

April 2023 - Part II: State Authorization Updates & Information ^[1]

April 17, 2023 by erika.swain@cu.edu ^[2]

Hello and Happy Monday!

Two emails in one month? Ha! I'm making up for missing March!

Two quick (well, quickish) updates:

NC-SARA announced this morning the next steps in their renewed policy modification process: the public comment period and the May 10th public session with the Board. If possible, I recommend reviewing some of these proposals to see what might be coming our way (and the states' way). Some changes and combinations have been made since the March listening session, and there are three proposals, in particular, that I'm watching closely:

- **PMP-0381: Professional Licensure** – The proposal is to remove the phrase “after all reasonable efforts” from 5.2. 100% yes, please and thank you. This is a problematic phrase with no universal oversight by the states, and if other proposed policies pass that increase oversight by individual states, we could see that phrase imposed on us in various ways when we offer professional licensure programs online outside of Colorado.
- **PMP-0365: Remove the C-RAC Guidelines** – YES, PLEASE. These were neither written for nor intended for this type of use. Interestingly, this proposal suggests “removing any use of the C-RAC Guidelines or any proposed replacement.” So... this would also mean not replacing them with the 21st Century Guidelines.
- **PMP-0340: Enforcement of State Consumer Protection Laws** – This one has the potential to be the most concerning. Specifically, the proposed revisions to SARA policy 2.5(k) and (l) would allow member states to determine which state laws can be waived or enforced under the guise of consumer protection laws. While I do believe states should be more involved in consumer protection, this could be used in the future by some states to expel institutions offering educational content that conflicts with new state laws/regulations on DEI and similar subjects.

I'm curious to see how this plays out after the Board meeting and public comments, especially with this being the inaugural run of the process.

And in other news...

In case you were wondering about the recent stir among legal and compliance folks, the ED released a blog post (which seems to be their new communication method?) on April 11 announcing a pause on their sub-regulatory guidance from 2/15/23 regarding TPS and its associated reporting requirement until they can process the 1,000+ comments they received.

Here are a few key points they highlighted:

- The Department does not consider contracts involving the following activities as third-party servicer relationships:
 - Study abroad programs
 - Recruitment of foreign students not eligible for Title IV aid
 - Clinical or externship opportunities that meet regulatory requirements under institutional supervision
 - Course-sharing consortia and Title IV-eligible institutions sharing employees for teaching or financial aid processing
 - Dual or concurrent enrollment programs through high schools and local education agencies, as these do not involve Title IV aid
 - Local police departments assisting with crime statistics, provided they aren't writing or filing reports on behalf of the institution

Additionally, ED noted:

- They intend to remove the provision in the guidance document regarding foreign ownership of a third-party servicer.
- They plan to carefully review public comments on areas of confusion or concern and may narrow the guidance's scope in several areas, including software services, student retention, and instructional content.
- The September 1 reporting deadline is paused and will now be set "at least 6 months after" the publication of revised guidance.

As I mentioned in my previous email, federal regulations on Third-Party Servicers, OPMs, and State Authorization are up for review, with discussion and revisions planned for this year. The ED held three days of listening sessions on these topics last week, and Negotiated Rulemaking is expected to take place in November.

What does this mean for us? For now, as I mentioned two weeks ago, state regulations on "physical presence" may need a second look from you and your campus. Who have you contracted with, and for what services? Where is that third party located, and what are that state's regulations regarding physical presence? Connect with those working on TPS issues on your campus to help them understand the potential need for physical presence permissions. Begin gathering information about these companies, the actions they perform on behalf of or under the name of your campus, and where they are located. Start researching the state requirements around physical presence. You may find that you don't need to take any action, or you may find that you need to go through a process to get a "location" approved.

As always, if you have any questions, don't hesitate to reach out!

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