

IN THE FIELD:
NC-SARA'S INSTITUTION
CONFERENCE

July 12-13, 2022



The U.S. Department of Education's Potential Regulations That Could Impact SARA

NC-SARA Staff

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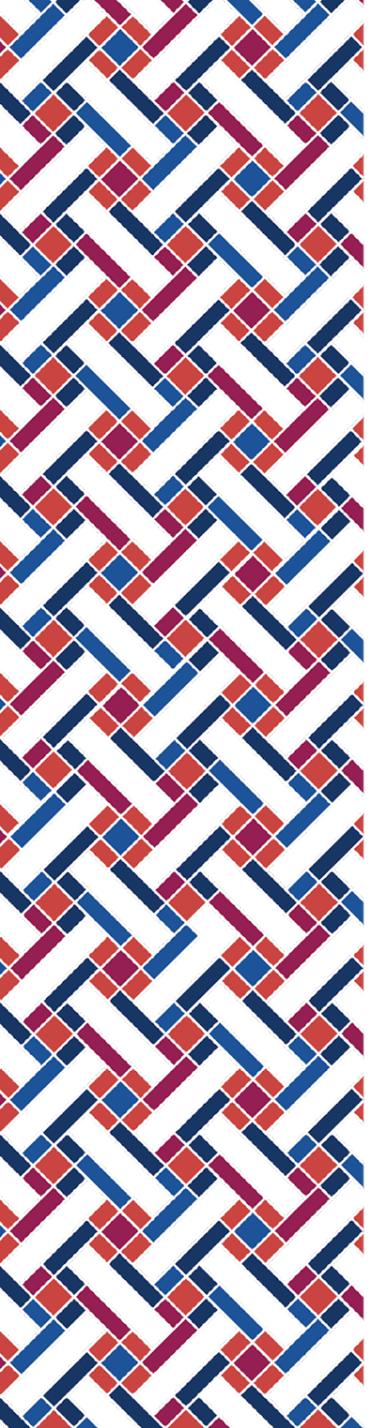
Shari Miller, Consultant

Institutional Compliance MATTERS



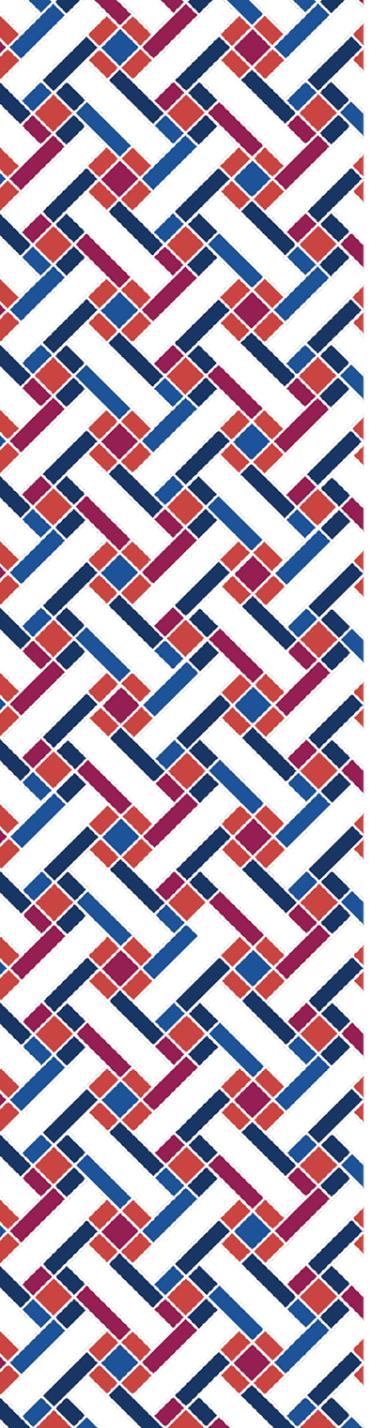
**National Council for
State Authorization
Reciprocity Agreements**

MHEC • NEBHE • SREB • WICHE



Presenters

- **Shari Miller, J.D.**, Institutional Compliance MATTERS
- **Lori Williams, Ph.D.**, President & CEO, NC-SARA
- **Melanie Booth, Ed.D.**, Vice President, Educational Programs and Communications
- **Marianne Boeke, Ph.D.**, Vice President, Research and State Partnerships
- **Jeannie Yockey-Fine**, General Counsel and Vice President, Policy and Regulatory Affairs



Agenda

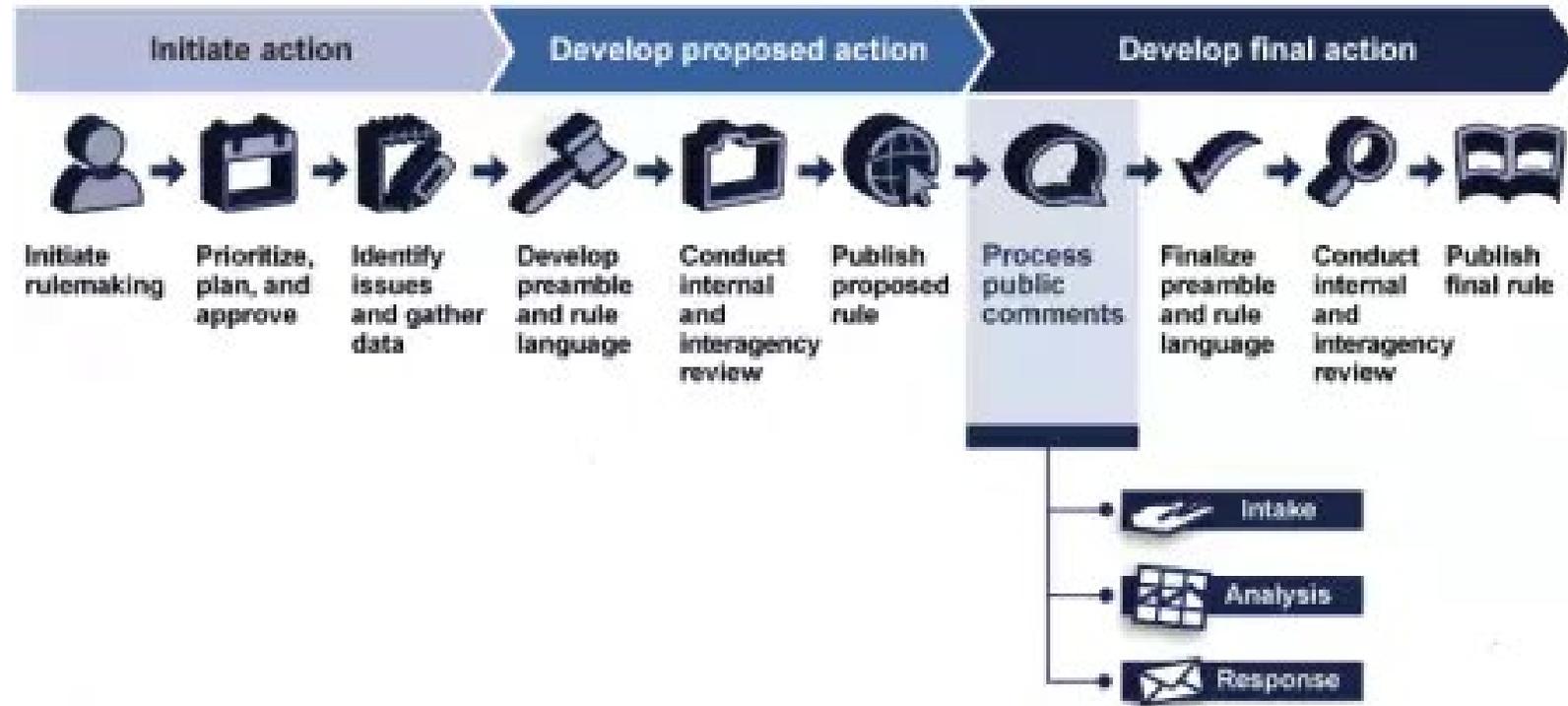
- **U.S. Department of Education – Rulemaking 101**
- **Neg Reg & SARA**
- **Rapid Response**
- **Overview & Discussion**
- **Next Steps**



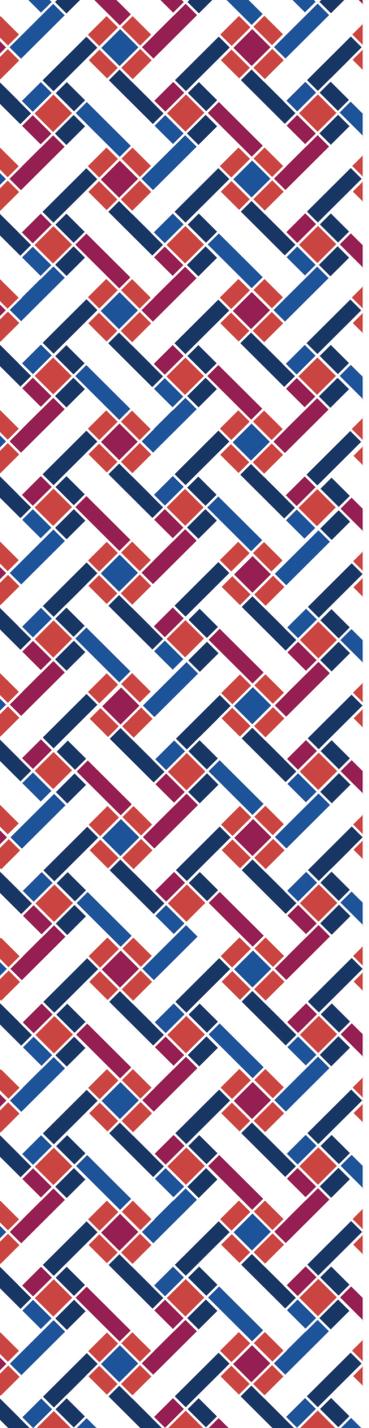
U.S. Department of Education – Rulemaking 101

Federal Rulemaking: Overview

Three main phases:

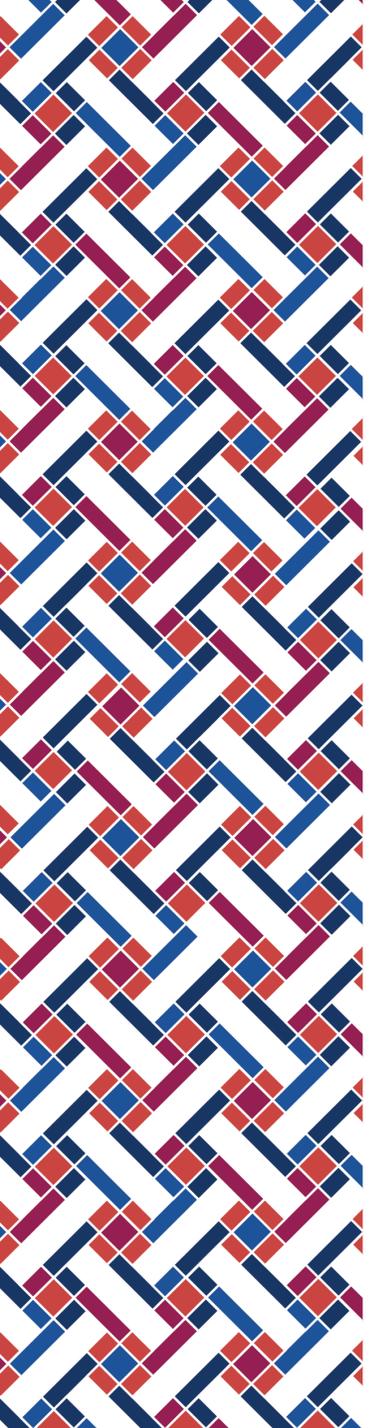


Source: GAO. | GAO-20-383R



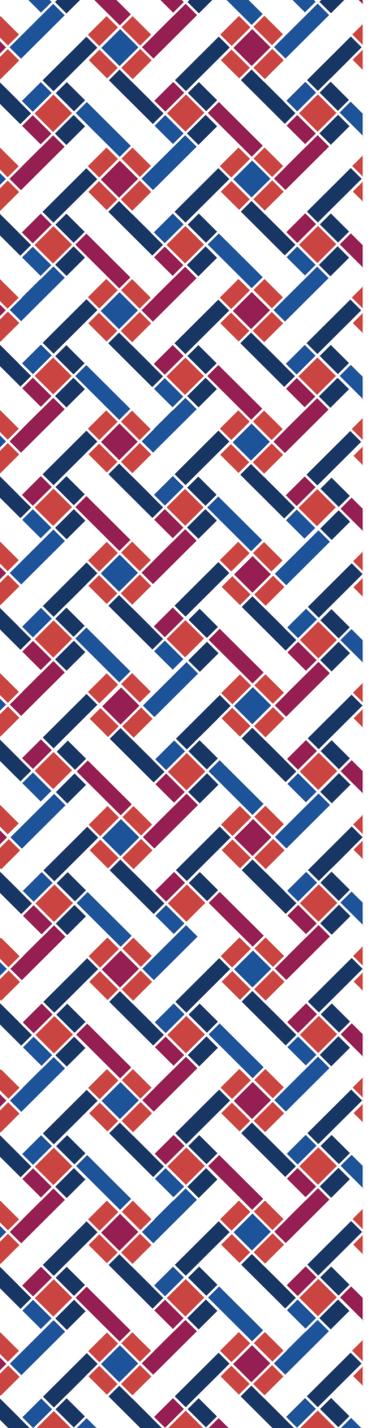
Federal Rulemaking: Overview

- Procedures vary by agency
- Agencies are led by presidential appointees acting on behalf of the administration
- Agency decides and identifies which *significant* regulations or topics (if any) that it wants to address in rulemaking
- Rules must be within the scope of the statutory language that authorizes the agency's existence
- Must follow a defined administrative procedure
 - Publish Notice of Proposed Rulemaking (NPRM) in Federal Register of upcoming rulemaking and details
 - Comment period
 - Publish final rule with effective date
- Failure to follow administrative procedure: Rules subject to challenge, 2011 state authorization rules vacated



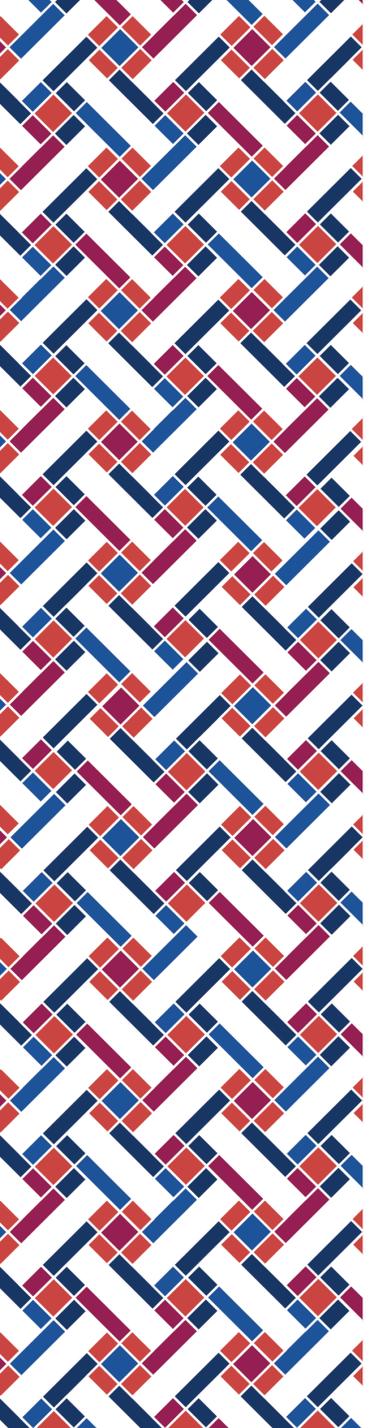
ED Rulemaking: Process

- ED Rulemaking is governed by Higher Education Act requirements
 - HEA contains the requirements for receiving Title IV funds
 - Thousands of institutions receive Title IV funds
 - Must have a Program Participation Agreements (PPA) with ED
 - Such provisions fall under 34 CFR 668.14
 - Negotiated Rulemaking (NegReg) is statutorily required by HEA for rulemaking of Title IV provisions by ED
- Who are the Committee Members?
 - Ensure diverse constituencies and experts are at the table
 - Structure
 - Their function
- Objective of Neg Reg
 - Consensus!



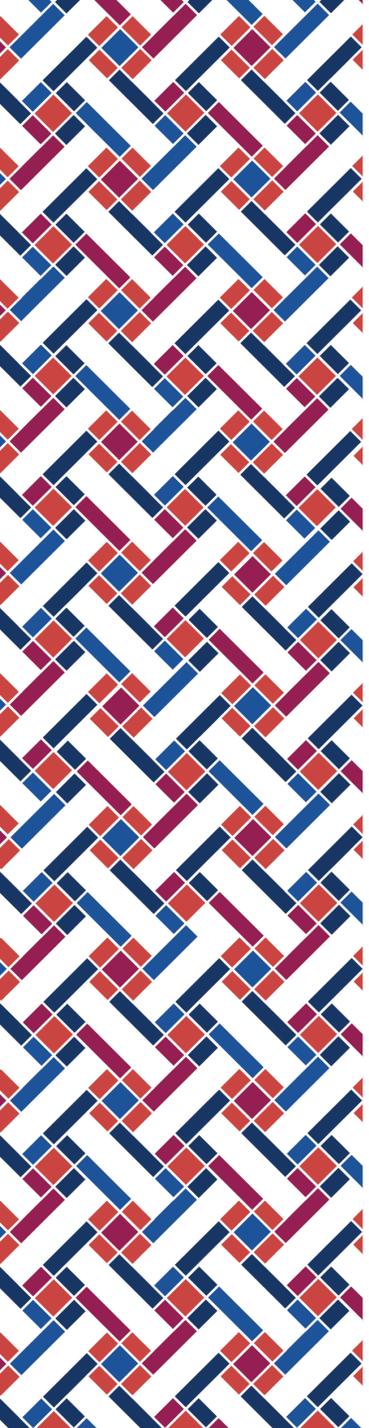
ED Rulemaking: Details

- ED publishes notice in Federal Register of which regulations are going to be addressed and details
- ED chooses negotiating committee members
 - *The committee will include representatives ... with interests that are significantly affected by the subject matter of the proposed regulations.*
 - Required by Higher Education Act to have “demonstrated expertise or experience in the relevant topics proposed for negotiations”
 - Solicit nominees of *key stakeholder constituencies* with knowledge of agenda items
 - Can self nominate or be nominated by someone
 - Alternates for each
 - Not compensated, no free lunch from ED!



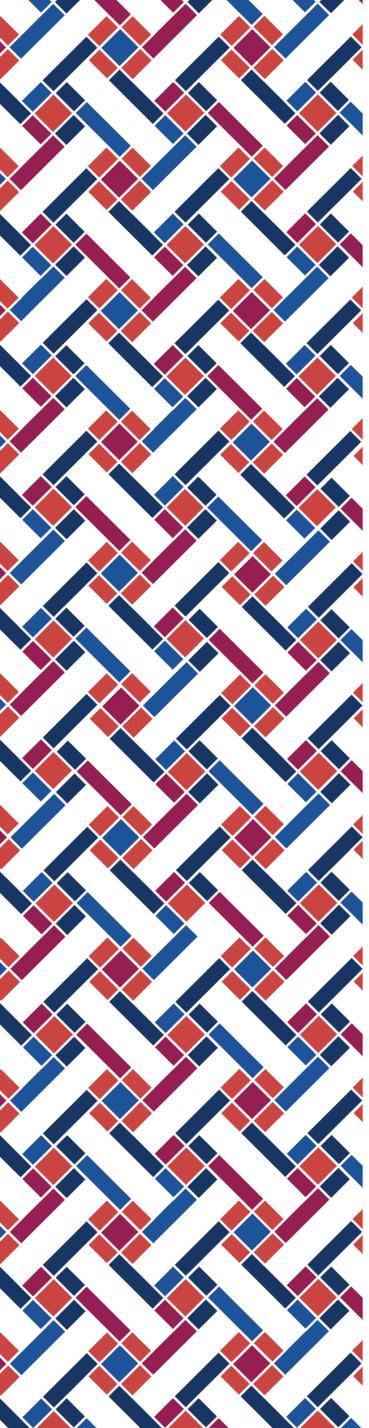
ED Rulemaking Details, cont.

- Negotiators prepare in advance to be effective negotiators and representatives of their constituencies
- Session structure and protocol
 - Federal Mediation and Conciliation Services
 - Sessions move quickly and cover much ground
- Virtual is challenging
- Negotiators work to reach consensus between sessions as well as at sessions



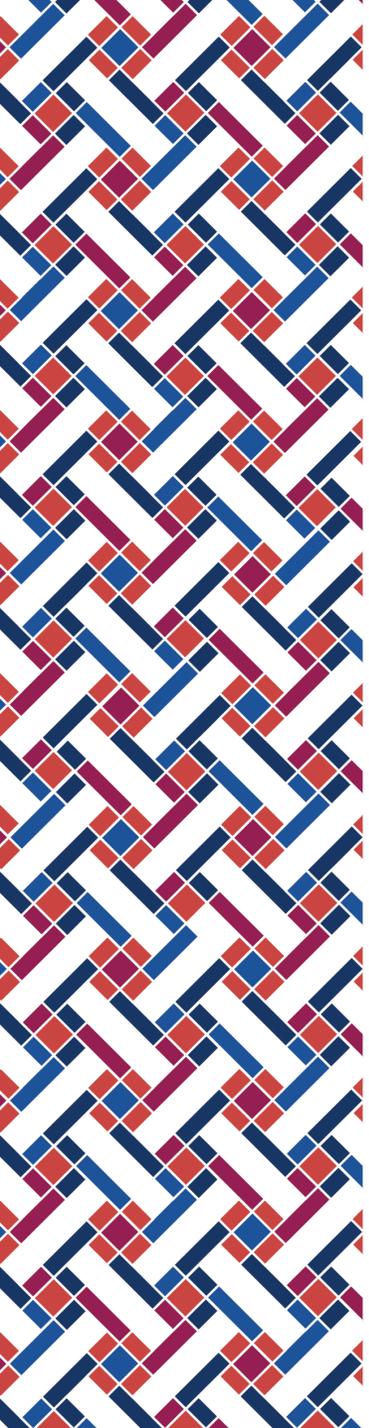
ED Rulemaking Details, cont.

- Goal to reach consensus
 - Negotiators vote to finalize language
 - All negotiators must agree to all language on every issue
 - If consensus, Committee language is accepted by ED (after check for legality of language)
 - No consensus, ED may use whatever language it chooses
- Proposed rules published in Federal Register
 - Deadline for comment period included in notice (could be short)
- Final rules published in Federal Register with preamble and responses to comments
 - Preamble is very useful for understanding rationale for ED rules
- ED FAQ on Neg Reg
 - <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>



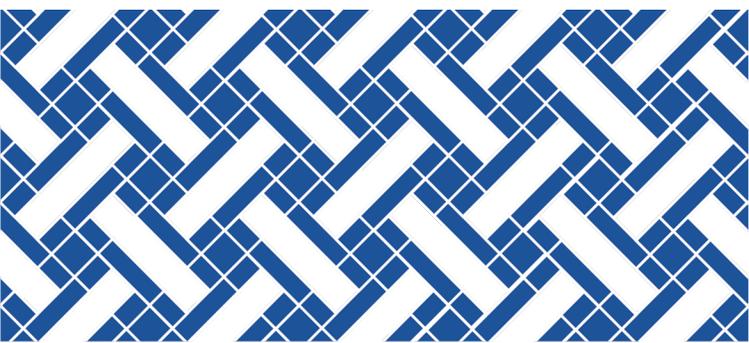
ED Rulemaking 2021-2022 Sessions

- [Negotiated Rulemaking for Higher Education 2020-21](#)
- Three separate committees divided up by general topic area
- Institutional and Programmatic Eligibility Committee met virtually for 3 sessions of 5 days each to cover 7 topics (Issue Papers)
 - Issue Paper #6 covered Certification Procedures (34 CFR 668.13)
 - Included PPA requirements (34 CFR 668.14)
 - Consensus reached on 2 topics (Issue Papers)
 - Not #6, Certification Procedures
- Reciprocity (34 CFR 600.9) not on the agenda
 - Brought up as part of PPA discussion in next to last session, new Section 32: **SURPRISE!**
- Negotiators were not representing this constituency
 - Not experts in institutional state authorization or reciprocity issues
- Discussion was very rushed, language pushed through
- Unintended consequences of adding the proposed language



Key Dates

- ED published rules always are effective on July 1, the year varies based upon when the rules are published
 - If published before November 1, they go into effect on July 1 of the following year (e.g., published 10-30-22, effective on 7-1-23)
 - If final regs released after November 1, 2022, and before November 1, 2023, then effective July 1, 2024
- Patiently waiting....
- Then on 6-21-22, ED issued notice that proposed rules will not be published until April of 2023
- **Earliest date that institutions will be required to meet any new requirements is July 1, 2024.**



Neg Reg & SARA

NC-SARA Updates – US ED

The U.S. Department of Education's Potential Regulations That Could Impact SARA

- 34 CFR 668.14 Program participation agreement
- (32) In each State in which the institution is located or in which students enrolled by the institution are located ~~the institution is otherwise required to obtain State approval under 34 CFR 600.9,~~ the institution must ensure that each program—
- (iii) Complies with all State consumer protection laws, including both generally applicable State laws and those specific to educational institutions, except where State requirements for **obtaining authorization** are inapplicable pursuant to a State authorization reciprocity agreement.

NC-SARA Updates – US Dept of Ed

What's next after negotiated rulemaking?



NPRM

- Publication of proposed rules (NPRM) in *Federal Register*
- April 2023 (target) for public comment
- At least 30 days comment period
- Regulations.gov



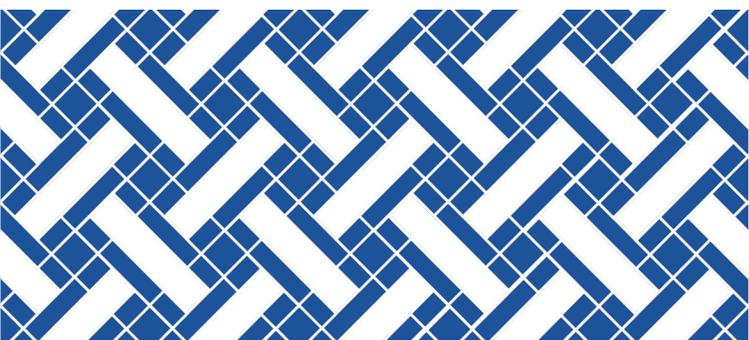
Publication of Final Rule

- ED responds to comments
- Publication of final rules in *Federal Register*
- Master Calendar: by November 1, 2023



Effective Dates

- Goal is to implement by July 1, 2024



NC-SARA's Rapid Response Team



Rapid Response

Purpose: To share information and collaborate on response and communications strategy.

RR Team Members & Advisors:

- NC-SARA Board Executive Committee Members
- Regional Compact Presidents and Staff
- NC-SARA Staff
- Whiteboard Advisors and Penn Hill (consulting advisors)

Activities:

- Produced 2 Data & Analysis Reports and Letter to Department
- Held 3 Meetings with Kvaal and Staff

NC-SARA's Outreach:

- Briefings with multiple groups and individuals



Overview of the Data & Our Analysis



Overview of Data & Analysis (cont.)

This change could create more work for institutions, limit students' options, and impact states' credential attainment and/or workforce development goals.

Overview of SARA Participation, State Consumer Protections, and Reciprocity

More than 2,300 institutions across 52 states and territories participate in SARA

- 48% are public
- 44% private non-profit
- 7% private for-profit
- 1% tribal and unknown

A summary of the potential impact of this new proposed language on students, institutions, and states.

HBCUs – more than half (57 of 102) participate in SARA

Community Colleges – 597 participate in SARA (94% of distance enrollments)



Overview of Data & Analysis (cont.)

States do have student consumer protections in place!

6 areas of consumer protection requirements by state:

(1) student tuition recovery funds, (2) surety bond requirements, (3) outcomes requirements, (4) tuition refund policies, (5) onsite visits, and (6) and closure requirements, to include teach-out agreements and teach-out plans.

Data Summary (from 52 SARA member states and California):

- 7 states have all six of these education consumer protections
- 18 states have five of the six education consumer protections
- 18 states have four of the six education consumer protections
- 4 states have three of the six education consumer protections
- 4 states have two of the six education consumer protections
- 2 states have only public institutions



Overview of Letter

Letter from NC-SARA to U.S. Department of Education – sent from Lori Williams, President & CEO of NC-SARA on June 14, 2022

Unintended Consequences:

1. Returning to the Patchwork of State Authorization
2. Potential Impact on Students and Institutions
 - Access
 - Out-of-State Learning Placements
3. States Commitment to Student Consumer Protections
4. Placement in Neg Reg Process



Next Steps



Next Steps

NC-SARA will:

1. Continue to monitor situation
2. Continue to engage with Rapid Response team
3. Continue to work with US Department of Education if possible
4. Continue to inform, engage, and prepare

Timeline (Maybe):

April 2023: Target date for NPRM (Public Comment)

July 2024: Earliest rule could be applicable

Q & A



Thank You!



<https://www.linkedin.com/company/nc-sara>



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www.nc-sara.org