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March 2022 State Authorization Updates & Information [1]

March 14, 2022 by erika.swain@cu.edu [2]

Hello everyone!

I was planning to send you a well-written update on out-of-state placements and field trips, but the Negotiated Rulemaking process at the Department of Education has completely derailed that.

On the table for this round of Negotiated Rulemaking is a proposed addition to institutional requirements under **668.14 (Program Participation Agreement)**—which governs what universities must do to receive and administer federal financial aid. This proposal, interestingly placed in this section, would essentially dismantle the State Authorization Reciprocity Agreement (SARA) and force us to revert to making individual agreements with every state, district, or territory where a student may be located in order to deliver education (whether online or through out-of-state placements). This would be a massive blow to online education, as well as to any non-credit education offered through platforms like Coursera, especially where we don't manage the student data. It would also drastically impact student mobility.

For those who didn't work in state authorization prior to Colorado joining NC-SARA (or before our universities were approved to participate), it was a challenging time. I was working in the SUNY system from 2011 to 2013, before New York joined NC-SARA. SUNY's system administration had a website that collected letters and responses from various states as they tried to broker authorization for 64 campuses. Some states refused to work with the system office, some wouldn't allow community colleges to gain authorization, and others required campuses to pay per FTE enrolled in their state. Some states never responded at all due to lack of capacity.

The proposed language reads that institutions must:

(iii) Comply with all State consumer protection laws, including both generally applicable State laws and those specific to educational institutions, except where State requirements for obtaining authorization are inapplicable pursuant to a State authorization reciprocity agreement.

This language would severely limit the reciprocity we currently enjoy under SARA, making us subject to several additional state-specific rules that SARA currently covers, including:

- Complying with different state refund policies
- Contributing to "tuition recovery funds" in states that have them, to assist students at closed institutions
- Posting surety bonds in some states
- Meeting varying state yearly reporting requirements

- Allowing states to take unilateral action against institutions
- Complying with any other requirements states may impose on out-of-state institutions

The irony is that many of these regulations were created to protect against large proprietary institutions, yet those are the very institutions most likely to have the human and financial resources to comply.

NC-SARA sent out a call to action this morning, with more background information than you could ever need on the issue. I highly recommend reviewing it. Should this language move forward, it will significantly limit the education we can provide outside of Colorado. I spoke with colleagues in the general counsel's office this morning, and we agreed that commenting on this issue is larger than any one of our universities. If you wish to send an individual comment to one of the negotiators, **NC-SARA** provides a template for that as well.

This language is still being discussed and has not yet been officially published in the Federal Register as proposed regulations. We have the rest of this week to get through, and possibly another month before any formal changes are made, but this is something to keep a close eye on. It could affect all of our jobs, day-to-day work, and the education we provide to our students.

Additionally, you may remember the language from **Issue Paper 6** (linked above), particularly **668.14 (32)**, mentioned in February's email. This concerns our professional licensure programs. Unfortunately, the new proposal has made things worse. Not only are they doubling down on the requirement that we "ensure" the education we provide allows students to sit for licensure in their state of residence (without acknowledging that we have no control over state requirements or student mobility), but they now also want to require us to obtain and maintain **programmatic accreditation** if a state requires it for licensure. As someone who often supports accreditation, even I find this a step too far.

I'm sure this isn't the last we'll hear about this, and I promise to keep you updated as things progress and as I get more information from those involved in the Negotiated Rulemaking process or at the Department of Education.

Maybe next month I'll finally get around to discussing out-of-state placements!

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