National Council for State Authorization Reciprocity Agreements
NC-SARA National Council Meeting
Atlanta Airport Marriott, Atlanta GA
May 11, 2017
CONTENTS

Agenda Item I (ACTION): Approval of minutes of the October 20, 2016 meeting  ... 9

Agenda Item II: Update on the progress of the SARA initiative........................................... 15

Agenda Item III (ACTION): Finance Report and related financial actions......................... 21

Agenda Item IV: Report on actions taken by the executive committee................................. 23

Agenda Item V (ACTION): Additions and modifications to the NC-SARA Manual............. 25

Agenda item VI (ACTION): Additions and modifications to the Unified Agreement........... 31

Agenda item VII: Past the “EASY STUFF” – the continuing evolution of SARA.............. 33

Agenda Item VIII (ACTION): Proposed FY 2018 budget .................................................... 35

Agenda Item IX: Information Items....................................................................................... 37

Agenda Item X: Executive Session....................................................................................... 47
AGENDA

Welcome and introductions: Paul E. Lingenfelter, Chair

Agenda Item I (ACTION): Approval of minutes of the October 20, 2016 meeting

Agenda Item II: Update on the progress of the SARA initiative
   a) Marshall A. Hill, NC-SARA
   b) Larry Isaak, Midwestern Higher Education Compact (MHEC)
   c) Michael Thomas, New England Board of Higher Education (NEBHE)
   d) David Spence, Southern Regional Education Board (SREB)
   e) Joe Garcia, Western Interstate Commission for Higher Education (WICHE)

Agenda Item III (ACTION): Finance Report and related financial actions - Teresa Lubbers, Treasurer

Agenda Item IV: Report on actions taken by the executive committee
   a) Smaller affiliation fees for some U.S. territories

Agenda Item V (ACTION): Additions and modifications to the NC-SARA Manual and other materials
   a) Affiliation fees for small U.S. territories (approved by executive committee)
   b) Modification of State Applications, Item 14
   c) Institutions that establish physical presence

Agenda item VI (ACTION): Additions and modifications to the Unified Agreement
   a) Affiliation fees for small U.S. territories

Agenda item VII: Past the “EASY STUFF” – the continuing evolution of SARA
   a) Discussion and possible action

Agenda Item VIII (ACTION): Proposed FY 2018 budget – Teresa Lubbers, Treasurer

Agenda Item IX: Information Items - Marshall A. Hill
   a) Report on establishing SARA as an independent entity
   b) USED rules on state authorization of distance education
   c) Status of current year work
   d) Executive Director presentations, October 2016 – May 2017

X. Executive session

XI. Questions, comments, reflections from council members

Adjourn
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**NC-SARA AGENDA ITEM**

May 11, 2017

**Agenda Item I:** Approval of minutes of the October 20, 2016 meeting

**Action Item:** ☑ Yes □ No

**Staff Recommendation:** Approve the minutes.
MINUTES OF THE NC-SARA BOARD MEETING
OCTOBER 20, 2016
CAPITAL HILTON, WASHINGTON D.C.

NOTICE OF MEETING
Notice of the time and place of the NC-SARA board meeting was posted on the NC-SARA website and given to board members, regional directors, Lumina Foundation, the Bill & Melinda Gates Foundation, and other interested parties.

An agenda is maintained in the NC-SARA offices at 3005 Center Green Drive, Suite 130, Boulder, CO 80301 and online at www.nc-sara.org

CALL TO ORDER AND INTRODUCTIONS
Chair Paul Lingenfelter called the meeting to order at 8:54 a.m. (CST)

Council Members in attendance:
Chris Bustamante
Kathryn Dodge
Joe Garcia
Dianne Harrison
Larry Isaak
Paul Lingenfelter
Teresa Lubbers
Leah Matthews
M. Peter McPherson
Patricia O’Brien
Pamela Quinn
George Ross
Paul Shiffman
Helena Stangle
Michael Thomas

NC-SARA staff present:
Alan Contreras*
Nathalie Cuartas
Marshall Hill
Holly Martinez
Jennifer Shanika

Regional Compact SARA Directors and staff present:
Kris Biesinger, SREB-SARA
Sandra Doran, NEBHE-SARA
Emily Jacobson, MHEC-SARA
Mary Larson, SREB-SARA
John Lopez, WICHE-SARA
Jennifer Parks, MHEC-SARA

Council Members not in attendance:
Barbara Ballard
Terry Hartle
Arthur Kirk, Jr.
David Spence
Leroy Wade*

Guests
Jim Hall – Founding President, SUNY Empire State College
Dan Silverman – Compliance Coordinator, Virginia Commonwealth University

*Joined via conference call
Welcome and Introductions:
Paul Lingenfelter welcomed Council members and other attendees. After Council members introduced themselves, Marshall Hill introduced Nathalie Cuartas as the new Human Resources Administrator of NC-SARA.

Agenda Item I: Approval of Minutes (Approval of minutes of the May 5, 2016 NC-SARA Board Meeting)
The minutes of the May 5, 2016 Board Meeting were reviewed by the Council. Joe Garcia moved to approve the minutes; Belle Wheelan seconded the motion. The motion passed with all members present voting “yes.”

Agenda Item II: Update on the progress of the SARA initiative
Marshall A. Hill, NC-SARA, reported that 42 states and the District of Columbia are members of SARA, with an additional two to five states expected to join by the end of the year. There are currently 1,100 participating institutions, with renewal rates above 99 percent.

Larry Isaak, Midwestern Higher Education Compact, asked Jenny Parks, the MHEC-SARA Regional Director, to provide MHEC’s regional update. Parks noted that all MHEC states have joined SARA and that MHEC currently accounts for 41% of all SARA Institutions. She noted the very active involvement of the MHEC regional steering committee. Isaak commented on the valuable lessons learned from the challenges presented by a recent institutional renewal. Hill complemented MHEC and the institution on how both handled the situation.

Michael Thomas, New England Board of Higher Education, reported that three NEBHE states (ME, NH, VT) have joined SARA and applications from three additional states (CT, NJ, NY) are likely to be considered for membership by the end of the calendar year. MA is still discussing membership.

Mary Larson, acting on behalf of David Spence, Southern Regional Education Board, reported that DC, DE have recently become SARA members. Applications from Kentucky and Pennsylvania have been received and will be considered in November. Puerto Rico anticipates affiliating with one of the regions and joining SARA in the near future.

Joe Garcia, Western Interstate Commission for Higher Education, reported that all WICHE members except California and the Northern Mariana Islands have now joined SARA. Initial discussions have been held with CNMI. California’s institutions are fully supportive, but other state priorities are slowing action.

Agenda Item III (ACTION): Ratification of actions taken by the Executive Committee
– Paul E. Lingenfelter, Chair

a) Revised FY 2017 Budget (Provided separately at meeting)
   Hill discussed the revised budget and his recommendation for an adjustment on staffing levels. The 2017 revised Budget was reviewed and approved by the finance and executive committees.
b) Records Retention and Destruction Policy  
Hill stated that this policy was recommended by our accounting firm since it is a federal requirement for 501(c)(3) organizations. Motion to approve the Records Retention and Destruction Policy was made by Pat O’Brien. Paul Shiffman seconded. The Board approved unanimously.

Agenda Item IV (ACTION): FY 2016 audit – Paul Lingenfelter, Chair and Teresa Lubbers, Treasurer

Lingenfelter and Lubbers noted we are in very good financial condition. There is a negative fund balance due to the conflict between the cash-basis influx of institutional fees and the need to defer accounting for some of that revenue throughout the year. Peter McPherson, Association of Public and Land-Grant Universities, requested an expense-to-budget report, which Hill agreed to provide in the future.

Hill reported that in October 2016, all SARA partners received the largest quarterly allocations yet provided. He reported that NC-SARA continues to retire its financial debt to WICHE, anticipating that it will be paid off by summer, 2017. Pat O’Brien requested clarification of the Temporary Restricted Assets, which Hill explained was the grant support received from the Bill & Melinda Gates Foundation, the President’s Forum and SREB, provided to cover the SARA State Meeting.

Treasurer Lubbers moved to approve the FY 2016 Audit. Belle Wheelan seconded. The Board approved unanimously.

Agenda Item V (ACTION): Finance Report (provided separately) – Teresa Lubbers

Reviewed and approved by the Finance Committee, no need for a vote.

Agenda Item VI (ACTION): Approval of SARA Manual, incorporating several policy modifications

The Manual combines the previous Policies and Standards and FAQs. The bulk of that conceptual and editorial work was done by Alan Contreras. Hill engaged attorneys from Cooley LLP to review the document regarding legal risks to NC-SARA prior to it being considered by the Board.

Peter McPherson moved to approve the SARA Manual with the indicated policy modifications. Belle Wheelan seconded. The board approved unanimously allowing for minor editorial corrections.

Agenda Item VII (ACTION): Election of Council Members – Paul Lingenfelter

Lingenfelter stated that SARA is now three years old, and as members’ terms conclude we need identify successors who are committed to being engaged and focused on continuing SARA’s important role in improving the quality of postsecondary distance education. Six of the eight members whose current terms conclude at the end of this year have agreed to stand for re-election. The two members that will not be continuing are Art Kirk and Terry Hartle. Both asked that their compliments and best wishes be conveyed to the Board. Lingenfelter asked for formal recognition for Kirk’s and Hartle’s contributions to the establishment and success of SARA.
Lingenfelter asked for a motion to approve second terms for the six current members standing for re-election: Chris Bustamante, Kathryn Dodge, Peter McPherson, Pam Quinn, Helena Stangle, and Leroy Wade. The motion to approve the re-election of these six board members was made by Larry Issak. Paul Lingenfelter seconded. The board approved unanimously.

Agenda Item VIII: Information Items

a) Quarterly Reporting of appealed complaints
   Hill reported that complaint reporting is done on a quarterly basis and that very few complaints have been appealed to the SARA states. He stated that no problematic patterns are evident.

b) Enrollment Reporting by Institutions
   SARA’s first round of enrollment reporting occurred in May, 2016. More than 800 institutions were to report; all but 20 reported.

   Unfortunately, more than one-third of reporting institutions reported zero enrollments across all states. To avoid allegations of FERPA complications, institutions were instructed to report “zero” for each state in which they had fewer than ten enrolled students. While that direction accounted for some unknown number of “zero” reports, it is unlikely to account for as many as were reported.

   Hill will convene a data committee to recommend modifications to future reporting processes.

c) Progress Report on establishing NC-SARA as an independent entity
   Hill reported that NC-SARA has attained federal 501(c)(3) status with the IRS, has filed its federal 990 forms, completed an official accounting audit, almost fully transitioned financial and accounting functions from WICHE, and established independent IT and technical services. About 90% of employee benefits plans are in place. Directors and Officer’s Liability Insurance has been obtained, as well as Worker’s Compensation, Business Owner’s Insurance, Property Insurance, Short & Long Term Disability and Life Insurance.

d) Institutional advisory committee
   Hill stated he is considering establishing an institutional advisory committee.

e) State of current year work
   Hill refereed members to the list provided in the Board Book.

f) Next Meeting
   Next Meeting will be Thursday May 11, 2017. Location: TBD

Executive Session

Questions, comments, reflections from council members

Adjourn at 2:00
NC-SARA AGENDA ITEM

May 11, 2017

Agenda Item II: Update on the progress of the SARA initiative

**Action Item:** ☐ Yes ☑ No

**Background:** The SARA initiative began inviting states to join in early 2014. As of April 2017, all states except California, Florida, and Massachusetts are members of SARA. The District of Columbia is a member and Puerto Rico and the U.S. Virgin Islands intend to join as soon as possible. Marshall Hill will provide an overall assessment. The regional compact presidents will focus more closely on developments within their regions.

a) Marshall Hill, National Council for State Authorization Reciprocity Agreements (NC-SARA)
b) Larry Isaak, Midwestern Higher Education Compact (MHEC)
c) Michael Thomas, New England Board of Higher Education (NEBHE)
d) David Spence, Southern Regional Education Board (SREB)
e) Joe Garcia, Western Interstate Commission for Higher Education (WICHE)
Progress of the SARA Initiative

Map as of April 2017

Approved as SARA state
## STATE ACTIONS REGARDING SARA

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n/a: State has determined new legislation is not needed to enable participation in SARA.

North Dakota & South Dakota are members of both MHEC & WICHE; chart indicates SARA affiliation.
As of April 2017

Number of SARA States

Number of SARA Institutions
As of April 2017

Institutions by SIZE

- Fewer than 2,500 FTE: 45%
- 2,500 - 9,999 FTE: 18%
- Greater than 10,000 FTE: 37%

As of April 14, 2017

Institutions by SECTOR

- Public: 62%
- Private/Non-Profit: 34%
- Independent/For-Profit: 4%
- Tribal: 4%

As of April 14, 2017
NC-SARA AGENDA ITEM

Agenda Item III: Finance report and related financial items – Teresa Lubbers, Treasurer

Action Item: ☒ Yes ☐ No

Background and policy context

The SARA initiative is now completely funded by institutional fee revenue. Institutions pay SARA participation fees to NC-SARA, which distributes funding to the four regional compacts and retains the remaining balance to support its own operations.

FY 2017 (July 1, 2016 – June 30, 2017) NC-SARA policies provide that each of the regional compacts is to receive $425,000 in SARA funding during the fiscal year. Following the end of each quarter, institutional participation fees that have been paid to NC-SARA during the quarter are distributed to the SARA partners. Each compact receives 16 percent of the accumulated quarterly revenue until its $425,000 has been provided; NC-SARA retains the remaining balances.

Each regional compact received its final FY 2017 allocation in early April, 2017.

NC-SARA financial status, end of third quarter FY 2017

NC-SARA ended the third quarter of FY 2017 in a strong financial position. Institutional fee revenue continues to be generated, and institutional renewal rates are above 99 percent.

Financial report will be sent separately

FY 2018 regional compact allocations and inflation (ACTION needed)

NC-SARA policies provide that the regional compacts’ annual $425,000 allocation may be increased due to inflation. The Commonfund Higher Education Price Index, 2016 Update states that the Consumer Price Index (CPI) for FY 2016 increased .7 percent and the Higher Education Price Index (HEPI) increased 1.8 percent during that same period.

Some options for the compacts’ SARA funding increases in response to those inflationary increases are listed below:

- FY 2016 increases: CPI + .7% HEPI: + 1.8%
- $.7 + 1.8 = 2.5 \quad 2.5/2 = 1.25
- $425,000 \times 1.018 = 432,650 \ (HEPI-based\ increase)
- $425,000 \times 1.007 = 427,975 \ (CPI-based\ increase)
- $425,000 \times 1.0125 = 430,313 \ (Average\ of\ the\ two\ inflation\ indices)
Reserve funds for the SARA partners  (ACTION needed)

Current NC-SARA policies provide that after NC-SARA has repaid its debt to ICHE (done April, 2017) and established a positive cash flow for its operation as an independent entity (done), funds are to be allocated to the five SARA partners to begin the establishment of reserves. Reserves are to total $212,500 for each of the regional compacts and, for NC-SARA, half of NC-SARA’s annual operating budget (as determined).

Staff believe that NC-SARA should establish additional policies regarding SARA reserves and recommends the following:

NC-SARA policy on reserve funds (recommended new text underlined, changes struck-through):

- Each regional compact is to be allocated $212,500- $215,000 in SARA-related reserve funds;
- NC-SARA is to be allocated for reserve funds an amount equal to half of NC-SARA’s annual operating budget (as determined);
- SARA reserve funds are in addition to the annual allocation by NC-SARA to the four regional compacts and will be restricted for use by the compacts for the administration of SARA in their respective regions for either the year they are received or in future years. Each compact will monitor the funds in accordance with its established finance and accounting policies.
- NC-SARA will treat its reserves similarly and will hold them in a separate account.
- SARA reserve funds are for emergency or unanticipated SARA-related needs, expenses, requirements or opportunities. Expenditures of SARA reserve funds by the compacts or by NC-SARA for “opportunities” require prior approval by NC-SARA.
- Expenditures of reserve funds by any SARA partner shall be reported to NC-SARA’s finance committee.
- If expended, reserve funds would be replenished upon approval by NC-SARA.
- At least $50,000 in reserve funding shall be provided each SARA partner per quarter, having begun with the third-quarter allocations of FY 2017 and continuing in FY 2018 until reserves are fully funded.

Staff recommendation:

- Accept the FY 2017 Third-Quarter Finance Report;
- Increase the FY 2018 regional compact funding to $430,000 each;
- Increase the regional compacts’ total reserve funding to $215,000 each; and
- Make the changes indicated above to NC-SARA’s policies on funding reserves.
NC-SARA AGENDA ITEM

Agenda Item IV: Report on actions taken by the executive committee

Action Item: ☐ Yes ☑ No

On February 10, the executive committee approved lower affiliation fees for some small U.S. territories. See Agenda Item V(a)
NC-SARA AGENDA ITEM

May 11, 2017

Agenda Item V: Additions and modifications to the SARA Manual and other materials.

Action Item: ☑ Yes ☐ No

a) Affiliation fees for small U.S. territories (approved by executive committee)
b) Modification of State Application (Initial and Renewal), Item 14
c) Institutions that establish physical presence

Agenda Item V: a) Affiliation fees for small U.S. territories (approved by executive committee)

Background
Regional compact and NC-SARA policies allow U.S. states, territories and districts that are not members of a regional compact to affiliate with a compact for the sole purpose of becoming members of SARA and thereby enabling their eligible institutions to participate. PA, NY and NJ (the only states that are not members of a compact) and the District of Columbia (also not a member of a compact) have taken that step, and each pays an affiliation fee of $50,000/year to the regional compact with which it has affiliated -- DC and PA with SREB and NY and NJ with NEBHE.

The United States has sixteen territories, five of which are permanently inhabited: Puerto Rico, Guam, Northern Mariana Islands, United States Virgin Islands and American Samoa.

Two territories (Puerto Rico and the U.S. Virgin Islands) are preparing applications to affiliate with SREB; discussions in the Northern Mariana Islands have begun but are not as advanced. PR and VI would likely affiliate with SREB and NMI with WICHE.

PR has quite a few institutions, as of course do PA, DC, NY and NJ. It has agreed to the normal $50,000/year affiliation fee. The U.S. Virgin Islands and the Northern Mariana Islands are in a different situation: each has only one institution likely desirous of participating in SARA. Given that, having VI and NMI pay $50,000/year to affiliate with their chosen compact would be challenging.

Rationale for a lower fee (provided by Michael Thomas):

- Some/many (though not all) state portal entities pass the costs of SARA-related operations on to their participating institutions (which SARA allows);
- Because the four territories are so small and have so few participating Institutions, that is not a feasible model;
- Thus, fundamentally, they have less capacity to pay such a high fee;
• SARA and its member states/institutions benefit from having the territories participate, for a variety of reasons;
• So, the fee needs to incentivize and sustain their participation, not discourage it;
• Given the distances involved with some such territories, they are less likely to benefit from the connection to a compact (due to distance and cost);
• The $10,000 is aimed at addressing those factors.

After discussion, the NC-SARA executive committee on February 10, 2017 approved the following policy:

If Guam, the Northern Mariana Islands, the United States Virgin Islands or American Samoa choose to affiliate with a regional compact to enable participation in SARA, the affiliation fee for each of those territories will be $10,000 per year. Institutions from those territories would pay regular institutional fees to NC-SARA; those territories, as do all SARA states, would determine whether to charge their institutions in-territory fees to participate in SARA.
Agenda Item V: b) Modification of Item 14 of the SARA State Initial and Renewal Applications

Background

Vermont became a SARA state in April 2015 and its next renewal date is April 17, 2017. Ten of the state’s institutions participate in SARA. Five of those institutions are public; six are independent, non-profit.

NEBHE began communication with the Vermont Agency of Education in December 2016 regarding their 2017 state renewal application. In mid-February, Agency staff expressed concerns with question 14. b. of the SARA State Renewal Application because of circumstances arising from the May 2016 closing of Burlington College (which was not a SARA institution).

Relevant language from the SARA State initial and renewal application is as follows:

14. The state has clear and well-documented policies and practices for addressing catastrophic events, as follows (language of concern is highlighted):

   a. The state may request assistance from the institution's accreditor as the accreditor applies its standards under §602.24(c) of federal requirements for catastrophic events.

   **b. In the event of the unanticipated closure of an institution, the state has processes to assure that students receive the services for which they have paid or reasonable financial compensation for those not received.** Such assurances may include tuition assurance funds, surety bonds, teach-out provisions or other practices deemed sufficient to protect consumers.

   c. The state requires institutions to have adequate disaster recovery plans, particularly with respect to the protection of student records, or the state provides such a plan.

   d. A SARA member state agrees to apply its policies and practices for catastrophic events consistently and equally within each sector (public, private non-profit, and private for-profit) to residents of any state.

About Burlington

Burlington College – an independent, non-profit institution established in 1972, with an enrollment of a few hundred students -- was placed on probation by NEASC (its regional accreditor) in June 2014. The institution ceased operations in May 2016. A teach-out plan was in place and the institution stated they would remain committed to following their plan through the end of 2016 in the NEASC public statement. ([https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/Public_Statement/Public_Statement_on_BurlingtonCollege_Decision_Final.pdf](https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/Public_Statement/Public_Statement_on_BurlingtonCollege_Decision_Final.pdf))
Burlington failed to comply with the preparation and delivery of student records per state statute (http://legislature.vermont.gov/statutes/section/16/003/00175). In addition, according to the VT Agency, students taking courses during the final semester (May 2016) have not received course credit, some transcripts are missing and 1098T forms (regarding tuition statements) have not been distributed. According to the VT statute, the state is charged with the protection of academic records. The Vermont Attorney General is only able to seek recourse in state costs incurred related to student records (obtaining, storing, attorney’s fees).

Based on this experience, the state has concerns about affirming in the SARA renewal application that they have processes to assure that students receive the services for which they have paid or reasonable financial compensation for those not received. Staff of the VT Agency of Education has stated that despite the Agency’s best efforts, there is no way to make Burlington students “whole.” Buildings were left abandoned, property was auctioned and there is no one to hold accountable. They report that the state will likely consider additional legislation because of this event, but that may not happen during the current legislative session.

Staff analysis and rationale for proposed resolution

When NEBHE in 2015 considered Vermont’s application to become a SARA state, it reviewed and found the state’s capabilities to meet the requirements of Item 14 of the State Application satisfactory. However, when Burlington College did not meet its statutory requirements and the assurances it had provided its regional accreditor that it “remains committed to implementing, through established agreements with various partners, its closing and teach-out plan to address the needs of the Burlington College student body through the end of the year,” those capabilities were insufficient to deal with the full range of consequences of the institution’s closure.

That would likely be the case for many states faced with a similar situation. Some states have established tuition recovery funds to deal with some consequences of institutional closures, but the majority haven’t – especially regarding non-profit institutions. SARA provides states flexibility in dealing with the issue. Having SARA require of its member states a particular type and level of financial redress in such circumstances would likely be a difficult political challenge. States cannot ensure the cooperation of closing institutions, despite statutes, rules and institutional assurances. A question of reasonableness therefore arises, and the staff proposes the following recommendation.

Staff recommendation:

Modify Item 14 of the SARA State Applications (both initial and renewal) as follows:

14. The state has clear and well-documented policies and practices for addressing catastrophic events, as follows:

   a. The state may request assistance from the institution’s accreditor as the accreditor applies its standards under §602.24(c) of federal requirements for catastrophic events.
b. In the event of the unanticipated closure of an institution, the state has processes. The state has laws, regulations, policies and/or processes in place to deal with the unanticipated closure of an institution and will make every reasonable effort to assure that students receive the services for which they have paid or reasonable financial compensation for those not received. Such assurances laws, regulations, policies and/or processes may include tuition assurance funds, surety bonds, teach-out provisions or other practices deemed sufficient to protect consumers.

c. The state requires institutions to have adequate disaster recovery plans, particularly with respect to the protection of student records, or the state provides such a plan.

d. A SARA member state agrees to apply its policies and practices for catastrophic events consistently and equally within each sector (public, private non-profit, and private for-profit) to residents of any state.

No action needed
Agenda Item V: c) Institutions that establish physical presence

This material will be sent under separate cover.
NC-SARA AGENDA ITEM

May 11, 2017

Agenda Item VI: Additions and modifications to the Unified Agreement

Affiliation fees for small U.S. territories (approved by executive committee)

Action Item: ☑ Yes □ No

Background

The Unified Agreement (as well as the SARA Manual) contains language on the affiliation fees that states which do not belong to a regional compact must pay in order to become members of SARA.

The following addition is needed to conform to the action recently taken by the NC-SARA executive committee.

UNIFIED STATE AUTHORIZATION RECIPROCITY AGREEMENT – DECEMBER 1, 2015

SECTION 8

ROLES AND RESPONSIBILITIES OF THE NATIONAL COUNCIL FOR SARA

8.4 Finance

To finance expenses related to the establishment and ongoing activities related to SARA, NC-SARA is given authority to set and collect fees from institutions in participating states and that have been authorized by the appropriate home-state entity.

These fees will be managed and distributed by NC-SARA based on the following principles:

A. Participating institutions will pay an annual fee directly to NC-SARA;
B. SARA fees will be standardized across all regions;
C. SARA fees must be adequate to fund operational expenses associated with this Agreement—including NC-SARA, the SARA-related work of the regional compacts, and their Regional Steering Committees;
D. Fees should be low enough to encourage institutional participation;
E. With input from regional compacts and participating states and institutions, NC-SARA will every two years approve and publish a SARA fee schedule for institutions;
F. Fees will be assessed on a graduated scale, based on institutional enrollment; and
G. The fee scale, schedule and any formulas to determine enrollment will be authorized by NC-SARA and will be reviewed every two years.

Participation in SARA does not infringe upon the right of any member state to charge fees to its home-state institutions to cover the costs associated with review, approval and monitoring of operations related to the terms of this agreement. The home state shall retain all such fees.
Non-affiliated states choosing to affiliate with one of the regional compacts in order to participate in the reciprocity agreement must pay a $50,000 annual fee to that regional compact.

However, if Guam, the Northern Mariana Islands, the United States Virgin Islands or American Samoa choose to affiliate with a regional compact to enable participation in SARA, the affiliation fee for each of those territories will be $10,000 per year. Institutions from those territories would pay regular institutional fees to NC-SARA; those territories, as do all SARA states, would determine whether to charge their institutions in-territory fees to participate in SARA.

Staff recommendation: Approve the addition.
NC-SARA AGENDA ITEM

Agenda Item VII: Past the "EASY STUFF" - the continuing evolution of SARA

This material will be sent under separate cover.
NC-SARA AGENDA ITEM

May 11, 2017

Agenda Item VIII: Proposed FY 2018 Budget – Teresa Lubbers, Treasurer

Action Item:  ☑ Yes  ☐ No

Provided separately

Staff recommendation: Approve the proposed budget
NC-SARA AGENDA ITEM

Agenda Item IX: Information Items

Action Item:  □ Yes  ☑ No

a) Report on establishing SARA as an independent entity
b) USED rules on state authorization of distance education
c) Status of current year work
d) Executive Director presentations, October 2016 – May 2017
Agenda Item IX (a): Progress report on establishing NC-SARA as an independent entity

Background
In October 2015, NC-SARA was approved by the Internal Revenue Service as a federal tax-exempt organization under Internal Revenue Code (IRC) Section 501(c)(3). Since then, we have been taking steps needed to support independent operation, separate from WICHE.

As of April 2017, the following tasks have been completed:

- Obtained 501(c)(3) status w/ IRS
- Federal form 990 (IRS return)
- Federal form 990 (IRS return)
- Transition finance/acct. from WICHE
- FY 2016 audit
- Phones, computers, printers, other IT services
- Arrange employee benefits (health, life, dental, ADD, retirement, etc.)
- Directors' and officers' insurance, office liability insurance, registration with CO secretary of state, Boulder County tax assessment and payment

NC-SARA continues in its present location – the building next door to the one housing WICHE, SHEEO and NCHEMS. We couldn’t ask for more pleasant and supportive neighbors, partners and colleagues.

WICHE is the lessee for our space; we sub-lease from them and have paid our portion of each month’s lease payment through them. (As of February, 2017 NC-SARA is paying all of those monthly costs.) The current lease expires in 2019.
Agenda Item IX (b): USED rules on state authorization of distance education

The status of U.S. Department of Education rules on state authorization of distance education remains unclear. A quick chronology:

- June, 2010 -- First version of a brief rule on state authorization of distance education is proposed by ED, following 2009 negotiated rulemaking
- October, 2010 -- Final rule issued
- June, 2012 -- Rule vacated by courts on procedural grounds
- Spring, 2014 -- Negotiated rulemaking panel fails to reach consensus on a new rule, leaving ED free to write a rule on its own
- July, 2016 -- ED proposes a rule, with problematic definition of "state authorization reciprocity agreement"
- October, 2016 -- NC-SARA provides comments on proposed rule*
- December, 2016 -- ED issues final rule, with an even more troubling definition
- January, 2017
  - January 10 -- NC-SARA and WCET request clarification of definition*
  - January 18 -- Undersecretary Ted Mitchell provides letter favorably clarifying intent regarding state reciprocity agreements*
  - January 30 -- ED states in the Federal Register that the rule is under review

* Included with these materials

What’s next?

The rule on state authorization of distance education is scheduled to go into effect on July 1, 2018. Many things could happen between now and then:

- no action by Congress or ED results in the rule going into effect as written;
- additional clarification could be issued by ED;
- Congress could invoke the Congressional Review Act and eliminate the rule;
- Congress could enact separate legislation on the issue;
- ED could delay implementation;
- the next federal budget could prohibit ED from spending funds to enforce the rule;
- ED could establish a new round of negotiated rulemaking on the issue;
- Congress could address the issue within the reauthorization of the Higher Education Act; or
- other creative actions could be taken.
Letter to John B. King, Jr. sent January 10, 2017

John B. King, Jr.
Secretary of Education
U.S Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

January 10, 2017

Dear Secretary King:
We are writing to request that the Department of Education (ED) as soon as possible provide a “technical correction” communication or a “Dear Colleague” letter clarifying ED’s definition of a “state authorization reciprocity agreement” in the recently promulgated rules on state authorization of distance education (34 CFR Parts 600 and 668 [Docket ID ED–2016–OPE–0050]).

As you are aware, there has been confusion in the field on this matter. Many people (ourselves included) interpreted ED’s language to be strongly detrimental to the use of state-to-state reciprocity as a means for institutions to demonstrate the authorization needed to allow students located in states other than that of the institution to be eligible for federal financial aid.

Recent communications with ED staff have indicated that our interpretation is not what ED intended. (See: [https://wcetfrontiers.org/2017/01/09/ed-clarifies-reciprocity/](https://wcetfrontiers.org/2017/01/09/ed-clarifies-reciprocity/) While that is certainly good news for the 47 states, the District of Columbia, and the 1,300 institutions participating in SARA, the country’s largest state authorization reciprocity agreement, those communications lack the official imprimatur of the Department.

Consequently, on behalf of the organizations we represent (see below), we request that ED remove uncertainty on this matter through whatever means is most expedient, while conveying the official position of the Department. If there is any way we can assist you in that process, we would be pleased to do so.

Sincerely,

Marshall A. Hill
Executive Director
NC-SARA

Russ Poulin
Director, Policy and Analysis
WCET

C: Ted Mitchell, Undersecretary of Education
About NC-SARA

The National Council for State Authorization Reciprocity Agreements (NC-SARA) coordinates a voluntary, regional approach to state oversight of postsecondary distance education. SARA is implemented by the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board, and the Western Interstate Commission for Higher Education. See www.nc-sara.org

About WCET

The WICHE Cooperative for Educational Technologies (WCET) is the leader in the practice, policy, and advocacy of technology-enhanced higher education. WCET is widely recognized as one of the most informative, reliable and forward-thinking organizations regarding the role of technology and innovation in higher education. More information about WCET’s institutional membership resources and services can be found on WCET’s website - wcet.wiche.edu

About WCET-SAN

The WCET/State Authorization Network (SAN) is a membership organization that provides training and support for navigating regulatory compliance for institutions’ out of state activities. SAN fosters collaboration to navigate authorization regulations processes efficiently among its members that are represented by more than 500 institutions nationwide.

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Russ Poulin
Director, Policy & Analysis
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303.541.0305
Dear Mr. Hill and Mr. Poulin,

The Secretary received your letter dated January 10, 2017 concerning the Department of Education’s (the Department) recently published state authorization distance education regulations and it was referred to the Office of the Under Secretary for a response. I am pleased to respond to the concerns in your letter. Under the final regulations regarding State authorization for distance education, published on December 19, 2016, for the purposes of establishing eligibility for the federal student aid programs, an institution operating via distance education is required to obtain authorization from the State(s) in which it operates if those States establish conditions for lawful operation within their jurisdiction. The regulations also establish that state reciprocity agreements are a satisfactory means to obtain authorization.

State authorization reciprocity agreements, like traditional forms of authorization, are vehicles for States to ensure that institutions comply with the laws and regulations that those States deem appropriate. For this reason, the definition of state authorization reciprocity agreement establishes several minimum requirements for reciprocity agreements. However, the regulation does not impose any requirement that the member States of reciprocity agreements accept any State that applies to enter into the reciprocity agreement. It also does not require the member States of reciprocity agreements to accept States into the agreement that have laws that are in conflict with the terms and conditions of the agreement. In other words, a distance education reciprocity agreement may require a State to meet the requirements and terms of that agreement in order for the State to participate in the agreement.

On the other hand, the regulation does not allow State reciprocity agreements to supersede other State laws if there are conflicts within State law that have not been resolved by the States themselves by making amendments to statutes or regulations. The Department is in no position to adjudicate disputes between State entities. Moreover, the rule does not preempt state law and we cannot do so in guidance. The Department will rely on the State to resolve the inconsistencies in the States’ body of law. Thus, if the Department becomes aware of an unresolved conflict between the terms of a reciprocity agreement and existing State statutes and regulations, affected institutions seeking authorization via a reciprocity agreement would not be considered authorized under the Department’s
regulation. Once a State has resolved the conflict within its own body of law, or the reciprocity agreement amends its conditions so as not to preempt state law, affected institutions will be found in compliance. The Department will coordinate with States, institutions and state reciprocity agreements to ensure the inconsistencies are resolved.

I appreciate your organizations' efforts in ensuring access to high quality distance education across the country. If you have any questions regarding the Department regulations in the future, please contact Lynn Mahaffie in the Office of Postsecondary Education.

Sincerely,

Ted Mitchell
Agenda Item IX (c) : Status of current year work

Goal 1: Continue promoting state membership and institutional participation
Goal 2: Ensure financial self-sufficiency of SARA
Goal 3: Address operational maturation of the organization

ACTIVITIES

1. Identify strategies to increase state membership and institutional participation
2. Refine the process for substantive change to NC-SARA Policies and Standards
3. Ensure operational efficiency for membership of 35-40 states and 1,000+ institutions to include:
   a. One SARA agreement, rather than four - Done
   b. Listserv for portal agency leaders - In Progress
   c. SARA cost study – Done.
   d. SARA state portal entity annual meeting – September 6-8, 2017
   e. SARA operations or policy manual – Board approved, October, 2016
   f. Facilitate document-sharing among senior SARA staff (i.e., Sharepoint) Done
   g. SARA effectiveness and efficiency metrics - In Progress
   h. Regular SARA webinars hosted by different regional compacts - Scheduled
   i. Evaluate need for promising (rather than best) practices document
   j. NC-SARA Annual Report After end of FY2017
4. Position NC-SARA as a 501(c)(3) entity – Done
5. Publish initial data collection, reporting and analysis re:
   a. Complaint system - Done
   b. Distance education enrollment reporting – Done
6. Review existing policies and standards with regard to:
   a. Tuition refunds -- Summer/fall 2016–2017
   b. Clinical placements/supervised field experiences - Continual
   c. Biannual rather than quarterly reporting of complaint data - Will consider in fall 2016–2017
   d. Links to institutional distance education pages or Classification of Instructional Program (CIP) codes - Other approach more likely
7. Collaborate on potential solutions to other higher education policy topics
   a. Coordinate updates to SHEEO complaint process site - Continuing discussions
   b. Professional licensure - Continuing discussions
8. Manage solicitation of new board members – Done.
Agenda Item IX (d): Executive Director presentations, October 2016 – May 2017

October 19, 2016
Presidents’ Forum
Washington, DC

October 25-27, 2016
SREB Electronic Campus and SARA Steering Committees
Atlanta

November 9, 2016
Virginia SARA meeting
Richmond

November 16, 2016
Online Learning Consortium
Orlando

November 30, 2016
Pennsylvania SARA meeting
State College

December 10-12, 2016
Council of State Governments Summit on Interstate Compacts
Williamsburg, VA

February 22, 2017
Florida SARA meeting
St. Petersburg

February 9-10, 2017
SARA Data Advisory Committee
Boulder

February 24, 2017
SARA Webinar
Northeast Texas Net

April 5, 2017
NASASPS Annual Meeting (State regulators)
Lexington, KY

April 8, 2017
Accreditation Commission for Audiology Education
Indianapolis

April 20, 2017
Western Association of Schools and Colleges
San Diego

May 1, 2017
United States Distance Learning Association
Indianapolis
NC-SARA AGENDA ITEM

May 11, 2017

Agenda Item XI: Executive Session

The Council may go into executive session if desired.

NC-SARA AGENDA ITEM XI: Questions, comments, reflections from Council members

Adjourn
National Council for State Authorization Reciprocity Agreements (NC-SARA)

National Council Meeting • Atlanta GA • May 11, 2017

A voluntary, regional approach to state oversight of distance education