

# Department of Education Negotiated Rulemaking: Spring 2024 Update for the SARA Community

March 21, 2024





# WELCOME!

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



# Webinar Guidance

- Please use the Question & Answer feature for questions
- The Closed Caption option is available
- This webinar will be recorded
- The webinar recording and slides will be posted on the NC-SARA website





# TODAY'S AGENDA & PANELISTS

## **Negotiated Rulemaking: What It Is and How It Works**

- **Cheryl Dowd**, Senior Director, State Authorization Network and WCET Policy Innovations, WICHE
- **Erika Linden**, Chief Compliance Officer, Des Moines University, and Non-Federal Negotiator 2024 Program Integrity and Institutional Quality Committee, U.S. Department of Education

## **2023-2024 Negotiated Rulemaking Update**

- **Erika Linden**, Chief Compliance Officer, Des Moines University, and Non-Federal Negotiator, 2024 Program Integrity and Institutional Quality Committee, U.S. Department of Education
- **Russ Poulin**, Executive Director, WCET, & Vice President for Technology-Enhanced Education, WICHE
- **Jeannie Pauline Yockey-Fine**, Senior Vice President and General Counsel, NC-SARA

## **2021-2022 Negotiated Rulemaking Review (Final Regs Published Oct. 2023; Effective July 1, 2024)**

- **Molly Hall-Martin**, Director, W-SARA, Policy Analysis and Research, Western Interstate Commission for Higher Education (WICHE)

**There will be time for Q&A after each session**



# Negotiated Rulemaking: What It Is and How It Works

**Cheryl Dowd**

Senior Director, State Authorization Network and WCET  
Policy Innovations, WICHE

**Erika Linden**

Chief Compliance Officer, Des Moines University, and  
Non-Federal Negotiator, 2024 Program Integrity and  
Institutional Quality Committee, U.S. Department of  
Education

# What It Is:

- Executive agencies may develop Federal regulations to implement Federal law.
- The U.S. Department of Education develops Federal regulations to implement aspects of the Higher Education Act, which is Federal law.
- The process to create the language for the regulations to address institutional participation in Title IV HEA programs is through a Negotiated Rulemaking Process ("Neg Reg").
- Governed by the [Administrative Procedure Act](#) (APA) (5 U.S.C. Chapter 5)

# How It Works:

- Notice of Intent to Establish a Negotiated Rulemaking; subject to public comment.
- Call for Nominations of Stakeholders to Address the Established Issues for Rulemaking Committee.
- Convening of Negotiated Rulemaking Committee
  - Negotiate the issues
  - Goal – Consensus (no dissension)



**YOU ARE HERE! For Winter 2024 Rulemaking!**

# How It Works:



**Remaining steps for Winter 2024 rulemaking!**

U.S. Department of Education Responsibilities:

- Prepare Proposed Rules.
- Submit regulations to Office of Management & Budget (OMB) for review.
- Release of Notice of Proposed Rulemaking (NPRM); subject to public comment.
- Must review all comments, prepare responses, and prepare final regulations.
- Send final regulations to OMB for review.
- Release final regulations with responses to public comments (preamble).



# Strict Timeline

Master Calendar for  
U.S. Department of Education Title IV Regulations

## Dates to Support Financial Aid Year

Final Regulations must be  
released by **November 1** to  
be effective the following  
**July 1.**





# Questions

Negotiated  
Rulemaking:  
What It Is and  
How It Works



# 2023-2024 Negotiated Rulemaking Update

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# 4 Main Areas of Concern

- “Applicable state laws” related to closure
- 500 rule
- Role of states
- Board composition

U.S. Dept of Ed 2023-2024 Neg Reg Website:

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>

Issue Paper 2: State Authorization (Non-consensus):

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/state-authorization-non-consensus.pdf>



# “Applicable State Laws”

## Proposal:

### Institutions Must Follow All Closure Laws in a State

- Even if a member of a reciprocity agreement...a state can require institutions to follow applicable State laws related to closure, including:
  - record retention,
  - teach-out plans or agreements, and
  - tuition recovery funds or surety bonds.



# 500 Rule

## Proposal:

### No More Than 500 Students in a State

- Institutions enrolling more than 500 students in a state in the two most recent financial aid award years can no longer use reciprocity in that state.
- The institution must seek authorization directly from the state.



# Role of States

## Proposal:

### Change (Perhaps?) Some Roles of States in a Reciprocity Agreement

States that are members of a reciprocity agreement:

- Retain the ability to enforce their general-purpose state laws.
- Condition or revoke authorization of an institution through reciprocity for violations of general-purpose laws and regulations.
- Permit states to accept, investigate, and resolve complaints without first requiring the student to go through an institutional process.



# Board Composition

## Proposal:

## Reciprocity Governance Requirements

- Governing body for a reciprocity agreement must consist solely of representation from:
  - State regulatory and licensing bodies,
  - Enforcement agencies, and
  - Attorneys general offices.





# What Happens Next?

Keep an eye on NC-SARA's Call to Action page on website:

<https://nc-sara.org/sara-neg-reg-call-action>





# Questions

2023-2024  
Negotiated  
Rulemaking



# 2021-2022 Negotiated Rulemaking Review (Final Regs Published October 2023; Effective July 1, 2024)

**Molly Hall-Martin**

Director, W-SARA, Policy Analysis and Research, WICHE

Final Regs:

<https://www.govinfo.gov/content/pkg/FR-2023-10-31/pdf/2023-22785.pdf>

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# Questions

Final Regs  
Published October  
2023  
(Effective 7/1/24)



# Thank you!

For questions please email:  
[info@nc-sara.org](mailto:info@nc-sara.org)



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



**National Council for  
State Authorization  
Reciprocity Agreements**

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