

STATEMENTS OF FISCAL EFFECT AND SMALL BUSINESS IMPACT

The Board of Higher Education seeks to enact amendments to existing regulations 610 CMR 12.00: Operation of Massachusetts Degree-Granting Institutions Under the State Authorization Reciprocity Agreement (SARA). These amendments will govern the Commonwealth's continued participation in the State Authorization Reciprocity Agreement ("SARA"), which requires the Commonwealth and member institutions to comply with the policies and procedures set forth in the SARA Manual, as may be amended from time to time by the National Council for State Authorization Reciprocity Agreements ("NC-SARA"), which oversees the universal implementation of SARA. These amendments are necessary to align 610 CMR 12.00 with the SARA Manual, so that the Commonwealth may continue to be eligible to participate in SARA. The Commonwealth's participation in SARA will, in turn, allow institutions of higher education that operate or aspire to operate under SARA to offer their 100% online programs in other SARA member states without having to meet varying state requirements for authorization and without having to pay each state's applicable fee. In addition to technical amendments which clarify which version of the SARA Manual applies to the Commonwealth's participation in and administration of SARA, the new amendments will serve to ensure consistency with SARA policies and procedures, and provide institutions and members of the public with updated information on the following: the Department of Higher Education's (the "Department") and NC-SARA's requirements concerning procedures for calculation of financial responsibility composite scores ("FRCS") for institutions that do not participate in Title IV financial aid programs or otherwise do not receive such scores from the U.S. Department of Education ("US-ED"); determinations of student location for the purposes of professional licensure disclosure requirements; and circumstances in which the Department may keep institutions on provisional approval for longer than one year.

Fiscal Effect on the Public and Private Sectors

M.G.L. c. 30A provides that, before any regulation can become effective, agencies of the Commonwealth must file an estimate of its fiscal effect on both the public and private sectors for the first and second years and a projection for the first five years; or state that there is no fiscal effect (if that is the case). According to the Secretary of the Commonwealth's Office, this requirement is not the cost/benefit analysis that accompanies federal regulations, but rather the agency's best judgment of the "out of pocket" expenses that will be incurred in complying with the regulation.

1. Professional Licensure Amendments

The Board anticipates that these amendments may have a minor fiscal effect on public and private institutions of higher education that voluntarily offer (or plan to offer) 100% online courses or programs to students outside Massachusetts that customarily lead to professional licensure via SARA. The amendments to these regulations, however, are being proposed in part because the changes are necessary to align Massachusetts' regulations with NC-SARA policy and upcoming changes to federal regulations governing state authorization, scheduled to go into effect on July 1, 2020. Such institutions may determine that, in order to comply with federal law (which, after these amendments and as of July 1, 2020, will align with state law), additional personnel may be needed to evaluate professional licensure requirements in all states in which such programs and courses are offered. Any addition of staff would be discretionary and may result in additional cost to the institution. However, as outlined above, those costs are not solely as a result of these amendments to 610 CMR 12.00.

2. Calculation of a Financial Responsibility Composite Score

The Board anticipates that these amendments may have a minor fiscal effect on some Massachusetts institutions of higher education that voluntarily choose to apply to the Department in order to operate (or continue operating) under SARA. In particular, an institution that does not presently receive an FRCS from US-ED, but is required to submit one as part of its application to operate under SARA, may incur a fee when requesting an FRCS calculation from an independent auditor approved by the Department. At this time, it is anticipated that six institutions in the Commonwealth would need to have an FRCS calculated for the purposes of participating in SARA because they do not already have one calculated by US-ED; one has already elected to obtain its own calculation and has not cited cost as a concern. Such a calculation likely would be simple to request from an institution's existing auditing firm, subject to the Department's approval, and likely would not incur significant costs.

3. SARA is Voluntary

Even if an institution had to incur minimal expenses as a result of these amendments, it is important to note the voluntary nature of SARA: institutions will only incur a fiscal effect if they choose to join SARA or maintain their participation therein. The vast majority of current participants in Massachusetts SARA are either public (and therefore do not need an FRCS to participate in SARA), already receive an FRCS from US-ED, and/or do not offer 100% online courses or programs to students outside Massachusetts that customarily lead to professional licensure. Institutions that do not

wish to operate under SARA, whether because of these minor fiscal effects or otherwise, are welcome to continue to incur costs associated with state-by-state authorization.

4. Fiscal Effects Offset by Cost Savings

Furthermore, any costs incurred by institutions choosing to operate under SARA will still most likely be offset by the overall cost savings for institutions, as they will continue to be able to operate online programs for residents of 48 other states and several territories without having to pay each state or territory individually for the authorization to offer online programs to residents of those states. An institution choosing to operate under SARA will continue to realize savings on authorization compliance, as the process for authorization to offer online programs in other states will be streamlined into one application to the Department. If the Department does not adopt these changes to its regulations, it risks being in non-compliance with the requirements of NC-SARA as set forth in the SARA Manual, which could jeopardize the Commonwealth's ability to renew its membership as a SARA state in spring 2020. The costs, both in dollars and time, associated with the termination of the Commonwealth's participation in SARA are considerably more significant, as institutions would be required to once again pursue individual authorization in other states (and pay the fees associated with authorization in those states). In addition, a termination of participation in SARA would result in significant disruption for students.

The Board strongly believes that the fiscal effects associated with these amendments are minor, that they are justified because of the benefits that continue to accrue to the higher education sector in Massachusetts and the public from the Commonwealth's membership in SARA, and that ultimately the costs to the institutions remain far lower than if the Commonwealth did not continue to participate in SARA and ensure continued alignment with the SARA Manual.

Small Business Impact

In addition, M.G.L. c. 30A provides that before any regulation becomes effective, agencies of the Commonwealth must file with the Secretary of State a statement considering the impact of said regulation on small businesses. Such statement of consideration shall include, but not be limited to, an estimate of the number of small businesses subject to the proposed regulation; projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation; the appropriateness of performance standards versus design standards; an identification of relevant regulations of the promulgating agency, or any other state agency, which may duplicate or conflict with the proposed regulation; and an analysis of whether the

proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth.

An estimate of the number of small businesses subject to the proposed regulation

There are approximately 89 private independent institutions of higher education in Massachusetts that could choose to apply to operate (or continue to operate) under SARA and therefore be subject to these amendments to 610 CMR 12.00. The Board believes that no more than 15 of these private institutions fall under the definition of "small business" as established by the U.S. Small Business Administration in 13 CFR § 121.201. Because SARA is voluntary, the Board has no ability at this time to determine how many of these 15 "small business" institutions will opt to join (or remain) in SARA.

Projected reporting, recordkeeping, and other administrative costs

Institutions that choose to apply to the Department for approval (or renewal) to operate under SARA have to submit an initial application and renew their participation on an annual basis by submitting a renewal application. This process is required by NC-SARA and continues to be memorialized in these regulations.

The amendments to these regulations, which are required as part of the Commonwealth's continued membership in SARA, may increase the amount of recordkeeping that institutions have to do: institutions that offer courses or programs that customarily lead to professional licensure will need to ensure their institutional procedures for identifying student location are frequent enough to ensure that the disclosures issued to students concern the state in which those students are individually located, rather than their state of residence. In addition, institutions which remain on provisional status for longer than one year may be required to submit additional information, such as periodic financial statements or institutional stability plans, to the Department at regular intervals in order to demonstrate continued efforts towards achieving full eligibility to participate in SARA.

Appropriateness of performance standards versus design standards

NC-SARA requires certain express standards for institutions to be approved to operate under SARA. Institutions that choose to apply to the Department for approval to operate (or continue operating) under SARA must comply with those standards. These amendments reflect the requirements that NC-SARA itself has imposed. Institutions that wish to operate under SARA must comply with those specific standards;

SARA does not provide for flexibility. As a result, performance standards are not appropriate for these regulations.

Identification of duplicate or conflicting regulations

The Board has been unable to identify any duplicate or conflicting regulations promulgated by any state agency.

Analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth

Massachusetts' continued participation in SARA, and having these amendments adopted to allow for said continued participation, is unlikely to have any impact on whether institutions want to establish a physical presence in Massachusetts. When people seek to create new institutions in Massachusetts, or when out-of-state institutions seek to open branches in Massachusetts, it is usually because they wish to offer some in-person educational programming/services to Massachusetts residents and 100% online education is not sufficient for their programmatic needs. The promulgation of these amendments to 610 CMR 12.00 should not affect that analysis in any way.