

Testimony of Whitney Barkley-Denney  
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Submitted to the Massachusetts Special Commission on Interstate Reciprocity Agreements

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Regarding Whether the Board of Higher Education Should Be Authorized to Enter into Interstate  
Reciprocity Agreements

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September 14, 2016

Secretary Peyser, Senator Moore, and members of the Special Commission, thank you for the opportunity to submit written testimony in advance of the September 14 hearing on interstate reciprocity agreements in higher education.

My name is Whitney Barkley-Denney. I am a Policy Counsel at the Center for Responsible Lending, a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. We are affiliated with Self-Help Credit Union, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers.

Over the past few years, the Center for Responsible Lending has been engaged in research and policy regarding for-profit institutions of higher education. In addition, in my previous position of a staff attorney at the Mississippi Center for Justice, I served as a negotiator for the Department of Education's Rulemaking on both the Gainful Employment Rule and Program Integrity, where Distance Education was a central issue.

I am submitting this testimony to share CRL's work and insight as you consider whether the Board of Education should be empowered to enter a distance education reciprocity agreement. Specifically, we seek to share our concerns about the Uniform State Authorization Reciprocity Agreement (SARA). As it currently is construed, SARA has two provisions that are of particular consequence to Massachusetts students and borrowers: 1) elimination of local, state-centered control over distance education in the state; and 2) holding distance education providers to insufficient standards.

The Commonwealth of Massachusetts has long been a national leader in higher education, and in 2014 expanded that leadership by rigorously protecting students from predatory schools with amended regulations issued by the Attorney General's Office. The 2014 regulations were adopted after years of complaints regarding the poor academic and financial outcomes for students of for-profit colleges and fraud investigations by state and federal agencies.

Students of color are at particular risk of being harmed by these abuses. CRL research found that African-American and Latino students are more likely to enroll in for-profit degree-granting schools, compared to non-profit and public institutions. These students take on more debt, are less likely to graduate, and are more likely to default on their student loans.<sup>1</sup>

We are concerned that if the Commonwealth of Massachusetts joins SARA but in the future enacts strong standards regarding for-profit institutions, the Commonwealth will be unable to apply such protections against out-of-state for-profit schools offering distance education within Massachusetts' borders. One recent SARA member, Maryland, has realized too late that their membership in the compact eliminated the ability to enforce their specific higher-education laws against out-of-state for-profit distance education providers. Last year, the State of Maryland passed a bill prohibiting for-profit colleges and career schools from enrolling students if, upon

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<sup>1</sup> Peter Smith & Leslie Parrish, Center for Responsible Lending, *Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Future* (Oct. 2014), <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-for-profit-univ-final.pdf>.

graduation, the student would not be eligible for licensure in their field.<sup>2</sup> Maryland's state legislature decided to pursue this legislation after a lengthy 2015 report by the Maryland Consumer Rights Center documented widespread abuses by for-profit colleges.<sup>3</sup>

However, because Maryland already joined SARA, the state's newly enacted reforms are not applicable to out-of-state for-profit distance education providers.<sup>4</sup> This both undermines Maryland's authority by substituting the judgment of the compact's authors for their own, and creates two separate classes of protection regarding for-profit college students in the state – one for those who attend brick and mortar schools, and can therefore be assured that their rights are protected under Maryland law, and one for distance education students attending schools based out of the state, who do not have the same protections.

Maryland's experience should act as a warning to other states like Massachusetts – strong state laws created to hold for-profit colleges accountable for their abuse are pre-empted by the SARA compact.

Joining SARA would also remove the ability of Massachusetts regulators to decide which out-of-state colleges should be allowed to operate in the state. By joining SARA, Massachusetts would largely cede authority to other states and a private third-party entity to determine whether not out-of-state institutions of higher education can offer online degree-granting programs to Massachusetts residents.<sup>5</sup> Though the state's general consumer protection laws remain applicable, SARA requires schools to comply only with the laws of the school's home state – laws which could be comparatively much weaker than the laws where a student resides.

For example, the University of Phoenix is a participant in the SARA compact through its home state of Arizona. Despite investigations by state attorneys general,<sup>6</sup> the Securities and Exchange Commission,<sup>7</sup> the Federal Trade Commission,<sup>8</sup> and negative actions by the Department of Defense,<sup>9</sup> the institution is approved to enroll distance education students in any SARA member state – even if that state has documented abuses by the institution.

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<sup>2</sup> S.B. 0427, 2016 Reg. Sess. (Md. 2016).

<sup>3</sup> Marceline White & Renee Brown, Maryland Consumer Rights Coalition, *Making the Grade? An Analysis of For-Profit and Career Schools in Maryland* 2-4 (2015), available at <http://www.abell.org/sites/default/files/files/ed-forprofitschools815.pdf>.

<sup>4</sup> See Nat'l Council on State Authorization Reciprocity Agreements, *SARA and the States*, <http://nc-sara.org/content/sara-and-states> (last visited Sept. 12, 2016) (“What the state gives up is the ability to apply to SARA institutions laws specifically directed at colleges offering distance-education activity into the state; such oversight is centralized in the college's home state.”).

<sup>5</sup> Nat'l Council on State Authorization Reciprocity Agreements, *SARA Policies & Standards* § 2-5(g) (May 5, 2016), available at [http://nc-sara.org/files/docs/NC-SARA\\_Policies\\_Standards.pdf](http://nc-sara.org/files/docs/NC-SARA_Policies_Standards.pdf) (“the state agrees that, if it has requirements, standards, fees, or procedures for the approval and authorization of non-domestic institutions of higher education providing distance education in the state, it will not apply those requirements, standards, fees or procedures to any non-domestic institution that participates in SARA; instead, the state will apply those specifically prescribed in or allowed by the SARA Policies and Standards.”).

<sup>6</sup> Apollo Education Group, Inc., Current Report (Form 8-K), at 2 (Aug. 7, 2015).

<sup>7</sup> Apollo Education Group, Inc., Current Report (Form 8-K), at 2 (Apr. 19, 2012).

<sup>8</sup> Apollo Education Group, Inc., Current Report (Form 8-K), at 2 (July 29, 2015)

<sup>9</sup> Apollo Education Group, Inc., Current Report (Form 8-K), at 2 (Oct. 7, 2015).

Another school, Daniel Webster College, was approved by its home state of New Hampshire to join SARA despite the allegations that dogged its parent, ITT Technical University. Like ITT Tech, Daniel Webster is faced with the possibility of losing its accreditation, and was placed under Heighten Cash Monitoring by the Department of Education. Despite questions about both quality and their financial soundness, Daniel Webster is currently approved to operate in SARA states.

SARA is further worrisome because students harmed by out-of-state schools would be unable to assert their complaints in Massachusetts, instead having to work with regulators in the school's home state.<sup>10</sup> The requirement is not only overly burdensome to students, it is reminiscent of arbitration agreements that force the plaintiffs to travel to the preferred forum of the defendant.

Finally, the SARA compact allows schools to be accepted to the agreement to recruit and enroll students in other SARA states despite the fact that the school may offer programs that do not qualify for licensure requirements in those other states.<sup>11</sup> These schools typically do not have the requisite programmatic accreditation that is required for students to obtain licensure in many fields, including nursing, accounting, and teaching.

An inability to sit for the appropriate licensing exam because the school did not have the proper programmatic accreditation is one of the most common and devastating complaints against for-profit colleges. Too often, students spend years pursuing a degree, only to find that they will not be able to work in their chosen field, because they are ineligible to sit for a licensing or certification exam in their home states. Moreover, assuring that a school offering distance education programs within Massachusetts has the proper programmatic accreditation is the responsibility of the Commonwealth in order to protect Massachusetts residents. Yet, SARA allows the Commonwealth to abdicate this responsibility to other states.

Reciprocity agreements require a delicate balancing of institutional efficiency and the ability of states to effectively protect students against abuses that are happening within their borders.. Unfortunately, the only reciprocity agreement that is currently in use – the SARA – weighs too heavily in favor of institutions. We urge the commission to recommend to the general court not to enter into SARA or any interstate reciprocity agreement that limits the ability of the Commonwealth to set and enforce strong standards for schools that enroll residents of the Commonwealth.

Once again, thank you for the opportunity to provide these written comments and for your attention to this matter. Should you have additional questions, please contact Whitney Barkley-Denney at 919-313-8526.

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<sup>10</sup> Nat'l Council for State Authorization Reciprocity Agreements, *SARA Policies & Standards* § 4 (May 5, 2016), available at [http://nc-sara.org/files/docs/NC-SARA\\_Policies\\_Standards.pdf](http://nc-sara.org/files/docs/NC-SARA_Policies_Standards.pdf) (“SARA consumer protection provisions require the home state, through its SARA “portal” entity or agency, to investigate and resolve allegations of dishonest or fraudulent activity by a provider, including the provision of false or misleading information.”).

<sup>11</sup> Nat'l Council for State Authorization Reciprocity Agreements, *SARA and the Licensed Professions*, <http://nc-sara.org/content/sara-licsned-professions> (last visited Sept. 12, 2016).