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June 2023 State Authorization Updates and Information [1]

June 9, 2023 by erika.swain@cu.edu [2]

Happy June!

I've spent the last few days talking with friends out east about how to clean ash off their lawns and patio furniture—so that's a new one.

The deadline for submitting the SARA data report is fast approaching! Hopefully, you're already done or, like me, just waiting on one last group to send over their information on out-of-state placements.

By now, you may have heard the collective screaming and crying coming from several campus offices in reaction to the 212 pages (1,077 in draft form) of proposed regulations issued by ED last month. Some things were expected (like the new look and section on Gainful Employment), but others are causing concern—especially the Financial Value Transparency (aka Gainful Employment regulations for the rest of us). If any data folks would like a side conversation about this, I'd be more than happy to facilitate. There are also proposed requirements for "adequate career services" (regardless of modality), new data demands for our consumer information pages, and updates on State Authorization and Professional Licensure.

We're still in the (incredibly short) comment period, but here's what's being proposed for 34 CFR 668.14(b)(32):

> ***(b) ...***
> ***(32)*** *In each state where the institution or its enrolled students are located (determined at the time of initial enrollment per 34 CFR 600.9(c)(2)), the institution must determine that each program eligible for Title IV, HEA program funds:*
>
> 1. *(i) Is programmatically accredited if required by the state or a federal agency, including as a condition for employment in the program's intended occupation, or has pre-accreditation when that is sufficient according to the state or federal agency;*
> 2. *(ii) Meets the applicable educational prerequisites for professional licensure or certification in the state, allowing a student who completes the program and seeks employment in that state to qualify for any required licensure or certification exam; and*
> 3. *(iii) Complies with all state consumer protection laws related to closure, recruitment, and misrepresentation, including both general state laws and those specific to educational institutions.*

Much of this might sound familiar, as it's nearly identical to the 2022 proposal. It appears,

once again, that institutions were left out of the conversation.

Here's a breakdown of the issues:

1. **Professional Licensure Programs:** We would be required to "determine" if the education provided meets licensure requirements in the student's home state at the time of initial enrollment (i.e., before they start classes). If it doesn't, the student wouldn't be able to use Title IV funds for the program.
    - This removes the "unable to determine" option currently allowed, which would also be eliminated from 668.43(a)(5)(v).
    - There's no proposed allowance for students to acknowledge and consent to use federal funds regardless.
    - This seems written by someone who's never tried contacting a licensing board
    - What evidence would we need to prove we've "determined" the program meets state requirements?
    - Has anyone informed state boards that we'll all be calling and requesting reviews, letters, etc.?
    - What if a student, like one I spoke with last week, plans to move states post-degree and only wants initial training here (e.g., "I'm 20; I don't know where I'll go or if I'll be a teacher long-term")?
2. **"Compliance with All State Consumer Protection Laws":** This (iii) provision is a very slippery slope. Allowing states to dictate which laws are waived or enforced, particularly amid political climates, could mean states may bar institutions from offering certain content or programs. Courses or programs on diversity, equity, inclusion, LGBTQ+ studies, African American history, sociology, or women's health could be seen as violating state laws, potentially leaving students with credits and loan debt for incomplete degrees.

   This single sentence could weaken reciprocity agreements like SARA. Part of SARA's purpose is to prevent states from enforcing additional laws or fees on institutions from other states. If enacted, this clause could reintroduce those restrictions, reducing the value of reciprocity. Before SARA, for example, MN charged institutions based on FTE to operate within the state, and MA restricted SUNY community colleges from delivering education within its borders.

What remains the same: Notifications & disclosures.

These are still just proposals, and ED has given only 30 days for comments—an absurdly short timeframe, as I've heard (colorfully) from a number of higher ed attorneys. And more sessions of negotiated rulemaking are set for this fall, with committee details to be released in the coming months.

What does this mean for you right now? Don't panic, but take a close look at where your students are located and what programs they're in. If you have students in states that have recently passed content restrictions, check to see if there were pre-SARA reciprocity rules and how they applied. If any students are enrolled in programs where it's unclear if they meet licensure requirements, take another look. How many students would be impacted if we couldn't provide them federal aid? These regulations wouldn't go into effect until 7/1/24, so we

have time to make careful, informed decisions.

For more reading, WCET has done a great job breaking it down into two parts: Part I [3] & Part II [4].

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