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in the Marketplace for All

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May 23, 2016

To the President of the Massachusetts Senate, Chair of the Committee on Ways and Means, and Members of the Senate and Committee:

We are writing on behalf of our low-income clients to caution against enabling Massachusetts to join a State Authorization Reciprocity Agreement (“SARA”) for oversight of online education providers. We urge you to oppose proposed amendment EDU 240.

The Boston-based 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.

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.<sup>1</sup>

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<sup>1</sup> See the Project’s web site at [www.studentloanborrowerassistance.org](http://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. 2014), updated at [www.nclc.org/library](http://www.nclc.org/library).

Our policy and advocacy efforts are grounded in our direct legal assistance work with low-income clients in Massachusetts. These clients seek our assistance because they are struggling with student loan debt. In addition to our work in Massachusetts, we consult with advocates across the country representing borrowers, many with complaints against for-profit schools. 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 SARAS are detailed in the attached report, "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 agreements that increasingly regulate the industry actually bar member states from applying their state student protection laws to protect their residents from illegal conduct by out-of-state schools authorized through SARA.

By signing onto the existing SARA, Massachusetts would be barred from applying its recently enacted, and tremendously important, regulations protecting students from abuses by for-profit educational institutions<sup>2</sup> to *its own residents* who attend for-profit online schools based in and authorized to operate by other SARA states. Thus signing onto SARA would deprive tens of thousands of Massachusetts residents of the rights and protections the State recently affirmed were critical. Additionally, the SARA would bar Massachusetts from applying its for-profit school regulations against Massachusetts-based schools that violate the regulations with respect to students in other states, depriving potentially hundreds and thousands more students from these important protections.

We therefore respectfully urge the Senate not to enable Massachusetts to sign onto SARA.

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,



Abby Shafroth  
Attorney  
National Consumer Law Center

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<sup>2</sup> 940 C.M.R. 31 (2014).

**Wake-Up Call to State Governments:  
Protect Online Education Students  
from For-Profit School Fraud**

**December 2015**

*Note: This brief updates Step 2 of the National Consumer Law Center's Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-Profit Schools (June 2014) available at: <http://tinyurl.com/muslfjb>.*

Distance online education is now the fastest growing segment of higher education.<sup>1</sup> Most states, however, have abdicated their responsibility to protect the increasing number of online education students from predatory and illegal practices of for-profit education companies. Most allow out-of-state companies to enroll online students *without complying with important state consumer protections for postsecondary students*, as long as the companies have no physical presence in state. These states either exempt these schools from oversight or have signed weak state authorization reciprocity agreements that prevent state enactment or enforcement of postsecondary education consumer protection laws.

## **ONLINE FOR-PROFIT SCHOOL STUDENTS NEED AND DESERVE STATE PROTECTION**

Thousands of online education students are vulnerable to misleading marketing, low-value programs, and fraud. Yet, these students lack the following protections, among others, which many states provide for students who attend brick-and-mortar schools:

- Reimbursements from state protection funds for economic losses due to sudden school or program closures;
- 100% refunds for students who cancel before the first day of class;
- Private student loan refunds in the event they withdraw before completing their educations; and
- The right to file complaints with their states' oversight agencies.

Online education students are equally deserving of protection from unscrupulous for-profit companies. There is no reason to conclude that for-profit online education schools are less likely to engage in the types of deceptive practices used by brick-and-mortar schools.

- As highlighted in the table on page 2, a majority of the largest online education schools are owned and operated by the same for-profit companies that have been the subject of multiple law enforcement investigations and actions.
- A 2012 investigation by the U.S. Senate Health, Education, Labor and Pensions Committee detailed extensive misleading practices at schools owned by all of these corporations.<sup>2</sup>

- Both Bridgepoint Education, Inc. and Career Education Corp. entered multi-million dollar settlements with state attorneys general based on allegations that they engaged in unfair and deceptive practices with respect to their online programs.<sup>3</sup>
- In November 2015, Education Management Corp. agreed to a \$100 million settlement with the Department of Education and 39 states for engaging in illegal recruiting and other illegal practices.<sup>4</sup> As of fall 2015, ITT Educational Services' financial status is being closely monitored by the Department of Education and has been sued by the Consumer Financial Protection Bureau for unfair and deceptive business practices.<sup>5</sup> Both of these schools offer extensive online education programs that are protected by reciprocity agreements or are exempt from state oversight.<sup>6</sup>

### Largest Online Colleges Involved in Government Investigations (2004-2014)

NATIONWIDE RANK BY HEADCOUNT (OF ALL POSTSECONDARY SCHOOLS OFFERING ONLINE PROGRAMS)	SCHOOL AND OWNER	ONLINE STUDENT HEADCOUNT (2012-2013 SCHOOL YEAR)	NUMBER OF LAWSUITS AND INVESTIGATIONS
1.	University of Phoenix Online, Apollo Group, Inc.	270,000	6
3.	Ashford University, Bridgepoint Education, Inc.	89,000	4
5.	Kaplan University, Kaplan Inc.	48,000	3
11.	DeVry University, DeVry, Inc.	34,000	3
13.	Corinthian Colleges, Inc.	30,000	12
14.	Education Management Corp.	30,000	6
16.	Colorado Technical University Online, Career Educ. Corp.	20,000	5

Source: "Top 20 Online Colleges and Universities by Headcount," *www.eduventures.com* (Jan. 16, 2013); see Appendix A of NCLC's Ensuring Educational Integrity report for information about government investigations and lawsuits, available at: <http://www.nclc.org/issues/ensuring-educational-integrity.html>.

### STATES SHOULD TAKE ACTION TO PROTECT ONLINE STUDENTS

Based on the National Consumer Law Center's review of state physical presence requirements, as of July 2013, only nine states regulate degree-granting and non-degree granting for-profit schools that offer online education but have no in-state physical presence.<sup>7</sup> Twelve other states regulate a subset of schools that offer online education but have no physical presence.<sup>8</sup> In the days when online programs were non-existent or rare, it may have been reasonable for states to conclude that online education oversight was unnecessary. But times have changed.

The U.S. Department of Education has recognized the risk that the lack of state oversight poses to the federal financial aid program. It is currently considering regulations that

would require schools solely offering online education programs to obtain some type of authorization from each state where the programs are offered.<sup>9</sup> To make it easier for schools to obtain state authorizations, the National Council for State Authorization Reciprocity Agreements (NC-SARA) and four higher education regional compacts have drafted a cooperative agreement for the purposes of online education oversight and approval, applicable to accredited degree-granting schools.<sup>10</sup>

The four State Authorization Reciprocity Agreements (the SARAs) essentially provide that if the state oversight agency where the school is physically headquartered (the “home state”) approves a school, then the states where the school offers online education programs (the “distant states”) must adopt the home state’s approval as long as the school lacks an in-state physical presence.

As currently drafted, the SARAs largely ignore consumer protection issues.<sup>11</sup> Chief among the SARAs’ deficiencies is the requirement that both home and distant states waive their consumer protections and minimum standards specifically applicable to for-profit schools with respect to out-of-state online students.<sup>12</sup> A school offering online education programs need only comply with the SARAs’ minimal standards and disclosure requirements. Even a home state may not apply or export statutory consumer protections to online education emanating from their state and conducted across state lines.

Numerous other serious problems with the SARAs exist and have largely gone unnoticed by state legislatures. **As of November 29, 2015, 34 states, many through authorizing legislation with little or no debate, have joined SARA.<sup>13</sup> In addition, the leaders of public and private non-profit colleges have led the efforts to pass SARA authorizing**

### **Lack of State Oversight of Online Education Programs Leaves Borrowers to Fend for Themselves**

In 2010, Shari B. (name changed to protect her privacy) had been unemployed for more than six years. A single mother of four living in California, she was attracted to an advertisement about a business associate degree program. The program was offered online by Centura College, a for-profit school headquartered in Virginia. Shari called the school and signed an enrollment agreement several days later. After enrolling, Shari discovered that her home Internet connection did not work well enough for participation in the online program. She informed Centura College by phone and in writing of her decision to cancel her enrollment agreement. She had never attended a single class or even logged onto the school’s website.

In mid-2014, Shari received a call from a lawyer. The lawyer told Shari that if she didn’t agree to start making monthly payments, her wages would be garnished. Shari was surprised and discovered that, although she had not been served with any complaint, a default judgment of \$3,000 had been entered against her. The plaintiff was a debt buyer that claimed it was enforcing a debt Shari owed to Centura College.

Because it has no physical presence in California, Centura College is exempt from oversight by the Bureau for Private Postsecondary Education. It is also not required to comply with California’s 7-day cancellation law, which allows students to cancel within 7 days and receive a 100% refund. In addition, because Centura College is an accredited school that has existed in Virginia for over 10 years under the same ownership, it is exempt from oversight by the State Council of Higher Education for Virginia. With no oversight agency to which she may address a complaint, Shari sought the assistance of a legal aid attorney.

## legislation, without regard to the serious consequences for low-income for-profit school students.

The SARAs' unbalanced and dangerous provisions are not set in stone. Reciprocity agreements may be useful, but only if they include strong consumer protections and provide for robust state oversight. In order to protect online students' and states' interests, member states, and those that are considering participation could demand that the SARAs be revised as recommended (see page 5). States should enter into reciprocity agreements only if they are revised to provide states with sufficient authority to protect their citizens.

## ENDNOTES

1. Office of the Inspector General, Dep't of Educ., "Title IV of the Higher Education Act Programs: Additional Safeguards are Needed to Help Mitigate the Risks That are Unique to the Distance Education Environment," ED-OIG/A07L0001 at 4, 6 (Feb. 2014).
2. U.S. Senate, Health, Educ., Labor and Pensions Comm., "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," S. Rpt. 112-37 (July 30, 2012).
3. See National Consumer Law Center, *Ensuring Education Integrity: 10 Steps to Improve State Oversight of For-Profit Schools* at Appx. A (June 2014). For a more up-to-date list of recent investigations, actions and settlements, see David Halperin, "Law Enforcement Actions and Investigations Regarding For-Profit Colleges," [www.republicreport.org](http://www.republicreport.org) (updated November 30, 2015).
4. Press Release, U.S. Dep't of Educ., "For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations" (Nov. 16, 2015); Press Release, Office of the Kentucky Attorney General, "Attorney General Conway Announces Agreement with EDMC" (Nov. 16, 2015).
5. Paul Fein, "Problems Deepen for ITT," InsideHigherEd.com (May 13, 2015).
6. See [www.aionline.edu](http://www.aionline.edu) (EDMC Art Institute of Pittsburg Online); [www.itt-tech.edu/onlineprograms](http://www.itt-tech.edu/onlineprograms) and [www.dwc.edu/onlineprograms](http://www.dwc.edu/onlineprograms) (ITT Education Services online programs).
7. These states are Alabama, Georgia, Indiana, Kansas, Montana, South Dakota, Utah, Wisconsin, and Wyoming. See National Consumer Law Center, *Student Loan Law*, Appx. M (Supp. 2016).
8. These states are Arkansas, Delaware, Iowa, Kentucky, Minnesota, Nebraska, New Jersey, Oklahoma, Rhode Island, Texas, Virginia, Washington. See *id.*
9. 78 Fed. Reg. 69612 (Nov. 20, 2013).
10. National Council for State Authorization Reciprocity Agreements, "State Authorization Reciprocity Agreements: Policies and Standards" (July 10, 2015).
11. Commission on Regulation of Postsecondary Distance Education, "Draft Findings, Principles, and Recommendations" at 4 (Feb. 2013).
12. National Council for State Authorization Reciprocity Agreements, "State Authorization Reciprocity Agreements: Policies and Standards" (July 10, 2015). All four regional SARAs include these provisions, unless otherwise noted, and are available at each of the following websites: [www.wiche.edu](http://www.wiche.edu), [www.mhec.org](http://www.mhec.org), [www.nebhe.org](http://www.nebhe.org), [www.sreb.org](http://www.sreb.org).
13. See <http://nc-sara.org/sara-states-institutions>.

**State Authorization Reciprocity Agreements’  
 Anti-Consumer, Anti-State Provisions  
 and How To Fix Them**



State Authorization Reciprocity Agreement (SARA) provisions are not set in stone. To more equitably address consumer, state, and school interests, states should enact legislation allowing state agencies to sign onto SARAs as long as they are revised as follows. State oversight agencies may also insist on these revisions before applying for membership or after they have become members.

SARA PROVISION	PROBLEM	SOLUTION
<b>Accreditation in Lieu of State Standards<sup>1</sup></b>	The home state <sup>2</sup> must accept institutional accreditation as sufficient for approving schools’ participation in SARA. Distant states must accept the home state’s approval. Under SARA, neither the home state nor any distant state may require more than accreditation in most circumstances.	Approval criteria should be expanded to ensure that a school provides quality education and does not engage in deceptive or illegal practices. Criteria should include minimum and audited graduate job placement rates for all programs that a school represents will lead to an occupation. <sup>3</sup>
<b>Waiver of State Consumer Protection Laws</b>	All states, both home and distant, must waive consumer protection laws with respect to covered schools and students. <sup>4</sup> It is not even clear if a state retains authority to enforce its general consumer protection laws against SARA schools.	State consumer protection laws that specifically apply to for-profit schools should cover all online for-profit education schools that market to state residents, regardless of physical presence.
<b>Treatment of All Type of Schools as If They Pose the Same Risk to Students</b>	SARA requires a state to sign onto SARA for all types of schools (public, private non-profit, or for-profit) or none.	States should be able to sign onto SARA for some types of schools, but opt out for types of schools that pose a higher risk to their residents.
<b>Lack of Consumer Protections</b>	SARA only requires that schools provide accurate information to students regarding a number of areas, including refund policies and accreditation. States may not apply more stringent consumer protection provisions to SARA schools. <sup>5</sup>	SARA should require schools to comply with all consumer protections of each state in which they market, including prohibitions targeted to unfair and deceptive business practices, disclosure requirements, private causes of action, language requirements, and requirements for enrollment agreements and other important documents.

1 National Council for State Authorization Reciprocity Agreements, “State Authorization Reciprocity Agreements: Policies and Standards” (July 10, 2015). All four regional SARAs include these provisions and are available at each of the following websites: [www.wiche.edu](http://www.wiche.edu), [www.mhec.org](http://www.mhec.org), [www.nebhe.org](http://www.nebhe.org), [www.sreb.org](http://www.sreb.org).

2 The “home” state is defined as the state where the school maintains its legal domicile.

3 For more on minimum job placement rates, see National Consumer Law Center, *Ensuring Education Integrity: 10 Steps to Improve State Oversight of For-Profit Schools* (June 2014).

4 While a home state may apply stricter consumer protections to in-state online students that enroll in schools domiciled in-state, it may not export those consumer protections to out-of-state online students of that school. The school need only comply with SARA for out-of-state online students.

5 See footnote 3, supra.

SARA PROVISION	PROBLEM	SOLUTION
<b>Inadequate Student Protection Fund Requirements</b>	While SARA states that each state must ensure that closed school students are able to receive the education they contracted for or financial compensation, it is unclear whether states are allowed to impose requirements on SARA schools to pay into state protection funds, provide bonds, or provide other financial assurance in order to fund these financial protections. <sup>6</sup>	SARA should require each member state to maintain a student protection fund sufficient to compensate the financial losses of all students impacted by school closures, at a minimum.
<b>No Refund or Cancellation Provisions</b>	SARA schools do not have to comply with state law refund or cancellation provisions.	SARA should require schools to comply with state refund and cancellation provisions for each state in which they market.
<b>Programs that are Represented Lead to Licensed Occupations but Do Not Qualify Graduates for Licensure</b>	SARA allows schools to offer programs that lead to a licensed occupation in distant states, even when the programs do not qualify students for licensure in those states. SARA only requires that schools disclose that the program does not meet state licensure requirements.	SARA should prohibit schools from enrolling students in programs that lead to a licensed occupation when the programs do not qualify students for licensure in their states.
<b>Inadequate Student Complaint Procedures</b>	SARA requires students to first try to resolve a complaint with the school. Only after this may a student submit a complaint to the home state. Although the distant state may help to resolve the complaint, only the home state may make the final decision.	SARA should provide states with the right to accept, investigate and act on complaints from their residents. Students should not be required to submit a complaint to the school before they may file a complaint with their states. Schools should be required to cooperate with any state's investigation.
<b>No Investigative or Enforcement Powers for Distant States</b>	Distant states may only take action for SARA violations (or regarding student complaints) in two ways: (1) either asking the home state to take action (and, if unhappy with the decision, appealing to regional compact), or (2) withdrawing from SARA for ALL schools.	Each state should maintain the authority to limit or deny approval, or take any other appropriate action, in the event it determines that a school has failed to meet the minimum SARA standards, its own minimum standards, or violated any state law or regulation. In addition, each state should be able to review documents, conduct site visits, issue subpoenas, and use other investigative tools it deems necessary to grant or continue approval through SARA. Other important state powers include: <ul style="list-style-type: none"> <li>■ Record retention and reporting requirements.</li> <li>■ Notification requirements regarding change in ownership, adverse accreditor actions, etc.</li> <li>■ Fee requirements to fund its work.</li> </ul>
<b>Overly Broad Definition of Physical Presence</b>	States must use SARA's overly broad definition of "physical presence" to determine which schools are covered. The definition excludes a number of activities which should lead to state oversight. For example, in-state recruiting does not constitute a physical presence. For-profit SARA schools may pay unlicensed recruiters to target students in distant states, while maintaining their immunity from state consumer protection laws.	SARA's definition should be revised to better delineate when a state has a legitimate interest in regulating activities conducted in its borders, such as recruitment activities.

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<sup>6</sup> In addition, the laws of some states that have been admitted to SARA do not allow the use of state protection funds to reimburse out-of-state distance education students. See, e.g., Ariz. Rev. Stat. Ann. § 32-3075(b) ("Any person injured by a private postsecondary education institution ceasing operation is eligible to submit a claim against the fund unless the person is not a resident of this state and is enrolled in distance learning instruction.") (emph. added.). Other member states do not have any bond provisions or protection funds to compensate harmed closed school students. See CFED, Assets & Opportunity Scorecard, For-Profit School Regulation, <http://scorecard.assetsandopportunity.org/latest/measure/for-profit-school-regulation> (accessed on Dec. 2, 2015).