

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Academic Affairs

NO.: AAC 18-15

COMMITTEE DATE: December 5, 2017

BOARD DATE: December 12, 2017

**AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON 610
CMR 4.00: OPERATION OF MASSACHUSETTS DEGREE-GRANTING
INSTITUTIONS UNDER THE STATE AUTHORIZATION RECIPROCITY AGREEMENT
(SARA)**

MOVED: The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, to solicit public comment on the proposed regulation 610 CMR 4.00: Operation of Massachusetts Degree-Granting Institutions Under the State Authorization Reciprocity Agreement (SARA).

Authority: M.G.L. c. 15A, § 9, as amended by 2017 Mass. Acts ch. 47, § 10;
M.G.L. c. 69, § 31A, as amended by 2017 Mass. Acts ch. 47, § 36;
M.G.L. c. 15A, § 41; M.G.L. c. 30A; 950 CMR 20.00

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Massachusetts Board of Higher Education

Proposed New Regulations to Govern Massachusetts' Entry into SARA

Background

Background

At its October 31, 2017 meeting, the Board voted (AAC 18-08) to approve the Department's participation in the State Authorization Reciprocity Agreement (SARA) and delegated to the Commissioner the authority to take the necessary steps to pursue Massachusetts' entry into SARA. One of the necessary steps for Massachusetts' entry into SARA is the promulgation of regulations that will govern the Commonwealth's review and approval of Massachusetts institutions that wish to operate under the provisions of SARA. (See **Attachment A, 610 CMR 4.00**)

Recommendation

Staff recommends that the Board approve 610 CMR 4.00 as attached to be submitted to the Secretary of the Commonwealth's Office for publication in the Massachusetts Register, which will entail the presentment of the proposed regulations to the public for comment.

Rationale

The Department has determined that regulations are necessary for it to pursue Massachusetts' entry into SARA and to serve as the SARA portal agency through which all Massachusetts institutions' applications to operate under SARA will be processed. The Board must approve the proposed regulations before the Department can submit them to the Secretary of the Commonwealth's Office for publication and solicitation of public comment, as required by state law.

The SARA regulations will, in part, serve to provide institutions and members of the public with information on the Department's (and SARA's) requirements concerning the following:

- Minimum institutional eligibility requirements
- Initial application process for institutions
- Renewal application process for institutions
- Standards for approval, disapproval, or provisional approval
- Institutions' loss of eligibility and removal
- Institutional withdrawal
- Student complaints against SARA institutions in Massachusetts
- Fees for institutions choosing to operate under SARA

As set forth in the attached timeline, after approval by the Board, the regulations will be submitted to the Secretary of the Commonwealth's Office for publication in the Massachusetts Register. The Department will hold a public hearing on the proposed regulations and have a 3 week public comment period, after which the Department will make changes to the regulations as it deems necessary as a result of public comment. Staff anticipate that the final regulations will be brought to the Board for final approval and promulgation at its March 6, 2018 meeting.

Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
December 15, 2017	<ul style="list-style-type: none"> • Draft regulations, small business impact/fiscal effect statements, and notice of public hearing will be brought to the Secretary of the Commonwealth's Office for publication in the December 29, 2017 edition of the Massachusetts Register • Letters will be sent to DHCD/MMA per E.O. 145
December 22, 2017	<ul style="list-style-type: none"> • Notices of public hearing will be sent to the Boston Globe for publication (publication in the Globe is likely to occur 3-4 days after submission)
December 29, 2017	<ul style="list-style-type: none"> • Publication of draft regulations and notices of public hearing in the Massachusetts Register
January 22, 2018	<ul style="list-style-type: none"> • Public Hearing, One Ashburton Place, Room 1401
December 29, 2017 – January 19, 2018	<ul style="list-style-type: none"> • Public comment period
February 20, 2018	<ul style="list-style-type: none"> • Final regulations distributed to BHE for review
February 27, 2018	<ul style="list-style-type: none"> • AAC meeting (final regulations up for approval)
March 6, 2018	<ul style="list-style-type: none"> • BHE meeting (final regulations up for approval)
March 8, 2018	<ul style="list-style-type: none"> • Submit final small business impact statement to Secretary of the Commonwealth's Office
March 9, 2018	<ul style="list-style-type: none"> • Submit final regulations to Secretary of the Commonwealth's Office for publication in the March 23, 2018 edition of the Massachusetts Register
March 23, 2018	<ul style="list-style-type: none"> • Publication of the final Regulations in the Massachusetts Register • Regulations will be final

610 CMR 4.00: Operation of Massachusetts Degree-Granting Institutions under the State Authorization Reciprocity Agreement (SARA)

4.01: Authority

610 CMR 4.00 is promulgated by the Board of Higher Education pursuant to its authority under M.G.L. c. 15A, § 9, as amended by 2017 Mass. Acts ch. 47, § 10; M.G.L. c. 69, § 31A, as amended by 2017 Mass. Acts ch. 47, § 36; and M.G.L. c. 15A, § 41.

4.02: Scope and Purpose

610 CMR 4.00 governs the entry of the Commonwealth into the State Authorization Reciprocity Agreement (SARA), a higher education interstate reciprocity agreement that permits institutions of higher education in Massachusetts to offer distance education programs in other participating states without needing to obtain degree-granting authorization separately from each state and that, in return, permits duly authorized institutions of higher education in other participating states to offer distance education programs to Massachusetts students without needing to obtain degree-granting authority from the Commonwealth pursuant to 610 CMR 2.00 and consistent with 34 C.F.R. § 600. This regulation establishes minimum standards for Massachusetts institutions that voluntarily apply to join SARA and sets forth the requirements for initial institutional applications, renewals, removals, and consumer complaints.

This regulation does not affect the existing obligations of in-state institutions to, where required, seek and obtain institutional and programmatic reviews and approvals for degree-granting programs from the Board for all programs, including distance and online programs, as set forth in 610 CMR 2.00. It also does not apply to: (1) out-of-state institutions that are not members of SARA which seek to offer distance education to Massachusetts residents; and (2) out-of-state institutions that are not members of SARA which establish a physical presence in Massachusetts pursuant to the Department's physical presence policy and/or regulations.

4.03: Definitions

As used in 610 CMR 4.00:

Accreditation. Accreditation as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

Board. The Board of Higher Education, a state agency established pursuant to applicable provisions of M.G.L. c. 15A.

Commissioner. The chief executive and administrative officer of the Department of Higher Education and the Board of Higher Education, pursuant to M.G.L. c. 15A § 6.

Complaint. A formal written submission to the Department containing assertions that the terms and policies of SARA and/or the provisions of 610 CMR 4.00 are being violated by a person, institution, state, agency, or other organization or entity operating under SARA.

C-RAC Guidelines. *The Interregional Guidelines for the Evaluation of Distance Education (Online Learning)* for best practices in postsecondary distance education developed by leading practitioners of distance education and adopted by the Council of Regional Accrediting Commissions (C-RAC) in 2011.

Department. The Department of Higher Education, a state agency established pursuant to applicable provisions of M.G.L. c. 15A § 6 and which shall serve as the portal agency for SARA in Massachusetts.

Distance Learning or Distance Education. Instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video, or correspondence courses or programs. It does not include intrastate distance education activity.

Home State. The SARA member state in which an institution holds its legal domicile.

Legal Domicile. The state in which the institution's principal campus holds its institutional accreditation and, if applicable, its Federal Office of Postsecondary Education Identifier (OPEID) number.

Member State. Any state, commonwealth, district, or territory of the United States that is a participant in good standing in SARA.

National Council for SARA or NC-SARA. The National Council for State Authorization Reciprocity Agreements, the central coordinating body for SARA participation.

New England Board of Higher Education or NEBHE. The regional compact as established in the SARA Policy and Operations Manual that administers SARA for Massachusetts.

Portal Entity. The single entity designated to serve as the interstate point of contact for institutional applications, questions, complaints, and other communications relating to a reciprocity agreement.

Postsecondary Institution or Institution. An institution of higher education located within Massachusetts legally authorized to award degrees at the associate level or above.

Reciprocity Agreement. A voluntary agreement that establishes reciprocity between willing states for approval of postsecondary educational services delivered by distance learning beyond state boundaries and that is consistent with the requirements set forth in 34 C.F.R. § 600.

State Authorization Reciprocity Agreement or SARA. The state authorization reciprocity agreement or the voluntary program which implements reciprocity agreements amongst states, institutions, and NC-SARA.

SARA Policy and Operations Manual. The document adopted and periodically updated by NC-SARA to administer the voluntary regional approach to state oversight of distance education (at the time of these regulations, version 16.3 was in place).

4.04: Institutional Eligibility Requirements for SARA

- (1) To be eligible for approval to operate under SARA, a Massachusetts institution shall:
 - (a) be legally domiciled in Massachusetts;
 - (b) be authorized by the Board or, for institutions chartered prior to 1943, authorized by the Massachusetts legislature to offer approved degree programs in Massachusetts and confer post-secondary degrees in Massachusetts;
 - (c) be in compliance with the requirements of 610 CMR. 2.00;
 - (d) meet and agree to comply with the C-RAC Guidelines;
 - (e) possess and maintain institutional accreditation from an accrediting body recognized by the U.S. Secretary of Education;
 - (f) for non-public institutions only, demonstrate financial stability and responsibility by meeting the following criteria:
 1. for federal Title IV participating institutions, having an institutional federal financial responsibility score of at least 1.5 (or 1.0 with justification acceptable to the Commissioner in his or her sole discretion);
 2. in the event that an institution does not participate in federal Title IV financial aid and therefore has no federal responsibility rating, providing sufficient financial evidence to the Department to allow the calculation of this rating using the federal rules; or
 3. for institutions owned by a corporate parent, in accord with current U.S. Department of Education policies and procedures, providing the financial score for the corporate parent and said score being at least 1.5 (or 1.0 with justification acceptable to the Commissioner in his or her sole discretion).
 - (g) agree to be bound by and comply with the current version of the SARA Policy and Operations Manual and to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA;

- (h) make its SARA-related complaint policies and procedures readily available to students by posting them on its website and distributing copies to enrolled students on an annual basis, and inform students that they may appeal SARA-related complaints to the Department;
 - (i) agree to provide the Department with any relevant information requested, including data, to assist the Department with resolving any student complaints, to the extent permitted by applicable law;
 - (j) upon submission of an initial or renewal application, pay to the Department the state fees as required by 610 CMR 4.09 and as set forth in Board policy;
 - (k) pay an annual SARA participation fee to NC-SARA as required by the SARA Policy and Operations Manual; and
 - (l) report any other information required by SARA, the Department, and/or this section that may enable the Department to determine the suitability of the institution's operation under SARA.
- (2) For any course or program potentially leading to professional licensure or certification, an institution must notify, in writing, all students and potential students in said program whether or not the course or program meets requirements for licensure or certification in the state where the student resides. If an institution does not know, after making a diligent effort to so determine, whether the course or program meets licensure or certification requirements in the state where the student resides, the institution must notify, in writing, all students and potential students that it cannot confirm that the course or program meets the licensure or certification requirements of the state where the student resides; provide students and potential students with current contact information for applicable licensing boards; and advise students and potential students to determine whether the course or program meets state licensure or certification requirements.
- (3) An institution seeking initial approval or renewal of its approval to operate under SARA must notify the Department of any adverse actions by its accreditor or of any negative changes to its accreditation status within thirty (30) days of the institution's knowledge of said adverse action or negative change.
- (4) An institution seeking initial approval or renewal of its approval to operate under SARA must notify the Department of any investigation by any governmental entity into academic quality, financial stability or student consumer protection issue or of any adverse action taken by any governmental entity as the result of such an investigation within thirty (30) days of the institution's knowledge of said investigation or adverse action.
- (5) An institution seeking initial approval or renewal of its approval to operate under SARA must notify the Department of any changes in its federal financial responsibility score, in the federal financial responsibility score of its corporate parent, or, for an institution that

does not participate in Title IV financial aid, in its financial status that would result in its federal financial responsibility score being less than 1.5 within thirty (30) days of the institution's knowledge of said changes.

- (6) Institutions approved to operate under SARA pursuant to 610 CMR 4.05 must maintain eligibility requirements throughout the participation period. Any institution that fails to maintain eligibility under these requirements may lose its eligibility to operate under SARA and be removed by the Board pursuant to 610 CMR 4.07.

4.05: Initial Application for Approval to Operate under SARA

- (1) The Department shall be the SARA portal agency for the Commonwealth and shall provide the services required to implement SARA.
- (2) An institution meeting the eligibility requirements set forth in 610 CMR 4.04 may apply to the Department for approval to operate under SARA. The Department shall make application forms available on its website.
- (3) An institution should submit its complete application, along with the fee required by 610 CMR 4.09 and set forth in Board policy, to the Department. The Department will conduct an initial review of the application for completeness. All incomplete applications will be returned to the institution along with the remitted fee. No action aside from a review for completeness will be taken on an institution's application until it is deemed by the Department to be complete and the required fee has been processed.
- (4) All properly submitted and complete applications will be reviewed by the Department to determine whether the institution meets the eligibility requirements set forth in 610 CMR 4.04 and whether the institution is in compliance with the SARA Policy & Operations Manual.
- (5) At the conclusion of the Department's review of an institution's application, the Department shall take one of the following actions:
 - (a) Approval. The Department shall approve all institutions that meet the requirements set forth in 610 CMR 4.04. The term of approval shall be one year from the date of notification of approval and may be renewed annually thereafter pursuant to 610 CMR 4.06. Upon approval by the Department to operate under SARA, the institution will be sent an electronic link to make payment to NC-SARA, and the Department will notify NC-SARA when an institution has completed the application process.
 - (b) Disapproval. The Department shall disapprove all institutions that do not meet one or more of the requirements set forth in 610 CMR 4.04. If an institution's application to operate under SARA is not approved, the Department will provide the institution with a written explanation of such disapproval. The institution may appeal any disapproval to the Commissioner or his/her designee in a timeframe

and manner to be prescribed by the Commissioner and it may submit additional information in support of its position. An institution that has been disapproved is not prohibited from reapplying to the Department for approval to operate under SARA.

(c) Provisional Approval. The Department may, at its discretion, provisionally approve institutions for participation in SARA in any of the following circumstances:

1. If the institution is on probationary status or the equivalent with its institutional accrediting association;
2. If the institution is currently using a letter of credit or is under a cash management agreement with the U.S. Department of Education;
3. If the institution is the subject of a publicly announced investigation by a government agency, and the investigation is related to the institution's academic quality, financial stability or student consumer protection; or
4. If the institution is the subject of a current investigation by its home state related to the institution's academic quality, financial stability or student consumer protection.

An institution admitted to or renewed for SARA participation in provisional status will be subject to the oversight measures that the Department deems necessary for purposes of ensuring SARA requirements are met regarding program quality, financial stability and consumer protection. The length of the provisional status of an institution shall be determined by the Department and may not exceed one (1) year.

During or at the end of the provisional status period, if an institution approved to operate under SARA in provisional status is no longer subject to any of the conditions listed above, it may apply in writing to the Commissioner to remove its provisional status designation. The Commissioner or his/her designee shall grant the application if the criteria justifying provisional status no longer apply.

During or at the end of the provisional status period, if the Commissioner determines that the institution approved to operate under SARA in provisional status does not meet the requirements of SARA, the Department will disallow any further enrollments under SARA, notify NEBHE and NC-SARA, and remove the institution from SARA participation. The Department will allow any students enrolled in the institution under SARA at the time of the finding of noncompliance a period of six (6) months in which to conclude their work at the institution.

The Commissioner may, in his/her sole discretion, allow the institution a period of time not to exceed twelve (12) months from the date of his/her determination that the institution in provisional status does not meet the requirements of SARA in which to come into compliance with SARA standards under the supervision of the Department. Only one such grace period is allowed in any three-year period.

4.06: Application for Renewal of Approval to Operate under SARA

- (1) Approval for participation in SARA is valid for one (1) year from the date of NC-SARA's approval of its initial or renewal application. An institution is required to annually submit an application for renewal of participation in SARA.
- (2) An institution will receive a reminder that it must submit an application for renewal of its approval to operate under SARA 90 days prior to the expiration of its existing term of approval.
- (3) An institution applying for renewal must submit its complete application, along with the fee required by 610 CMR 4.09 and set forth in Board policy, to the Department no later than 60 days prior to the expiration of its existing term of approval. The Department shall make renewal application forms available on its website. An institution should submit its renewal application, along with the fee required by 610 CMR 4.09 and set forth in Board policy, to the Department.

If an institution does not submit its application 60 days prior to the expiration of its existing term of approval, the Commissioner may charge the institution a late fee in the amount of \$25.00 per day for up to 60 days, until the expiration of the existing term of approval.

No action will be taken on an institution's renewal application until it is deemed by the Department to be complete and all required fees have been processed.

- (4) All properly submitted and complete renewal applications will be reviewed by the Department to determine whether the institution continues to meet the eligibility requirements set forth in 610 CMR 4.04 and whether the institution is in compliance with the SARA Policy & Operations Manual, including a review of the history of complaints received regarding an institution and its compliance with the requirements of 610 CMR 2.00. Following its review, the Department will make a determination on the renewal of an institution's approval to operate under SARA consistent with the procedures set forth in 610 CMR 4.05(5).
- (5) If an institution knows that it will not be applying for renewal to operate under SARA, it should provide the Department with written notice to that effect 30 days prior to the expiration of its approval to operate under SARA.

- (6) An institution that does not apply for renewal prior to the expiration of its approval is no longer approved to operate under SARA and may reapply to the Department for approval no earlier than 180 days from the date of the expiration of its approval.

4.07: Loss of Eligibility and Removal

The Department may revoke an institution's approval to operate under SARA if it makes a finding that the institution fails to meet the requirements of this regulation, that the institution is no longer eligible, or that the institution is not in compliance with the SARA Policy and Operations Manual. The Department shall notify an institution of the revocation in writing. An institution may appeal a revocation of its approval to operate under SARA to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner. It may submit additional information in support of its position, and it may request that a public hearing on its removal from SARA be held.

4.08: Complaints

- (1) This section applies only to complaints which pertain to SARA distance education provided by institutions approved by Massachusetts to operate under SARA to students residing in other states. Complaints about a SARA institution's in-state operations, including intrastate distance education, are to be resolved pursuant to 610 CMR 2.00.
- (2) A student who receives SARA distance education from an institution approved by Massachusetts to operate under SARA may, after exhausting the institution's procedures for resolution of grievances, file a written complaint with the Department against the institution. The Department shall make complaint forms available on its website.
- (3) The Department shall review and attempt to resolve complaints which pertain to SARA distance education provided by institutions approved by Massachusetts to operate under SARA as follows:
 - (a) The Department shall send a copy of the complaint to the institution that is the subject of the complaint;
 - (b) Within 30 days of the date that the Department sends a copy of the complaint to the institution, the institution must provide a written response to the student and the Department;
 - (c) Within 30 days of the date the Department received the institution's response, or if the Department receives no response, the Commissioner or his/her designee shall issue a notice to the institution containing the Commissioner's findings regarding the complaint; any corrective actions that the institution shall take to comply with the requirements of this regulation; and that, should the institution fail to take those corrective actions, the complaint shall be referred to the Office

of the Attorney General for review and, if the Office of the Attorney General deems it appropriate, enforcement action.

- (d) The Department may review and consider an institution's history of complaints received under this section and under 610 CMR 2.00 to determine if an institution's application should be denied, if an institution's renewal application should be denied, if an institution should be moved to provisional status, or if an institution should be disapproved to operate under SARA.
- (e) Nothing in this section precludes the Commonwealth, including the Office of the Attorney General, from simultaneously enforcing its laws and regulations, including laws of consumer protection and fraud prevention, such as 940 CMR 31.00 et seq., against an institution approved by the Department to operate under SARA.

4.09: Fees

- (1) Massachusetts institutions seeking approval to operate under SARA shall be subject to annual fees to be paid to the Department to obtain and/or maintain their participation in SARA. The Department annual fee is separate from and in addition to the annual fee charged by NC-SARA.
- (2) The annual fee schedule shall be established by the Board through policy and shall be periodically reviewed and revised as needed. Factors that the Board may take into account in setting fee levels shall include, but not be limited to: the number of Massachusetts institutions participating in SARA; the full-time equivalent enrollment at institutions; the cost to the Commonwealth to administer SARA; distance learning revenue; and industry norms, such as average fees charged by similarly situated SARA states.
- (3) All fees required under these regulations shall be paid to the Board's Licensing Fee Trust Fund and shall be used solely for the purposes of the Licensing Fee Trust Fund.
- (4) The annual fees for approval to operate under SARA shall be due upon an institution's submission of an application for initial approval (pursuant to 610 CMR 4.05) or an application for renewal (pursuant to 610 CMR 4.06). Applications, both initial and renewal, will not be reviewed by the Department until the required fee has been processed.
- (5) In addition to the fees required by 610 CMR 4.09(1) and set forth in Board policy, institutions that have been approved by the Department to participate in SARA shall be subject to the annual fees required by NC-SARA as provided in the SARA Policy and Operations Manual. All institutions, regardless of the Department's fee schedule, must remit fees to NC-SARA.

- (6) If the Department disapproves an institution's application, the institution will be eligible for a partial refund of its annual fee, minus an amount to be determined by the Board which represents the costs to the Department for application review. If NC-SARA disapproves an institution's application after the Department has approved it, no refund will be made.
- (7) No refund shall be made to an institution that is removed from eligibility pursuant to 610 CMR 4.07 during an approval period.

4.10: Withdrawal

- (1) Should Massachusetts withdraw from SARA, the Department will notify all SARA participating institutions in Massachusetts of the Commonwealth's changed status.
- (2) An institution operating under SARA through Massachusetts may continue to do so until the conclusion of its current academic term or 90 days after the date of receipt of notice of withdrawal, whichever is later, but not to exceed six months from the date the withdrawal notice was received by the NEBHE.

4.11: Non-SARA Reciprocity Agreements

Nothing in this regulation shall preclude the Commonwealth from pursuing and entering into any other reciprocity agreement with any other state, commonwealth, district, or territory, including those states, commonwealths, districts, or territories that are not members of SARA.

4.12: Implementation Date

This section shall be implemented by [DATE].