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

wcetsan.wiche.edu
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

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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:

Issue Paper 2: State Authorization (Non-consensus):
“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.
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
Page 74649
Questions

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

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

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