

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

October 10, 2024

Countdown to Start:

10:00

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 Breaktime for PowerPoint by Flow Simulation Ltd.

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WELCOME!

Jared Abdirkin

Director, Institutional Engagement and Initiatives,
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

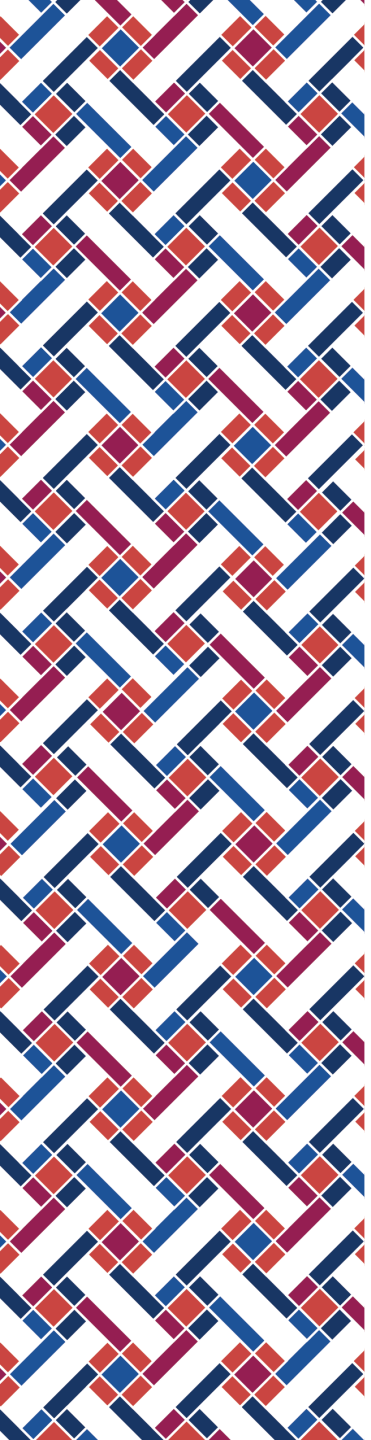




TODAY'S AGENDA AND PANELISTS

Negotiated Rulemaking 2024

- **Vic Klatt**, Principal, Penn Hill Group
- **Alex Nock**, Principal, Penn Hill Group
- **Scott Dolan**, Executive Dean, College of Liberal Arts and Sciences, Excelsior University
- **Jeannie Pauline Yockey-Fine**, Senior Vice President and General Counsel, NC-SARA
- **Marianne Boeke**, President, NC-SARA



Vic Klatt, Principal, Penn Hill Group

Alex Nock, Principal, Penn Hill Group



Where We've Been

- **Late 2023:** the Department of Education (ED) formed a negotiated rulemaking committee (including NC-SARA Board Chair, Rob Anderson) to discuss proposed regulations pertaining to State authorization and other topics.
- **January 2024:** Session 1 of Negotiated Rulemaking on Program Integrity and Institutional Quality.
- **February 2024:** Session 2 of Negotiated Rulemaking on Program Integrity and Institutional Quality.
- **March 2024:** ED concluded Negotiated Rulemaking on Program Integrity and Institutional Quality with Session 3. Members of the Negotiated Rulemaking Committee did not reach consensus on ED's proposed regulation.
- **July 2024:** ED published a [blog post](#) that stated that it would delay publishing a notice of proposed rulemaking on this topic until 2025, leaving this potential regulatory action in the hands of the incoming Administration.



Three Major Issues

- **“Applicable State Laws” Related to Closure** - ED’s final proposal would undermine the benefits of state reciprocity agreements by authorizing a state to enforce its own consumer protection laws related to closure, including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds.
- **NC-SARA Board Membership** - ED’s proposal would stipulate that any governing body of state reciprocity agreements must be composed solely of representatives from state regulatory and licensing bodies, enforcement agencies, and attorneys general offices. This would undermine the ability of NC-SARA to ensure a range of experts and, as a private organization, to determine its own board members.
- **The 500 Rule** – ED’s proposal would mandate conditions of reciprocity for SARA-participating institutions. Institutions would be required to obtain direct authorization, and therefore not have the benefit for reciprocity, from any participating state where the institution enrolls more than 500 students in each of the two most recently completed Title IV award years.



What's to Come

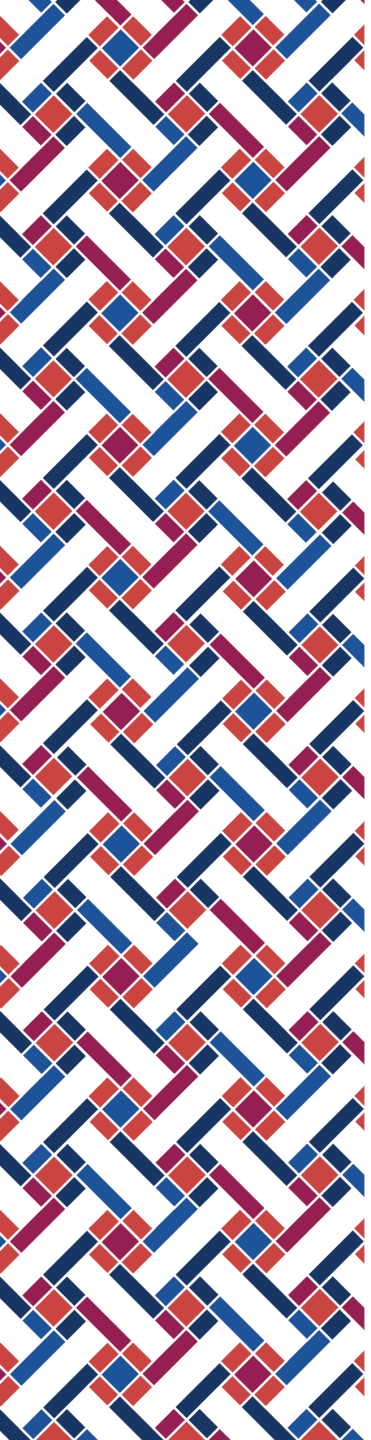
The outcome of the 2024 November election will directly impact the future likelihood of a final rule:

- It is more likely than not that a **Harris-Walz Administration** would continue many of the initiatives from the Biden-Harris Administration, including topics that were part of recent negotiated rulemakings.
- A new **Trump-Vance Administration** is expected to put any unfinished regulatory or other executive actions on hold until they can be thoroughly reviewed by the new administration. A Trump-Vance Administration would likely not have the same interest in moving regulations pertaining to State authorization and may simply halt any regulatory activity on this issue.



Questions





Scott Dolan, Executive Dean, College of
Liberal Arts and Sciences, Excelsior
University

The Issue & Topics

Program Integrity and Institutional Quality

1. The Secretary's recognition of accrediting agencies under [34 CFR part 602](#) and related parts;

2. Institutional eligibility under [34 CFR 600.2](#), including State authorization as a component of such eligibility under [34 CFR 600.9](#);

3. The requirements for distance education under [34 CFR 600.2](#) that pertain to clock hour programs and reporting for students who enroll primarily online;

4. Return of title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing the administrative burden for institutions of higher education under [34 CFR 668.22](#);

5. Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, and loss of such funds under [34 CFR part 668, subpart K](#); and

6. The eligibility requirements for participants in the Federal TRIO Programs.

Areas of Focus: Distance Education

Issue	ED Issues/Concerns	Main changes in final rule
State Authorization	Concerns that current processes do not allow for “sufficient state oversight.” Focus initially on governance and complaints. Concerns raised consistently from numerous stakeholders about distance education, the potential for bad actors, and the impact of school closures.	<ul style="list-style-type: none"> • Direct authorization if 500 students in any given state • Comply with institutional closure requirements • Governing board must be state representatives--501(c)3
Accreditation	ED relies on accreditors “to determine whether an educational program is worthwhile investment for Federal financial aid and taxpayer dollars.” Focus on greatest risk; increase rigor; strengthen accreditation; simplify and clarify rules	<ul style="list-style-type: none"> • Establish and enforce minimum expectations of performance • Require updated teach out plans • Focus on written arrangements • Substantive change • Change of accreditors
Distance Education	Lack of data on distance education enrollment. Enable student-level data for Title IV. Closed school discharge relief	<ul style="list-style-type: none"> • Create a virtual additional location • Report on distance education enrollments • Defined a distance education course • Remove the ability of clock hour programs from offering asynchronous distance education
R2T4	Simplify and make more accurate return of funds	<ul style="list-style-type: none"> • Require attendance taking for all distance education courses

State Authorization



500 rule

Require institutions direct authorization where institution enrollment more than 500 students in each of the two most recently completed Title IV award years

Enrollment size = risk

Discussions and strong advocacy for lower threshold



Institutional Closure Requirements

State must be able to enforce their **own** consumer protection laws

- Record retention, teach-out plans, tuition recovery



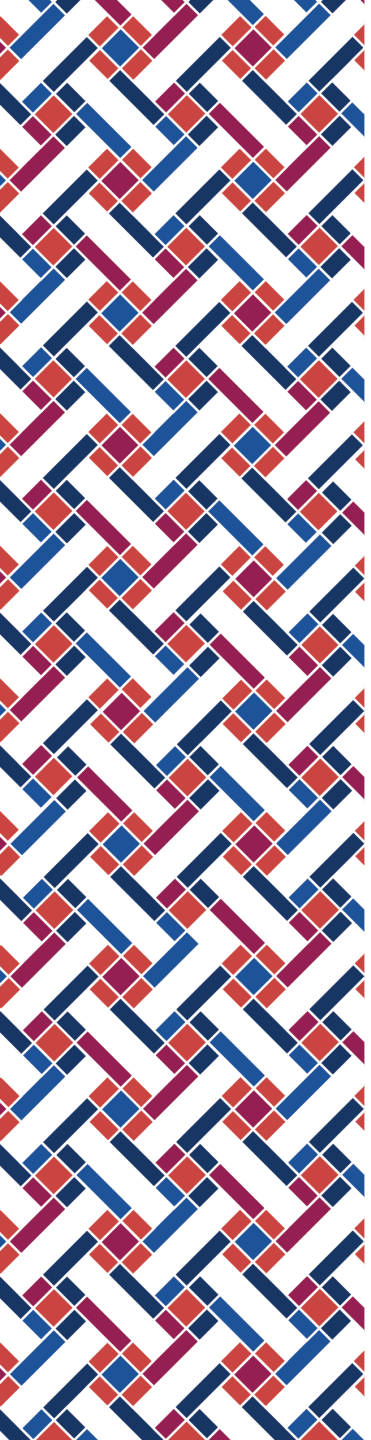
NC-SARA Governing Board

Must consist **solely** of representatives from state regulatory, licensing boards, enforcement agencies, and state attorneys general



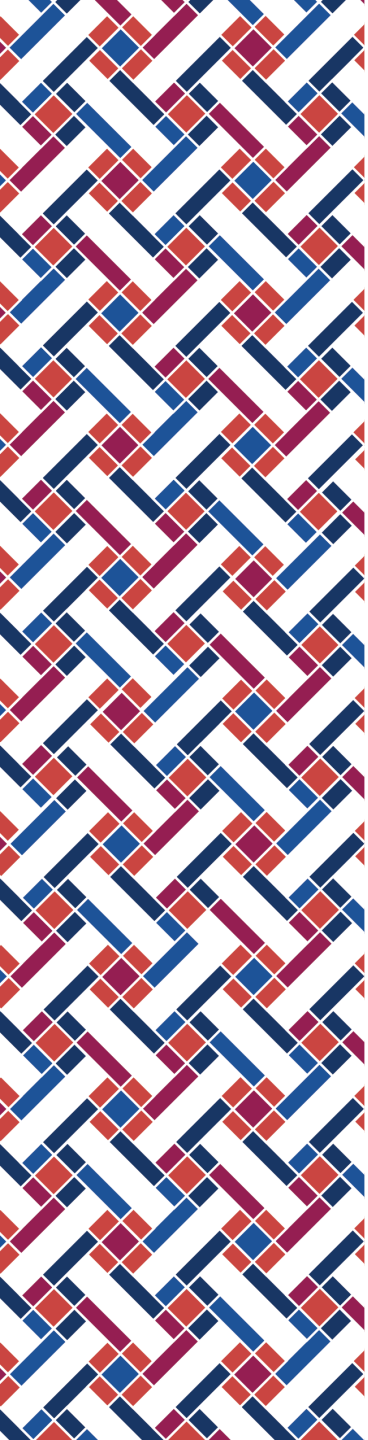
Questions





Jeannie Pauline Yockey-Fine
Senior Vice President and General Counsel,
NC-SARA

Marianne Boeke
President, NC-SARA



Neg Reg is still on our radar!





Policy Modification Process

General Student Consumer Protections

- Clarifies that institutions that lose SARA participation must meet state-specific authorization requirements
- Aligns SARA policy with federal requirements regarding professional licensure

State Oversight

- Increases options for a state to place a SARA-participating institution on provisional status
- Requires public sharing of reason for a SARA-participating institution placed on provisional status

SARA Student Complaints

- SARA-participating institutions must provide SARA student complaint resolution policies on their website and in their catalog
- Improves SARA student complaint data collection and reporting to include complaint type and student location

Webinar!

2024 SARA Policy Modification Process Wrap-Up: Results of NC-SARA Board Voting and Implications for SARA-Participating Institutions and State Portal Entities

Date: Tuesday, November 19, 2024

Time: 11:00 AM to 12:30 PM Mountain Time

[Register](#) Today!





What is the SARA Community Doing?

Working Group – Institutional Closures

- Teach out plan / Teach out agreement
- Financial Arrangements
- Records Retention

Conversations, Communication, and Collaboration

- Board, Regional Compacts, SPEs, Institutions, Organizations, and ED
- Webinars, Attending Meetings, Eblasts...
- Look for White Papers/Blogs on the Value of SARA



Collect, Review, and Disseminate Information

- Continue to gather information from states/institutions.
- Continue to gather data (evidence) and conduct robust policy analysis.
- Continue to share information, data, evidence with SARA Community (including ED).

Stay Informed!

SARA Call to Action Page - <https://nc-sara.org/sara-neg-reg-call-action>

Sign Up for SARA Updates - <https://formstack.io/71987>

Stay Tuned!



Questions



Thank you!

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



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



**National Council for
State Authorization
Reciprocity Agreements**

MHEC • NEBHE • SREB • WICHE