May 17, 2023

Via E-Mail, FedEx Delivery and
Portal Submission

National Council for State Authorization Reciprocity Agreement
Board of Directors
c/o Dr. Marianne Boeke
3005 Center Green Drive, Suite 130
Boulder, CO 80301

Dear Dr. Boeke and Members of the NC-SARA Board of Directors,

Pursuant to the SARA Policy Modification Process procedures, the undersigned participating SARA institutions respectfully submit comments on several of the submitted policy proposals. We appreciate the openness of this process and the opportunity to share our comments as this important effort moves forward.

Background

The NC-SARA State Authorization Reciprocity Agreement (SARA) was developed and implemented by the U.S. Department of Education (the "Department") in collaboration with a broad-based array of stakeholders and is the culmination of extensive and exhaustive study, discussion, and cooperation within the postsecondary education community. SARA came into being to facilitate institutional accountability and compliance by means of a newfound system of national reciprocity that would facilitate expanded access to quality distance education postsecondary educational programs amidst rapid technological change, in accordance with the Department's state authorization requirements at 34 CFR §600.9.

For almost 10 years now, SARA has served as a highly functional comprehensive solution created, structured, and designed as a voluntary state compact that streamlines the regulation of interstate postsecondary distance education by leveraging mutual reciprocity among the SARA member states. SARA provides full state authorization for participating accredited institutions to offer their approved programs exclusively through interstate distance education in other SARA member states. For the 49 member states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, the 2,311 colleges and universities, and the more than 4.2 million enrolled students, SARA works very well. For the past decade, SARA has enabled institutions to provide a broad-based population and demographic of students with much-needed access to their choice of school and program via distance education. Without the system of reciprocity that SARA provides today, access and school choice for students would be significantly limited, and there would be far fewer institutions with the ability to offer their distance education programs across the nation.

Many of the proposals that are currently part of the SARA Policy Modification process – and in particular those submitted by the Century Foundation group – would effectively gut the core reciprocity element of SARA by relegating SARA to a ministerial application process. This

would return the modern-day higher education community to unworkable past circumstances that subjected every institution to a myriad of different statutes and regulations governing distance education programs that had to be enforced by each state. Not only was this previous approach incomplete, cumbersome, and expensive for states, most institutions were not equipped to manage the multi-state, multi-jurisdictional regulatory licensure and compliance requirements necessary to offer distance education in a majority of jurisdictions. Since SARA's creation, state regulators, institutions and students have benefited from its comprehensive home state jurisdiction approach for the authorization of distance education. Most institutions today were able to grow and expand their distance education offerings only because of SARA. Most states were able to streamline their regulatory functions and eliminate the significant budgetary costs of regulating out-of-state schools providing exclusively distance education programs. The current proposal to dismantle SARA reciprocity would not only eliminate these valuable advances, it would also inevitably trigger the limitation and discontinuation of many distance education programs across the country.

General Concerns

Section I of these comments (below) responds point-by-point to certain enumerated language changes set forth in various Policy Modification Proposals (PMPs) classified as active for purposes of the current process. But first, we present the following: 1) certain general threshold concerns to those PMPs that would abrogate the Unified State Authorization Reciprocity Agreement (the "Unified Agreement"); and 2) responses to the introductory statements found on the first five pages of the Century Foundation attachment titled, "Elevating the State Authorization Reciprocity Agreement's Consumer Protection Standards" (referenced below as "the Century Foundation attachment)." That attachment was submitted with PMPs 0340, 0341, 0345, 0346, 0347, and 0350.

PMPs that abrogate the Unified Agreement cannot be validly adopted or implemented. Any PMP proposing policy changes that would abrogate the Unified Agreement cannot as a practical or legal matter be adopted or implemented. SARA is a state compact whose terms are legally binding upon the member states that have chosen to participate in SARA. The Unified Agreement went into effect when it was adopted by the four Regional Education Compacts and then ratified by the National Council for State Authorization Reciprocity Agreements (NC-SARA) on December 1, 2015. Section 5.1 of the Unified Agreement ("Core Conditions for State Participation") expressly requires that to effectuate reciprocity, each member state must "demonstrate that state law and policy have been enacted or amended to meet the standards of [the Unified Agreement]." Unified Agreement at Section 5, Introduction. The Unified Agreement further requires member states to agree not to have "fees, requirements for a refund policy unique to that state, requirements for a set curriculum for general education requirements, a mandatory number of hours for a degree or certificate, and other such requirements for out-of-state institutions that do not have physical presence in their borders and are participating in the interstate reciprocity agreement." Unified Agreement, Section 5.1.5. Furthermore, a state seeking participation in SARA acknowledges that SARA "provides uniform standards for distance education across states and eliminates the need for participating states to assess the quality of out-of-state institutions through the traditional authorization process. Therefore, states will not require that institutions participating in the agreement meet additional requirements before serving students in the state." Unified Agreement, Section 5.1.6. (emphasis added).

These core reciprocity terms and conditions apply to all states that join SARA and are foundational to membership. One of the governing principles of SARA is that "States working

together and agreeing on terms of engagement and collaboration can trust each other to work cooperatively and consistently toward reciprocally accepting each other's authorization of institutions to offer interstate distance education." Unified Agreement, Governing Principles of SARA at page 9. Part of what makes SARA an interstate compact whose terms are binding on the member states is that membership in SARA is voluntary: "This agreement establishes reciprocity between willing states that accept each other's authorization of accredited institutions to operate in their states to offer distance educational services beyond state boundaries. Participation in this agreement is entirely voluntary on the part of the state." Unified Agreement, Governing Principles of SARA at page 10.

The Century Foundation's submissions, joined by other organizations, propose some policy modification proposals to NC-SARA's policy manual that cannot be adopted or implemented because they conflict directly with the above-quoted reciprocity requirements in the Unified Agreement state compact that are legally binding on the member states. The Century Foundation itself recognizes this obstacle in its submission for PMP-0340: "enforcement of state consumer protection laws." That proposal seeks a policy change that would allow states to impose their own education-specific requirements on out-of-state institutions in direct contravention of the above-quoted prohibition in Section 5.6.1 of the Unified Agreement. The Century Foundation's submission acknowledges that "[t]he rule requiring states to waive enforcement of education-specific and sector-specific consumer protection laws . . . is included in the Unified State Authorization Reciprocity Agreement (USARA) as well as the SARA Policy Manual" and notes that "changes need to be made to both the USARA and the SARA Policy Manual to address this problem." See Century Foundation attachment at page 4, footnote 16. Therefore, even if the Century Foundation's proposed modifications to the SARA Policy Manual were to be adopted, the Unified Agreement that is legally binding on the states would control and would preclude implementation of such policy change, rendering it null and void from inception; and the same is true with respect to any and all other conflicts between the various PMPs and the Unified Agreement. The SARA Policy Manual itself acknowledges that the Unified Agreement is "the foundational document for the SARA initiative" that "provides a rationale for reciprocity as the basis for addressing state authorization of distance education challenges." SARA Policy Manual, Introduction, Background. While the SARA Policy Manual is the "source of the policies and procedures" for implementing the Unified Agreement, the Manual itself acknowledges that it is subordinate and ancillary to the foundational document establishing the terms of the interstate compact.

NC-SARA would have to first amend the Unified Agreement before it could lawfully and validly consider, adopt, or implement any PMP that conflicts with the requirements of the Unified Agreement. The PMPs that would depart from the states' existing reciprocity obligations and violate this core requirement of the Unified Agreement cannot be adopted or effectuated in the absence of predicate amendments to the Unified Agreement itself. The Unified Agreement is a national compact. The 49 signatory states, the four regional compacts, and NC-SARA itself are all bound by the terms and conditions of the Unified Agreement. In the same way that states are constrained by the compact from adopting regulatory (or even legislative) oversight actions that violate SARA reciprocity, NC-SARA itself is barred by the Unified Agreement from effectuating mere policy changes that violate its elemental reciprocity requirements.

It is the Unified Agreement that sets forth the binding reciprocity commitments that are the foundation for the compact, and any accompanying policies, instructions and guidance are ancillary and secondary and must conform to the Agreement. The role and responsibility of NC-SARA as set forth in Section 8.1 of the Unified Agreement is to serve "as the primary

coordinating and oversight body for the reciprocity agreement…" Moreover, just recently NC-SARA expressly acknowledged that its policies are subordinate when it embarked on the current Policy Modification process. NC-SARA stated that its purpose is to amend the "SARA Policy Manual in a manner that reflects the principles of SARA's foundational document, the Unified Agreement." Policy Modification Process, page 1 (June 2022). And the published parameters for that review make it clear that all policy modifications must conform to the existing terms and conditions of the Unified Agreement: "Proposed policy modifications shall be reviewed based on whether they are consistent with the purposes and governing principles of SARA, as established in the Unified Agreement and clarified in the SARA Policy Manual." Policy Modification Process, page 1 (June 2022) (emphasis added). Therefore, PMPs that conflict with the Unified Agreement are out of sequence, are not ripe for adoption or implementation, and would fail the SARA requirement that all policies be "consistent with the governing purposes and principles" of the Agreement.

The Policy Modification process is not a vehicle for amending the Unified Agreement. Any such process is required to be distinct from – and more exacting than – the subordinate process by which mere policy adjustments are considered. Under Section 9 of the Unified Agreement, "Procedures to solicit and consider suggested amendments shall be developed, published and administered by NC-SARA, in concert with the regional compacts." Unified Agreement, Section 9. NC-SARA has not published procedures on how it would solicit, consider, develop, publish and administer amendments to the Unified Agreement pursuant to Section 9. The process for amending the SARA Unified Agreement must be more exacting than the Policy Modification process. The Unified Agreement is the foundational document between regional compacts to which the member states have agreed. States who wish to participate in SARA renew their membership every other year, and these periodic re-commitments to SARA are predicated on each state's renewed assent to the Unified Agreement. If NC-SARA intends to solicit amendments to the Unified Agreement, it would need to develop and publish its process for doing so separately – not by means of the Policy Modification process, which was created for the limited purpose of developing policy guidance and which entails a review of PMPs' consistency with the principles of the Unified Agreement.

For all of these reasons, the Unified Agreement and the Policy Modification Process each make it clear that a separate and more fulsome process would be required to amend the Unified Agreement. Amendments to the Unified Agreement would be a required prerequisite to adoption or implementation of policy changes that conflict with the reciprocity requirements and other terms and conditions set forth in the existing Unified Agreement.

NC-SARA is not a "low bar." The Century Foundation attachment states incorrectly that SARA sets an "extremely low bar for consumer protection, leaving millions of online students vulnerable to abuse by unscrupulous schools." This sensationalist assertion, which is the basic predicate for multiple PMPs that seek to upend state reciprocity and that are the subject of these comments, is inaccurate, unfounded, and unsupportable, for reasons that include the following:

- For nearly a decade, tens of thousands of distance education programs have been made possible by means of state-authorized reciprocity pursuant to NC-SARA membership; yet at no time during that period has there occurred an identified pattern or practice of online student mistreatment attributable to any deficiency in the NC-SARA approval processes or requirements.

- The existing SARA consumer protection framework and standards are robust and effective. They balance rigorous oversight and accountability for member institutions with efficiency and a streamlined system based on reciprocity. The SARA reciprocity system of reliance (in part) upon State Portal Entity (SPE) rules and regulations is a source of strength and accountability. SARA member institutions are subject to SPE requirements pertaining to a wide range of requirements, including consumer information disclosures, catalog contents, program length, course content, refund calculations, notice requirements, contractual terms, program integrity, and innumerable other rules and regulations, all of which apply, pursuant to SARA, to the delivery of distance education programs out of state. This strengthens consumer protection, not the opposite as is contended.
- The unsupported "low bar" characterization also fails to acknowledge or account for the important role of the SPEs in comprehensive oversight and accountability upon member institutions in the context of a uniform national system based on reciprocity. Institutions are sharply attuned to the requirements applicable to their main campus locations because those requirements apply to the full scope of their operations (on ground or otherwise), because those requirements must be met for purposes of all offerings in all SARA member states, and because adherence to home state rules and requirements is an existential priority and has always been (and continues to be) a linchpin of regulatory compliance under the oversight triad.
- The Century Foundation's proposals to require institutions to follow a myriad of state authorization requirements have the potential to harm the students they purport to protect by limiting students' opportunities and access to distance education programs. Many institutions began offering distance education after SARA was created and have no experience in managing multi-state, multi-jurisdictional regulatory licensure and compliance requirements. Now more than ever, students, companies, employers, and communities are benefiting from the expanded access and choice through the broad scope of educational offerings that SARA makes accessible to students, working adults, and employers to re-skill, educate, and train for the future. If institutions are required to follow a 49-statewide patchwork of overlapping and conflicting state education-sector specific education laws, institutions will determine that these distance learning programs are too difficult and onerous for schools to offer.
- The Century Foundation's sweeping statement that SARA prevents states from enforcing "stronger consumer protection requirements" is misguided. SARA does not prevent member states from enforcing their consumer protection laws against SARA-member institutions. The Home States provide oversight for authorization, but all states are free to bring general consumer protection claims against out-of-state schools. What is not permitted is for member states to enforce their own educational licensure standards on out-of-state institutions that are already regulated by their home state. Nothing is preventing states from pursuing general consumer protection claims against schools for fraud, misrepresentation, etc.
- The 49 signatory states have made a voluntary choice to participate in SARA. They have chosen to participate in compliance with SARA's many required standards and policies because it is the pathway that provides educational access for millions of distance learners attending institutions (including many who were initiating distance education programs for the first time) that were not in a position to obtain licensure and to achieve compliance with the separate (and often inconsistent) requirements of fifty different states. If individual states do not wish to accept the SARA standards and

structure, they are free to cease participation and to regulate distance education independently.

- SARA imposes exacting consumer protection standards on each participating institution. Per existing SARA policy, SARA member states are required to have authority over and to investigate a variety of consumer protection issues at their institutions including: truthfulness of recruitment and marketing materials; accuracy of job placement data; accuracy of information about tuition, fees, and financial aid; complete and accurate admission requirements for courses and programs; accuracy of information about the institution's accreditation and/or any programmatic or specialized accreditation held by the institution's programs; and accuracy of information about whether course work meets any relevant professional licensing requirements of specialized accrediting agencies. *See* NC-SARA State Authorization Guide – Key NC-SARA Student Consumer Protections at Key NC-SARA Student Consumer Protections | NC-SARA. Moreover:
    - SARA's existing consumer protections balance rigorous oversight and accountability of its member institutions with efficiency and a streamlined system based on reciprocity.
    - SARA complements state regulatory oversight with extensive requirements for state membership.
    - SARA member states are required to have authority over and to investigate a variety of consumer protection issues at their institutions.
    - Each year, SARA institutions are required to engage in a robust annual data collection and complete an annual renewal.

NC-SARA should not entertain the call for wholesale discrimination against an entire sector of postsecondary education. The Century Foundation group seeks to upend one of the core foundational guiding principles of the Unified Agreement, of the SARA Policies, and of the NC-SARA Board. SARA has steadfastly and continuously provided the opportunity for all qualified, accredited, degree-granting institutions to become SARA-participants without regard to the school's type or sector. The newfound contentions promoting the elimination of participation of private, for-profit schools are unwarranted and inappropriate when, for nearly a decade, the sector has participated in SARA without the occurrence of any identifiable concern attributable to SARA participation. All institutions, regardless of sector, deserve to continue their participation in SARA based on their own conduct and ability to uphold all the requirements of SARA and those of their state regulators and accreditors. Private for-profit schools are relevant, skilled providers of distance education and have an important place in the higher education community. Indeed, it is the University of Phoenix and others who have been the trailblazers and innovators in the distance education space and who have the experience and recognition to serve the large populations of adult learners and underserved populations that traditional institutions have historically failed to reach. Removing such schools from SARA would make the world of online higher education weaker, less accessible, less inclusive, and less able to meet the needs of these students across the nation. For example, students who live in rural areas may have no access to colleges or universities in their communities, and students everywhere need the flexibility of distance education so that they can work, take care of their families, and keep their commitments to military service while pursuing their education. U.S. students need more access and options in higher education to obtain degrees and to prepare for the changing world of work. A failure to maintain the inclusion of all sectors of SARA schools that serve online students would profoundly constrict program access and student choice –

access that has flourished and benefited students under SARA for almost 10 years – and would create incalculable harm.

The Regional Compacts and the NC-SARA Board should reject these minority views out of hand particularly when states' participation in SARA is completely voluntary. Now more than ever, the more than 4 million current students at SARA institutions, companies, employers, and communities rely upon the broad scope of educational offerings that SARA reciprocity makes possible so that students, working adults, and underserved and remote populations can receive the education, training, and skills they need for the future. If there are concerns that additional consumer protections for students are needed, they should be solved within the current framework of SARA and its member states and not by dismantling a reciprocity compact that has been working well and that has served the best interests of states, institutions, and most importantly, students.

For ease of reference, the comments in response to specific proposals presented below are listed in numerical order within the categories of Proposed Revisions and New Additions.

I. Comments in Response to Proposed Revisions to SARA Policies

PMP-0340: Enforcement of State Consumer Protection Laws

The Century Foundation proposes a change to §§2.5(k) and (l) to remove the exception regarding the applicability of the various state laws regulating the provision of distance education. They argue that this is necessary because 1) SARA's current consumer protection provisions "set an extremely low bar," and 2) students at member institutions are, therefore, "vulnerable to abuse by unscrupulous schools." The proposal would effectively relegate SARA to an administrative body with duties limited to activities that relate to mere ministerial procedures for authorization, such as application and fee requirements. This would fundamentally change the purpose and design of SARA from a true reciprocity compact between states where all member states agree to home state oversight of their participating institutions plus the uniform policy requirements provided by SARA. Such a sea change would subject member institutions to a complex, inconsistent, overlapping and unmanageable patchwork of the distance education regulations in place among the 49 participating states. This unnecessary and unworkable purported solution to a non-existent problem would take away the reciprocity that has successfully worked to authorize and regulate distance education among member states since 2014. Such a result would not benefit students or institutions.

What the proponents ignore is the central, foundational element of SARA – the authorization and oversight of the institution by its home state. Each institution's home state regulator and SARA Portal Entity (SPE) both have ongoing oversight authority to ensure the institution initially meets, and continues to meet, all of their own standards as well as all the standards set forth in the SARA reciprocity agreement policies. Under this framework, every SARA member state voluntarily and willingly establishes reciprocity, accepting the home state's authorization and regulatory oversight of their own accredited, degree granting institutions to offer distance education programs to residents of the members' states. As a requirement that is essential to this core reciprocity feature, individual states, as voluntary signatory members, are held to one narrow proviso -- they are not permitted to enforce additional requirements or restrictions regarding the authorization of distance education by out-of-state SARA approved institutions. This is axiomatic in 34 CFR §600.9(c)(1)(iii), in the Unified Agreement, and throughout SARA policies.

This fundamental structural component requiring member home states to apply (and all member states to accept) home state regulatory oversight over their institutions participating in SARA has not just facilitated reciprocity; it has also been central to consumer protection for students receiving distance education programs through SARA. This reciprocity has always been a primary point of agreement for all member states and is a linchpin of the state compact.

The assertion by advocates for PMP-0340 that SARA does not provide *enough* consumer protection is a subjective *opinion* relied upon by proponents who seek to scrap the reciprocity agreement that 49 member states joined pursuant to enabling actions and directives issued by their state legislatures and executive branch officials. Not only does the proposal to discard reciprocity raise potential legal challenges from a multi-state agreement perspective; it is also completely unnecessary because SARA is voluntary. States that wish to impose their own rules on out of state providers are free to withdraw from SARA participation.

SARA policies already include comprehensive student and consumer protection measures consistent with what has come to be expected in higher education. But if there are other protections needed, the solution should be to add those requirements to SARA policy so that they apply to all institutions and protect all students – NOT, as is being proposed, to revert to an unworkable system where each state handles the regulation of distance education individually and differently across the country. The merits of potential additions to the consumer protection components of the SARA policies, as a means of expanding the requirements applicable to the member states and participating institutions can be debated without the need to gut reciprocity. And this healthy debate can be accomplished within the framework of SARA so that uniform standards related to the offering of distance education programs can be sustained and can evolve in response to the needs of students, the states, and the institutions for the benefit of all constituencies of SARA.

Furthermore, it is critical to underscore that pursuant to SARA's published SARA policies every SARA member state retains its full authority to enforce its general consumer protection laws. This includes the authority to pursue any institution that engages in fraudulent or other activity that would be of concern with respect to any business in the state. These general powers are broad and undisputed. The claims by some advocates that such powers of states or Attorneys General are curtailed somehow by SARA is simply not accurate. No institution can engage in fraud, misrepresentation, untruthful or misleading advertising, or unfair or coercive business practices without consequence, as every state Attorney General has the power *now* to enforce all applicable civil, general consumer protection, business, occupational, and criminal laws against any such institution. SARA does not and never has changed that authority of any state. The SARA compact makes a discreet and necessary carve-out for specific laws relating to the state authorization of distance education. Without this necessary and limited carve-out, the uniform compact would fail and the certainty and efficiency that students, businesses, employers, schools, and regulators have counted on under SARA would end, causing incalculable harm to the very students that consumer advocates seek to protect. Dismantling the reciprocity that SARA provides would eliminate the participation of many schools and would shutter programs currently being attended by students. The impact of such an action upon student access and success would be profound, particularly for those are underserved by traditional schools and who rely on open access online programs to prepare them for jobs and career changes and opportunities to re-skill to stay relevant in today's workforce. Additional consumer protections deemed necessary can be achieved without this type of disruption. For all of these reasons, this proposal should be rejected.

PMP-0341: Stricter standards for Higher-Risk Schools

This Century Foundation submission proposes to modify §2.5 by eliminating current language that requires states[1] to consider the application of its institutions to participate in SARA on the same basis regardless of control or structure of the institution. The submission proposes to instead permit states to apply stricter standards based on the "risk profile" of the institution. The proposal is vague, lacks any definition of a "risk profile," and provides no detail on what stricter standards are being proposed. As such, it should be rejected.

Fair and equal consideration and participation of qualified degree-granting accredited institutions, regardless of sector or structure, their institutional accreditor, and their home state regulator, is a foundational principle of SARA, and we urge that this guiding principle be retained. Schools participating under SARA are subject to ongoing home state regulatory oversight, including student complaint review, all SARA policies, and extensive annual renewals by their SARA State Portal Entity (SPE). Per existing SARA policy, SARA member states are required to have authority over and to investigate a variety of consumer protection issues at their institutions including: truthfulness of recruitment and marketing materials; accuracy of job placement data; accuracy of information about tuition, fees, and financial aid; complete and accurate admission requirements for courses and programs; accuracy of information about the institution's accreditation and/or any programmatic or specialized accreditation held by the institution's programs; and accuracy of information about whether course work meets any relevant professional licensing requirements of specialized accrediting agencies. Moreover, under the home state oversight requirements of SARA, institutions must meet any specific requirements of their own state applied to their type of institution. In addition, SARA itself imposes common, exacting standards upon all participating institutions. *See* NC-SARA State Authorization Guide – Key NC-SARA Student Consumer Protections at Key NC-SARA Student Consumer Protections | NC-SARA.

It is under this current framework that we submit that schools from all sectors should continue to be looked at on their own merits and actions and not excluded or treated differently based on arbitrary, broad-brush labels that are politically motivated. Moreover, the notion that lower consumer protection standards would be needed if particular sectors were excluded from SARA is simply not accurate. Many of the same concerns raised by the Century Foundation of low performing programs, poor student outcomes, financial distress closures, questionable marketing claims, and high tuition rates occur at state schools, community colleges and non-profit colleges; however, they go largely undiscussed and receive limited coverage by the media. Students attending distance education programs from any school should have uniform and meaningful consumer protections that will protect them regardless of the school they choose to attend. Such protections need to be uniform and consistent in accordance with how SARA has modeled its current and long-established policies. We welcome additional meaningful student protection standards that are uniformly applied and will further strengthen SARA's already solid framework. Students taking distance education programs, regardless of their choice of school, should have confidence that there are consistent, uniform standards applied to any SARA school they choose. Additionally, SARA SPEs and state regulators should

[1] Within SARA there are certain powers explicitly and specifically provided to State Portal Entities of a state, not a "state" as a whole or any other entity within a state. *See* SARA Policy Manual §2.4(i). Accordingly, any authority over SARA activities of a participating institution should be clearly referenced as under the purview of the state portal entity.

have certainty in the uniform consumer protection standards they are required to uphold and apply to all their participating institutions.

PMP-0342: Member State Control of Standard Setting

The Century Foundation's proposal to shift the membership of the NC-SARA Board to only representatives of member states is an unwarranted and unfounded proposal that is not in the best interest of SARA constituents. The NC-SARA Board is currently made up of a multi-disciplinary group of higher education representatives and experts from various perspectives and backgrounds. Per §8.2 of the NC-SARA Uniform Agreement, the NC-SARA Board is required to be composed of an odd number of members not fewer than 17 or more than 23 that represent the full spectrum of the higher education community. The membership includes the Chief Executive Officers of each of the four regional compacts that represent all the member states within NC-SARA and includes leaders and individuals from state and private higher education institutions, SARA State Portal entities, state higher education regulators, leaders from institutional accrediting bodies, and other education and legal experts in higher education. The membership of the NC-SARA Board is specifically designed to come from the full range of impacted groups and constituencies of SARA to ensure that all viewpoints and stakeholders have representation. Not only is such multi-faceted membership desirable, but it is also imperative to the leadership of a voluntary, national reciprocity agreement of the breadth and scope of NC-SARA. The Uniform Agreement wisely provides that no one constituency should have a majority membership on the Board, and the undersigned urge that this wisdom continue to prevail.

The proposal to limit the NC-SARA Board to only "representatives of member states" is unnecessary and would weaken the effectiveness and leadership of NC-SARA. The purported concern that the NC-SARA Board as currently configured does not represent the interests of states is unfounded. First, the NC-SARA Board has representation of the states by including the chief executive officer of each higher education regional compact that represents each member state of that region in SARA. Second, the Board, being multi-disciplinary and having a variety of stakeholders representing all constituencies of NC-SARA, is thereby better equipped to take up each policy proposal carefully and thoroughly and with the full views of all stakeholders represented. Significantly, the NC-SARA Board's multi-faceted representative membership approach is replicated throughout higher education among regulatory bodies, authorizing agencies, accrediting bodies, associations, and SARA SPEs -- and for good reason. Having such representation ensures the ability of the board members to bring their expertise and experiences to the table to strengthen and guide the decision-making process that impacts all stakeholders, and to ensure that no one group is able to control policy and decisions to the detriment of others. The Century Foundation's proposal to have total NC-SARA Board membership be member states or their representatives through "state regulatory and enforcement agencies" would not serve the best interests of students, institutions, member states, or the public at large. As wisely set forth in §8.2 of the Unified Agreement, no one group, including presidents of the regional compacts, should control NC-SARA Board membership. Rather, in accordance with the express terms of the Unified Agreement that each member state has signed, the NC-SARA Board should continue to be drawn "from the range of impacted groups to ensure a wide range of support as the interstate reciprocity agreement is promoted and implemented, while taking into consideration the need for those groups to have a permanent voice." See, §8.2, Unified Agreement. Ensuring that all stakeholders are represented and that no one group has a majority on the Board maximizes the experience,

competence, and viewpoints necessary to continue to lead a national reciprocity agreement and should be retained.

PMP-0343: Protecting Students from Abrupt Closures

The proposed amendment to §3.6 would mandate that institutions pay an assessment into a newly created Student Tuition Recovery Fund (STRF) managed by SARA. While we can support the inclusion of a STRF as a valid consumer protection method, SARA is not the proper entity to manage or administer a STRF.

Many states including Arizona have a STRF fund and require institutions to pay annual assessments based on enrollment. Administration of a STRF fund is an administratively challenging process. That process should be located within the home state regulator of the subject participating institutions to ensure local and direct oversight and enforcement of STRF requirements and the claims processing for that state's schools. A typical process involves the filing of claims by or on behalf of the student, who is required to provide specific information regarding their attendance at the institution and all funds paid to the institution during their enrollment including private funds, student loans, grants or other sources. Other information typically collected includes such topics as the program of study, how far the student advanced, whether they graduated, time period of attendance, etc. The claim must then be investigated to ensure that the claimant is eligible for a refund (such criteria must also be clear). After that, the claim must be investigated to determine whether the claimant will receive any refund. Home state higher education regulators are uniquely positioned to administer a STRF. Creating some overarching, national STRF administered via SARA, does not comport with the structure or capabilities of SARA.

The answer instead would be to place the requirement of a STRF fund for the protection of students in the SARA requirements of member states, which would in turn apply their STRF requirements to their participating institutions. Member states, through their higher education regulator, would require participating institutions to pay into a STRF fund. The home state regulator would then administer and manage the STRF fund on behalf of all students attending its institutions. Members states may need reasonable time to modify statutes and regulations to implement this SARA policy for their participating institutions.

PMP-0344: Requiring Evidence of Compliance at Authorization

This proposal from the Century Foundation contemplates a change to the Explanatory Note in §2.5(b) of the SARA Policy Manual. It proposes to change the answer to the question "Can a SARA State Portal Entity (SPE) require a SARA applicant institution to provide additional evidence that it will meet policies for operating under SARA before allowing it to participate in SARA?" from "No," to: "Yes." A state may require an institution to provide evidence that it meets SARA requirements, and a state must investigate any claims that the institution does not meet those requirements."

We fundamentally agree that SPEs should have the authority to review information prior to granting an institution approval as a SARA institution. However, this authority cannot be unlimited. Rather, the review must be limited to information that is determinative of an institution's ability to meet its obligations as a SARA institution. Those requirements are currently included in the SARA Institution Application. As we have expressed in comments to proposals PMP-0348 and PMP-0349 (incorporated herein by this reference), speculative and

non-adjudicated information is not appropriate to determinations related to status or participation in SARA.

Moreover, the generic reference to the term "state" in this and other proposals should be clarified. The generic use of the term purports to give power to a "state" to perform investigations of institutions related to approval of applications for participation in SARA. However, within SARA this power is explicitly and specifically provided to the State Portal Entity (SPE) within a state, not a state as a whole or any other entity or enforcement authority within a state. *See* SARA Policy Manual §2.4(i). Accordingly, any investigation and compliance authority related to SARA authorization should clearly reference the exclusive purview of the SPE for that state.

PMP-0346: Fixing Flaws in the Complaint Process

Proponents seek to amend §4.5 regarding the complaint process by deleting the requirement that students must first take their concerns to the institution directly, and then if unsatisfied with the result, may seek additional support and redress from state regulators or SARA. They posit that the current process must be flawed based solely on the *absence* of complaints that rose to SARA for handling. They present no evidence of any kind indicating that students have found the process to be cumbersome or unduly burdensome or that institutions are doing anything incorrectly in processing student complaints.

Rather than viewing the absence of complaints that rose to the SARA-level as a positive indication that the system is working as designed – that is, that student complaints are getting resolved by the very institutions that can do so in a meaningful and expeditious manner- proponents assert that this is an indication that things are "flawed", amiss, and must be changed. Such speculation is neither an appropriate nor sufficient basis to change the current SARA procedures.

The overriding goal of any complaint process is to assess the matter(s) asserted and, if justified, provide a remedy to the complainant. In this case, each member institution must have a complaint process in place for all students taking programs under SARA policies. Requiring students to first present their complaint to their institution is not burdensome, as it is the institution itself that has the most direct and efficient way to provide relief to the student. In truth, depriving an institution of the initial attempt at resolution actually works to the detriment of students. It interjects a layer of bureaucracy that will most certainly extend and complicate the process of getting to resolution. *Schools* have the power to resolve the complaint – regulators have the power to punish the institution, not the power to immediately help the student. The proposed change would not benefit students, and we believe that most SARA stakeholders including state regulators and SPEs would agree.

By way of example, the vast majority of student complaints University of Phoenix receives involve student concerns/questions about financial aid (processing, balances owed, refunds, etc.), followed by academic issues (policies, faculty, and grades). These are precisely the kind of complaints that are best handled and resolved by the institution with its student directly. An institution can immediately access all financial records and processes, communications, etc. that are needed to investigate and resolve the student's issue without escalation beyond the first step. If the student is not satisfied, they may go to a variety of external sources for relief, such as the state's regulator, SPE, or accreditor. Further, students may file complaints with various entities simultaneously or before contacting their school. That they do not choose to routinely

do so is not evidence of a problem or flaw; it is more reasonable to conclude that students prefer to go directly to the institution that is in a position to respond directly to address their concerns rather work through a third-party agency. This is the very reason that a system of handling complaints is required of member institutions. Where institutions can typically resolve complaints in a matter of *days* – state and other regulatory entity processes typically take *months*.

General consumer protection laws prohibiting fraud and misrepresentation are in place throughout the states and are not within the exclusive province of higher education. Students who believe that their school has engaged in this kind of very serious activity with respect to their enrollment or attendance are free to proceed directly to the state's regulatory agency, attorney general, SARA, or other body. But these rare situations are not what is being addressed by current SARA policy. There is no need to burden these agencies with the volume of student complaints that are typically presented to institutions as discussed above. The current policy gives institutions the necessary and important opportunity to address student concerns first. If students are not satisfied, it permits the matter to progress to the state and SARA SPE. Removing this important initial step creates an inefficient and burdensome process for students and institutions where early intervention by the school can potentially resolve the student's complaint. The current SARA policy is common sense and good practice and should remain.

PMP-0347: Refund Policy

We support the inclusion of mandatory refund policies to help protect consumers. Some states, including Arizona, currently require institutions to maintain a refund policy such as the one proposed.

However, like the proposed addition of a STRF, we do not believe that SARA is the proper entity to manage or administer an overarching uniform refund policy that would apply to all SARA institutions. That should be left to the member states to require of their participating institutions. Similar to a STRF, SARA policy could be modified to add the refund policy requirement to states to require of their own participating institutions. At the state level this can be accomplished by the home state higher education regulatory body making any necessary modification to statutes and regulations that would apply to participating SARA institutions. Again, some reasonable time would need to be provided for states to implement such changes.

PMP-0348: State Authority to Deny or Revoke Participation

The Century Foundation proposes to add the ability to deny or revoke participation in SARA to SARA Policy §4.4(e), which provides for the resolution of complaints. As a threshold matter, the proposed language would be misplaced because the process for taking severe enforcement actions against institutions does not belong in a policy aimed at providing redress and relief for student complaints. But beyond this question of misplacement, the substance of the proposed addition presents significant issues. The proposed addition provides:

> "States may revoke SARA participation or deny renewal of an institution's participation in SARA on the basis of the state's determination that a school has violated state or federal consumer protection standards related to misrepresentation, fraud, or other illegality. In making this determination, state may consider state or federal government investigations or actions brought against the institution or the institution's corporate parent or affiliate;

> state or federal government investigations or actions against a school's institutional partners or contractors, including lead generators, online program managers (OPMs), and/or other third-parties providing marketing/recruiting service or other services; adverse actions by accreditors; and other evidence of misconduct, such as consumer complaints; private lawsuits, settlements, or judgments; information from whistleblowers; U.S. Department of Education Borrower Defense to Repayment student loan discharges, program reviews, or audits; or the placement of the school into provisional or temporary provisional Title IV certification status or heightened cash monitoring status by the U.S. Department of Education."

First, the addition is duplicative because the existing language of §4.4(e) already gives SARA member states the ability to investigate misrepresentation, fraud, and other illegal activity by institutions. Second, the addition is overly broad, as it seeks to allow states to rely on vague and inappropriate categories as measures for determining that an institution has violated those standards and therefore can have its SARA participation denied or revoked. Specifically, the proposed language allows the use of speculative and unreliable information that has not been adjudicated in a proceeding affording due process or that has not been tested before any judge as proof of a violation of a state or federal standard. The proposal calls for a standard contemplating extreme sanctions and adverse enforcement actions based upon mere allegations in consumer complaints, private lawsuits, whistleblower claims, and other unreliable, untested, and unadjudicated preliminary assertions. Consumer complaints, private lawsuits, and whistleblower allegations are simply allegations of wrongdoing. Decisions to deny or revoke an institution's participation in SARA based on mere allegations would deny due process to institutions, cause significant reputational and operational harm, and could cause harm to students pursuing studies at the affected institutions.

The proposal further seeks to allow the revocation or denial of SARA participation based on discharges of Borrower Defense to Repayment (BDR) claims by the Department. Yet, adjudication of a BDR claim is the very first step in the process, and at that stage no liability is or can be assessed against the institution. As the Department of Education has stated, the loan discharge process is between the borrower and the Secretary. *See* Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program, 87 F.R. 65904, 65913 (2022). Until such time as there has been a final adjudication and exhaustion of appeals with respect to loan discharges sought pursuant to the BDR regulations (which can only occur after the recoupment phase where an institution is a party), any action against an institution would be premature and unfounded. A policy contemplating potential revocation of SARA participation or denial of renewal of an institution based upon the mere existence of BDR discharges would deny institutions fundamental due process and should be rejected.

Settlements are also included in the laundry list of unreliable criteria proposed for use as grounds to revoke or deny an institution's participation in SARA. Yet, settlements are often entered into prior to a trial or final administrative hearing and regularly contain specific disclaimers of any wrongdoing by the parties. The mere existence of a settlement cannot be grounds for revoking or denying participation by an institution in SARA. We suggest that the potential for any action by an SPE be restricted to either final adjudicated actions that are not subject to any appeal or, in the case of a settlement, a stipulation of substantial and material wrongdoing by a party. Accordingly, the language of the proposal should be revised to require that in the event a settlement is relied upon for action taken against an institution by a SPE, any

such settlement must include a stipulation of substantial and material wrongdoing by the SARA-participating institution.

Likewise, no revocation or denial of SARA participation should be possible based upon an institution merely being placed on Title IV provisional certification. The proposal to that effect is dramatically overbroad; the Department routinely takes such action for a wide variety of reasons, many of which (such as, for example, a change in ownership or control) involve no actual or alleged wrongdoing on the part of an institution. *See* 34 CFR 668.13. Similarly, the mere pendency of Departmental program reviews and audits alone is not grounds for revocation or denying participation approval. Therefore, the broad language of the proposal should be rejected and revised to include a requirement that the reason for imposing provisional certification, or the findings in a program review or performance audit, as applicable, must constitute final adjudicated findings against the institution that are not subject to any appeal and that demonstrate substantial and material wrongdoing on the part of an institution in order for any such finding to be relied upon by an SPE to revoke or deny an institution's participation in SARA.

For all the reasons stated above, this proposal cannot be approved. The only information that can be reasonably relied on in making the serious determinations of denial or revocation against an institution should be final actions in which an institution has received its due process rights, such as final, non-default judgments or final administrative actions.

PMP-0349: Addressing Flaws in the Provisional Status Provisions

This proposal would add circumstances under which a state, in its discretion, could approve or renew an institution provisionally. Many of these additions are speculative and mere allegations at best and should not constitute grounds for action by SPEs. Any actions taken by a SPE should be based on final, non-default judgments or decisions in administrative proceedings that are not subject to appeal. Otherwise, institutions' due process rights are denied.

Additionally, the proposal purports to give power to a "state" to revoke or deny an institution's approval to participate in SARA. If the reference to "state" is intended to unlawfully broaden the enforcement powers against SARA institutions, it must fail. SARA provides the authority to admit, revoke, and place an institution on provisional status explicitly and specifically with the SPE of the member state, not a state as a whole or any other entity or enforcement agency within a state. *See* SARA Policy Manual §2.4(i). Accordingly, any references to authority related to SARA activities should be clearly noted as within the exclusive authority of the applicable State Portal Entity.

Specifically, the proposed language to Policy §3.2(a)(6) would allow a SPE to provisionally approve or renew an institution in the event that the institution is subject to a private lawsuit. Currently, SARA policy specifically states that a private lawsuit is not grounds for a provisional approval or renewal, and that limitation should remain. A private lawsuit is speculative and is not a final determination. Private litigants have broad latitude to make claims and demands within a complaint, and their motivations are not confined to compliance concerns or perceptions of institutional malfeasance. The proposed reliance upon the mere existence of a private lawsuit for the purpose of provisional approval or renewal would ignore basic due process requirements and should be rejected.

The proposed changes to Policy §3.2(a)(9) would similarly treat speculative information as authoritative and would allow for action based on such mere speculation. Under this proposed revision, "evidence" of "engagement in deceptive, abusive, fraudulent, or otherwise illegal conduct" is defined to include consumer complaints, information from whistleblowers, private lawsuits, settlements and an undefined catch-all "other evidence."

Consumer complaints, information from whistleblowers, and the undefined catch-all are speculative and untested by any administrative or legal tribunal, and reliance on these categories of information would defy fundamental precepts of due process. For example, there are no limits and no requirements that consumer complaints must contain any evidence of wrongdoing. Likewise, information from whistleblowers is untested and speculative in nature, as are private lawsuits. Moreover, "any other evidence" is so broad and vague that any application of that standard would be arbitrary and capricious. Accordingly, this proposal cannot stand.

The proposal would also cite settlements on the laundry list of criteria to be used as evidence, but settlements cannot be reasonably relied upon for findings and conclusions justifying adverse action. Settlements may in some instances be somewhat more indicative than speculative criteria such as consumer complaints and private lawsuits. However, in most cases settlements are entered into prior to a trial or final administrative hearing to forego the expense and time of protracted litigation, and they specifically disclaim wrongdoing by the parties. Therefore, the mere existence of a settlement cannot be grounds for adverse actions. We suggest that, at a minimum, any new criteria would need to ensure any action taken must be based upon final, fully adjudicated non-default judgments or determinations brought against the school that are not subject to any appeal. And for a settlement to be relied upon for action taken against an institution by a SPE, that settlement must include a stipulation of substantial and material wrongdoing by the SARA-participating institution.

Likewise, revoking or denying approval to participate in SARA based merely on the institution being placed on Title IV provisional certification is dramatically overbroad. To reiterate, the Department routinely takes such action for a wide variety of reasons, many of which (such as, for example, a change in ownership or control) involve no actual or alleged wrongdoing on the part of an institution. *See* 34 CFR 668.13. Accordingly, we suggest that the language of the proposal be revised to include a requirement that the underlying Title IV provisional certification action must have been based upon final a fully adjudicated non-default judgement or final agency action brought against the institution that is not subject to any appeal and that reached a determination of findings of substantial and material wrongdoing on the part of an institution.

The proposal also contemplates changes to Policy §3.2(c) which address additional oversight measures while an institution is provisionally approved. We agree that it is important to protect students when an institution is on provisional status. We also agree that institutions on provisional status should be required to work toward regaining full membership in SARA. Institutions should be required to have a plan in place that will demonstrate that improvement and meet milestones over time, and that there should be a reasonable time within which institutions must demonstrate the required improvements. However, the proposed changes to Policy §3.2(d) should be rejected because the changes propose an unreasonable timeframe and make it impossible for an institution to demonstrate improvement. The proposal changes the standard for extension of provisional status from one of acting and progressing toward addressing the reasons for provisional status, to a resolution of those conditions. In many instances, such a resolution is an impossibility within a set period. Enforcement actions, private lawsuits, investigation, and settlement discussions can take multiple years to resolve.

Moreover, a Title IV provisional participation agreement can be granted for a period of 3 years. 34 CFR §668.13(c)(ii). Accordingly, requiring the resolution of any of those issues within 1 year will make it impossible for institutions to meet the requirements, potentially affecting students' ability to continue in their programs without interruption. Accordingly, this proposed change should be rejected.

II. New Additions to SARA Policies

PMP-0327: State Reviews of Institution Applications

This proposes a new policy that provides for the ability of the home state to initially review the institutional application for SARA participation and to deny initial application (or any renewal) for several enumerated reasons. While in principle, we can support the discretion of the SPE to make such a determination for their schools that apply for initial or renewed SARA participation, we believe there should be clear delineation between what actions or circumstances would allow entry or renewal of a school on provisional status vs. what conduct would result in a denial. For example, proposed section (d)(2) provides that if a school is under a current investigation by an oversight entity related to the institution's academic quality, financial stability, student consumer protection policies or practices, or compliance with any state or federal requirement, it can be denied.

A current investigation in and of itself is not a final determination of anything and can be a basis for a provisional license until the investigation concludes. Many investigations by "oversight entities" can take years. The mere existence of an open investigation is not sufficient grounds for issuance of a decision denying an institution SARA participation. If all other requirements of SARA are met, the institution could be placed on provisional status and made subject to necessary oversight and conditions that would ensure students are protected. In addition, proposed section (7) lists several statuses with an oversight entity like a "warning", "sanction", or "determination" that do not qualify as final or adjudicated matters. Any such status that is preliminary, not final, and not formal should not be the basis for a denial of SARA initial participation or renewal. Actions that are merely commenced by an oversight entity have not been subject to adjudication nor have they provided full due process to the institution. In such instances, a provisional status may in some instances be appropriate in connection with investigations or non-final oversight matters and would allow the institution the ability to participate in SARA subject to monitoring processes at the discretion of the SPE when the institution otherwise meets all other requirements of SARA. The policy proposal should be revised to specify that denial of initial or renewed SARA participation may not be imposed based upon oversight matters unless they are final, fully adjudicated non-default judgements or actions, are not subject to any rights of appeal, and include findings of substantial and material wrongdoing on the part of an institution.

PMP-0328: Changes to Provisional Status

This proposal seeks to change the parameters of provisional status and would effectively create a permanent underclass of institutions, weakening SARA's authority over member institutions and vesting the decision and criteria for length and path forward during this status to each individual state regulatory authority.

The proposal seeks to delete all but two of the specific criteria upon which a provisional status placement can be based and to permit placement on provisional status at any time. The

proposed deletion of specific criteria is concerning because most of the current criteria involve actions or conditions relevant to consumer protection. The proposal would retain the criteria of a change in the federal financial responsibility composite score between 1.0 and 1.5 but seeks to modify the change in ownership criterion in a curious manner, proposing to extend this factor to a change in ownership and substantive change in organizational structure as well as "additional" undefined changes in ownership. There is no explanation why that modification is required or what gap it seeks to fill that is purportedly absent from the present language.

In place of a clear list of criteria, the proposal seeks to incorporate grounds upon which a state[2] may "deny" an initial or renewal application "based on §3.1(e)." This provision makes no sense because the cited section pertains to "participation by federally owned or federally chartered institutions," is not applicable to all institutions, and does not address reasons or criteria for approval or denial of an institution's participation in SARA. All SARA member institutions must first pass their home state regulatory agency's approval criteria, institutional accreditation and any programmatic accreditation, and SARA eligibility criteria contained in §3.1(a). Provisional status is currently reserved for cases where there are specific conditions or indicia of compliance issues or other indications of issues with the institution's academic quality, financial stability, or consumer protection.

The absence of any clear listing of criteria (and aside from the possible misstatement regarding §3.1(e)) of criteria applicable to all forms of institutions, would yield a vague standard that could not, as a practical matter, be applied to all institutions equally and/or fairly. The proposal would leave the SARA participants with policies that present no clear criteria for removal from provisional status and with no stated parameters or guidelines for the exercise of discretion by the state or for the involvement of the SPE. This policy proposal should be rejected as submitted.

PMP-0331: Institutional Disclosure Requirements

This proposal seeks to add a new requirement (adding §3.9) for participating institutions regarding disclosures to their home state upon certain triggering events. While we do not disagree with the need for transparency, the proposal is internally inconsistent and does not achieve the stated goal of benefitting "students, states and members of the public by providing transparency regarding *changes in the status* of SARA institutions." (emphasis added).
First, the proposed language requires disclosure of "any investigation by an oversight entity related to the institution's academic quality, financial stability, student consumer protection policies or practices, or compliance with any state or federal requirement within 30 days of "the institution's notification" of the same. The proposal requires that the institution, in its initial notification to the home state, must provide:

I. The notice of the *adverse action* provided to the institution.
II. Summary of the steps it will take to resolve the issues or concerns which led to the *adverse action*, and
III. Any other materials requested by the home state.

[2] Within SARA there are certain powers explicitly and specifically provided to State Portal Entities of a state, not a "state" as a whole or any other entity within a state. *See* SARA Policy Manual §2.4(i). Accordingly, any authority over SARA activities of a participating institution should be clearly referenced as under the purview of the state portal entity.

An adverse action is specifically defined as a "warning or sanction" issued against the institution or a "judgment" against an institution that may impact operations, or any "action, decision, or finding" that impacts the financial solvency of an institution. What it is NOT is an investigation that precedes a warning, sanction, judgment, action, decision or finding from an oversight entity of that institution.

Investigations are not actions – they are meant to find out whether action should be taken. There is no evidence or other basis to conclude that the mere existence of an investigation compromises an institution or its students. Further, it is entirely inappropriate to require an institution to provide a summary of steps it will take to "resolve" the investigation because at that stage there is nothing to resolve, and no wrongdoing found by any entity. The proposal assumes that an investigation will automatically lead to a finding of inappropriate conduct. This is incorrect, not justified by any evidence, and not logical.

Next, the stated rationale regarding this proposal is to provide "transparency" to members of the public "regarding changes in the status of SARA institutions." (emphasis added). Investigations, warnings, judgments, decisions, actions, and findings do not necessarily change the "status" of an institution. Status is typically a condition such as "in good standing," "on probation," "additional reporting required," "provisional," or the like. These kinds of statuses are typically public information that a prospective student may wish to know when considering enrollment in an institution. This proposal does not seek to require notification of a status change. Rather, it seeks disclosure of matters that might potentially lead to a status change – information that is typically *not* public information and that is speculative as to what if any impact it may have on institutional status. The disclosure to the home state of the information as would be required by the proposal could not possibly provide the public with solid information upon which to make an enrollment decision. And much of the information sought would in any event be disclosed on at least a yearly basis at the time of renewal and is consistent with the type of information upon which a SPE could place an institution on provisional status. See, §3.2. Moreover, subsection "b" of the proposal is redundant with current requirements, vague, and illogical.

This proposal should be denied because it is internally inconsistent, not aligned with its stated goal, and duplicative of other disclosure requirements.

PMP-0332: Include Corporate Entities in Application of Policy

This proposal seeks to add additional language to SARA policy that would make the requirements of SARA apply to an institution's corporate parents, affiliates, online program managers, etc. who act in concert with the institution "to provide instruction or activities that are covered under SARA." The only entities that are subject to SARA requirements are participating degree-granting institutions. Section 3.1(h) and the accompanying explanatory note are instructive here and support that other "persons or entities" as described in the proposed language cannot participate in SARA (and thus be subject to the requirements of SARA) unless they are a degree-granting institution in their own right. Perhaps the focus of the submission is SARA-participating institutions' responsibility for the actions of persons or entities that assist the institution in carrying out distance education functions and responsibilities covered under SARA. Such accountability is already required of SARA-participating institutions pursuant to the SARA initial application and renewal processes. Institutions certify their adherence to the requirement to be responsible for the actions of any other entities that assist them in their operations under SARA. Any evidence that the institution is not meeting this

responsibility can be a basis for investigation and action by the SPE against the institution. For all these reasons the proposal is unnecessary and duplicative and should be rejected.

PMP-0355: Off-Ramp from Provisional Status

This proposal seeks to add additional language to SARA policy regarding the ability of the SPE to remove a school on provisional status from SARA participation if the SPE becomes aware "of information (public or otherwise) of an egregious nature such that no conditions are reasonably ascertainable to sufficiently protect students (ex: financial standing, institution accreditation status)." This language should be rejected because it would permit a basis for removal of an institution from SARA participation that is undefined, speculative, unverified, and with no required minimum standards as to the source, content, certainty, proof, or severity of the subject information. Moreover, this addition is duplicative and unnecessary. Current policy in §3.2(a), (g), and (h) comprehensively address provisional status and the ability of the SPE to remove an institution on provisional status from SARA participation. If any of the activities set forth in 3.2(a) were to occur while an institution is on provisional status, a basis would exist for any SPE to consider a possible denial of continued participation in SARA. Because these issues are already clearly and completely covered by SARA policy, this proposal is unnecessary and should be rejected.

PMP-0376: More Autonomy on Placing Institutions on Provisional Status

This proposal seeks to modify §3.2(a) by inserting a clause that would completely nullify the clear and unambiguous criteria for placing a member institution on provisional status in favor of a vague standard that will likely be used not as a shield of protection for students, but as a sword against classes of institutions.

Presently, §3.2(a) permits a state[3] to place an institution on provisional status when, during either an initial or renewal application, there is evidence of any of nine identified criteria. The current criteria are clearly focused on conduct by the institution or actions taken by other regulatory bodies against the institution that implicate consumer protection concerns, thus protecting students from unscrupulous behavior. As an "addition" to those clear criteria, proponents seek to modify the introductory statement as follows (new language proposed is underlined):

A state, at its discretion, may approve an institution applying for initial or renewal participation in SARA to participate on provisional status for any circumstance <u>that is necessary to protect public interest or is likely to incent future compliance which may include . . .</u>

By this proposal, the current criteria would be nullified in favor of a new clause **permitting action against an institution for behavior, conduct or circumstances that have not occurred.** The proposal would permit negative action against an institution based *solely* on speculation and would permit states to act as some kind of online higher education "pre-crime" unit. The proposal seeks to sanction and encourage state targeting of institutions deemed "undesirable," for denial of their initial or continuing participation in SARA. This apparent goal of

[3] Within SARA there are certain powers explicitly and specifically provided to State Portal Entities of a state, not a "state" as a whole or any other entity within a state. See SARA Policy Manual §2.4(i). Accordingly, any authority over SARA activities of a participating institution should be clearly referenced as under the purview of the state portal entity.

sanctioning pre-emptive action against institutions believed to somehow be undesirable is apparent from the proponents' stated rationale for the proposal: "Provide SPE's more autonomy . . . or rejecting them from joining SARA in the first place. . ." This proposal seeks to encourage state authorization restrictions via SARA based upon vague, anticipatory, speculative and unproven theories that would never be includible as part of any state's regulatory regime because such standards would be deemed unenforceable, violative of due process, and likely unconstitutional if engaged in by a state actor.

No evidence has been presented that indicates the present policy is ineffective for these purposes or that there has been a merry-go-round of institutions moving back and forth through a revolving door from approved to provisional status and back. That is not the case, and if there were actual data or experiences that supported a rationale for the proposal, that information would have been readily apparent and highly visible, and it would have been presented by the proposal's proponents. The absence of such reveals this proposal's true aim – to prohibit certain categories of institutions (such as proprietary institutions) from participation. This proposal seeks to defy the hallmarks of NC-SARA, which are open, inclusive, and promote uniform standards for every participating institution.

PMP-0388: Student Awareness of Provisional Status

We believe disclosures serve an important purpose and agree that consumers should have information about the approval status of an institution in which they are contemplating enrolling. But excessive and repetitive disclosure, as proposed here, is overly burdensome to institutions, confusing to the public, and does not provide any additional consumer protection.

The proposal seeks to require institutions to disclose its provisional status on its website and to provide disclosure directly and continuously to currently enrolled and newly admitted SARA students as part of its complaint disclosures. We agree that a disclosure on an institution's website regarding its approval status is appropriate. We also agree that a clear and conspicuous disclosure of an institution's SARA approval status is appropriate prior to admission of a student to an institution and additionally, upon a change to such status. However, continued, ongoing, direct disclosure is unnecessary and overly burdensome on institutions.

PMP-0389: SPEs able to review new IHE applicant

This proposal is substantially similar to PMP-0344. As with PMP-0344, we agree that SPEs should have the authority to review information prior to granting an institution approval as a SARA institution. However, we believe that this authority cannot be unlimited. Rather, the review must be limited to information that is determinative of an institution's ability to meet its obligations as a SARA institution. Those requirements are currently included in the Institution Application. As we have expressed in comments to proposals PMP-0348 and PMP-0349 (incorporated herein by this reference), speculative and non-adjudicated information is not appropriate to determinations related to status or participation in SARA.

Conclusion

In summary, we believe that NC-SARA is a highly evolved system of reciprocity that is an effective and comprehensive platform for state authorization and oversight of interstate distance education. The necessity for continued access and choice of high-quality distance education

programs under SARA is vital and must be preserved. We support any additional consumer protection additions to policy that are consistent with the Unified Agreement, that maintain true reciprocity among member states and participating institutions, that continues the participation of all qualified institutions from all sectors, that are applied equally to all participating institutions, and that result in necessary and meaningful additions or changes that will clearly benefit students.

Respectfully submitted jointly by:

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