

Memorandum

To: U.S. Department of Education and Negotiated Rulemaking Committee

From: Carolyn Fast, Barmak Nassirian

Date: March 16, 2022

Re: Preserving the Department’s language on state consumer protection laws

In Issue Paper 6: *Certification Procedures - Session 3*, the Department proposed new language requiring schools to comply with consumer protection laws in all states where they operate, with an exception for “State requirements for obtaining authorization” that are inapplicable pursuant to a reciprocity agreement.¹ NC-SARA concedes that the Department’s proposal would preserve member schools’ ability to submit “a single institution application and a single fee” to operate in multiple states, thus preserving the key function of the reciprocity agreement. But NC-SARA still objects, asserting in their March 11 letter to the Committee that participating schools should be exempted from state laws beyond those related to obtaining authorization.

The Department’s proposed language should be retained. The extension of reciprocity to consumer protections beyond institutional authorization is unnecessary and inappropriate: reciprocity should provide a higher, not lower, level of consumer protection.

Currently, NC-SARA’s policies require states to waive consumer protections specific to higher education. NC-SARA’s rule, together with NC-SARA’s lack of strong consumer protections, creates a two-tiered system in which online students have significantly fewer protections than in-person students in some states.

NC-SARA’s insistence that reciprocity should exempt schools from other laws goes too far. Many entities must comply with state law in every state in which they do business (for example, student loan servicers, automakers, and financial product providers must comply with state laws in each state where they do business). It is reasonable to expect schools to do the same. Consumers certainly would not expect that some schools are exempt from consumer protection laws.

¹ § 668.14(a)(32)(iii) would require participating schools to comply with “all state consumer protection laws, including both generally applicable State laws and those specific to educational institutions” in each state where the school offers programs, “except where State requirements for obtaining authorization are inapplicable pursuant to a State authorization reciprocity agreement.”

NC-SARA's recent letter to negotiators asserts that forcing states to waive enforcement of state consumer protection laws isn't a problem because NC-SARA itself imposes consumer protection requirements on participating schools. However, NC-SARA imposes extremely weak requirements that are no substitute for state consumer protection laws. NC-SARA has few substantive consumer protection requirements at all, beyond those already required by federal regulations. For example, NC-SARA highlights in its letter that NC-SARA requires participating schools to be accredited. However, schools must be accredited to obtain Title IV funding, so this requirement adds little in the way of consumer protections for most students. Moreover, NC-SARA does not have the kinds of protections found in many state consumer protection laws, such as minimum cancellation periods, non-federal funds refund requirements, and contract requirements. The lack of strong consumer protection standards in NC-SARA's policies leaves students vulnerable and ties states' hands.

NC-SARA's broad waiver requirement incentivizes online schools to locate their home base in states with the least protections, creating a "race to the bottom" for student protections. State attorneys general and representatives of state agencies share this concern: a bipartisan group of 25 State AGs highlighted this concern in a recent [letter](#) to NC-SARA.

The Department's proposal preserves the reciprocity benefits of NC-SARA by ensuring that schools can continue to obtain authorization to operate in multiple states through one application and fee. The Department's proposal would also ensure that states have the ability to protect online students and that online students have the same protections as in-person students. We strongly support the Department's proposed language and object to modifications, such as the modification proposed by NC-SARA, which would unnecessarily and inappropriately exempt NC-SARA schools from complying with consumer protection laws in each state where they operate.