



TO: Higher Education Committee

FROM: John L. D'Agati 

SUBJECT: Proposed Addition of Part 49 to the Commissioner's Regulations Relating to the Authorization of New York Higher Education Institutions to Participate in the State Authorization Reciprocity Agreement (SARA) and the Approval of Out-of-State Institutions to Provide Distance Education to New York Residents

DATE: September 1, 2016

AUTHORIZATION(S): 



SUMMARY

Issue for Decision

Should the Board of Regents add a new Part 49 to the Commissioner's Regulations to authorize New York higher education institutions to participate in the State Authorization Reciprocity Agreement (SARA) and the approval of out-of-state institutions to provide distance education to New York State residents?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the Higher Education Committee for adoption as a permanent rule at the September 2016 Regents Meeting. A copy of the proposed amendment is attached.

Procedural History

At the January 12, 2015 Board of Regents meeting, the Higher Education Committee discussed the implications of New York State's possible participation in SARA, and heard from a panel of representatives from each of the four higher education sectors in New York State about the challenges of offering distance education in other states and how New York State joining SARA would be beneficial to NYS colleges and universities. As a result of this discussion, the Board of Regents directed the Department to draft legislation which would provide the Commissioner with the authority to join SARA on behalf of New York State, provide the Department the authority to collect fees from New York State institutions to cover the costs of administering SARA, and the authority to collect a fee for out-of-state institutions who do not participate in SARA but who offer distance education in New York State.

At the February 10, 2015 Board of Regents meeting, the Higher Education Committee discussed the Department's draft legislation and directed the Department to move forward with legislation to be included in the package of Departmental legislative proposals being submitted for consideration by the Legislature. The Department's bill received unanimous support from the four NYS higher education sectors.

At the April 14, 2015 Board of Regents meeting, the Higher Education Committee discussed the estimated resources that would be required by the Department to administer the SARA work.

On August 13, 2015, the Governor signed into law Chapter 220 of the Laws of 2015 which enacted a new Education Law §210-c to give the Commissioner the authority to enter into SARA, subject to an appropriation, and provided the Department with the authority to collect fees from NYS and out-of-state IHEs to cover the administrative costs of this work. Since that time, and in anticipation of the necessary appropriation language being included in the 2016-2017 State Budget, the Department has been regularly engaging stakeholders from the four NYS higher education sectors, the regional compacts, and the national SARA organization about implementation of SARA.

The proposed amendment was discussed by the Board of Regents at its April 2016 meeting. A Notice of Proposed Rule Making was published in the State Register on May 4, 2016. Supporting materials are available upon request from the Secretary to the Board of Regents. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received several comments on the proposed amendment. Attachment B is an Assessment of Public Comment.

Background

The purpose of the addition of Part 49 to the Commissioner's Regulations is to establish the procedures and fees for New York State institutions who may wish to voluntarily participate in SARA, as well as the procedures and fees for postsecondary institutions whose legal domicile is outside of New York State, that are not SARA participants and which want to offer distance education to New York State residents.

Over the past several years, the widespread availability of digital and Internet-connected technologies has created greater opportunities for institutions of higher education (IHEs) to provide programs of study to students through distance education. The opportunity to offer programs of study through distance education has opened up a new marketplace for IHEs and provided for greater access to higher education for students who physically reside in places other than where an IHE is located. It has also created challenges for individual state oversight over out-of-state distance education.

Providing state oversight for interstate postsecondary distance education has proved challenging due to the patchwork of different regulations across individual states and limited individual state capacity to monitor these activities. For example, many states require detailed approval and review processes and annual fees amounting to tens of thousands of dollars or more for New York State IHEs seeking to offer distance education to their residents. New York State, on the other hand, has not previously required out-of-state institutions of higher education to be approved to offer distance education to New York State residents. Thus, while it is currently costly and cumbersome for New York State's IHEs to offer distance education in other states, it is disproportionately easy for out-of-state IHEs to offer distance education to New York State residents without any initial screening or quality assurance approvals required.

Through participation in SARA, New York State is advancing a multi-layered approach to quality assurance and consumer protection in New York State. SARA sets minimum quality standards for the provision of postsecondary distance education where there were previously no requirements. In addition, under SARA, the Department will have new staff capacity specifically dedicated to the quality review and complaint management processes for interstate postsecondary distance education. In collaboration with the four higher education sectors, and to complement the Department's efforts, New York State will benefit from a national network of support from other SARA state portal agencies responsible for the same.

Additionally, it is important to note that under SARA, state attorneys general retain their ability to take action against IHEs that violate consumer protection laws. For example, the New York State Attorney General currently has the authority to investigate and take action regarding complaints from New York State residents who are enrolled in out-of-state postsecondary distance education based upon New York State consumer protection and fraud prevention statutes. That does not change if New York State joins SARA.

At the time of the Board of Regents discussion at its April 2016 meeting, 36 states and territories were members of SARA. Since that time, four new states and one

territory have become members of SARA (Delaware, Hawaii, North Carolina, South Carolina, and the District of Columbia), bringing the current total to 41 states and territories. Additionally, two other states have submitted applications to SARA (Wisconsin and Utah), and four states are preparing applications (Connecticut, Kentucky, New Jersey, and Pennsylvania).

A brief summary of the major provisions in the proposed regulations is set forth below:

New York State IHEs and SARA – Proposed Subpart §49-1

By joining SARA, the Department will be setting minimum initial quality and accountability standards, as agreed to through the SARA policies and standards, for New York State IHEs to offer credit-bearing postsecondary distance education in other SARA states. Under the terms of SARA, out-of-state IHEs participating in SARA will be held to the same initial quality and accountability standards in order to receive approval to offer distance education to New York State residents.

When the Department, on behalf of the State, joins SARA, it will begin accepting applications from New York State IHEs for voluntary participation in SARA. Subpart 49-1 of the proposed regulations provides for procedures and fees for New York State IHEs to participate in SARA and sets eligibility requirements for institutions seeking to participate in SARA, consistent with §210-c of the Education Law and the national policies and standards of SARA.

Once New York State institutions apply and are approved by the Department for participation in SARA, they will be authorized to offer their registered distance education programs in all other states that are participating in SARA without any additional costs in any of the other states in which they wish to operate. There are currently 41 states and territories participating in SARA and several others are considering joining and/or pursuing the necessary state legislation to do so.

Once the Department joins SARA, it will be responsible for managing a complaint process for complaints received against New York State IHEs offering distance education under the SARA agreement. Other states that participate in SARA have established comparable state processes for managing complaints for IHEs from other states that participate in SARA which will provide the Department with a national network of support for quality assurance and complaint management across SARA states.

The fee structure presented in the proposed regulations reflects the costs required by the Department to carry out the administrative and oversight work of SARA on behalf of New York State IHEs and the costs to maintain state-level membership which is required for the state to participate in SARA. This fee structure is reasonable in relation to the type and nature of the work required of the Department to carry out required SARA activities, including a complaint management process. Since there are currently 41 states and territories participating in SARA, this annual Department fee will

be significantly lower than the costs for New York State IHEs to seek individual state approval to offer their distance education program outside of New York State.

Approval of Distance Education for Non-SARA IHEs – Proposed Subpart §49-2

While SARA sets minimum initial quality and accountability standards for offering interstate credit-bearing postsecondary distance education, there remain a few states that are not in SARA. In addition, there may be a number of IHEs in SARA states that have elected not to join SARA. For those IHEs that are not in SARA and that seek approval to offer distance education to New York State residents, the Department would be responsible for initial screening and ensuring that these non-SARA IHEs meet the same or comparable initial quality and accountability standards as IHEs approved to operate under SARA.

Subpart 49-2 of the proposed regulations provides for procedures and fees to enable out-of-state IHEs that are not in SARA to obtain approval to offer credit-bearing distance education instruction, courses, or programs to New York State residents. The minimum eligibility and quality standards set forth in this Subpart are comparable to those expected for IHEs that participate in SARA. So, in other words, an out-of-state institution that does not meet the standards to participate in SARA would not meet the standards established in this section and would not be approved to offer distance education to New York residents.

The fee structure presented in this Subpart of the proposed regulations reflects the costs required by the Department to carry out the initial and quality review of out-of-state applicants, the costs to maintain a basic level of oversight and data collection, and the costs associated with renewal reviews. This fee structure is reasonable in relation to the type and nature of the work required of the Department, and is comparable to those currently charged by other states for New York State IHEs to receive approval (for example, Michigan charges annual fees of \$10,000; Oregon charges biennial fees of \$7,000 and requires a separate surety bond).

There are many out-of-state IHEs that currently enroll New York State residents in credit-bearing postsecondary distance education programs. In order not to disadvantage New York State residents who are currently enrolled in these programs, the proposed regulation includes the following:

Grace Period

The proposed regulation includes a six-month grace period from the effective date of the regulation for an out-of-state IHE to actively work toward obtaining Department approval. During the grace period, an IHE may continue to operate its distance education programs to students that are currently enrolled in its programs. However, if the IHE does not obtain approval during this grace period, the institution will be prohibited from enrolling additional New York State residents until such time as approval is granted.

Phase-out Period

Should an out-of-state IHE currently enrolling New York State residents choose not to apply for approval, or be disapproved by the Department to offer credit-bearing postsecondary distance education to New York residents, the IHEs will be prohibited from enrolling new students from New York State and the IHE will only be allowed to offer its distance education programs to New York State residents who are currently enrolled in its programs for the purposes of course or degree completion and phasing out of its operation in New York State.

Related Regents Items

- <http://www.regents.nysed.gov/common/regents/files/416hed2.pdf>
- <http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415hed1.pdf>
- <http://www.regents.nysed.gov/common/regents/files/215hea2Revised.pdf>
- <http://www.regents.nysed.gov/common/regents/files/meetings/Jan%202015/115hed3.pdf>

Recommendation

The Department recommends that the Board of Regents take the following action:

VOTED: That a new Part 49 be added to the Regulations of the Commissioner of Education, as submitted, effective September 28, 2016.

Timetable for Implementation

If adopted at the September 2016 meeting, the proposed amendment will take effect as a permanent rule on September 28, 2016.

The Department will review the proposed amendment in one year, and/or when the United States Department of Education promulgates regulations on postsecondary distance education, if earlier.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 210-c, 212 and State Finance Law section 97-III and Chapter 220 of the Laws of 2015.

1. A new Part 49 is added to the Regulations of the Commissioner of Education, effective September 28, 2016, to read as follows:

Part 49

Post-Secondary Distance Education

Subpart 49-1

Approval of New York State Degree-Granting Institutions to Operate Under a State Authorization Reciprocity Agreement (SARA).

§ 49-1.1. Definitions.

For purposes of this Subpart:

(a) *Accredited* shall mean holding institutional accreditation from an accreditor recognized by the U.S. Department of Education.

(b) *Approved* or *Approval* means the department has granted approval for an institution to operate distance education programs under the terms of the state authorization reciprocity agreement (SARA), pursuant to section 210-c of the Education Law.

(c) *Complaint* means a formal complaint received by the department in writing that asserts that an institution has violated the terms and policies of SARA and/or the

provisions of this Subpart, are being violated by a person, institution, state, agency or other organization or entity operating under SARA.

(d) *Distance education* means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) *Institution* means a post-secondary higher education institution that is authorized by the Regents to confer degrees in New York State.

(f) *Legal domicile* means the state in which the institution's principal campus holds its institutional accreditation and, if applicable, its federal Office of Postsecondary Education Identifier (OPEID) number.

(g) *State authorization reciprocity agreement or SARA* means an agreement among member states, districts and U.S. territories that establishes comparable national standards for interstate offering of post-secondary distance-education courses and programs.

(h) *SARA policies and standards* means the SARA Policies and Standards February 17, 2016 as adopted by National Council of State Authorization Reciprocity Agreements, 3005 Center Green Drive, Suite 130 Boulder, Colorado 80301 - Available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York, 12234.

§ 49-1.2. Institutional Eligibility Requirements. To be eligible for approval to operate under SARA an institution shall:

(a) be legally domiciled in New York State and be authorized by the Board of Regents to confer post-secondary degrees in New York State and offer registered degree programs in New York State;

(b) possess and maintain institutional accreditation, by an accrediting body recognized by the U.S. Secretary of Education, including distance education within the scope of its recognition;

(c) for non-public institutions only, possess a financial responsibility index score from the U.S. Department of Education that is 1.5 or above;

(d) agree to be bound by the SARA policies and standards and to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA;

(e) agree to remain responsible for compliance with the requirements of SARA and applicable laws and regulations, regardless of whether the institution engages in operations under the agreement itself, or through a third-party provider;

(f) agree to notify the department of any adverse actions by its accreditor or any negative changes to its accreditation status;

(g) agree to notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, whether or not the course or program meets requirements for licensure or certification in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s);

(h) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

(i) agree to provide any data requested by the department, to the extent permitted by applicable law, to assist the department in resolving any complaints arising from its students and to abide by decisions of the department, in order for the department to effectively monitor any activities under the agreement;

(j) upon application submission, pay to the department any state fees for application review and SARA participation as prescribed in section 49-1.7 of this

Subpart;

(l) pay an annual SARA participation fee to the National Council for SARA (NC-SARA), as required by the SARA policies and standards; and

(m) report any other information required by SARA and/or this section.

§ 49-1.3. Initial Application for Approval to Operate Under SARA.

(a) An institution may apply to the department for approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-1.7 of this Subpart.

(b) All complete applications will be reviewed by the department to determine whether the institution meets the eligibility requirements set forth in this section.

Following the department's review of an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the

date of notification of approval, and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet the requirements set forth in this section. If an institution's application for participation in SARA is disapproved, the department will provide the institution with a written reason for such disapproval. The institution may appeal any disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. An institution that has been disapproved, may reapply to the Department no earlier than 180 days from the date of disapproval.

(3) Provisional approval. The department may, at its discretion, provisionally approve institutions for participation in SARA, subject to the specific terms for provisional approval identified in the SARA policies and standards.

§49-1.4. Application for Renewal of Approval to Operate Under SARA.

(a) An institution may apply to the department for renewal of its approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-1.7 of this section no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal of approval may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's

compliance with the SARA policies and standards. Following such review, the department will make a determination consistent with the options and procedures identified in section 49-1.3(b) of this Subpart. The institution may appeal such disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Department, and submit additional information in support of its position.

(c) Institutions that do not apply for renewal before expiration of its approval are no longer approved to operate under SARA.

(d) Institutions no longer approved to operate under SARA may reapply to the Department no earlier than 180 days from the date of disapproval or non-renewal.

§ 49-1.5. Loss of Eligibility and Removal.

The department may remove an institution from approval to operate under SARA, based on a finding that the institution is no longer eligible or is out of compliance with SARA policies and standards. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. An institution that is removed from eligibility during an approval period shall receive no fee refund, except as otherwise provided in section 49-1.7 of this Subpart.

§ 49-1.6. Complaints. Complaints against New York State institutions operating under SARA shall follow the following procedures:

(a) Complaints against a New York State institution shall first be subject to an institution's own procedures for resolving complaints.

(b) If a person bringing a complaint to an institution is not satisfied with the outcome of the institutional process for handling complaints, a complaint (except for complaints about grades or student conduct violations) may be made to the department, on a form prescribed by the Commissioner.

(c) The department shall review and resolve complaints in accordance with the SARA policies and standards.

(d) The department may impose as a penalty, refunds or other corrective action, to resolve complaints.

(e) Nothing in this section precludes the state from simultaneously using its laws of general application, including laws of consumer protection and fraud prevention, to pursue action against an institution that violates those laws.

§ 49-1.7. Fee Schedule.

(a) New York State institutions seeking approval to operate under SARA shall be subject to the following annual fees to obtain and/or maintain state participation in

SARA:

Institution's total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS)	Total Annual Fee
Under 2,500 FTE enrollment	\$5,000
2,500 – 9,999 FTE enrollment	\$7,000
10,000 or more FTE enrollment	\$9,000

(b) The annual fees for approval to operate under SARA shall be due upon the submission of an application for initial approval or renewal as prescribed in sections 49-1.3 and 49-1.4 of this Subpart.

(c) If the department determines that an institution's application is disapproved; the institution will be refunded its annual fee, less \$2,000, which represents the costs to the Department for application review.

(d) In addition to the fees prescribed in (a) of this section, institutions that have been approved by the Department to participate in SARA shall be subject to the annual fees required by the SARA policies and standards, which shall be made payable to the National Council for SARA.

(e) The department shall periodically review, and if necessary revise this fee schedule to ensure that it is sufficient to meet the state administrative costs of State participation in SARA.

Subpart 49-2

Approval of Out-of-State Post-Secondary Institutions to Offer Distance Education to New York State Residents

§49-2.1 Approval of the Department.

(a) Any institution legally domiciled in a State other than New York State that seeks to offer any educational credit-bearing post-secondary instruction, courses, or degree programs through distance education to New York State residents shall obtain approval to operate in this State from the Department. This includes institutions that are operating in New York State under section 3.56 of the Rules of the Board of Regents (permission to operate) that seek to offer distance education programs in this State.

(1) Post-secondary institutions that enrolled New York State residents in its distance education programs on or before of the effective date of this Subpart, shall have six months from the effective date of this Subpart to seek and obtain department approval to continue to operate such programs to New York State residents. An extension of the six-month time period may be granted in limited circumstances, at the discretion of the Commissioner.

(2) All institutions with New York State residents enrolled in its distance education programs on or before the effective date of this Subpart, that have not received department approval by the expiration of the time period in paragraph (1) of this subdivision, must cease enrolling new students, and shall phase-out instruction for students who are currently enrolled in such programs until such students have completed the distance education program they are enrolled on the effective date of this section.

(b) Exemption. Any institution that is identified by a member state as participating in SARA is exempt from the application procedures and fees identified in this Part, and are instead subject to the SARA policies and standards.

§ 49-2.2. Definitions.

For purposes of this Subpart only:

(a) Accredited shall mean holding institutional accreditation from an accreditor recognized by the U.S. Department of Education.

(b) Approved or Approval means approval of an institution to offer its distance education programs to New York State residents.

(c) Complaint means a formal assertion in writing that the terms of approval are being violated by a person, institution, state, agency or other organization or entity operating under the terms of this agreement.

(d) Distance education means credit-bearing post-secondary instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) Institution means a degree-granting postsecondary entity legally domiciled in a state other than New York State.

(f) Interregional Guidelines for the Evaluation of Distance Education means the guidelines developed by the Council of Regional Accrediting Commissions (C-RAC) in February 2011, published by the Middle States Commission on Higher Education, 3624 Market Street, Philadelphia, PA 19104 - Available at the Office of Counsel, New York

State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.

(g) Legal domicile or legally domiciled means the state in which the institution's principal campus holds its institutional accreditation and, if applicable, its federal Office of Postsecondary Education Identifier (OPEID) number.

§ 49-2.3. Institutional Eligibility. An institution applying to the Department for approval to offer credit-bearing post-secondary courses or degree programs to New York State residents through distance education pursuant to this Subpart must:

(a) be legally domiciled in a state other than New York or a United States territory and hold proper authorization from such state/territory to offer degree-granting programs and confer degrees in such state/territory;

(b) be a U.S. degree-granting institution that holds institutional accreditation from an accrediting association recognized by the U.S. Secretary of Education with distance education within its scope of recognition;

(c) possess a financial responsibility index score from the U.S. Department of Education that is 1.5 or above;

(d) agree to abide by the Interregional Guidelines for the Evaluation of Distance Education as defined in section 49-2.2(f) of this Subpart;

(e) agree to be responsible for the actions of any third-party providers used by the institution to offer distance education to New York State residents;

(f) agree to notify the department of any adverse actions by its accreditor or any negative changes to its accreditation status;

(g) agree to provide any data requested by the department, to the extent permitted by applicable law for the purposes of monitoring activities or responding to or resolving complaints;

(h) agree to work with the Department, other state agencies, and accreditors to resolve any complaints, and to abide by decisions of the Department or other state agencies regarding complaint resolution, including by not limited to paying any fines or other corrective actions imposed;

(i) agree to notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, that the institution outside of New York State is not able to recommend graduates for licensure or certification in New York State, does not know whether the course or program meets licensure requirements in New York State, and provide the student the contact information for the appropriate state licensing or certification board(s);

(j) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

(k) agree to pay a non-refundable fee as prescribed by the department, for the review and processing of an institution's application;

(l) If deemed approved by the Commissioner, agree to pay a non-refundable fee as prescribed by the department, for the maintenance of ongoing administrative costs;
and

(m) agree to cease and desist all operations, including offering any distance education programs to New York State residents, upon notification from the department that the institution has lost its eligibility to offer such programs under this Subpart.

(n) Waiver. The Commissioner, at her/his sole discretion, may waive one or more eligibility requirements identified in this section, provided that the institution can establish, in the determination of the Commissioner, that it has met the substantial equivalent of a requirement under this Subpart.

§ 49-2.4. Initial Application for Approval to Offer Distance Education.

(a) An institution shall apply to the department for approval to offer distance education on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-2.8 of this Subpart.

(b) All properly submitted applications will be reviewed by the department to determine whether an institution meets the eligibility requirements set forth in this section. Following the department's review of an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the date of notification of approval, and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet all of the requirements set forth in this section. If an institution's application to offer distance education in this State is disapproved, the department will provide the institution with a written reason for disapproval. Within 10 days of the date of the written

notification of disapproval, the institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

An institution that has been disapproved, may reapply to the Department no earlier than 180 days from the date of disapproval.

§ 49-2.5. Renewal Application.

(a) An approved institution that seeks to renew its approval authority shall apply to the department on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-2.8, no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's compliance with eligibility requirements and other indicators of good standing. Following such review, the department will make a determination on the renewal application consistent with the options in section 49-2.3(b) of this Subpart. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

(c) Institutions that do not apply for renewal before the expiration of its approval period are no longer approved to operate distance education programs in this State.

§ 49-2.6. Loss of Eligibility and Revocation.

(a) The department may revoke an institution's approval authority under this Subpart, based on a finding that the institution no longer meets the requirements of this Subpart and/or based on any one or number of complaints received, that raise a substantial question as to the institution's ability to offer distance education programs to New York State residents. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

An institution that has had its approval revoked during an approval period receives no fee refund, except as otherwise provided for in section 49-2.7 of this Subpart.

§ 49-2.7.Complaints. Complaints relating to an institution that has been approved by the Department to offer distance education to New York residents shall follow the following procedures:

(a) Complaints against an approved institution shall first be subject to institution's own procedures for resolving complaints.

(b) If a person bringing a complaint against an institution is not satisfied with the outcome of the institutional process for handling complaints, a complaint (except for complaints about grades or student conduct violations) may be made to the department, in a form prescribed by the Commissioner.

(c) The Department shall review such complaints and may impose as a penalty, refunds or other corrective action, to resolve complaints.

(d) Nothing in this section precludes the state from simultaneously using its laws of general application, including laws of consumer protection and fraud, to pursue action against an institution that violates those laws.

§ 49-2.8. Fee Schedule.

(a) Institutions seeking approval from the Department to offer distance education to New York State residents under this Subpart shall be subject to the following state fees:

Application Review Fees	Annual Approval Fee	Total Annual Fee
\$7,000	\$10,000	\$17,000

(b) The total annual fee of \$17,000 shall be due upon the submission of an application for approval or renewal as required by this Subpart. The annual application review fee is non-refundable. Upon a department determination to disapprove an application, the department will refund the annual approval fee.

(c) The department shall periodically review, and if necessary revise this fee schedule to ensure that it is sufficient to meet the state administrative costs of approval and oversight of out-of-state distance education programs offered pursuant to this Subpart.

ASSESSMENT OF PUBLIC COMMENT

8 NYCRR §49

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on May 4, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

Commenter supports the amendment because SARA would protect the quality of online courses and ensure students seeking to take courses online will be able to proceed with confidence, and because SARA will remove barriers to providing quality online education.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

2. COMMENT:

Commenter strongly supports the amendment because it will increase regulatory oversight over online programs, preserve New York State's right to legally prosecute predatory institutions, expand education options for resident students, and enable legitimate colleges with strong online programs to more easily offer distance education beyond New York State's borders.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

3. COMMENT:

Commenter supports the amendment on behalf of its 24 New York State colleges and schools and regards SARA's oversight of academic programs of educational institutions in other member states a valuable service to New York State's own students, and hopes that the fee structure that makes membership for the entire university attractive can be developed. Without SARA, we would miss the opportunity to participate in a more transparent and collaborative consumer protection effort. At the same time, each of our New York institutions would need to continue the tasks of registering with each individual state, or choosing not to provide New York based learning opportunities to citizens in particular states because the processes are too time consuming or expensive.

DEPARTMENT RESPONSE:

Comment supportive. To the extent that the commenter requests that the fee structure be attractive for its entire university, the Department has established a fee structure in section 49-1.7 of the proposed amendment, which it believes will reduce the costs of individual institutions securing multiple state approvals, while maintaining state capacity to ensure quality and consumer protection.

4. COMMENT:

Commenter strongly supports the amendment because students in New York and across the country will benefit from high quality online providers such as New York's independent colleges and universities while providing a layered approach to consumer protection and states' rights. SARA creates a shared responsibility for ensuring the quality of online education and provides new tools for states to protect

students. Joining SARA will ensure quality, transparency and protection on all fronts. Not all institutions in a state are automatically eligible for participation in SARA. Each state must assure that participating institutions are in compliance with state rules, regulations and standards of good practice in online education, and each state must have a transparent system regarding student complaints.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

5. COMMENT:

Commenter strongly supports the amendment on behalf of its 64 campuses. Participation in SARA will avoid current expenditures of more than \$250,000 in fees and countless administrative resources for the commenter's institutions each year. In addition, commenter believes that SARA provides a more robust regulatory environment for online education than currently exists to protect students. SARA provides an effective, multi-layered approach to consumer protections and state rights. SARA creates shared responsibility for ensuring the quality of online education, without interfering with New York's ability to enforce laws related to consumer protection and fraudulent activities.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

6. COMMENT:

Commenter supports reciprocity changes that will allow out-of-state teachers up to two years to complete their requirements and to accept the SARA higher education

institutions as comparable to a New York State administrator or teacher preparation NYS approved program.

DEPARTMENT RESPONSE:

The proposed amendment and SARA have no effect on reciprocity for professional certification and/or licensure or the establishment of comparable administrator or teacher preparation programs. Therefore, this comment does not appear to relate to the proposed amendment.

7. COMMENT:

Commenter supports the amendment because it would ease the administrative burden associated with launching online degrees without diminishing the protections offered to students. The commenter has allocated significant administrative resources to navigating the bureaucratic processes established in 50 states acting somewhat autonomously. It is already the case that thirty-six states participate in SARA, and at least nine others are pursuing it. With more than 300 colleges and universities, New York is one of the most important states in higher education. Participation in SARA would help New York institutions continue to thrive in a competitive environment.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

8. COMMENT:

Commenter supports the amendment, yet suggests that §49-1.2(c) be revised to permit an institution that possesses a financial responsibility index score from the U.S. Department of Education of between 1.0 and 1.5, to participate in SARA if it is able to

successfully demonstrate to the New York State Education Department that it is nevertheless sufficiently financially stable to justify participation in SARA.

DEPARTMENT RESPONSE:

A financial responsibility index score of 1.5 or higher is the basic standard set by SARA policies and standards for approval to operate under SARA (although SARA does not preclude a state from setting its minimum standard higher than 1.5). However, SARA does allow a state to consider for “provisional approval,” institutions that possess a financial responsibility index score of 1.0 to 1.5, with justification. No revision to the proposed regulation is necessary to address the suggestion of the commenter since §49-1.3(3) permits the department to consider institutions with a financial responsibility index score of 1.0 to 1.5 for provisional approval.

9. COMMENT:

Commenter supports the amendment.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

10. COMMENT:

Commenter supports the amendment because SARA will enable institutions to provide opportunities for students all across the country who are interested in attaining their educational goals by creating clear processes, accountability, and accessibility for our organization to serve students in the national marketplace.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

11. COMMENT:

Several commenters strongly support the amendment because it would level the playing field for institutions who wish to recruit both in-state and out-of-state students by eliminating burdensome and costly barriers to New York State colleges and universities to provide high quality online education and provide oversight of out-of-state IHEs that currently have no regulatory screen to offering programs to New York State residents.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

12. COMMENT

Several commenters strongly support the amendment. SARA will provide benefits both to New York institutions of higher education, and to New York students who choose to enroll in distance education programs from institutions located in other states.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

13. COMMENT:

One commenter seeks to expand their reach beyond New York and Vermont. The commenter notes that as they build online programs, without SARA they would have to engage in the daunting and expensive task of registering with each state. Commenter would likely face the undesirable situation of choosing not to provide New

York-based online learning opportunities to citizens in particular states because their processes are too time consuming or expensive.

Commenter strongly supports the amendment because SARA will increase student access to New York State's high-quality online education providers and without SARA, the commenter would miss the opportunity to participate in a more transparent and collaborative consumer protection effort across higher education. Participation in SARA will provide an efficient and effective mechanism for the regulation of online higher education across the United States while leveling the playing field for New York's colleges and universities to deliver education in a reasonable and responsible manner.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

14. COMMENT:

Commenter supports the amendment because the current costs of obtaining and managing compliance and accreditation requirements across individual states could have a direct impact on the affordability of higher education programs in New York State, and by entering SARA New York State will be providing an option for qualifying institutions within New York State to maintain needed regulatory approvals. The commenter further notes that if NYS does not join SARA, there could be a direct impact on a student's ability to be successful upon graduation, in an era where graduates of a higher education institution struggle to find robust internship programs, since currently internships in other states trigger the need for additional State approval.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

15. COMMENT:

Several commenters support the amendment. With 36 states currently in SARA, New York State and its colleges and universities will be at a great disadvantage if New York State does not join. The option to join SARA would provide significant relief to universities and other institutions in New York wishing to provide courses in an online format, and would allow us to extend our high quality, unique, and innovative programs to more students, including those for whom a traditional college experience is unfeasible. Further, joining SARA will strengthen regulatory oversight, improve consumer protections for New York residents, and provide a more effective system for ensuring quality online education programs. By participating in SARA, the unique, innovative programs here at this University and other institutions across NYS can reach more students in more states around the country, while ensuring an efficient, effective and transparent mechanism for regulation that our current system lacks.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

16. COMMENT:

Commenter supports the amendment. This is a long overdue development that will allow colleges and universities such as the commenter to compete more equally for online students from across the country. Presently, the commenter must still secure permissions from all states and territories to operate its online programs outside of New York State. SARA offers an efficient means to secure those permissions, while maintaining high educational standards and protections for students. The commenter

noted that their online programs have more than doubled the enrollment of out-of-students over the past three years, but they cannot even begin to market their programs in states where they are not authorized, putting them at a competitive disadvantage. The current process by which the commenter secures individual states' authorization is lengthy, inefficient, and very expensive. SARA offers an efficient means to secure those permissions, while maintaining educational standards and protections for students.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

17. COMMENT:

Commenter strongly supports the amendment because SARA creates a shared responsibility for ensuring that high quality online education is achieved across the state and provides tools in which to protect students enrolled in these programs. As a SARA member, New York will monitor institutions based in the state offering distance education programs and will receive assistance from other SARA states, as they will monitor providers in their own states. This will ensure transparency and provide protections. Any state will be able to take action against in or out-of-state institutions and if fraud, misrepresentation or abuse occurs that violates consumer protections laws of their state.

The current compliance landscape for many colleges and universities is cumbersome, time consuming and costly. Joining SARA will assist such institutions in remaining competitive in developing human capital and preparing graduates for the global workforce through online education.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

18. COMMENT:

As the largest developer and provider of online learning opportunities for New Yorkers, commenter urges the Board to support and adopt SARA/Part 49 regulations, because it will improve and tighten oversight of online learning providers and will serve to remove barriers for New York schools to offer online learning to students in other states without having to incur tremendous expense and difficult bureaucratic rules. Commenter also expresses an understanding about the expressed concerns about unscrupulous and predatory practices sometimes associated with for-profit online providers, yet believes that SARA/Part 49 as published, will enhance New York's regulatory power to fight against such practices.

DEPARTMENT RESPONSE:

Comment supportive, no response necessary.

19. COMMENT:

Commenter notes that the current lack of regulations regarding the enrollment of New York residents in out-of-state online schools is unsustainable and dangerous, however, the commenter expresses concerns about SARA. These concerns include, the notion that under SARA, New York State is ceding its authority to approve institutions to a third party entity that may rely on the good will of other states and NC-SARA; that SARA enshrines a two-tiered system in which New Yorkers attending in-state online schools are subject to one set of marketing and operating standards, while

students attending out-of-state online schools are subject to another, likely lower set of standards; and that the agreement additionally requires New York and every other state to ignore the financial incentives that have caused so much predatory behavior at for-profit schools, by requiring that for-profit, nonprofit and public institutions be assessed as if they are the same.

However, if New York does join SARA, commenter made the following recommendations:

1. Clarify application of New York law to SARA institutions.

a. Institutions based in New York that participate in SARA must be held accountable to both the standards outlined in the national compact sponsored by NCSARA, as well to New York's regulations. As such, the recommendation is to add language explicitly stating that participating schools must abide by New York regulations and SARA.

b. The SARA agreement itself states that "general purpose laws enforced by state, tribal or federal law enforcement agencies shall not be affected or superseded by any provisions of SARA." However, the parallel provision in the proposed regulations is in subpart 49-1, which applies only to institutions based in New York. It is critical to ensure that New York's general purpose laws apply to institutions participating in SARA whether they are based in-state or out-of-state. The recommendation would be to make clear that the state's protections against fraud and abuse apply regardless of the home state of the offending institution.

2. Ensure that colleges provide data necessary for the integrity of SARA.

a. By joining SARA, NYSED will be taking responsibility for nationwide oversight of online programs offered by New York-based institutions participating in SARA. It will

be the Department's stamp of approval that other states will rely on to allow the institutions to operate in their states without licensure or registration. Therefore, it is incumbent on the Department to be able to verify the information that New York institutions are submitting in their applications for SARA membership, and to monitor the institutions on an ongoing basis.

b. While New York would not have a general right to seek data from out-of-state SARA institutions, we recommend a provision that ensures that, at minimum, information is made available regarding the number of New York residents enrolled by the out-of-state institutions. Our expectation is that these data would be submitted to NC-SARA and made available to participating states.

c. These provisions would require non-SARA institutions enrolling New York students-from out of state to provide data requested the department, including New York enrollment figures.

3. Retain right to hear complaints from students. Student complaint procedures are among the most important tools government officials have to monitor postsecondary institutions, ensuring that these schools live up to the reasonable expectations of consumers and abide by established legal standards. While it is appropriate, as a general procedure, for complaints to be referred to institutions, it is dangerous for the department to legally require itself to do so. The severity, volume, or nature of some complaints may justify a direct inquiry or investigation without first referring the complaints and awaiting an institution's reply to the complainant. It is for this reason that we strongly recommend that §49-1.6(a), §49-1.6(b), §49-2.7(a) and §49-2.7(b) be stricken from the proposed regulation. We recommend, instead, a general agreement to

follow the SARA procedures with the department retaining the right to follow up on complaints as it deems appropriate given the circumstances.

4. Making sure students get what they pay for. Under SARA, participating states are required to have “clear and well-documented policies for addressing catastrophic events,” including “processes to ensure that students receive the services for which they pay,” in the event of an institutional closure. States have some flexibility to determine how to comply, through methods such as “tuition assurance funds, surety bonds, teach-out provisions or other practices deemed sufficient to protect consumers.” The recommendation is to add explicit language requiring that New York State establish such fees and requirements for institutions approved by the Department to participate in SARA.

DEPARTMENT RESPONSE

SED agrees with the commenter that the present lack of regulations regarding the enrollment of New York State residents in out-of-state online schools is problematic; however, SED believes that implementing Part 49 is a potential solution to that problem. SED disagrees that by joining SARA New York State would be ceding any of its current authority, since all existing New York State laws for consumer protection and fraud, and education regulations for program registration remain unaffected by SARA or by Part 49. Rather SED agrees with comment numbers 1-18, that SARA adds a multi-layered approach to quality assurance and consumer protection that provides SED with a system of external supports for consumer protection in other SARA member states and affords greater student access to New York State’s high quality institutions of higher education. SED does not believe that SARA enshrines a two-tiered system where New Yorkers are subject to two sets of standards, but rather, that SARA provides for initial

quality screens for out-of-state institutions, where there are presently none. Finally, SED disagrees with the premise that applying the same standards to all higher education sectors (for-profit, not-for-profit, public) incentivizes predatory behavior by for-profit institutions. The existing regulatory framework in New York State already requires that all degree-granting institutions in New York State meet the same standards in order to be approved to operate in New York, regardless of sector and Education Law § 210-c does not make a distinction between for-profit and non-profit institutions. It allows the state to enter into an interstate reciprocity agreement for all postsecondary distance education courses. Moreover, section 3 of the SARA agreement provides that all degree-granting institutions located in the United States holding proper authorization from Congress, a U.S. State or a federally recognized tribe and holding accreditation as a single entity from an accrediting association recognized by the U.S. Secretary of Education is eligible to apply to its home state to participate in SARA if that state is a SARA member. SED further notes that presently for-profit and non-profit colleges and universities in New York State are held to the same standards of program quality and program registration standards, which is consistent with Part 49 and SARA.

In response to each of the specific recommendations presented by the commenter SED responds as follows:

1a. SED agrees that New York State institutions must be held accountable to both the standards outlined in the national compact, as well as to New York's regulations. However, SED believes no regulatory revision is necessary to achieve this effect. New York State institutions that are approved to participate in SARA, must meet the requirements for institutional participation in SARA and all of New York State's requirements. New York State has confirmed this with NC-SARA. There is no provision

in Education Law §210-c, Subpart 49-1, or in the SARA policies and standards that waive, or supersede New York State's requirements that New York State institutions meet all other Part 50 regulations for program and site approval, including any distance education programs offered through SARA, or any other applicable New York State laws and regulations.

1.b. SED agrees that it is critical to ensure that New York's general purpose laws apply to institutions participating in SARA whether they are based in-state or out-of-state, however, SED believes no regulatory revision is necessary as all general purpose laws continue to be applicable per section 4 of the SARA agreement which provides that "Nothing in the SARA Policies and Procedures precludes a state from using its laws of general application to pursue action against an institution that violates those laws." The Department has confirmed this with NC-SARA.

2.a. SED agrees that it will be incumbent on the Department to verify the information that New York State institutions submit in their applications for SARA membership and to monitor the institutions on an ongoing basis. SED believes that no regulatory revisions are needed, since §§ 49-1.2(i) and 49-2.3(g) require institutions to provide any data requested by the Department to assist the Department in resolving any complaints arising from its students and to abide by decisions of the Department, in order for the Department to effectively monitor any activities under the agreement.

2.b. SED agrees with this recommendation. These data are required to be reported annually to NC-SARA and made available to the Department.

2.c. SED agrees with this recommendation, however no regulatory revision is necessary since the reporting of these data will be covered under §49-2.3(g).

3. See response to 1b. The complaint procedures as currently written comport to existing SED practice with regard to student complaints and to SARA policies and standards. The student complaint procedures to be adopted in Part 49 are specific to SARA. Nothing prohibits SED from simultaneously referring complaints to other state agencies to enforce general state laws for consumer protection and fraud or to take immediate action upon receipt of the complaint. SED does not believe a revision is needed to maintain consumer protection.

4. SED acknowledges that the establishment of fees for catastrophic events such as institutional closure are worthy of Department and Regents consideration, however, this is a broader consideration not specific to SARA, and it would require a statutory change.

20. COMMENT

Commenter asserts it investigated state oversight over online education providers in a report entitled “Wake Up Call to State Governments: Protect Online Education Students from For-Profit School Fraud,” which suggests the need for state regulation of online education providers and the insufficiency of the then existing SARA to address consumer protection issues. Commenter does not support the amendment and requests the Department consider alternative measures to regulate online schools. Commenter states that if New York joins SARA any current or future laws and regulations the state develops specifically to protect students from unfair or predatory conduct by for-profit schools will be inapplicable to protect New York State residents who attend online SARA schools based in another state. Commenter suggests that the result would be a two-tiered system in which New Yorkers attending in-state online

schools would be subject to one set of protections, while New Yorkers attending online schools based in another state would be deprived of those same protections.

Commenter further suggests that 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.

DEPARTMENT RESPONSE:

SED does not agree with the commenter's analysis. See response to Comment #19. Also, section 4.2(g) of the SARA policies and standards explicitly states that "nothing in *SARA Policies and Standards* precludes a state from using its laws of general application to pursue action against an institution that violates those laws." Therefore, the Attorney General's authority to apply its consumer protection and fraud laws should not be impacted by SARA. The Department has confirmed this with NC-SARA.

21. COMMENT:

Commenter supports the comments submitted by commenter # 20. Commenter does not support the amendment because of the requirement that students submit complaints to institutions of higher education before New York State regulators would consider a complaint (citing the proposed §49-1.6.9(a), §49-1.6.9(b), and §49-2.7(a) and §49-2.7(b)), in the event that certain student complaints may well warrant immediate and direct inquiry or investigation by NYSED. Commenter also cites recently proposed federal regulations that would prohibit a school participating in the Direct Loan Program from requiring students to engage in internal institutional complaint or grievance procedures before contacting accrediting or government agencies with

authority over the school regarding such claims, and suggest that the Department consider a reciprocity agreement that would balance the interests of schools, students, and the state.

DEPARTMENT RESPONSE:

See SED response to Comments #19 and #20.

22. COMMENT:

Commenter does not support the amendment out of concern about for-profit schools and because under SARA there is no distinction between for-profit and non-profit or public institutions. The commenter indicates that there are widespread deceptive practices in the for-profit sectors. Commenter requests that the Department carefully consider where changes in SARA are necessary before signing, and recommends consideration of each of the recommendations identified in Comment #19.

DEPARTMENT RESPONSE:

Education Law § 210-c does not make a distinction between for-profit and non-profit institutions. It allows the State to enter into an interstate reciprocity agreement for all postsecondary distance education courses. In addition, section 3 of the SARA agreement provides that all degree-granting institutions located in the United States holding proper authorization from Congress, a U.S. State or a federally recognized tribe and holding accreditation as a single entity from an accrediting association recognized by the U.S. Secretary of Education are eligible to apply to its home state to participate in SARA if that state is a SARA member. SED further notes that presently for-profit and non-profit colleges and universities in New York State are held to the same standards of program quality and program registration standards, which is consistent with Part 49

and SARA. Moreover, under SARA, if any entity, whether for-profit or non-profit engaged in deceptive practices, SED would have the authority to refer such conduct to the Attorney General's Office for an investigation under general consumer protection laws at any time.

23. COMMENT:

Commenter expresses support for the recommendations identified in Comment #19.

DEPARTMENT RESPONSE:

See SED response to Comment #19.

24. COMMENT:

Commenter agrees with comment #20, however states that if New York State intends to join SARA anyway, the commenter supports adopting the recommendations identified in comment #19.

DEPARTMENT RESPONSE:

See response to comment #20.

25. COMMENT:

Commenter expresses support for the recommendations identified in comment #19.

DEPARTMENT RESPONSE:

See response to comment #19.

26. COMMENT:

Commenter expresses support for comment #20 and requests the Department consider alternatives that will address common abuses of the industry.

DEPARTMENT RESPONSE:

See Response to Comment #20.

27. COMMENT:

Commenter recommends that the Department consider changes presented by both comment #19 and comment #20.

DEPARTMENT RESPONSE:

See responses to comments #19 and #20.

28. COMMENT:

Commenter suggests that SARA ties schools across the country together in one agreement, with no way for a state to apply its requirements to a problem school without causing a breach in the entire agreement, citing that SARA requires states waive their consumer protections and minimum standards applicable to for-profit schools.

Additionally, commenter asserts that SARA treats for-profit colleges as though they were the same quality investment as a non-profit or public institution, which ignores significant differences between non-profit and public colleges and for-profit education businesses. Commenter suggests that New York State should demand that SARA be revised to address consumer and state interests and suggests NYSED carefully consider the proposals put forth in comment #19.

DEPARTMENT RESPONSE:

SED does not agree with the commenter's analysis. SARA policies do not require New York State to waive its laws for consumer protections or minimum standards applicable to for-profit schools. As stated in responses to similar comments, Section 4.2(g) of the SARA policies and standards explicitly states that "nothing in SARA Policies and Standards precludes a state from using its laws of general application to pursue action against an institution that violates those laws." SED notes that presently for-profit and non-profit colleges and universities in New York State are held to the same standards of program quality and program registration standards, which is consistent with Part 49 and SARA. Institutions that do not meet the standards, whether for-profit or non-profit, will not be approved to participate. Moreover, under SARA, if any entity, whether for-profit or non-profit engaged in deceptive practices, SED would have the authority to refer such conduct to the Attorney General's Office for an investigation under general consumer protection laws. Therefore, the Attorney General's authority to apply its consumer protection and fraud laws should not be impacted by SARA. The Department has confirmed this with NC-SARA.

29. COMMENT:

Commenter does not support the amendment, shares the general concerns for SARA noted in comment #19 and recommends the Department consider alternative regulatory measures to regulate online schools. Commenter asserts that SARA cedes New York State's authority to approve institutions of higher education to a third-party private entity controlled by institutional representatives and enshrines a two-tiered system in which New Yorkers attending in-state online schools are subject to a different

set of marketing and operational standards and requires New York State ignore the financial incentives that have caused predatory behavior at for-profit schools.

DEPARTMENT RESPONSE:

See SED responses to comment #19, #20, #21, and #22.

30. COMMENT:

Commenter asserts that although the state has been assured, even under SARA, New York's general consumer protection laws remain applicable; SARA would generally require schools to comply only with the laws of their home state, laws which could be comparatively much weaker than New York laws. Because SARA enables schools to earn regulatory approval in one state, and then enroll students in any other SARA state, the compact creates an incentive for schools to find the state with the lowest bar to initial entry, thereby encouraging a race to the bottom. Joining SARA would also create a two-tiered system in which New Yorkers attending in-state online schools are subject to one set of standards, while students attending out-of-state online schools are subject to another, likely weaker set of standards.

DEPARTMENT RESPONSE:

Since the SARA policies and standards require that all SARA states apply the same initial minimum standards for institutional participation in SARA, SARA will provide for initial quality screens in New York State, where there are currently none. This will improve the quality of out-of-state online offerings accessible to New York State residents. In addition, under SARA, other State agencies will provide an additional network of support to SED for online oversight of institutions offering within the context of the agreement. Finally, as stated in previous responses, Section 4.2 (g) of the SARA

policies and standards explicitly states that “nothing in SARA Policies and Standards precludes a state from using its laws of general application to pursue action against an institution that violates those laws.” Therefore, the New York State Attorney General’s authority to apply its consumer protection and fraud laws to out-of-state institutions enrolling New York State residents should not be impacted by SARA. The Department has confirmed this with NC-SARA.