

## **Newsletter** <sup>[1]</sup>

### **State Authorization Newsletter Archive**

#### **July 2020**

#### **Happy June! Thoughts on July 1st and notifications**

Just wanted to check in and say hello! I think I've drafted a half dozen emails over the last few months, but kept getting pulled away to do campus/academic Covid planning meetings and preparations. I hope you're all faring well and that we've gotten through the worst of it... Boulder is doing what looks those in the restaurant world call a "soft open" for Fall. We're going to try to run things as close to normal but with a longer scheduling period (courses can run between the hours of 8am-9pm), smaller classes, bigger gaps between classes, some cohorts, more online and synchronous video options for courses etc. etc. Honestly my biggest sigh of relief was when the ABA moved to allow for up to 1/3 of a legal education to be delivered via distance education. We're still awaiting their final vote, but it sailed through earlier committees w/o much discussion.

July 1st is quickly approaching and with it the new regulations on professional licensure programs and notifications. I hope everything is moving along well as you prepare for this. As a reminder, failure to comply puts your University in danger of losing access to federal financial aid (Title IV). How is your research coming on the various professional licensure programs and the applicability of education your Universities are offering? I know I've found that the PhD in Psychology will likely not allow for students at CU Boulder to sit for the licensure exam in most states. Looks like we don't offer enough hours in the way of internships. Don't forget that NC-SARA, in an effort to continue helping the higher education community has branched out in to assisting us with our professional licensure needs – namely by gathering a directory of the most common professional licensure fields and their state agencies <sup>[2]</sup>. This is a great head start on getting the information required for our programs and notifications as it gives you the contact information and name of all of the applicable agencies in these fields.

There was an interesting conversation on the WCET/SAN listserv about one of the aspects of

gathering and disseminating information. In a conversation about some of the language in disclosures, I had indicated that for the Teaching Degrees at CU Boulder we were saying that we don't meet any other states' requirements for licensure when a colleague at Truman State indicated that he had thought that intent of the new regulations meant that if we admit students from other states we should also tell them why/how a program may not meet their state's licensure requirements. Deputy General Counsel from the University of Phoenix chimed in then noting that "If students from other jurisdictions are able to enroll and you don't restrict that, you must ensure your program meets the licensure requirements in their state, tell them about it, or tell them that it doesn't meet the requirements."

And while I have a great respect for the University of Phoenix when it comes to state authorization – remember, they have been dealing and working with all of this for much much longer than the rest of higher education – and I agree with the Deputy Counsel and with the gentleman from Truman, I do so with a caveat.

I agree that the intent of the regulation is for institutions to provide students with enough information that they can make an informed decision about their education. That being said, nowhere in the regulatory language does it say we're required to disclose to the students the specific state educational requirements we're not meeting, only that we disclose to them that we have either made the determination that our education does/doesn't meet the requirements in that state or we don't know if we meet the requirements in that state. I agree that doesn't mean you shouldn't/don't have to share the information as to how you came to that determination if you wish to. In fact, in regard to marketing, being able to make specific disclosures (and thus notifications) about how you don't/can't meet educational requirements in a particular State would likely put you at an advantage.

However, I think though that we need to take the mission of the institution and the intended audience of the program in to consideration. The example of UoP's teacher ed programs is great. But CU Boulder's teacher ed programs are not offered in a distance modality, and our students rarely, if ever, leave the state for student teaching. We're not aiming for or recruiting students outside of CO, thus stating we don't meet requirements for other states is the most prudent for this program. Does that logic carry to our other professional licensure programs? Depends on the program, the intended audience, the modality, etc.

I read back through the section of the Federal Register (vol. 84, no. 212) <sup>[3]</sup> that discusses 668.43 (pgs. 58884-58888) and the Department notes that they require "institutions to only advertise true and factual statements about their programs, " and that the "Department expects that institutions will accurately and truthfully provide that information on the required disclosure." For this particular program (teaching degrees), and this particular disclosure, we are adhering to that intent (p.58886).

I hope you're all doing well and getting to get things somewhat back to normal or have started a new normal that agrees with you!!

Erika

## November 2022

### November 2022 State Authorization Email Updates & Information

Hello and Happy November!

It's that time again! SARA RENEWAL SEASON! At the end of the month all three CU campuses will receive notification that it's time to submit our SARA renewal form and information to our SPE Heather DeLange at CDHE for review and approval for our institutions to continue to participate in SARA and offer education to students online and on-ground outside of Colorado. We will have 30 days from receipt 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 with previous years, once your campus has paid your SARA invoice, you can contact **Kelly Madden** with a copy of your invoice and the speedtype it was paid from, and the System office will reimburse your campus. There have been no changes to the SARA renewal form from last year (thank goodness) [4]. The document attached below is a reminder of the sections and requirements. Additionally, as with previous years, Heather DeLange has asked that we *PLEASE* include the text from, or copies of, our direct disclosures, and links to our general disclosures as an appendix to the renewal form.

Now, to the new stuff: Admittedly when the most recent round of proposed regulations came out, I set them aside, thinking I'll read through them but they don't necessarily pertain to us in the CU System as it was mostly language around the 90/10 rule and Prison education programs and Pell eligibility. However, after a few conversations with some colleagues at other universities as we started to dig into some of the new language, there are a few sections that pertain to us and our work in state authorization-land. Specifically, the sections regarding prison education programs and eligibility for Pell and language associated with Borrower Defense.

Erika that's crazy - how in the world do either of those relate to state authorization? Hear me out -

## Pell Grants for Prison Education Programs

Pell Grants for incarcerated individuals enrolled in qualifying programs was established by Congress through the Consolidated Appropriations Act, 2021 [5], which included the end to a ban on providing Pell grants to incarcerated students. These regulations were developed by a negotiated rulemaking committee that reached consensus on the language in Fall 2021. Part of this language addresses something that we should all be familiar with at this point - education being provided outside of our state and/or in a field that leads to professional licensure. That is, for a program offered to incarcerated individuals and be eligible for Pell, these programs:

- Must satisfy the educational requirements for a license or certification. Such requirements allow students to sit for the licensure examination required to practice or obtain employment **in the specific occupation in the state where the state correctional facility is located or, in the case of a federal correctional facility, the state where most of the incarcerated individuals will reside upon release** (34 CFR 668.236.(a)(7)).
- Must not have prohibitions on the licensure or employment of formerly incarcerated individuals **in the state where the state correctional facility is located or, in the case of the federal correctional facility, the state where most of the incarcerated individuals will reside upon release** (34 CFR 668.236 (a)(8)).

Additionally, you're still required to send these individuals the required notifications pertaining to the professional licensure programs as well as notify the individual whether any state for which the institution has made a determination about any state or federal prohibitions on licensure or employment in an occupation for formerly incarcerated individuals (34 CFR 668.43(a)(5)(vi)). Aside from including the language about how you notify the incarcerated individuals per the regulation, should you be offering or are thinking about offering a licensure program that may be Pell eligible, you will need to update your process on determining a student's location to account for how you determine "the state where most of the incarcerated individuals will reside upon release" as required in the federal language.

## Borrower Defense (BD) to Repayment

There is a lot (vast understatement) being written about this and the politics leading up to and around it. Generally speaking, BD is coming from the enormous number of instances that have come to light in the last decade surrounding students who began and didn't finish or finished a degree at a shady or now defunct institution and didn't get the bang for the buck they were promised, or the institution engaged in aggressive and/or deceptive recruiting

practices, misrepresentation etc. etc. The feds feel that these new regulations strike a balance between creating a process for those that feel they were wronged or harmed and preventative measures to assure these things don't happen again. Most notably these changes and additions all fall under 34 CFR Subpart F - *Misrepresentation*. I want to highlight two things here.

The definition of a Prospective student and the new section on *Omission of Fact*. So first some terrifying language. Under this definition a Prospective student is defined as:

*Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.*

Yikes right? Maybe not. For BD, there'd be a review on "totality of circumstances" (fancy legal term for the decision being based on all the facts, not just the high level pieces) and since generally speaking BD wouldn't apply without there first being enrollment/distribution of financial aid at some point, and our disclosures are presented prior to admission/enrollment, we would still be in compliance. 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" as well as your process for notifying prospective students, make sure that they're getting the required and accurate information.

Then there's the new section, 668.75 Omission of Fact. The ED defines "omission of fact" as... *a misrepresentation under §668.71 if a reasonable person would have considered the omitted information in making a decision to enroll or continue attendance at the institution. An omission of fact includes, but is not limited to, the concealment, suppression, or absence of material information or statement concerning... our academic programs.* Specifically, the ED calls out something very particular to our roles at our institutions. That is, 668.75 (d):

*The factors that would prevent an applicant from meeting the legal or other requirements to be employed, licensed, or certified in the field for which the training is provided because the academic, professional, or occupational degree or credential that the institution will confer upon completion of the course of study has not been authorized by the appropriate State educational or licensure agency, or requires specialized accreditation that the institution does*

not have.

What does this mean - In terms of BD, if we fail to alert the student that the education we're providing doesn't meet the requirements of the state where they are located while they are enrolled and the student can show proof of this, our institution would be liable for the cost of that education.

There are a few other sections in 668.74 (Employability of Graduates) that would be worth chatting with folks in the licensure programs and IR about (i.e. publishing actual licensure passage rates), and requiring an institution to have the "appropriate state authorization" to deliver programs is echoed in each sections (all the more reason to get a jump on that SARA renewal) but overall it really points back to making sure the language you are publishing about your licensure programs is accurate and up to date and that you have a documented process that details how and when this is done.

You can read the entire release and reasoning [here](#) [6].

The effective date for these regulations is July 1, 2023. Questions, concerns? Please feel free to give me a call or send an email if you need some assistance with this! And don't forget to turn it in before you run away for break/vacation!

[SARA Renewal Helper Text](#) [7]

Erika

## September 2023

### ***SAN Network : SAN Breaking News! U.S. Department of Education Rulemaking Update!***

*The U.S. Department of Education submitted the remaining issues that had been part of the [May 2023 Notice of Proposed Rulemaking \(NPRM\)](#) [8] to the Office of Management a Budget Office/Office of Information and Regulatory Affairs ([OMB/OIRA](#)) review [9]. This review is a required step before the Department can release the regulations as final. Regulations released as final by November 1 will be eligible to be effective the following July 1.*

*You will recall that there were five issues released in the May 2023 NPRM. In mid-August, the Department submitted the [Gainful Employment regulations](#) [10] for the review which was completed one month later. The issues currently under review include [Financial Responsibility](#) [1840-AD64], [Administrative Capability](#) [1840-AD65], [Certification Procedures](#) [1840-AD80],*

*and Ability to Benefit [1840-AD51].*

*We believe that the Certification Procedures issue is of great concern to our members given the potential impact on reciprocity and serving students in programs leading to a license or certification. You may wish to read more: **Proposed Federal Rules Affecting Programs Leading to a License & State Authorization Reciprocity Need a Delayed Effective Date** <sup>[11]</sup> ; 8/25/23*

*We will share more as it develops!*

*- Cheryl Dowd | Senior Director, State Authorization Network (SAN) & WCET Policy Innovations*

Hi everyone –

This just in – The ED has taken the final step in implementing regulations and sent all of the remaining proposals to the Office of Management and Budget Office/Office of Information and Regulatory Affairs. Proposed regulations relating to state authorization and professional licensure (and others) will be acted on before November 1 (barring any federal shutdown), meaning we will have a July 1, 2024 “live” date for these regulations.

We don't know if they're going to take a pass on things and say there was significant opposition (I would not take those odds to Vegas) or if/what edits may be written in or if they will go as we saw them in May when they were proposed.

**What this means for us right now:** Take stock of some of the things we have looked at the last few months – where your students are, how you use “unable to determine,” how students are notified about professional licensure exams (applicability of the education provided, cost of attendance etc.), and what you might have to do should you no longer be able to recruit students for certain programs from certain states (and in some cases if you're offering a program online, can you continue to deliver it there).

If these regulations are released as is – I will work with both campuses to understand the larger impact and assist with helping leadership to understand why some things will be changing.

As always, if you have any questions – do not hesitate to reach out!

Erika

**Resources**

## If you have any additional questions, please contact:

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Associate Director for State Authorization, Office of Academic Affairs

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Additional resources can be found [here](#) [13].

### Groups audience:

State Authorization

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**Source URL:**<https://www.cu.edu/state-authorization/newsletter>

### Links

- [1] <https://www.cu.edu/state-authorization/newsletter>
- [2] <https://www.nc-sara.org/professional-licensure-directory>
- [3] <https://www.govinfo.gov/content/pkg/FR-2019-11-01/pdf/FR-2019-11-01.pdf>
- [4] [https://nc-sara.org/sites/default/files/files/2021-07/StateApplication2021-Revised\\_%207-8-21\\_FinalVersion\\_7-28-21.pdf](https://nc-sara.org/sites/default/files/files/2021-07/StateApplication2021-Revised_%207-8-21_FinalVersion_7-28-21.pdf)
- [5] <https://www.congress.gov/bill/116th-congress/house-bill/133/text>
- [6] <https://www.govinfo.gov/content/pkg/FR-2022-11-01/pdf/2022-23447.pdf>
- [7] <http://cu.edu/doc/sara-renewal-helper-textpdf-1>
- [8] <https://www.federalregister.gov/documents/2023/05/19/2023-09647/financial-value-transparency-and-gainful-employment-ge-financial-responsibility-administrative>
- [9] <https://www.reginfo.gov/public/do/eoDetails?rrid=334963>
- [10] <https://www.reginfo.gov/public/do/eoReviewSearch>
- [11] <https://wcet.wiche.edu/frontiers/2023/08/25/proposed-fed-rules-affecting-license-state-auth-reciprocity-need-delayed/>
- [12] <mailto:erika.swain@cu.edu>
- [13] <https://drive.google.com/drive/folders/134ZYw8u7ZkKPZHWUIQX-O7LjMGN925tF?usp=sharing>