


Department of Education Final Regulations and SARA: What To Know

November 7, 2023

Countdown to Start:

10:00

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WELCOME!

**Marianne Boeke, President,
National Council for State Authorization
Reciprocity Agreements (NC-SARA)**



Webinar Guidance

- Please use the Question & Answer feature for questions. We will address questions during the last part of the webinar.
- The Closed Caption option is available.
- This webinar will be recorded.
- The webinar recording and slides will be posted on the NC-SARA website under SARA Call to Action.



TODAY'S AGENDA & PANELISTS

Department of Education Final Rule: Certification Procedures

- Jeannie Pauline Yockey-Fine, General Counsel & VP for Policy, Regulatory Affairs, and Administration, NC-SARA

Regional Perspective

- Patrick Lane, Vice President, Policy Analysis and Research, Western Interstate Commission for Higher Education (WICHE)

State Perspective

- Paige Smith, Chief Compliance Officer, University of Wisconsin System Administration

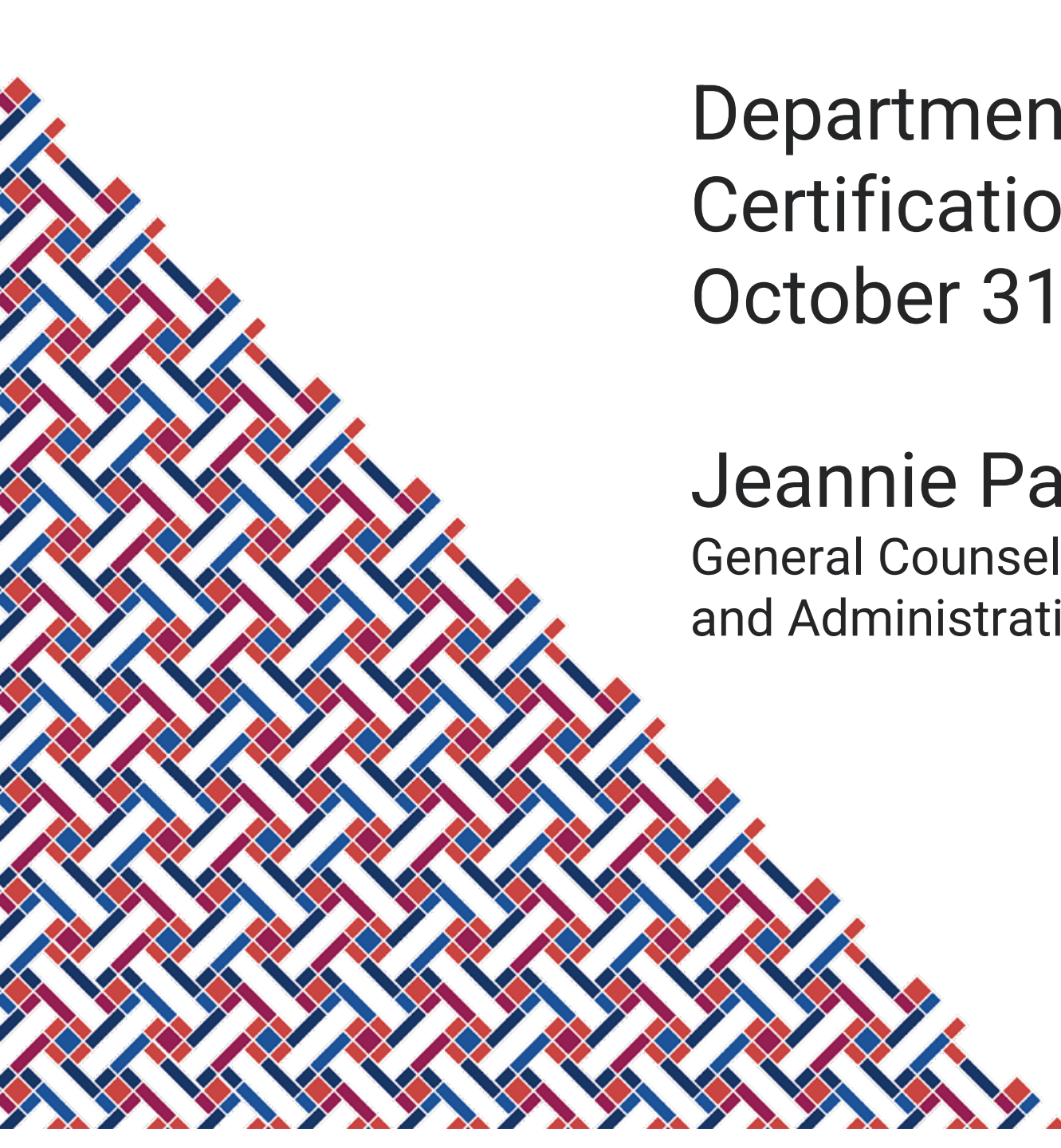
Institution Perspective

- Andrew Lessman, Associate Director, State Authorization and Quality Assurance, Temple University

Regional Perspective

- Jared Abdirkin, Director, State Authorization Reciprocity Agreements (SARA), New England Board of Higher Education (NEBHE)

Q&A



Department of Education Final Rule: Certification Procedures October 31, 2023

Jeannie Pauline Yockey-Fine

General Counsel & VP for Policy, Regulatory Affairs
and Administration, NC-SARA



**National Council for
State Authorization
Reciprocity Agreements**

MHEC • NEBHE • SREB • WICHE

Final Regulation

The Language was published in the Federal Register on October 31, 2023

- Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB) Final regulation.
- Today – we are focusing on the potential impact to SARA of the Certification Procedures.

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/financial-responsibility-admin-capability-cert-procedures-ability-to-benefit-final.pdf>

Certification Procedures - Closure

§ 668.14(b)(32) In each State in which: the institution is located; students enrolled by the institution in distance education or correspondence courses are located, as determined at the time of initial enrollment... the institution must determine that each program eligible for title IV, HEA program funds—

(iii) Complies with all State laws related to closure, including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds.

(See pg. 624-625)

Preamble

“We did not regulate the conditions, structure, or other elements of State reciprocity agreements or the organizations that operate them.”

“Nor did we set requirements that States must follow to oversee institutions enrolling students in a State where they have no physical presence.”

"The extent to which States have these laws [related to closure], what they require, and to whom they apply them to is up to the States."

Impact on the SARA Community

- SARA Policy
- Regional Compacts (clarify certain language at the state level)
- States
- Institutions

Negotiated Rulemaking - 2024

“Many of the issues raised by the commenter get at broader questions of State authorization and reciprocity, which we think are better addressed in a future regulatory package.”

- Definition of Reciprocity – 34 CFR 600.2?
- Timeline of Negotiated Rulemaking 2024?
- Negotiators





Regional Perspective

Patrick Lane, Vice President, Policy Analysis and Research, Western Interstate Commission for Higher Education (WICHE)

Intro and Caveats

- ▶ **SARA Governance, Roles, and Responsibilities**
- ▶ **Consultation with your General Counsel is essential**
- ▶ **Still early in the reading and interpretation phase**
- ▶ **Apologies for text-heavy slides**
- ▶ **Discussion limited to 668.14(b)(32)(iii)**
- ▶ **Text cited:**
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/financial-responsibility-admin-capability-cert-procedures-ability-to-benefit-final.pdf>

Key questions we hear so far

- ▶ **Does this mean we have to secure surety bonds in other states? If so, how many?**
- ▶ **Do we have 51 new records retention policies we have to follow?**
- ▶ **Licensure, licensure, licensure (beyond the scope of today's discussion)**

Initial, heavily caveated, conclusions

- ▶ The Department will require institutions to certify compliance with applicable laws as part of PPA post-July 1, 2024.
- ▶ The Department explicitly states that nothing impacts SARA policy.
- ▶ The Department repeatedly acknowledges that States can choose to whom their laws apply (and notes explicitly that states can exempt institutions that participate in a reciprocity agreement).
- ▶ The key becomes how States have written laws related to closure. The vast majority of SARA-participating states do not appear to have closure laws applicable to SARA-participating institutions.

Final Rule Preamble

- ▶ **Commenter: “Please clarify what it means that institutions are only required to comply with State laws to which they are subject.”**
- ▶ **E.g. If state laws apply only to institutions operating w/ physical presence, institutions operating under a reciprocity agreement w/o a physical presence should not be required to comply with a law from which they are exempt. (p. 420 of double-spaced PDF)**

Final Rule Preamble: Department Clarification

▶ Department responses:

- “This certification requires institutions to affirm that they are complying with applicable State laws related to [closure].”
- “For instance, if a State’s tuition recovery fund law exempts out-of-state institutions, those institutions would not have to abide by it.”

▶ Analysis

- What happens if you replace “out-of-state institutions” with “out-of-state institutions that participate in a reciprocity program to” which the State also belongs”?
- Additional response (p. 416): Department: “We note that many States exempt closure requirements for...institutions under a reciprocity agreement.”

SARA Policy 2.5k

- ▶ **“The state agrees that, if it has requirements, standards, fees, or procedures for the approval and authorization of non-domestic institutions of higher education providing distance education in the state, it will not apply those requirements, standards, fees or procedures to any Non-domestic (out-of-state) institution that participates in SARA; instead, the state will apply those specifically prescribed in or allowed by SARA policies.”**

Example: Virginia closure requirements

- ▶ **See: 8VAC40-31-280 (institutional closure)**
- ▶ **Virginia has requirements related to:**
 - Notifying state
 - Records retention
 - Notifying students
 - A “transacted surety instrument form” (8VAC40-31-180)
- ▶ **But...**

Example: Virginia “applicability” requirements

- ▶ **8VAC40-31-125: “Any degree-granting postsecondary school providing distance learning to residents of the Commonwealth from a location outside of the Commonwealth:**
 - shall be certified to operate in the Commonwealth or
 - shall be a participant in a reciprocity agreement to which the Commonwealth belongs

- ▶ **Bottom line: Virginia certainly seems to exempt SARA-participating institutions from its certification requirements**

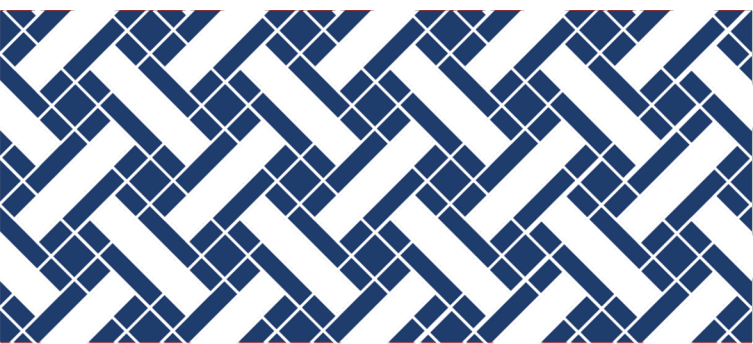
Next steps and key questions

- ▶ **Assessing extent of state carve-outs.**
- ▶ **Ensure clarity about existing SARA policy 2.5: Compacts' role.**
- ▶ **How will the Department assess compliance:**
 - “With respect to closure, the Department would ask institutions to indicate which States have laws they are complying with, and we would look at how those reports vary across institutions.” (p. 380)
 - Could there be common language for responding to this?
 - Will the Department clarify whether institutions must list State laws that are not applicable to them?



State Perspective

Paige Smith, Chief Compliance Officer, University of Wisconsin System Administration



Institution Perspective

Andrew Lessman, Associate Director, State
Authorization and Quality Assurance, Temple
University



Regional Perspective

Jared Abdirkin, Director, State Authorization Reciprocity Agreements (SARA), New England Board of Higher Education (NEBHE)

NEBHE Region-Observations

Jared Abdirkin
Director SARA, NEBHE

- Institutions and states are interested in continued development of student consumer protections, for SARA and in general
- Interest in data-supported policy, regulations, and law derived from broad consultation
- Determine if new policy, regulation, or law would have unintended impacts on student access and opportunities
- NEBHE-SARA regional leaders (states and institution representatives) will meet and discuss this topic tomorrow with NC-SARA leaders



Questions



NEXT STEPS

- NC-SARA will post the recording and slides of this webinar on our SARA Call to Action webpage: <https://nc-sara.org/sara-neg-reg-call-action>
- NC-SARA and its regional partners are continuing to work with SARA stakeholders to help inform and drive attention to this issue.
- We encourage you to continue having discussions within your organizations and institutions on the potential implications of the new federal regulations.

STAY TUNED!



ABOUT

STUDENTS

STATES

INSTITUTIONS

POLICY

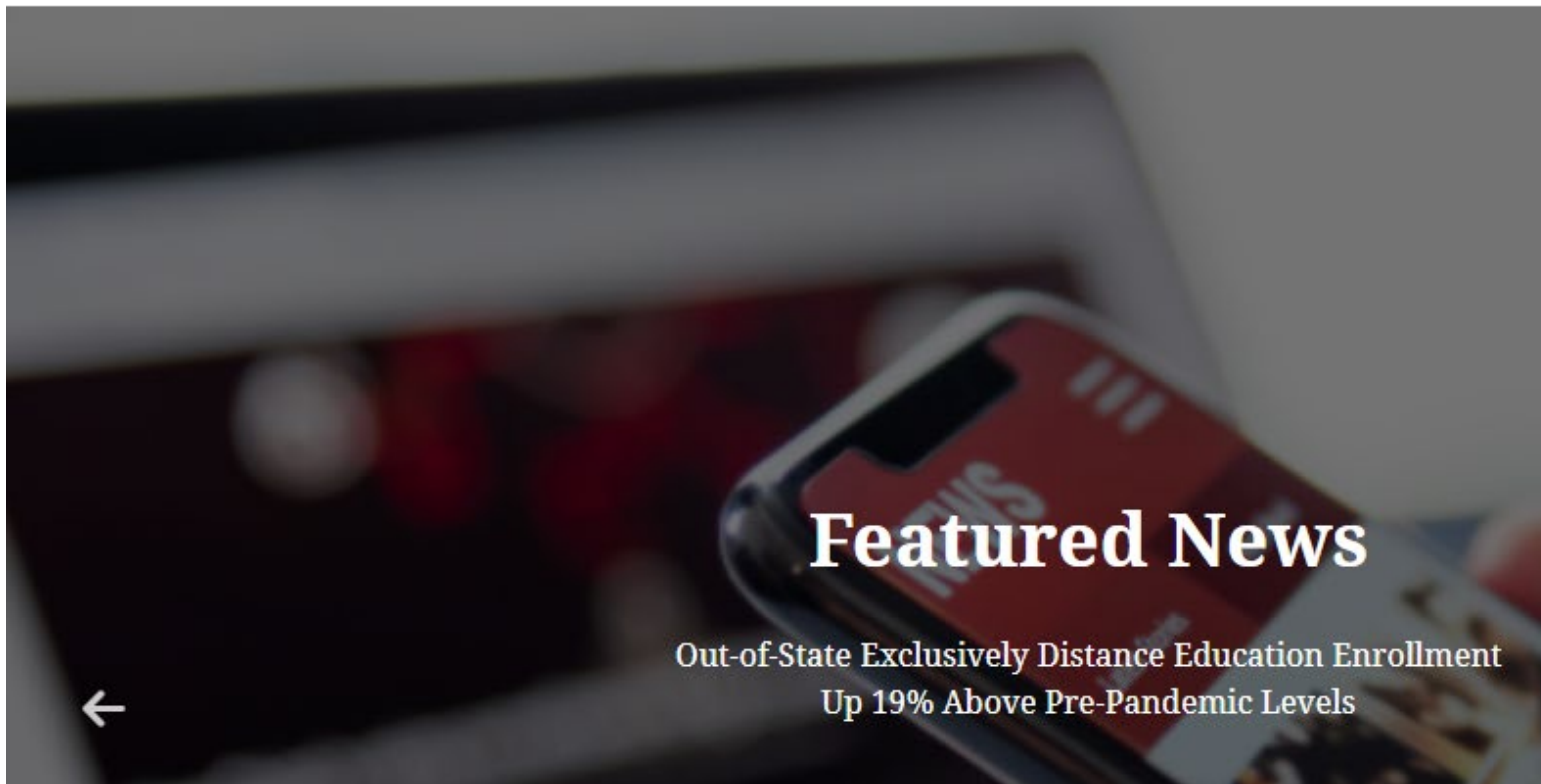
RESEARCH & DATA

RESOURCES

NEWS & EVENTS

The State Authorization Guide

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RESOURCES OVERVIEW

SARA Policy Manual

SARA Resources for States & Institutions

SARA Learning Station

Student Resources

Contacts

Resource Directories and Guides

NC-SARA Meetings & Presentations

SARA Call to Action



Thank You!

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**National Council for
State Authorization
Reciprocity Agreements**

www.nc-sara.org



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

For questions please email:
info@nc-sara.org