprofit, and for-profit institutions,<sup>2</sup> despite the fact that many states regulate the sectors differently.<sup>3</sup>

### **1** Facilitate coordination between states to reduce unnecessary administrative burden where appropriate, while simultaneously improving the oversight and quality of online education.

Each state has its own set of laws governing higher education that establish the criteria and processes for institutions seeking approval to operate and enroll students. Complying with the laws of multiple states can present a challenge for colleges, especially small or new institutions that may have only one or two students enrolled in a state, but which need to comply with all of the state’s application and reporting requirements, fees, and consumer protections. Distance education presents a new challenge for states as well, as it increases the number of institutions state agencies must review, approve, and oversee when they seek to offer out-of-state educational programs. This challenge represents an opportunity to streamline authorization for both states and institutions, while also improving the oversight of distance education, if states agree to join an interstate reciprocity agreement. Such an agreement can promote cooperation between states to support the delivery of high-quality education without incentivizing a race to the bottom to undermine standards of education, accountability, and consumer protection.

There is no requirement that states join a reciprocity agreement. States have the authority to require all institutions to apply directly

for authorization or to require no authorization of out-of-state institutions at all. However, the 2016 regulations specifically allowed reciprocity agreements to satisfy federal requirements, meaning states could utilize a powerful mechanism to safeguard students and taxpayers while also reducing their workload.

States have the power to design a reciprocity agreement that provides an alternative to the traditional authorization requirements, creating a streamlined approval and oversight process in the Institution State for schools that are able to meet a set of minimum requirements. By creating strong institutional requirements, Student States can be confident that out-of-state institutions are offering quality programs, even without requiring the school to undergo the in-state authorization process. If institutions are unable to meet the agreement’s requirements, they will still be able to apply for traditional state authorization outside of the more streamlined process available to those that do meet requirements. This system would allow states and institutions to reduce their approval and oversight workload, but would do so without subjecting students and taxpayers to the risk of problematic institutions obtaining reciprocal approval.

## 1. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Needs Improvement	2016 Federal Rule	Good
<p>NC-SARA simplifies compliance for institutions by funneling approval and oversight through the state where they are physically located, which in turn reduces the number of out-of-state institutions seeking to enroll students that states must oversee.<sup>4</sup> However, in an attempt to make it easier for institutions to obtain state authorization, NC-SARA’s one-size-fits-all system oversimplifies the process, making it too easy for institutions to get approved and reducing states’ authority over institutions outside their borders.</p>		<p>The 2016 regulations would have required institutions offering distance education to be authorized by each state in which the institution enrolls students, if authorization is required by the state. The regulations did not create a reciprocity agreement directly but allowed institutions to receive state authorization by participation in a state authorization reciprocity agreement and gave states the freedom to determine the terms of those agreements.</p>	

### An Example of Differences in State Oversight

Massachusetts is an example of a state with strong consumer protections for higher education programs, both for in-state and out-of-state institutions. All institutions seeking to offer programs in Massachusetts are subject to review and on-site inspections and must comply with completion and placement reporting requirements.<sup>5</sup> Massachusetts also has regulations designed specifically to protect students from the “widespread acts and practices in the for-profit and occupational school industry,” which apply to both in-state and out-of-state institutions.<sup>6</sup> Additionally, Massachusetts law allows students harmed by institutional deception or predatory recruiting practices to recover damages and attorney’s fees.<sup>7</sup>

Conversely, South Dakota is a state with minimal higher education oversight. South Dakota does not require institutions to undergo any kind of review or on-site inspection in order to operate, and authorization is continuous so long as the institution maintains its accreditation.<sup>8</sup> There are no disclosure requirements for institutions, no consumer protections for students attending for-profit institutions, and no regulation of recruiting practices.<sup>9</sup>

Both states are members of NC-SARA. In practice, this means that institutions offering distance education that are physically located in Massachusetts undergo a much more rigorous approval process than do the institutions located in South Dakota. While they both have to meet NC-SARA standards, the programs physically located in Massachusetts are also subject to state-level requirements to ensure quality education that the South Dakota programs are not. However, if they are members of NC-SARA, the institutions located in South Dakota are able to enroll students in Massachusetts without complying with Massachusetts’ consumer protections. Distance education

students in South Dakota benefit from this arrangement because it enables them to enroll in programs held to higher standards than those offered by in-state institutions. Conversely, students in Massachusetts run the risk of enrolling in out-of-state programs with little state oversight and without access to the legal remedies that would be available to them if they were enrolled at an in-state institution.

This difference in the way states oversee institutions of higher education also puts students at risk of institutional venue shopping, in which the poorest performing institutions relocate to states with the easiest regulatory environment as forums to provide education nationwide. Because students are largely unaffected by a change of institutional address for online programs, there is an incentive for colleges to venue shop for the state most likely to be lenient and with the least oversight of higher education. This kind of forum shopping is already taking place in other regulatory areas.

For example, the exclusively online Ashford University is headquartered in California, but until 2017 was approved for GI Benefits through the State of Iowa, where it operated a single campus. The campus closed in 2016, and with it the Iowa GI Bill authorization vanished. At the U.S. Department of Veterans Affairs' urging, Ashford applied for approval in California<sup>10</sup> where the state veterans agency has a reputation for tough scrutiny. The school was denied,<sup>11</sup> and decided to look at Arizona rather than address the California agency's concerns. After opening a small office space that housed only a small portion of the university's employees and offered no classes, Ashford was able to apply for and obtain authorization from the Arizona State Board for Private Postsecondary Education, and shortly thereafter received approval from the Arizona Department of Veterans' Services.<sup>12</sup>

Although the NC-SARA requirements are uniform for all institutions, there are stark differences in the state policies governing higher education institutions, as with Massachusetts and South Dakota. Further, NC-SARA gives Institution States significant autonomy in determining whether to take action against a school in violation of NC-SARA policies.<sup>13</sup> This creates the danger of a race to the bottom in distance education and puts students at risk unnecessarily.

## 2 Enable students to enroll at high-quality educational institutions and create safeguards and requirements beyond accreditation.

Accreditation is widely regarded by the higher education community as an insufficient measure of quality, particularly due to lack of resources and the convoluted relationship institutions and accreditors share.<sup>14</sup> There have been several recent court cases that hinge on the question of whether accreditors are fulfilling their role as gatekeepers, including the recent case regarding Accrediting Council for Independent Colleges and Schools (ACICS) and its "pervasive noncompliance" with federal regulatory criteria.<sup>15</sup> Close observers question whether the Department is adequately overseeing the accreditors.<sup>16</sup>

Some states have already begun to take steps to improve requirements for out-of-state institutions. For example, many require all distance education programs to be approved to operate, regardless of their physical presence.<sup>17</sup> However, individual states cannot have the same impact as a nationwide reciprocity system, which offers the opportunity to improve distance education for all students.

Interstate regulation of distance education—including any reciprocity agreement—must establish institutional standards and reporting requirements sufficient to ensure that students and taxpayers do not face the risk of investing in substandard educational programs. Additional evaluation for distance education programs and schools should be used to ensure that only those institutions with strong track records are eligible for the streamlined approval and oversight reciprocity entails. This could include assessments of colleges' student loan repayment or default rates, completion rates, job placement rates, and their compliance with federal financial regulations, including a financial responsibility score no lower than 1.5 (the threshold for being considered financially responsible without additional oversight needed). Additionally, distance education regulations must include strong policies to combat fraud and student abuse, to ensure that all



students are protected no matter the institution at which they enroll. These requirements should be drafted collaboratively among the states and with the input of students, consumer advocates, and state attorneys general. In a reciprocity agreement, these requirements will serve as safeguards to ensure the rigor and financial stability of the institutions being granted expedited authorization.

## 2. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Needs Improvement	2016 Federal Rule	Good
<p>NC-SARA has minimal institutional requirements, which include accreditation,<sup>18</sup> a Financial Responsibility Composite Score greater than 1.0,<sup>19</sup> at least one degree granting program, and a commitment to adhere to the Interregional Guidelines for the Evaluation of Distance Education created by the Council of Regional Accrediting Commissions (C-RAC).<sup>20</sup> These requirements apply to all NC-SARA member institutions.</p>		<p>In order to be eligible for Title IV funds, an institution must be legally authorized to operate in the state in which it is physically located, accredited by an agency recognized for that purpose by the Department, and certified by the Department as eligible to receive Title IV funding. Title IV funding also comes with mandatory disclosure requirements.<sup>21</sup></p> <p>The 2016 regulations created 10 additional disclosures that distance education programs were required to provide in certain situations, including how and where the distance program is authorized, information on state-required refund policies, and notification of any adverse actions taken against the program in the previous five calendar years by a state or accreditor.</p>	

### Distance Education Enrollment

In fall 2016, three in 10 students were partially or exclusively enrolled in distance education. While most distance education students were enrolled in both online and traditional courses at the same time, nearly half were enrolled in exclusively distance education coursework. Of these exclusively distance education students, four in 10 were attending college outside the state of their residence. It is this group of colleges and students to which questions of state reciprocity are relevant, because they are enrolling students who reside outside of the state where the school is based.

While the majority of exclusively distance education students are enrolled in public colleges, relatively few public college students (10 percent) enroll in exclusively distance education coursework. Further, of those who do enroll in distance education exclusively, the vast majority (86 percent) of students enroll at a school within their own state. As a result, while most of the schools enrolling exclusively distance education students are public colleges, questions of state reciprocity are relevant to fewer than two percent of public college students.

In contrast, nearly half (47 percent) of all for-profit college enrollment is exclusively distance education, with 83 percent of these students enrolled at a school outside of their home state. In total, 39 percent of all for-profit college enrollments are students enrolled exclusively in distance education, in schools outside of their state of residence.

Overall, while for-profit colleges account for just one in 10 schools enrolling exclusively distance education students, they account for 46 percent of out-of-state distance education enrollments. As a result, the issue of state reciprocity is a particularly important one for for-profit institutions.<sup>22</sup>

3

## Require institutions to be financially secure, including mandatory tuition recovery funds and prohibitions on conflicts of interest.

School closures can be devastating to students, and states serve an essential function in protecting students and taxpayers from the risk of a precipitous school closure. Some states have protections in place in the event of such a closure by maintaining tuition recovery funds and performance bonds to reimburse students who are enrolled at a private college if it closes. Were distance education regulations drafted to require each state to maintain a student protection fund sufficient to compensate the financial losses of all students impacted by closures, as well as to require institutions to comply with state refund and cancellation provisions for each state in which they market, these regulations could significantly strengthen states’ ability to make harmed students whole after they’ve been harmed.

Additionally, in recent years some for-profit institutions have sought to procure nonprofit status, in an attempt to avoid the regulatory safeguards placed on for-profit colleges, while continuing to operate under the same profit-seeking business model.<sup>23</sup> While IRS rules for nonprofit organizations should prohibit this misleading reclassification, compliance with those rules is insufficiently enforced. By mandating that public schools be backed by the full faith and credit of the state, and that nonprofit schools establish an independent board without financial conflicts of interest to ratify budget and pricing decisions, distance education regulations can help ensure the financial veracity of distance education institutions.

### 3. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Poor	2016 Federal Rule	Needs Improvement
<p>NC-SARA does not require states to have student protection funds in order to participate. In fact, in 2017, NC-SARA weakened the relevant requirements, removing language requiring that states provide assurances “that students receive the services for which they have paid or reasonable financial compensation for those not received,” to instead require that states “make every reasonable effort to assure” that students receive the services they paid for.<sup>24</sup> Further, NC-SARA does not differentiate between types of institutions and treats public, nonprofit, and for-profit institutions alike.<sup>25</sup></p>		<p>The 2016 regulations required institutions to comply with state laws in the states in which they enrolled distance education students, including laws relating to student protection funds. It did not otherwise require states to create such protection funds.</p>	

### Investigations into Distance Education Institutions

Increasing complaints about fraud at online institutions indicate that the need for clear state oversight standards is essential. In fact, more than half of the 10 institutions with the largest out-of-state distance education enrollment have been under investigation for misleading and harming students: The University of Phoenix, Western Governors University, Grand Canyon University, Kaplan University, Ashford University, and Capella University have all been the focus of complaints by state and federal agencies for issues related to their ongoing distance education programs. While not all investigations find wrongdoing, the number of regulators who have acted on concerns with these institutions signals the need for caution. Additionally, Grand Canyon University has just made a somewhat suspect conversion from a for-profit institution to a nonprofit, under which a nonprofit entity will own the school, while the primary functions of admissions, curriculum development, financial aid processing, marketing, and strategic enrollment management will continue to be provided by the for-profit entity.<sup>26</sup> Kaplan University has been purchased by Purdue University and is now considered a public college, despite lacking the level of oversight and transparency expected of public colleges.<sup>27</sup>

## INSTITUTIONS WITH THE MOST OUT-OF-STATE DISTANCE EDUCATION ENROLLMENT

INSTITUTION	COLLEGE TYPE	ENROLLED STUDENTS	INVESTIGATING AGENCY
University of Phoenix	For-Profit	122,732	Florida Attorney General <sup>28</sup> Delaware Attorney General <sup>29</sup> Massachusetts Attorney General <sup>30</sup> California Attorney General <sup>31</sup> U.S. Department of Education <sup>32</sup> U.S. Department of Defense <sup>33</sup> U.S. Securities and Exchange Commission <sup>34</sup> U.S. Federal Trade Commission <sup>35</sup>
Western Governors University	Nonprofit	78,460	U.S. Department of Education <sup>36</sup>
Southern New Hampshire University	Nonprofit	55,993	
Liberty University	Nonprofit	47,764	
Grand Canyon University	For-Profit*	46,863	U.S. Department of Education <sup>37</sup>
Walden University	For-Profit	46,705	
American Public University System	For-Profit	44,960	
Kaplan University	For-Profit	36,496	Illinois Attorney General <sup>38</sup> Delaware Attorney General <sup>39</sup> North Carolina Attorney General <sup>40</sup> Florida Attorney General <sup>41</sup> Massachusetts Attorney General <sup>42</sup> U.S. Department of Justice <sup>43</sup> U.S. Department of Education <sup>44</sup>
Ashford University	For-Profit	36,193	California Attorney General <sup>45</sup> North Carolina Attorney General <sup>46</sup> New York Attorney General <sup>47</sup> Massachusetts Attorney General <sup>48</sup> Iowa Attorney General <sup>49</sup> U.S. Consumer Financial Protection Bureau <sup>50</sup> U.S. Department of Education <sup>51</sup>
Capella University	For-Profit	35,994	U.S. Department of Education <sup>52</sup>

Notes: Enrollment calculations by TICAS using data from the Integrated Postsecondary Education Data System (IPEDS) Fall 2016 Enrollment by Distance Education Status. Calculations of out-of-state enrollment include students enrolled domestically, located in a different state from the institution or an unknown state. Note that NC-SARA's enrollment reports show Ashworth College, a for-profit college based in Georgia, enrolling 47,566 students in fall 2016, but the school is not reflected in the table above because it does not receive federal aid and accordingly does not report enrollment to IPEDS.

\*Grand Canyon University has recently been acquired by an affiliated nonprofit, and Kaplan University has recently been acquired by a public college, but they are regarded as for-profit institutions for the purposes of this report because all available data predates those conversions.

## Prohibit institutions from enrolling students at institutions that will not qualify for state professional licensing requirements where they reside.

For many students, earning their degree is only the first step on their career path. From accounting to veterinary medicine, professional licensure is also a requirement for many individuals after they graduate, and each state has a specific set of requirements for the educational programs that qualify for licensure. Prior to enrolling in a distance education program, students are unlikely to understand the post-college requirements they will need to satisfy, and even if they are aware, they may be ill-equipped to determine whether an out-of-state program satisfies the requirements in the state where they hope to get licensed—or even to realize that it may not. Institutions are far better positioned to understand their program offerings, relevant licensing requirements, and the implications for students.

Because the risk of enrolling in programs that do not meet licensing requirements rests so heavily on students, institutions should not be permitted to enroll students in programs from which Student State licensure is not possible. In early 2018, representatives of both community colleges and for-profit colleges proposed such a prohibition during negotiations on the gainful employment rule, a regulation designed to ensure students in career education programs do not leave school with heavy debts, but limited job prospects.<sup>52</sup> Such a requirement is particularly critical for distance education programs, where out-of-state enrollment is common.

Distance education regulations should require institutions to certify that they meet licensure requirements for all enrolled students in all states in which they offer their programs, and prohibit institutions from enrolling students in programs that do not meet the state requirements for licensure. Individualized and handwritten consent waivers will facilitate the appropriate enrollment of students in truly unique situations—such as the student who plans to move across state lines after graduation—without putting groups of students at risk.

### 4. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Needs Improvement	2016 Federal Rule	Needs Improvement
<p>NC-SARA allows institutions to offer programs that lead to a certified or licensed occupation, even when those programs do not qualify students for licensure in the Student State. While NC-SARA does require institutions to provide students with notice if the program does not meet the Student State's requirements, it does not specify the content or format of those notifications.<sup>54</sup> It is therefore unclear whether students are receiving the information necessary to choose an educational program that meets their needs, potentially leaving them at risk.</p> <p>There have been many calls for NC-SARA to serve a secondary function of facilitating professional licensure reciprocity, but recent Board meeting materials indicate that NC-SARA officials regard this as an “unmanageable expansion of mission.”<sup>55</sup></p>		<p>The 2016 regulations established disclosure requirements for institutions that enroll students in programs that lead to professional licensure or certification in other states. Institutions would have been required to notify students whether the distance education program satisfied the requirements for professional licensure or certification in the Student State. It did not specifically prohibit programs from enrolling students in programs that did not meet the requirements for licensure.</p>	

## California and NC-SARA

The most visible proponents within states for joining the NC-SARA agreement have been in-state institutions that seek an easier route to enrolling students from other states. Out-of-state enrollments can help colleges meet enrollment targets, and the higher tuition paid by out-of-state students can boost revenues for increasingly strapped public colleges.

Yet joining NC-SARA also provides out-of-state colleges an easier path to enroll students within a state, even if those colleges are not in compliance with state laws. NC-SARA further precludes states' ability to strengthen laws that apply to out-of-state colleges enrolling their residents. In the immediate, this leaves states with less ability to prevent abuses of their residents by out-of-state institutions. It also risks creating perverse incentives to loosen existing state laws, so that in-state institutions are not at a competitive disadvantage to those out-of-state institutions to which state laws do not apply.

For California, there are good reasons to be concerned. California's history with predatory for-profit colleges had led to the creation of several laws aimed at protecting students. These include requiring colleges to disclose student outcomes to prospective students, prohibiting colleges from misleading students in advertising and recruiting, and requiring colleges to meet outcome standards in order to maintain authorization under the Bureau of Private Postsecondary Education.<sup>56</sup>

While these laws do not currently apply to out-of-state institutions enrolling Californians, problematic outcomes at these institutions argue for greater state oversight, not the acceptance of lower standards. Importantly, at the NC-SARA institutions that enroll Californians, student loan repayment outcomes are worse than those of California-based distance education providers. Three years after leaving college, 30 percent of student loan borrowers from out-of-state schools enrolling Californians are paying down their debt, compared to 45 percent of borrowers from California-based distance education providers.<sup>57</sup> The share of borrowers who end up in default is also higher at out-of-state distance education providers than at in-state providers.<sup>58</sup>

According to the most recently available data from NC-SARA, there are 104,000 students living in California and enrolling online only at nearly 1,000 colleges outside of the state. Mirroring national trends, for-profit colleges make up a small share of these colleges, but a much larger share of enrollment. In fact, three for-profit colleges—the University of Phoenix, Grand Canyon University, and American Public University System—enroll more distance education students from California than do all nonprofit or public colleges combined.<sup>59</sup>

### 5 Create a complaint process that focuses on students, encourages collaboration among states, and contains transparency requirements to assist in identifying problematic institutional behavior patterns.

When students enroll in a distance education program, it is important that there is a complaint procedure in place to ensure that students' concerns are reviewed and addressed under the law. Complaints serve a dual purpose: they allow students to address concerns and seek resolution to issues relating to their education, and they also allow states to identify patterns of predatory or misleading practices at institutions. The Consumer Financial Protection Bureau (CFPB) is an example of an agency with an extremely transparent complaint process.<sup>60</sup> The CFPB process has itself become a powerful tool to hold companies accountable and prevent consumer abuse.<sup>61</sup> Similarly, distance education students must be freely able to file complaints, and the complaint system should be transparent to state regulators, students, and the public.

While students may be encouraged to bring appropriate issues to the institution for resolution, restrictions on students filing complaints with state authorities is counterproductive. States must have the authority to accept, investigate, and act on complaints from their

residents, as well as the students enrolled at institutions within their borders. Both students and taxpayers will benefit from states working collaboratively to investigate complaints. Once the investigation is complete, students should be entitled to the protections afforded by both the Student State and the Institution State, and eligible for the state legal remedy most favorable to the student. Collecting records of complaints in a central database, available to the public, would further ensure that any patterns of problematic institutional behavior could be more easily identified.

Complaint processes are especially critical for states that join reciprocity agreements. As part of such an agreement, Student States give up some of their institutional approval and oversight authority, trusting that the Institution State will verify and regulate the rigor and financial security of the institution. In such a situation, student complaints become the primary tool for Student States to identify problematic trends at out-of-state institutions and are a key method for states to identify problematic institutions for further investigation.

## 5. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA <sup>61</sup>	Poor	2016 Federal Rule	Needs Improvement
<p>The existing NC-SARA complaint process is restrictive, and limits students' ability to file complaints. Students are required to file complaints first with their institution.<sup>62</sup> Then, if students are unsatisfied with the institution's resolution, they are able to appeal the complaint to the Institution State. Although the Student State "may assist as needed" at the discretion of the Institution State with the complaint, the "final resolution of the complaint rests with the SARA Portal Entity in the Home State of the institution."<sup>63</sup> And because NC-SARA limits the Student State's authority to enforce consumer protection laws that would otherwise safeguard students, Student States are unable to utilize many of the higher education-specific protections to protect their residents.<sup>64</sup></p> <p>Some information is available regarding complaints that are appealed to the NC-SARA Portal Agency, but data is not available regarding complaints resolved at an institutional level. Additionally, the dearth of complaints appealed to NC-SARA portal agencies suggests a problem with the process.<sup>65</sup></p>		<p>The 2016 regulations protected students' right to file complaints and required institutions providing distance education to notify students of the process for filing complaints in the Student State. It did not address complaint transparency, or the collection of complaint data.</p>	

### Mandatory Arbitration

Mandatory arbitration clauses are widely used by for-profit schools, including some of the largest institutions within NC-SARA.<sup>66</sup> As an independent organization rather than a state compact, NC-SARA could legally prohibit mandatory arbitration clauses outright for member institutions without violating the Federal Arbitration Act.<sup>68</sup> However, it is unclear exactly how mandatory arbitration clauses are affected by the terms of the NC-SARA agreement. The NC-SARA Manual states that, "Arbitration agreements generally do not pertain to SARA policy issues. Disputes between students and institutions are to be resolved by the Portal Entity or through other means."<sup>69</sup> That language doesn't specifically prohibit mandatory arbitration requirements, nor does it provide protection for students who might be subject to mandatory arbitration clauses as part of their enrollment contracts.

## 6

## Allow states to retain the authority to enforce their own state laws on higher education-specific consumer protections.

Higher education is not traditionally thought of as a consumer product, but in many ways it is indistinguishable. Just like any other good or service a consumer might buy, students shop for, select, and pay for their education presuming that they are purchasing a product that will perform as advertised. Public policy generally requires companies to comply with local laws in the states where they conduct business, or states where they have “sufficient minimum contacts.” Many states have also created consumer protection laws specifically to address and prevent harm to students of higher education institutions, including regulations specifically aimed at preventing abuses by for-profit institutions and regulations relating to out-of-state institutions.<sup>70</sup>

In order for states to serve their gatekeeping function, they must have the authority to require distance education institutions to comply with higher education laws, including prohibitions targeted to unfair and deceptive business practices, disclosure requirements, language requirements, and requirements for enrollment agreements and other important documents. Congress previously addressed this issue by tying access to Title IV funding to the state authorization requirement, and the Department sought to clarify that this requirement also applied to institutions offering online distance education programs across state lines with the 2016 regulations. Those regulations also specified that a reciprocity agreement would not satisfy state authorization requirements unless states retained the authority to enforce their own state laws; unfortunately the rule has been further delayed.

As demonstrated by the 2016 regulations, reciprocity agreements do not have to be all or nothing. Interstate reciprocity can streamline approval and oversight without undermining states’ authority to take appropriate action in the event that they determine that an out-of-state institution has failed to meet the minimum required standards or violated a state law or regulation. In any distance education regulatory system, it is essential that states retain the authority to enforce applicable laws in defense of residents, especially those statutes drafted specifically with higher education students in mind.

### 6. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Poor	2016 Federal Rule	Good
<p>NC-SARA allows the Student State to enforce only “general-purpose laws” against out-of-state institutions.<sup>71</sup> A general-purpose law is “one that applies to all entities doing business in the state,” and not laws written to specifically apply to institutions of higher education.<sup>72</sup> State authorities and consumer advocates have repeatedly expressed concerns about this issue with NC-SARA.<sup>73</sup></p>		<p>The 2016 regulations specified that a reciprocity agreement between states could not prohibit a state from enforcing its own consumer protection laws.</p>	

### Massachusetts Memoranda of Understanding

Massachusetts is the most recent state to join the NC-SARA agreement and was one of the states that delayed joining due to concerns regarding the loss of state authority to enforce consumer protections. As a condition of joining NC-SARA, Massachusetts drafted a Memoranda of Understanding<sup>74</sup> in which it specifically reserved the right to enforce the regulations promulgated under M.G.L. c. 93A. The regulations, 940 CMR 31.00, address both in-state and out-of-state for-profit and occupational schools.<sup>75</sup> Massachusetts shared the document with the NC-SARA Director for the New England Board of Higher Education, who in turn responded with a letter confirming that she had reviewed the document and discussed it with NC-SARA, and that they were

amenable to its contents.<sup>76</sup> Massachusetts subsequently joined NC-SARA specifically because the Department had addressed its concerns,<sup>77</sup> and acting in reliance on the Memoranda of Understanding.

When asked about the Massachusetts Memoranda of Understanding, NC-SARA officials said that Massachusetts retains the right to enforce general consumer protection statutes, but not those specifically written to apply to higher education institutions.<sup>78</sup> This is at odds with the Massachusetts Memoranda of Understanding, which specifically identifies regulations that apply exclusively to for-profit and occupational schools, and states that “all other existing regulations regarding consumer protections for students from unfair and deceptive business practices by for-profit and occupational schools, as promulgated under 940 CMR 31.00, are otherwise unaffected by this agreement.” It is unclear how the Memoranda of Understanding will be interpreted by NC-SARA or by the courts in the event of a dispute. It is also unclear whether the several dozen for-profit colleges enrolling distance education students from Massachusetts understand that they may be subject to Massachusetts law, despite what it says in the NC-SARA Unified Agreement.<sup>79</sup>

## 7 Permit states to limit problematic institutions from enrolling residents, or to enforce state policy limitations on enrollment.

States have the authority to place limitations on enrollment and funding when there are concerns about the rigor or financial security of an in-state institution, and the same authority must be preserved in interstate regulation. States must be able to take steps to limit an institution’s ability to operate within the state if they determine there is a risk to resident students, even and especially regarding distance education, and distance education regulations must ensure that states retain the authority they need to safeguard their citizens.

Additionally, many states regulate for-profit institutions differently than public and non-profit institutions. In fact, prior to joining the NC-SARA agreement, Rhode Island only very rarely allowed private for-profit postsecondary educational institutions to grant degrees within the state.<sup>80</sup> Yet in 2016, after joining NC-SARA, nearly 800 Rhode Islanders were enrolled in more than 30 degree-granting for-profit colleges based in other states.<sup>81</sup> If states have determined that the risk of a particular sector to their students is too great, they must have the authority to limit enrollment by institutional sector.

Distance education must not become a vehicle for undermining state authority over the institutions that enroll resident students. Particularly in a reciprocity agreement, states must work collaboratively to create guidelines that will allow them to protect their residents, even as the agreement streamlines authorization processes. In any distance education oversight system, each state should maintain the authority to limit or deny approval to enroll students if they have concerns about the out-of-state institution’s educational programs, by sector, or if the institution is otherwise ineligible to operate under state law.

### 7. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Poor	2016 Federal Rule	Good
<p>NC-SARA removes all institutional approval (or removal) authority from the Student State. Provided that an institution has applied for membership and been approved, a Student State has no authority over the institution. For example, as mentioned above, Rhode Island state law does not allow for-profit institutions to offer degrees within the state unless they have a specific exemption from the law to do so. However, after becoming a member of NC-SARA, Rhode Island is now unable to limit the enrollments of out-of-state for-profit NC-SARA member institutions.</p>		<p>The 2016 regulations acknowledged that states have the authority to establish requirements for distance education providers if they wish to do so, and required institutions to comply with state laws in order to be in compliance. The rule additionally clarified that states retained this right as a member of an interstate reciprocity agreement, and that such an agreement could not supersede state law.</p>	



## Give states authority over the creation and modification of distance education regulations.

In order to serve their essential gatekeeping function, states must have the ability to improve institutional oversight policies and have a voice in the creation of distance education rules in order to adequately protect students and taxpayers. States have the authority to regulate institutions conducting business within their borders, and are empowered to protect consumers by creating legislation and regulations.

Interstate reciprocity agreements have the potential to significantly undermine the authority and ability of states to protect their residents from harm. Without sufficient measures or consumer protections, a reciprocity agreement can put students and taxpayers at greater risk, lowering the bar for institutions and weakening state authority to act. Therefore, if states desire to join such an agreement, it is essential that the state play a prominent role in the governance of the agreement.

### 8. HOW THE REGULATORY ATTEMPTS STACK UP

NC-SARA	Poor	2016 Federal Rule	Good
<p>NC-SARA was already established and the agreement drafted when state governments were invited to join in 2014.<sup>82</sup> State governments did not play a significant role in creating the terms of NC-SARA. Under NC-SARA's guidelines, "minor modifications" can be approved singlehandedly by the Executive Director, and even "significant modifications" are left to the Executive Director and other NC-SARA staff.<sup>83</sup> Decision-making authority rests almost exclusively with the NC-SARA executive director and staff; there is no forum for states to submit ideas to the other member states for consideration or adoption, and there is no appeals process for changes states disagree with.</p>		<p>The 2016 regulations did not mandate the use of a state authorization reciprocity agreement, but did authorize states to create such an agreement. The regulations would have allowed states and institutions to satisfy authorization requirements with a reciprocity agreement. The rules did not specify that states should retain decision-making authority within the agreement.</p>	

# Recommendations:

## The Existing System Can Be Improved

Distance education constitutes to be a small but growing share of postsecondary enrollment, and it is one that comes with unique risks to students and taxpayers. These risks demand that distance education be subject to greater attention from state overseers, not loosened standards that create a race to the bottom in consumer protection. States are well positioned to initiate improvements in policies and processes for interstate reciprocity agreements, pushing for greater protection for students and greater authority for states. Federally, the Department can implement federal rules finalized in 2016 without further delay and use any future rulemakings on state authorization to strengthen protections for students and taxpayers.

### Interstate Reciprocity Agreements

A robust state authorization reciprocity agreement can be a powerful tool to promote the availability of distance education options, ease oversight burdens on states, and strengthen consumer protections. However, in order to be effective in each of these areas while also maintaining states' critical role in postsecondary oversight, distance education oversight—including reciprocity agreements—must include these key features:

1. Facilitate coordination between states to reduce unnecessary administrative burden where appropriate, while simultaneously improving the oversight and quality of online education.
2. Enable students to enroll at high-quality educational institutions and create safeguards and requirements beyond accreditation.
3. Require institutions to be financially secure, including mandatory tuition recovery funds and prohibitions on conflicts of interest.
4. Prohibit institutions from enrolling students in programs that will not qualify for state professional licensing requirements where they reside.
5. Create a complaint process that focuses on students, encourages collaboration among states, and contains transparency requirements to assist in identifying problematic institutional behavior patterns.
6. Allow states to retain the authority to enforce their own state laws on higher education-specific consumer protections.
7. Permit states to limit problematic institutions from enrolling residents, and to enforce state policy limitations on enrollment.
8. Give states authority over the creation and modification of distance education regulations.

Unfortunately, the existing framework for state reciprocity falls short of these standards in several ways, as detailed throughout this report. Although many of NC-SARA's policies are good and may represent a net increase in the regulation of distance education in some states, they also undermine critical safeguards and consumer protections in others. While the need for distance education regulation and oversight is clear, the solution to this problem cannot be to require states and students to run the risk of lowering their standards or giving up autonomy to protect their residents. The agreement in effect today needs improvements to ensure that interstate distance education opportunities are not just available, but also safe and high-quality.

NC-SARA has been modified several times since its creation and could be further modified to bring it closer to the standards outlined above. (See the Appendix for a list of recommended changes to NC-SARA.) Unfortunately, the NC-SARA Director for the Western Interstate Commission for Higher Education (WICHE) has previously referred to advocates' attempts to seek improvements as "wishful thinking," explaining that WICHE and NC-SARA "want to caution California leaders against assuming that SARA will make significant revisions...There is no reason for SARA to do this."<sup>84</sup>

While California is currently the only state that has not joined the NC-SARA agreement, there are signs of discontent from other states. For instance, 16 state attorneys general recently called attention to the fact that NC-SARA “does not permit states to enforce education-specific state laws against out-of-state SARA member schools,” urging the implementation of federal rules that would force NC-SARA to revise its terms.<sup>85</sup>

If NC-SARA remains unwilling or unable to make necessary changes, states should create a second-generation reciprocity agreement that builds on the strengths of NC-SARA, but which also possesses the essential characteristics described above. The federal rules governing reciprocity agreements allow for the creation of an agreement between two or more states. There is nothing in the rule that limits it to a single agreement between all 50 states. The fact that California has yet to join NC-SARA makes this a particularly interesting option to consider. With California’s significant population, as well as the large number of institutions within its borders, there will likely be many states and institutions that would want to sign a reciprocity agreement that includes California.

Creating a new agreement would require substantial coordination and ongoing management. Additionally, the creation of a bifurcated reciprocity system may be less ideal than a unified system of reciprocity. However, if there were an opportunity to develop such an alternative agreement, incorporating all the essential characteristics discussed in this report, it would be beneficial to students nationwide.

## Federal Distance Education Rules

The 2016 federal regulations on state authorization took several important steps to improve state oversight of distance education. They clarified states’ responsibility for overseeing out-of-state institutions, set minimum standards for what state oversight of distance education must entail, and allowed states to rely on an interstate reciprocity agreement for oversight of schools located elsewhere.

The delay of these rules has caused confusion for states and institutions, creating a situation the Department acknowledged “may lead students to choose sub-optimal programs for their preferred courses of study.”<sup>86</sup> Because of this delay, several student-centered requirements instituted as part of the rule are not in effect. These include requirements that schools tell students about whether their program of choice will prepare them for licensure in their state of residence, and prohibitions on reciprocity agreements (such as NC-SARA), which keep states from enforcing their consumer protection laws. Because the 2016 rule is also what allowed states and institutions to rely on reciprocity agreements to meet state authorization requirements, the 2016 rule’s delay means that institutions relying on their NC-SARA membership for state authorization may no longer be in compliance with state authorization requirements.

The 2016 rules represented a significant step forward for online distance education oversight, and implementing them as currently written is the simplest and fastest path toward improving distance education oversight for both students and institutions. Yet there remains room for these rules to be improved in future rulemaking efforts. In addition to ensuring that none of the protections contained in the previous rule are weakened, the Department could strengthen the rule to better serve students and taxpayers by making the following changes:

1. Improve financial veracity requirements, and require that all states maintain a tuition recovery fund.
2. Prohibit institutions from enrolling students in programs that will not qualify for state professional licensing requirements where they reside, absent handwritten request for exemption.
3. Improve complaint processes to be more collaborative among states and more fruitful in identifying problematic institutional behavior patterns.
4. Specify that states retain decision-making authority within any state authorization reciprocity agreement.

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- 57 Calculations by TICAS using data from NC-SARA 2016-17 Enrollments and data from the U.S. Department of Education's College Scorecard, accessed April 2, 2018. A 3-year repayment rate is the share of borrowers who are not in default on their federal loans and who have paid down at least \$1 on the initial balance on their undergraduate loans after entering repayment in FY2012 or FY2013 (rolling two-year average). This is suppressed for colleges with fewer than 30 borrowers in the two cohorts. In some cases, these data reflect students from more than one campus. Out-of-state schools enrolling Californians are included in this analysis if they enrolled at least 100 students from California.
- 58 Calculations by TICAS using data from NC-SARA 2016-17 Enrollments and data from the U.S. Department of Education's College Scorecard, accessed April 2, 2018. A 3-year cohort default rate is the percentage of a school's borrowers who enter repayment on certain Federal Family Education Loan (FFEL) Program or William D. Ford Federal Direct Loan (Direct Loan) Program loans during FY2013 (October 1, 2012, to September 30, 2013), and defaulted before September 30, 2015. In some cases, these data reflect students from more than one campus. Out-of-state schools enrolling Californians are included in this analysis if they enrolled at least 100 students from California.
- 59 Calculations by TICAS using data from the Integrated Postsecondary Education Data System (IPEDS) Fall 2016 Enrollment by Distance Education Status and Level of Student file and data from NC-SARA 2016-2017 Enrollments.
- 60 Consumer Financial Protection Bureau (CFPB). *Submit a Complaint.* Available at <https://www.consumerfinance.gov/complaint/> (last visited July 26, 2018).
- 61 U.S. PIRG. (May 2, 2016). *Ten Ways the CFPB is Protecting Consumers.* Available at <https://uspig.org/resources/usp/ten-ways-cfpb-protecting-consumers> (last visited July 26, 2018).
- 62 Marshall Hill and John Lopez. (June 21, 2018). Telephone interview. (Information provided by NC-SARA indicates that the existing complaint procedures are expected to be modified, but at this time no details on those potential changes are available publicly.)

- 63** NC-SARA Manual, p. 26.
- 64** NC-SARA Manual, p. 27.
- 65** NC-SARA Manual, p. 14.
- 66** For example, while the CFPB does not accept complaints against colleges, at least one dozen Arizonans filed student-loan related complaints in 2017 that implicated their schools. In contrast, NC-SARA's complaint reports show no complaints against Arizona schools in 2017.
- 67** Robert Weissman and Julie Murray. (Feb. 24, 2016). Citizen Petition to the U.S. Department of Education on Title IV Arbitration Clauses. Available at <https://www.citizen.org/sites/default/files/citizen-petition-to-ed-title-iv-arbitration-clauses.pdf>.
- 68** 9 United States Code Ch. 1. Available at <http://uscode.house.gov/view.xhtml?path=/prelim@title9&edition=prelim>.
- 69** NC-SARA Manual, p. 27.
- 70** *Failing U.*
- 71** NC-SARA Manual, p.14.
- 72** NC-SARA Manual, p. 14, footnote 5.
- 73** Lori Swanson. (March 12, 2015). *State Needs to Make For-Profit Colleges More Transparent*. Star Tribune. Available at <http://www.startribune.com/state-needs-to-make-for-profit-colleges-more-transparent/295991441/>. Kate Taylor. (March 17, 2016). Critics Assail Potential New York Move on Regulating Online Colleges. The New York Times. Available at <https://www.nytimes.com/2016/03/17/nyregion/critics-assail-potential-new-york-move-on-regulating-online-colleges.html>.
- 74** Massachusetts Office of the Attorney General. (Oct. 10, 2017). *Memorandum of Understanding Between the Office of the Attorney General and the Department of Higher Education*. Available at [https://www.mass.edu/bhe/lib/documents/AAC/AAC18-10b\\_Attachment%20B%20AGO%20DHE%20MOU.pdf](https://www.mass.edu/bhe/lib/documents/AAC/AAC18-10b_Attachment%20B%20AGO%20DHE%20MOU.pdf).
- 75** See 610 Code of Mass. Regs. § 31.00. Available at <https://www.mass.gov/files/documents/2016/08/oq/940-cmr-31-00.pdf> (last visited July 26, 2018). (The MOU agrees that Massachusetts will use SARA's disclosures, but reserves the right to enforce all other state regulations relating to for-profit institutions.)
- 76** Sandra J. Doran. (June 15, 2017). *Letter regarding NC-SARA*. Available at [https://www.mass.edu/bhe/lib/documents/AAC/AAC18-10c\\_Attachment%20C%20NEBHE%20Letter%20to%20AGO.pdf](https://www.mass.edu/bhe/lib/documents/AAC/AAC18-10c_Attachment%20C%20NEBHE%20Letter%20to%20AGO.pdf).
- 77** Massachusetts Department of Higher Education. (Oct. 24, 2017). Request for Committee and Board Action. Available at [https://www.mass.edu/bhe/lib/documents/AAC/AAC18-10\\_AAC%2018-08%20SARA.pdf](https://www.mass.edu/bhe/lib/documents/AAC/AAC18-10_AAC%2018-08%20SARA.pdf).
- 78** Marshall Hill and John Lopez. (June 21, 2018). Telephone interview.
- 79** In fall 2016, 45 out-of-state for-profit colleges enrolled 2,902 students in Massachusetts. Calculations by TICAS using data from the Integrated Postsecondary Education Data System (IPEDS) Fall 2016 Enrollment by Distance Education Status and Level of Student file and data from NC-SARA 2016-2017 Enrollments.
- 80** Rhode Island Board of Governors for Higher Education. (June 30, 2008). *Regulations Governing Proprietary Schools in Rhode Island*. Available at <http://www.ribghe.org/proprietaryregs.pdf>.
- 81** Calculations by TICAS using data from the Integrated Postsecondary Education Data System (IPEDS) Fall 2016 Enrollment by Distance Education Status and Level of Student file and data from NC-SARA 2016-2017 Enrollments.
- 82** National Council for State Authorization Reciprocity Agreements (NC-SARA). *The Evolution of SARA*. Available at <http://nc-sara.org/about/evolution-sara> (last visited July 26, 2017).
- 83** NC-SARA Manual, p. 39.
- 84** John Lopez. (August 29, 2017). *Response to Public Advocates' Memo titled "Why SARA is a Bad Deal for California's Online College Students."* Letter on file with author.
- 85** *Comments to the U.S. Department of Education on Proposed Rule*. (June 12, 2018). Available at <https://www.regulations.gov/document?D=ED-2018-OPE-0041-0036>.
- 86** U.S. Department of Education. (July 3, 2018). *Final Rule; Delay of Effective Date*. Available at <https://www.federalregister.gov/documents/2018/07/03/2018-14373/program-integrity-and-improvement>.

# Appendix

## Recommendations for Improvements to NC-SARA

Although many of NC-SARA's policies are good and may represent a net increase in the regulation of distance education in some states, they also undermine critical safeguards and consumer protections in others. The following changes to NC-SARA's reciprocity agreement would bring it closer to the standards outlined in this report.

**1. Strengthen institutional quality measures, including assessments of colleges' student loan repayment or default rates, completion rates, job placement rates, and raise the required Financial Responsibility score to no lower than 1.5.**

Reciprocity offers states and institutions an opportunity to reduce their authorization workloads, but a streamlined approval process should only be available to institutions that do not put students or taxpayers at risk. Approval requirements should establish a high bar, so that only rigorous and financially secure institutions are eligible for this expedited approval process.

**2. Create strong financial security and veracity requirements to require institutions to comply with state refund and cancellation provisions, and require that all states maintain a tuition recovery fund.**

School closures can be devastating to students, and states must retain the authority to protect students and taxpayers from a precipitous school closure. States must be confident that institutions approved to operate through a reciprocity agreement are financially secure, and students must be protected in the event of a school closure.

**3. Prohibit institutions from enrolling students in programs that will not qualify for state professional licensing requirements where they reside, absent a handwritten request for exemption.**

The risk of professional licensing requirements rests almost entirely on students. Current NC-SARA policies require institutions to determine whether a program satisfies state licensure requirements, but allows the institution to enroll the student regardless, requiring only that the student receive some form of notification from the institution.

**4. Develop a complaint process that works well for students, encourages collaboration among states, and assists in identifying problematic patterns of institutional behavior.**

Especially in a reciprocity agreement, student complaints serve as an important tool for states to identify problematic patterns at educational institutions. Students must be free to file complaints, states must work collaboratively to investigate and resolve complaints, and complaint data must be collected and transparent at every level. Further, we recommend that NC-SARA prohibit institutions from including mandatory arbitration clauses in their enrollment contracts.

**5. Empower states with the authority to enforce higher education-specific consumer protections, excluding certain agreed upon approval and disclosure provisions, which will be addressed by the reciprocity agreement.**

Reciprocity agreements don't need to be all or nothing. NC-SARA can streamline the approval and oversight process for institutions without requiring states to cede authority over out-of-state institutions.

**6. Allow states to limit enrollment at institutions that display specified problematic patterns, as well as based on state policy.**

States must be able to make the final determination about whether an institution is permitted to operate within the state, and a reciprocity agreement must ensure that states retain the authority needed to safeguard students and taxpayers.

**7. Modify the existing governance and decision-making processes to afford states more authority within and regarding the agreement, and encourage more collaboration between the states.**

Given their key role in the Title IV triad, it is essential that states can create and enforce higher education regulations. For states that join a reciprocity agreement, this process is by definition a collaborative one, but it is imperative that states serve as the key policy and decision makers.

