



Information about the U.S. Department of Education Draft Regulations Affecting SARA

May 30, 2023

On Friday May 19, 2023, the U.S. Department of Education [released proposed regulations](#) coming out of the spring 2022 negotiated rulemaking sessions. Language that was proposed that would potentially impact State Authorization Reciprocity Agreements (SARA) has been modified since then and now reads:

[§ 668.14\(32\)\(iii\)](#)

(32) In each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2), the institution must determine that each program eligible for title IV, HEA program funds

(iii) Complies with all State consumer protection laws related to closure, recruitment, and misrepresentations, including both generally applicable State laws and those specific to educational institutions;

The SARA community’s overarching substantive concern about the new proposed language is that it is inherently vague and imprecise. Among other things, the terms “closure,” “recruitment,” and “misrepresentations” are subject to a variety of definitions, conceptually—as well as a range of different definitions under different state laws. The confusion that will be generated by the recommended language further reinforces concerns about the process leading to this proposal that lacked sufficient input regarding the regulatory impact of the proposed changes—as explained in more detail below.

What Might This Language Mean for SARA Participating Institutions and SARA Member States?

For Institutions: SARA-participating institutions would be subject not only to SARA Policy requirements, but also to certain state-specific educational consumer protection requirements unique to each of the states in which they serve students. This would apply to state-specific recruitment requirements, state-specific closure requirements, and state-specific misrepresentation requirements. ***State requirements in these areas vary significantly.***

- Because different states have different requirements for closure, recruiting, and misrepresentations, institutions will need to track all of these requirements and will need to ensure compliance in each state in which they serve students.
- At any time, states may change their requirements – or increase or decrease stringency – within their education-specific requirements.

For States: SARA-member states will need to shoulder the increased management placed on states for out-of-state institutions needing to make a determination regarding state-specific closure, recruitment, and misrepresentation requirements that may apply in addition to those requirements already addressed in SARA Policy.

Limiting Reciprocity: This regulation will impact the intent and value of reciprocity for SARA member states and SARA-participating institutions in that they will need to attend to compliance requirements surrounding closure, recruitment, and misrepresentation in addition to the SARA compliance requirements.

Infringement on States' Role: State authorization is a state responsibility; SARA member states voluntarily joined the State Authorization Reciprocity Agreements in order to ensure consistency in oversight of institutions across member states. Furthermore, the new [SARA Policy Modification Process](#), launched in January 2023, designed by the member states, is already attending to the needs for increased input into and thorough deliberation about increasing the stringency of SARA Policy.

Flawed Negotiated Rulemaking Process: This regulation was born out of a negotiated rulemaking process that did not include state authorization experts. It was also embedded within Certification Procedures instead of state authorization.

- This placement of language about state authorization reciprocity is problematic in that the federal regulations concerning state authorization are in a separate section (600.9), which was not discussed in the 2022 negotiated rulemaking session.
- The negotiated rulemaking process in 2022 did not allow sufficient time for research and impact analysis, or for thoughtful discussion and deliberation inclusive of constituents that could be impacted by such a regulatory change.
- The negotiated rulemaking process did not include state authorization experts who could speak about the potential consequences and practical impact of the proposed changes. The committee lacked proper representation of negotiators able to fully reflect the expertise and experience of the SARA community and directly affected parties.

Timeline for Implementation: Should this language become final and be posted by November 1, 2023, it will go into effect on July 1, 2024. The SARA community is concerned that this is insufficient implementation time for both states and institutions.

NC-SARA's Next Steps

1. NC-SARA is hosting a [webinar](#) on June 1, 2023 with a panel of representatives from the State Authorization Reciprocity Agreements (SARA) Community, who will share information and perspectives about the recently released draft regulations potentially impacting SARA.
2. NC-SARA is facilitating a broad group of stakeholders to analyze the potential impact on SARA-participating institutions and member states and to write a public comment letter from the SARA perspective.
3. NC-SARA will post the public comment letter on the [Call to Action](#) webpage on or before June 20, 2023.

What Can You Do?

- Attend NC-SARA's June 1, 2023 webinar: [Department of Education Draft Regulations and SARA: What To Know](#)
- The public comment period on these proposed regulations is open now; comments are due on or before June 20, 2023. States and institutions may wish to [submit a formal comment](#).