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March 2024 State Authorization Updates & Information [1]

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Greetings from Rainy, Cold California!

I'm out here with a group of other state authorization folks and SAN for a workshop on recent federal announcements affecting institutional compliance. I'll share everything that comes out of this event, and I'll be looking at all the information with each of our campuses and the system as a whole in mind. But before the workshop starts, let's take a look at some of the updates from Negotiated Rulemaking.

State Authorization and NC-SARA: State Authorization—specifically NC-SARA and the reciprocity agreement—has been a central topic in the last three rounds of the Department of Education's Negotiated Rulemaking. At the core of the discussions is a fundamental misunderstanding of what SARA is, what NC-SARA's role is, the State's role, and how students and institutions benefit from reciprocity. One of the most frustrating parts was watching representatives from consumer advocacy groups and the State Attorneys General discuss all the ways SARA allegedly harms students. For a long time, not a single institutional representative spoke up—until this week. And it didn't help that the Public 4-year representative was from a University of California school.

I won't dive into the proposals regarding who can serve on a reciprocity agreement's board, as that was particularly frustrating, but instead, I'll focus on two specific proposals that could ultimately undermine the current state authorization reciprocity agreement. Essentially, the current proposals suggest removing many existing SARA provisions and allowing states to revert to pre-SARA practices. This could mean that states could impose additional requirements on institutions before allowing them to deliver courses and programs online within their borders, potentially including "applicable" state laws, though no one specified what would be considered "appropriate." More specifically, the proposed language states:

> *(i) Requires the institution to comply with any applicable State authorization or licensure requirements and all applicable State laws and regulations.*

On Tuesday morning, the SHEEO representative pointed out that this could allow states to enforce their individual ideological requirements on institutions wishing to deliver education in their state. While representatives from consumer advocacy groups and the Department of Education claimed that this was not the intent of the proposed language, as colleague aptly noted, "I hope no one here is trying to teach reproductive care as part of a nursing requirement in Oklahoma…"

New Proposal on Enrollment Limits: Another new proposal in this round concerns allowing institutions to deliver education to a specific number of students per academic year before having to apply for authorization:

> *(d) If an institution is authorized to offer distance education in another State under a state authorization reciprocity agreement, as defined in 600.2; … (4) As a condition of participation, the institution must obtain within one year direct authorization from any participating State where it enrolls more than 500 students.*

In other words, we would be able to deliver education "online" in a particular state to up to 500 students per academic year. However, if we exceeded that number, we would need to apply for authorization. At first glance, 500 may seem reasonable; in fact, some institutions on the SAN and WCET listserv suggested they would even accept a lower threshold, around 100-150.

Hard no.

I strongly disagree with this threshold approach. A threshold, regardless of its size, takes us back to the pre-SARA days and disregards the current educational environment and trends. It contradicts everything higher education has been working towards over the past decade. While 500 or 100 might seem manageable now, will it still work in a year? Two years? Five years? For smaller institutions or those facing enrollment or budget pressures, this could pose significant challenges if campus leadership decides to grow online programs to address these issues.

I also question the data being used to set any threshold. Consider what we currently report to SARA: it's IPEDS data on 100% online (distance education) students. Last year, CU Boulder reported around 1,500 online students across various states for SARA. However, the actual number of students at CU Boulder engaging in at least one online course (distance, correspondence, for credit, noncredit, alternative credentials) for Fall 2023 is about 11,500 (thanks to Blake @Boulder for the data).

This highlights a significant disconnect between the data we report for SARA and the reality of online education. While the reason for SARA's use of IPEDS data may be outdated at this point, it raises important questions about what data the Department of Education would require states to use for the 500-student threshold, how states would collect and process that data, and, of course, the cost associated with implementing these requirements.

Currently, these 11,000+ students enrolled in online courses from CU Boulder are covered by reciprocity and SARA. But what happens if the Department of Education alters the regulations around state authorization, allowing states to enforce their own educational, or even general purpose, laws or, for example, if New York requires CU Boulder to apply for separate authorization upon enrolling 700 students in various online offerings? Institutions might choose to stop offering education in certain states if such changes pass. I also question whether states have the capacity to manage this process, which would likely come at a high cost to institutions.

Some might argue that non-credit and alternative credentials aren't subject to Title IV regulations and therefore wouldn't be affected. However, this is state authorization, beyond the scope of federal financial aid. It concerns the education (and business) conducted within a

state, regardless of whether financial aid is involved. While federal requirements may direct states to verify enrollments and oversee institutional authorization, this would be based on educational delivery, not financial aid eligibility.

Final Thought:
So, how many students do you actually have enrolled in each state?

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