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November 2022 State Authorization Updates & Information [1]

November 7, 2022 by erika.swain@cu.edu [2]

Hello and Happy November!

It's that time of year again—SARA RENEWAL SEASON! At the end of the month, all three CU campuses will receive notifications that it's time to submit our SARA renewal form and supporting information to our SPE, Heather DeLange at CDHE, for review and approval. This is necessary for our institutions to continue participating in SARA and offer education to students both online and on the ground outside of Colorado. We will have 30 days from the date of the email to submit the information to Ms. DeLange. Once, barring any issues of non-compliance, your campus has been reapproved for participation, the person who submitted the form will receive an invoice.

As in previous years, once your campus has paid the SARA invoice, you can contact System with a copy of the invoice and the speedtype it was paid from, and we will reimburse your campus. Thankfully, there have been no changes to the SARA renewal form from last year. Additionally, as in past years, Ms. DeLange has requested that we PLEASE include the text or copies of our direct disclosures and links to our general disclosures as an appendix to the renewal form.

Now, onto the new stuff: I'll admit, when the most recent round of proposed regulations was released, I initially set them aside, thinking they wouldn't pertain to us in the CU System, since they mostly focused on the 90/10 rule, prison education programs, and Pell eligibility. However, after discussing these regulations with colleagues, we found a few sections that do impact us and our work in state authorization. Specifically, these sections relate to prison education programs and Pell eligibility, as well as language associated with Borrower Defense.

"Erika, how do those relate to state authorization?" Hear me out:

Pell Grants for Prison Education Programs

Pell Grants for incarcerated individuals enrolled in qualifying programs were established by Congress through the Consolidated Appropriations Act, 2021, which, among other things, ended the ban on Pell grants for incarcerated students. These regulations were developed by a negotiated rulemaking committee that reached consensus on the language in Fall 2021.

A key part of this language is relevant to us—education provided outside our state and/or in fields leading to professional licensure. For a program offered to incarcerated individuals to be eligible for Pell, it must:

- Satisfy the educational requirements for a license or certification, allowing students to sit for the licensure exam required to practice or obtain employment in the specific occupation in the state where the correctional facility is located or, for federal facilities, the state where most incarcerated individuals will reside upon release (34 CFR 668.236(a)(7)).
- Have no prohibitions on the licensure or employment of formerly incarcerated individuals in the state where the correctional facility is located, or for federal facilities, the state where most individuals will reside upon release (34 CFR 668.236(a)(8)).

Additionally, you must still send these individuals the required notifications about professional licensure programs, including whether any state prohibits licensure or employment for formerly incarcerated individuals (34 CFR 668.43(a)(5)(vi)). If you're offering or considering offering a licensure program that may be Pell-eligible, you will need to update your process for determining a student's location, specifically how you define "the state where most incarcerated individuals will reside upon release," as required by the federal regulations.

Borrower Defense (BD) to Repayment

There has been a lot (a vast understatement) written about BD and the politics surrounding it. Generally, BD arises from situations where students attended a shady or now-defunct institution and didn't receive the promised value, or the institution engaged in aggressive/deceptive recruitment practices. The federal government believes these new regulations strike a balance between creating a process for those who were wronged and implementing preventive measures. Most of these changes fall under 34 CFR Subpart F—Misrepresentation.

I want to highlight a couple key points:

- **Definition of a Prospective Student** Under these regulations, a "Prospective student" is defined as: *Any individual who has contacted an eligible institution to request information about enrolling or who has been contacted directly or indirectly through advertising about enrolling.*

  Yikes, right? Maybe not. For BD purposes, there will be a review of the "totality of circumstances" (a legal term meaning all the facts will be considered). BD typically wouldn't apply without enrollment or financial aid distribution, and since our disclosures are presented before admission or enrollment, we should remain compliant. That is, as one of my friends put it, "...with licensure disclosures needing to occur 'prior to enrollment' and needing to be based on location 'at the time of enrollment' if a prospective student doesn't ever receive required disclosures but also never enrolls, can a violation have occurred? I'd say probably not since the institution would theoretically still have the opportunity to disclose up until the time of enrollment, which hasn't happened."

What does this mean for us? Revisit your language around "location" and your process for notifying prospective students. Ensure they receive the required and accurate information.

- Omission of Fact (668.75) The ED defines "omission of fact" as misrepresentation if a reasonable person would have considered the omitted information in their decision to enroll or continue at the institution. This includes concealing, suppressing, or omitting

material information about academic programs. Specifically, 668.75(d) highlights a crucial point for us: *Institutions must disclose if there are factors that would prevent a student from meeting the legal or other requirements for employment, licensure, or certification in the state where the program is offered, or if the program does not have the required state authorization or specialized accreditation.*

What does this mean for us? In BD cases, if we fail to inform a student that the education we're providing doesn't meet the state's requirements where they are located while enrolled, and the student can prove it, our institution could be liable for the cost of their education.

There are other relevant sections in 668.74 (Employability of Graduates) that you might want to discuss with your licensure program teams and Institutional Research (e.g., publishing actual licensure passage rates). The need for "appropriate state authorization" to deliver programs is echoed throughout these sections, further emphasizing the importance of staying on top of that SARA renewal.

You can read the entire release and reasoning here [3]. The effective date for these regulations is July 1, 2023.

If you have any questions or concerns, please don't hesitate to reach out to me! And don't forget to submit everything for your SARA renewal before you head out for break!

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