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June 16, 2016

Submitted via email: regcomments@nysed.gov

Peg Rivers
State Education Department
Office of Higher Education, Room 979 EBA
89 Washington Ave., Albany, NY 12234

Re: Comments to Proposed Regulations – I.D. No. EDU-18-16-00004-P
Authorization of NY Higher Education Institutions to Participate in SARA and Approve
Out-of-State Institutions for Distance Learning

Dear Ms. Rivers,

We are writing on behalf of our low-income clients to caution against joining the State Authorization Reciprocity Agreement (“SARA”) for oversight of online education institutions. For reasons outlined below, we urge the Board of Regents and New York State Education Department to oppose the proposed rules authorizing New York to join SARA and providing limited oversight of distance learning in New York State.

The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. Additionally, NCLC’s Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable.¹

Our policy and advocacy efforts are grounded in our direct legal assistance work with low-income clients. These clients seek our assistance because they are struggling with student loan debt, much of which was taken out to attend for-profit schools. We also consult with advocates across the country representing borrowers, many with complaints against for-profit schools.

¹ See the Project’s web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including National Consumer Law Center, Student Loan Law (5th ed. 2015), *updated at* www.nclc.org/library.

Further, a large percentage of the complaints we get through our Student Loan Borrower Assistance web site involve for-profit schools.

We recently investigated state oversight of online education providers and the emergence of SARAs as a method of addressing providers' interest in more easily accessing student markets in other states. Our findings regarding the need for state regulation of online education providers and the insufficiency of the existing SARAs (now the unified NC-SARA) to address consumer protection issues are detailed in the attached report, "Wake Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud."

What we found regarding SARAs was deeply troubling. While distance online education is now the fastest growing segment of higher education, the reciprocity agreement that purports to regulate the industry actually bars member states from applying their state student protection laws to protect their residents from illegal conduct by out-of-state schools authorized through SARA. While we understand the proponents of SARA emphasize that member states may still apply their consumer protection laws of general applicability to students attending SARA-schools, the same is not true for laws and regulations specifically intended to protect students from abuses by private, for-profit schools.

Rather, if New York joins SARA, any current or future laws and regulations the state develops specifically to protect students from unfair and predatory conduct by for-profit schools will be inapplicable to protect the New York residents who attend online SARA schools based in another state. The result would be a two-tiered system in which New Yorkers attending in-state schools (including online schools based in New York) would be subject to one set of protections that the State has decided are important to protect its residents, while New Yorkers attending online schools based in another state would be deprived of those same protections. Given emerging revelations of the details and extent of misconduct by some for-profit schools, many of which operate large on-line distance education programs, New York should not cede its authority to enact and enforce laws and regulations to protect its residents from such misconduct. Additionally, the SARA would bar New York from applying state student-protection regulations against New York-based schools that violate the regulations with respect to students in other states, depriving potentially hundreds and thousands more students of protections.

The assurance that New York's general consumer protections laws would continue to apply is also less reassuring than it may sound. Under SARA, New York would be required to rely on the other member states to provide oversight of institutions selling services to New York residents, and to receive complaints from New York residents about online schools based in other states. This oversight and complaint resolution role is a critical part of the regulation and enforcement process, and is when misconduct that may violate New York's consumer protections is likely to be identified. By signing SARA, New York would yield that role to other states—which may not share New York's same strong commitment to consumer protection—or its concern for the interests of New York residents. Indeed, there is good reason to believe that there will be a race to the bottom, with the online schools most likely to engage in unfair conduct choosing to base themselves in states that lack the resources or will to provide effective oversight.

We therefore respectfully urge the Department to reject the draft regulation and consider alternative measures to regulate online schools that would better protect students in New York and elsewhere. While many states have rushed into joining SARA without considering consumer protection issues, New York has the opportunity to carefully consider these important issues and take a principled stand. The weak consumer protection provisions of SARA are not set in stone. The Department has the opportunity to turn the tide, refuse to sign onto SARA now, and push instead for an agreement that is more balanced between the interests of schools on the one hand, and the interests of states and students on the other. Taking this stand may lead to change that benefits both states and consumers throughout the country.

Thank you for your consideration of these comments. Please feel free to contact Abby Shafroth at 617-542-8010 if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Abby Shafroth', with a long horizontal flourish extending to the right.

Abby Shafroth
Attorney
National Consumer Law Center