

Cheryl Dowd:

Okay, we've started the recording. So, welcome to the WCET|SAN webcast that we're doing in collaboration with UPCEA. And I will move to the next slide. This is the federal rulemaking process. So, we wanted to offer you this opportunity. It's the federal rulemaking process, how to follow and inform colleagues about the upcoming negotiated rulemaking meetings and outcomes.

Cheryl Dowd:

And so, I should probably tell you all who I am. I'm Cheryl Dowd. I'm the senior director for Policy Innovations with WCET|SAN, and very pleased to be with you. Glad that you all could register and participate today. I know that some of you are not SAN members, you're members of UPCEA. And we welcome you. And we'll tell you a little bit more about ourselves in just a second. But welcome to participants today from SAN and from UPCEA.

Cheryl Dowd:

So, how our day will work is that this is being recorded. We will be posting the slide deck, the recording and a transcript on the SAN website following the webinar. I will also be giving these materials to UPCEA for them to be able to post as they normally do with their virtual events. So, we will be sharing it with them if you're a member of UPCEA. But it will be posted on the SAN website as well. It'll be a public facing page. So, UPCEA members, if you came to the SAN website, you would find it there as well. So, we welcome you.

Cheryl Dowd:

We developed this webinar for the purposes of helping to inform people about the upcoming negotiated rulemaking committee. Actually the committee meetings will start on Monday. And so, I am going to put something in the chat that Ricky will talk about and I'll explain who Ricky is in just a second because he's my esteemed colleague. So, we are joined together with UPCEA. And a one of our colleagues is Ricky LaFosse.

Cheryl Dowd:

And Ricky is the compliance and policy lead at the University of Michigan in Ann Arbor, but he is also the chair of the UPCEA Policy Committee. And so, he serves both those roles. But he's a very important colleague of ours with SAN. I will turn this over to him in just a second.

Cheryl Dowd:

But just some of the housekeeping items of today. What you'll see here is this is meant to be rather informal. We have our guest speaker today, Russ Poulin, who is the executive director for WCET. And he will be sharing with us about the steps in the Department of Education rulemaking process.

Cheryl Dowd:

Both he and our other special guest, David Schejbal, who is the president of Excelsior College, have experience working in negotiated rulemaking. Both of them served on the subcommittee in the 2019 Federal Rulemaking Process. They were on the subcommittee of the negotiated rulemaking and informing the main committee, and then Russ Poulin also served on the 2014 Rulemaking Committee. So, they bring a lot of experience to us. But Russ will walk us through these steps.

Cheryl Dowd:

And then we're going to move to a moderated panel discussion, where we will be talking with both David and Russ about their experiences and some of the nuances that will be further developed from the steps that Russ has shared. And we hope that at that time, as you're hearing these pieces and this nuance about rulemaking that you will add your questions to the chat.

Cheryl Dowd:

So, at that point, we hope that you will, you'll start putting your questions in the chat and we'll have definitely time for questions throughout. So, it's a piece of information sharing about the process and then moving into moderated, which just really means that we hope that it's inviting your further questions. So, we will be taking questions from the audience. We hope that you will include them into the chat and we will address those.

Cheryl Dowd:

But without further ado, I would like to get started with our content. And to do that we have our moderator today, who I said was Ricky LaFosse. He is again the compliance and policy lead at the University of Michigan. And he's the chair of UPCEA's Policy Committee. And so, welcome Ricky and really glad to have you here with us today. And thank you for being willing to moderate this session.

Ricky LaFosse:

Absolutely. And thanks, Cheryl. And hello, everyone. I want to quickly go over a bit of additional housekeeping and provide some background on the topic before turning this over to Russ.

Ricky LaFosse:

So, first and foremost, we do realize that there may be a range of prior experience with regulatory matters among the audience. And we would therefore like to encourage you to request clarification using the chat as needed. We'll be monitoring and addressing questions throughout. But we'll also save any more substantive questions for our presenters to that dedicated block Cheryl mentioned towards the end.

Ricky LaFosse:

In addition, we are sharing several resources later in the slides. For those of you who would like to learn more about rulemaking or higher ed governance more broadly, including resources developed for both UPCEA and SAN and in terms of important background, first agency rulemaking. Procedures do differ by agency.

Ricky LaFosse:

And the Department of Education's use of negotiated rulemaking or neg reg for short, is itself somewhat unique, depending on the topic. Congress does explicitly require as part of the Higher Education Act neg reg sessions to take place early on in the drafting process. And this is in an effort to ensure a diverse range of perspectives will be considered from the start.

Ricky LaFosse:

Other more broadly used and required administrative procedures such as those involving notice and comment, for example, these are likewise subject to acts of Congress. And it is important to keep in

mind that agencies really can't deviate too far from the goals and the specific language that Congress is using as part of any authorizing legislation that agencies are working from.

Ricky LaFosse:

If Congress says that an institution has to do X to remain eligible for federal funding and an agency thinks, well, in our experience would be better if they did Y instead of perhaps X and Y together, the resulting rule is likely going to be struck down and courts just as it would if the agency failed to follow procedural requirements prescribed by Congress.

Ricky LaFosse:

Presidential administrations also have a sizeable role in the work of federal agencies as they oversee the executive branch and can influence agency rulemaking agendas priorities to be consistent with those of the administration. And perhaps you are curious about whether you actually have to follow the rules to begin with.

Ricky LaFosse:

Technically, the answer would be no, as long as you're willing to forfeit eligibility for the billions of dollars that flow through federal funding programs. And as that proposition probably untenable for the vast majority of institutions, perhaps the better way would be to play ball in the process and engage in the rulemaking process itself, participating in the ways that we'll talk about here today. And this is, in essence, why we are here, sharing this information with you today. We'll try to give you good ways to stay informed throughout the process of rulemaking as well as actively participate.

Ricky LaFosse:

And if you are members of UPCEA or SAN or ideally both participate in the listservs, you are in good hands as both organizations are going to work to keep their members always informed and up to date, including with the upcoming neg reg session starting next week, which primarily are addressing affordability and student loan issues. But there is some including the borrower defense rule topics where institutions may want to pay some attention because they involve misrepresentation rules and updates that might impact how you approach marketing as well as consumer disclosures at your institution.

Ricky LaFosse:

So, with that, I think in the interest of time, I will go over to Russ here. And thank you in advance, Russ, for walking us through this complicated process. So, I'll hand it off to you.

Russ Poulin:

Well, thank you all. And thank you very much, Ricky, for that introduction. Again, Russ Poulin, with WCET. And I did serve on the main committee in 2014 and did six roles in that time and served on the subcommittee with David in 2019. And we had, depending on how you count like 55 rules or something like that, run there. But on our subcommittee, we had a much smaller but still sizable group of things that we looked at.

Russ Poulin:

Let's move to the next slide, Cheryl, and go this. And so I tried to bring this down, we're going to go through sort of a complicated process rather quickly here just to give you the background in these steps that they have here that they go through.

Russ Poulin:

So, let's go to the next slide. And where that starts off, and then as Ricky sort of alluded to that, the department will identify particular regulations or topics that they want to work on. And sometimes it's a clarification of things that are already there. Sometimes there's a new law that comes out and that they need to figure out, okay, a little bit vague, how do we interpret that or how do we enforce that? What are institutions supposed to do in order to show that they're meeting that law, and so that there needs to be some more administrative details around that. And that's where the rulemaking comes in.

Russ Poulin:

And so, they'll identify a set of topics. Then I'll post this notice out there that they're about exactly which ones they're going to work on. That if there's a committee or subcommittee structure, the subcommittee is a new thing as of the 2019 rulemaking and that seemed to work pretty well. They had three subcommittees then. I think they have one in the current one. [inaudible 00:10:42] that structure.

Russ Poulin:

And then what they'll do is that they'll want to seek nominees from what are referred to as affected constituencies, that who knows about this issue. So, if it's about financial aid, we need some financial aid officers. If it's about I represented distance ed or they might need people from the four-year institutions or two-year institutions or from different consumer groups. And so, they'll ask for people to either nominate themselves or get nominated for it.

Russ Poulin:

And then, let's go to the next one. And so, you submit those nominations. And then the department gets to ... I put some wording there and it shows that they are looking for kind of a diverse group of people that represent for very specific areas that they select, look through. They go through the nominations. Department makes their selections.

Russ Poulin:

For the main committee state select both a primary and a secondary negotiator. And so, you have an alternate for each of those. And that provides a little depth in case something happens to them. But it also provides some more input because, so, in 2014, I was the distance ed person and served with Marshall Hill, President of NC-SARA, that we work together and we're able to bring some different parts, different ideas to it. And so, that worked out well. And then also, among the negotiators, it's important to note that the department is one of the negotiators, and so they get about in on this, too, and we'll show that comes up a little bit later on.

Russ Poulin:

Let's move to the next slide. Okay, we've got the topics, we've got the roles, and so there's a lot of preparation that goes on before the first meeting. The document or the department creates background materials and just maybe materials. For last time, the other thing that they did was that they came out with four proposals at the first meeting. That was a little bit different than what they've done before.

Russ Poulin:

And contrary to what you may have heard in the press or something like that, they actually were willing to move off of those proposals. Some people thought that they are better proposals and that's not what happened. And also then, the negotiators at the same time were getting ready. And I know I talked to a lot of different people about their ideas and tried to collect thoughts about what would work and some of the rules we're looking at.

Russ Poulin:

Let's go to the next slide is that the very important meeting is the first meeting. And this is actually a picture from the end of the Main Committee of the 2019 one, not the first meeting, but as a screenshot that we took because they streamed that whole process last time. It gives you an idea that, pre-COVID as you can tell, that we're all sitting close together and discussing things. I'll be curious to see what they do with COVID this time.

Russ Poulin:

But they had some protocol, things that they have to go through, how they conducted meetings. Those usually don't change very much. They confirm the issues and education submits what they've proposed, and that there's some discussions and it comes out of that meeting in terms of what additional information or what changes to any proposals that they want to see or things that they want to see proposed in terms of language to consider at the next meeting that comes up.

Russ Poulin:

And all of these meetings and with public comment. And so, it's available for anyone who wants to ... That any of the issues [inaudible 00:14:34] and sometimes they talk about things that aren't the issues that are there, which is always interesting, but there's some time for public comment for people who aren't on the committees to give their input as well.

Russ Poulin:

Let's go to the next slide. And this gets to what is the purpose of all this and it's this word "consensus" is one of the things that we're trying to get to. And consensus has a lot of definitions and a lot of different areas, but it's very specific here and really have it there. And I have the Inside Higher Ed article where they talked about the current event actually popping champagne because they came to consensus on those 55 issues last time.

Russ Poulin:

But the consensus, and think about this, that you saw those people around the table. So, you probably have depending on the neg reg process, you have 10 to 20 people, and they all have to agree on all of the language on every issue. They tried subdividing it last time, which was very unusual on the legality of that may have been in question, but they did come up with agreement on all the different issues. And so, that is very hard to do in these sorts of things.

Russ Poulin:

And remember, the Department of Ed is one of the ones who vote in all this. And if they don't reach consensus, if they don't all agree, then the department gets the right tools. Well, okay. But what happened, and obviously, in one where we didn't reach consensus and actually the parts that we agreed

to that the department was very good at keeping that language that we agreed to it that they put that for you.

Russ Poulin:

If there was areas where we couldn't come to agreement to, they tried to figure out, okay, how does this kind of work between the two parties and where the disagreements for. So, just trying to get everybody to agree on things. This is a lot of work and trying to end something that is the goal that is not reached all that often in terms of getting us together.

Russ Poulin:

With that, let's move to the next one. So, there's lots of negotiation going on. So, this is a picture of the subcommittee from last time. So, you kind of get an idea there. And both of my subcommittee and my committee I get to sit next to Leah Matthews, who you see there personally on the left, and we were buddies talking about all these roles, going through the whole thing, that was very, very helpful.

Russ Poulin:

But the subcommittee that they meet outside of the main committee and that they will make proposals to the main committee, that there's a lot of proposals that are put forward about specific language. So, I grew up maybe the consumer protection folks will come through and these attorneys general will come through and propose specific language and that will be considered in all this.

Russ Poulin:

But there's, again, consulting with constituencies about what happens. We were very big. When I served on him about we would write blog posts and put the proceedings out there that here's what we were seeing. And if we had questions, we'd ask people, let me know, if you have suggestions about what we should be doing.

Russ Poulin:

You see the name tags there on end. And there's a very ... That's saying that you want to ask a question or make a comment. And so, that keeps things in order. And it's very civil sort of discussion, most of the time, works out pretty well. So, all this goes on. And then, we have this back and forth, both at the meetings and between the meetings, very formal recommendations about what language should go forward between the meetings.

Russ Poulin:

Now, let's get to the next slide, where we finally get to the last meeting. And it could be three or four at one time. We decided to have an extra meeting because we couldn't get through everything that we're ... There's a vote at the end, where first there's the finalizing language we come up with. Okay, here's the language. And usually, there's struggle ahead of that. We kind of know where people are and where the pain points are.

Russ Poulin:

And then you have a vote. And on each different regulation, each different topic that they have, that there's a vote about that, that we reach consensus on it. And again, everybody has to agree. And we

don't take the final vote until we think either we're at consensus or that consensus is not possible. And so, the wait for the final vote for the end.

Russ Poulin:

So, with that, let's move to the next part. So, let's see, there's a couple paths here in that you're seeing a graphic that we had from Frontiers post that we had after the last negotiated rulemaking. If there's no consensus, remember that the Department of Education gets to write the language and they do try to read here to what came out of the committee.

Russ Poulin:

If there is consensus, they'll have to do some things in terms of making sure because sometimes things get changed at the last minute or there's new suggestions in the final one, and they have to check to make sure that it's all legal. And that what we're proposing is not in conflict with that some other part of the law, that would be bad. And so, sometimes there's some changes there.

Russ Poulin:

Once the department and the lawyers get that all together, they publish it in the Federal Register for everyone to see that they're saying, "Hey, this is the final proposed language." And they ask for comments. And it's usually, it's been as little as 30, but usually 60 days is a good time for comments.

Russ Poulin:

And this is something where both UPCEA and SAN, WCET have asked people to comment on all this because it's important. You need to participate and there's places where you can participate. But really, in this comment period, if there's something you don't like, you really write something because volume matters. If you're seeing the same thing from several different people, they have some ability to do some changes. There's lots of restrictions on what they can change. But there is some ability to change.

Russ Poulin:

With that, final two things here we're getting down to that once they get those comments, that they look at all them, that they write a preamble that gives their reasoning for all the rules, why they're needed, why they did certain things within the rules, and maybe some clarifications about that they could see from the comments that people weren't quite getting things. And then they respond to all the comments. They're supposed to respond to all the comments. Often we'll get 50 comments about one thing, so they'll clump them together and respond to them as a group.

Russ Poulin:

But if you put something in there, they are supposed to respond to them and do them. And they'll also note if there's any changes that they've made as a result of the comment process and that they'll publish that.

Russ Poulin:

And then moving to the next one, last part I have here is that the date that they publish it makes a big difference. Rules always go into effect. Department of Ed rules always go into effect on July 1st. And it all depends about whether they publish them before or after November 1st. Because those, if they're published prior to November 1st, they go into effect the following year.

Russ Poulin:

So, if they were to be, let's say they had rules now, if they were to be published today, they would go into effect July 1st of 2022. If you waited till December, it has happened last time, they had rules that came out in December, and that those would have to wait a whole other year, a whole other calendar year and it wouldn't be 2022, but it'd be off until 2023 when those would be published.

Russ Poulin:

With that, that's a whole lot of stuff, went a little longer than I thought, but it's quite a few things, but gives you a background on the process of all of this. And so, Ricky, I'll turn it back to you.

Ricky LaFosse:

Great, thank you so much, Russ. So, it looks like we do have David joining us as well. He is here. So, to reintroduce David, David Schejbal is the president of Excelsior College in Albany, New York. And at the time, Cheryl mentioned that he served with Russ as part of that last round on negotiated rulemaking on the subcommittee for distance learning and educational innovation. And at that time, he was vice president and chief of digital learning at Marquette University.

Ricky LaFosse:

So, David, I'm going to go to you first, if that's all right, and given your vast leadership experience in higher ed, in the roles that you're serving on the committee, is whenever you can share your thoughts on the importance of participation as part in this process from an institutional governance perspective.

Ricky LaFosse:

So, do we have David here or is he stuck on mute?

David Schejbal:

Sorry, I started talking and I was stuck on mute.

Ricky LaFosse:

No worries. Thank you.

David Schejbal:

So, thanks, Ricky and good to be with all of you. So, as Russ would explain, the process is pretty weedy. And so, you got to like the policy stuff to follow it. What was clear to me though, not just from participating this last time, but from other negotiated rulemaking processes is that the consequences of the process can be really significant for institutions.

David Schejbal:

And so, if institutions aren't paying attention and whispering in the ear of the negotiators or others who can influence the negotiators, they might end up with regulations that they don't want. So, I'll give you an example of one of the regulations, Russ, you'll remember this, that we struggled with that actually was proposed by folks at the Department of Education.

David Schejbal:



And that was, what percent of a curriculum can an institution outsource and still be eligible for federal financial aid. So, the proposal made under the divorce administration was to actually increase the amount of curriculum that an institution could outsource to 100% for a program. Right now, it's 50%, it was 50%. And this was a big part of debate. Because as you might imagine, for some institutions, it would actually be much cheaper to outsource all of their curriculum, especially if they don't have any faculty expertise in a particular area.

David Schejbal:

So, imagine that you want to stand up a cybersecurity program, but you don't even have a computer science department. It would be a heck of a lot easier to outsource that part of the curriculum than to build an entire cybersecurity program, for example. So, that was one of the issues that was being discussed. And it was a robust discussion, as you can imagine.

David Schejbal:

And there were good arguments made for both sides. On the one hand, it seems that it can undermine the credibility of an institution and what it means to get a degree from a particular school, given that you might not actually have the benefit of any faculty at that institution, if that school was to outsource all of its programmatic curriculum.

David Schejbal:

At the same time, it would allow schools to have much broader curricular arrays than they can afford, especially at the small liberal arts schools, schools that have very focused areas of expertise, and simply can't build the curriculum. So, that's just one example between, Russ, I mean, I'm sure we can give you another 25 if you really want to know, but that would be one example where the consequence of the negotiated rulemaking process can have real impacts on institutions once that process is done.

David Schejbal:

So, I don't want to keep talking. I just wanted to give you an example of how the process really does matter from an institutional perspective and happy to answer questions or kind of go in whatever direction you all want to go.

Ricky LaFosse:

Thanks so much, David. And what I appreciate about that response, too, I mean, on the one hand, it's the, you're not at the table, you're on the menu. We often hear about these types of rulemaking activities. But it's also in a very real way, you produce better rules by being more engaged. The rules themselves can come out to be of a higher quality. So, thanks for sharing that.

Ricky LaFosse:

Russ, feel free to respond as well from if you have any thoughts to add based on what David just responded with. But I'm also curious to know, were there times as a negotiator, and you've now been in a room twice here, where you experienced some very thorny issues, where it was clear that the path to consensus might actually be defeated. How were you able to overcome those conflicts? Were there times where you weren't? And if you were able to overcome them, how did you actually proceed in do that?

Russ Poulin:

That's a great, great question, Ricky. And just to follow on with David that the importance of participation that the reason that we follow these things and put them out on blog posts and such is that there are some really significant impact to some of these roles. And so, you want to make sure that you get your voice heard and if not, before especially that comment period because it does make a difference, how many comments that they get and what goes on and all along the way.

Russ Poulin:

With that, and great question about conflict, yes, we're all representing different constituencies and trying to forward and we have all these people whispering in our ears about you must get this, and there's a few times where I had my integrity called into question on one issue. But then we were working very closely on another issue. So, that was always interesting and usually ended up ... And the nice thing about being in a small room pre-COVID is that you ended up pretty much talking to everybody at some time or other or and collaborating at least with half of them at some time rather.

Russ Poulin:

And I remember that in 2014, that where we fit, where there was what several of us thought were agreed upon language coming into the last day on state authorization and then it got changed on the last day by the department and some others, where the thing that we had ... Every time I spoke in that negotiated rulemaking, the thing I started with on the state authorization I started with, we must get rid of, I think it was Section 8, I think it was.

Russ Poulin:

And they get rid of it. And then they put it back in and we said it was a deal breaker and we didn't have time to negotiate something else. And we ended up not coming to consensus on that issue and thus breaking all consensus on them.

Russ Poulin:

And the happy side and there were several times where we did come to agreement on things in that negotiated rulemaking, but in 2019, that I know a really tough issue was on regulating substantive interaction. I know David gave a lot of great input on that. And example is the word "regular" and trying to define that. I was representing one of the things. I was representing was competency-based education.

Russ Poulin:

Well, how do you define regular advice, something that by its definition is somewhat your regular in terms of the interactions that happen. And so, I thought that, man, there were loads of proposals, that was great. And we considered a lot of things. And I really thought that the language that came out of the subcommittee was it was probably as far as we were able to go.

Russ Poulin:

I think David had some suggestions that would have taken us farther and I appreciated those. Those didn't quite get, but there was a genuine back and forth with others about, oh, I like to side of yours. I like the side of yours. How do we put this together to make it work?

Russ Poulin:

And so, I think that was one where it's not everything that everybody lost something, but you had to negotiate and everybody with what came out of it was probably as good as we could get. Now, there were some problems when I went to the main committee, but I want to leave that. I'll leave that aside, that it gets changed just a little bit. But I thought that we worked very, very well together on that.

Ricky LaFosse:

Yeah. And bringing up how you may have wanted to go further in some directions. You think was it more that you were concerned with how the main committee might treat it? Or I guess in this case, with regular and substantive interaction. It's part of statute, mentioned limitations there as well. Was it the statutory language that kind of posed a problem there? Was it just concerns over meeting committee?

Russ Poulin:

Well, it was some of it was statutory because so regular is in the statute. We couldn't change that. And so, we had to try to come up with a definition of regular that still regular came in to the statutes back in 1992 and didn't anticipate a lot of the innovations that have happened since then. So, there is that.

Russ Poulin:

And the other was kind of vote counting. We knew that there were certain things that would make perfect sense to us, that would not fly either with some of the constituency groups that were represented there, or in the main committee, or others were ... I was thinking about one, and I think David may have been one who put this in there, and it had to do with the student identity verification. And that's only for distance education courses.

Russ Poulin:

And so, somebody said, "Well, why not for all courses? Aren't we worried about this for face to face. And I think just the regular four-year institutions probably would have hated us if we would get that through." But it was worth putting forward on the table to make the point that why isn't this for everyone?

Ricky LaFosse:

I think on behalf of the distance education community, we certainly appreciate you trying to eliminate double standards wherever you can. So, I think, actually, one more quick followup. We talked about consensus a bit. What does happen if consensus cannot be reached? I guess, procedurally, what are the next steps at this point? Is it just the US part of education just takes upon itself, does whatever it wants? Or is it a little more nuanced than that?

Russ Poulin:

Do you want to talk about it, David, or do you want me to or?

David Schejbal:

Well, so I'm going to be very flippant, but they can pretty much do whatever they want. If the negotiators don't reach consensus, the department can do whatever we want.

Russ Poulin:

Yeah, and that was a lot of the impetus for getting to consensus last time was that there was with the professional staff and the department appointed staff who were in the room that there was a lot of negotiation. And there was worry that once he got away from this small group of people who banded together, that it could go in all sorts of different ways.

Ricky LaFosse:

All right, thank you. I'm going to ask one more before we turn it over to the audience here. And I mentioned in the chat, too, but please feel free to add any questions you have there. I think once we get the audience section, you can also feel free to take yourself off mic and ask directly off mute rather than ask directly that way, if you prefer.

Ricky LaFosse:

But first, so David, I know, I believe your official constituency group designation as part of those 2019 sessions was academic executive officers at postsecondary institutions. So, curious, how did you approach your role as a representative for that constituency? Did you reach out to others in the group? Did anyone try to contact you during the process? And also, did you experience any challenges just balancing the interest of that group or those who are most concerned with maybe other constituency groups present?

David Schejbal:

Well, so it's a good question. So, I had been at Marquette I think about a year or maybe even less when I was on the negotiated rulemaking process. Prior to that, I was in the University of Wisconsin System for 11 years. And when I was at the University of Wisconsin, we built a competency-based program that was based on direct assessment at the same time and it included all the campuses in the UW System.

David Schejbal:

So, I had the various constituencies in the UW System talking to me. Marquette was probably less of a player because it had a much smaller online presence. But also, I've seen it. So, I have been a member of UPCEA for a long time, I'm a past president, have been on various UPCEA boards, functions. And UPCEA nominated me to the process.

David Schejbal:

So, I ended up sort of feeling like I'm representing a lot of different folks. The common denominator for me was that I felt that I was representing it primarily adult and nontraditional students. Because those are the students that I've worked with throughout my career. And those are the kind of programs that I had been developing. And when we were looking at competency-based education, it was geared towards the adult and nontraditional learners.

David Schejbal:

So, my colleagues and I got emails and texts and voicemail messages from various colleagues who were following the process and who were very engaged and wondering what's going on, or "Hey, don't forget to say this," or that kind of thing. But that was certainly how I engaged with folks. And if I had questions or I wanted opinions from folks on the outside, I contacted them and said, "What do you think?"

Ricky LaFosse:

All right, thank you so much. Yeah, I think if there are any questions from the audience, if not, that's fine. I got a long list and we can keep going here. But I do want to give an opportunity for anyone who did have those questions in the chat or [crosstalk 00:39:25].

Russ Poulin:

We do have one from Katherine it looks like, about how does the department choose negotiators and what is the time commitment, and how about if I start with the choosing and you want to talk about time commitment, David?

Russ Poulin:

And so, the choosing, neither David or I were invited to be behind the scenes to see what happened. But when looking at it from what they say and what appears to happen is that they are trying to look for balance in many different ways and with a small committee, that's really hard because they are starting with race and ethnicity that they're looking at that type of institution or organization, that they're looking at those sorts of things. And they all have very specific groups that they want to look at.

Russ Poulin:

So, type of expertise. I remember the first time I was sitting on and they had got way deep in some business and financial aid things that I learned a lot about and I've now forgotten almost all of it. That that was interesting sitting at that table, but they had other people who knew that and knew nothing about state authorization, so I was able to bring in our distance ed, and so, we're going to bring that in.

Russ Poulin:

Geography, if you ever want to apply that so many of them who apply because you have to pay yourself, your organization has to pay to have you go there. So, they get a lot of people from the DC area or not far away. So, I think if you're from far west places like Marquette or Colorado where I'm at, or there were several from California, that you have a better chance if you're willing to get there because they are looking for geographic diversity.

Russ Poulin:

And finally, the last one is politics. I did not see that in 2014, but I do think there was one person where I kind of learned that it seemed like through connections through governor or senator as well highly placed in the party that I think that may have had a difference. Not often, but happens.

David Schejbal:

Yeah, and in terms of time commitment, I'm trying to remember it was over a three week period, this is for the subcommittee. So, the subcommittee actually had a much lower time commitment than the main committee. Russ, help me here. I think we met, it was ... We stayed over two nights.

Russ Poulin:

Right.

David Schejbal:

Each time. And it was like, start at noon and then ended noon two days later, that kind of thing. Am I remembering that right?

Russ Poulin:

Yeah. So, we may have had a full day, on one of those extra days, too, I think maybe the middle one, yeah.

David Schejbal:

Yeah. But basically, it's several days per week over a three week period for the subcommittee. And then for the full committee, there were several weeks in addition to that and they were there all week. So, they were there probably for a month in DC flying home on the weekends.

Russ Poulin:

Yeah, and I had forgotten from the 2014 one or the 2019, it is quite the time commitment. Because if you do it well, you should be talking to your constituents and taking phone calls and exchanging emails. And so, that's the trick in trying to come up with proposals to move the ball forward. And it does take time.

David Schejbal:

Yeah, and when you're sitting there, you can't check your email and respond to emails and that kind of thing, because you really need to be engaged in the process. So, if you do end up ever participating, check the day job at the door because it's not going to be happening while you're participating in this.

Ricky LaFosse:

Surely, there's allowances for fantasy football, things of that nature. Probably not. So, this time [crosstalk 00:43:40].

David Schejbal:

And you got to buy your own lunch because the feds aren't allowed to buy you lunch.

Ricky LaFosse:

All right, thank you. I'll be silent for about 10, 15 seconds here. If anybody does want to jump on with the question, great opportunity to do so right now.

David Schejbal:

While people are thinking of questions, one thing, and Russ started talking about this, that's interesting about the process is that when we were talking, as Russ said, one big part of the conversation was the regular and substantive, the meaning of what regular and substantive interaction is and the reason that this is such a big issue is because when you try to do competency-based education and you focus your educational program exclusively on outcomes and not on inputs, time on task steps to matter.

David Schejbal:

And so, what ends up mattering is what people actually learn and how they demonstrate their knowledge and that how much time they spent learning. But the problem is that the current regulatory space requires that people actually get paid for, i.e. financial aid for time on task and that outcomes. So, it doesn't matter what grade you get, as long as you pass a course, to get your federal financial aid. What matters is how much time you actually spent in the classroom.

David Schejbal:

And the way you verify how much time you spent is how much interaction you have with the material and mostly with faculty. So, this is the regular and substantive piece of the conversation. And it becomes very obvious at the tension in competency-based education because the CBE folks want to focus on outcomes and actually want to reduce time on task and leave that up to students so that students can bring prior knowledge to their learning, and so on.

David Schejbal:

And yet, the law requires that federal financial aid be allocated based on time on task, i.e. the number of credit hours, or sorry, contact hours you spend for each credit hour that you earn.

David Schejbal:

And so, it is a perfect example, I think, of one huge challenge we have in this country, between focusing on learning outcomes, which everybody wants to do, and yet having a regulatory structure that doesn't care about learning outcomes, in the sense that it doesn't matter what the outcomes are for you to get federal financial aid. So, it's actually a huge national issue about how federal financial is allocated and on what criteria it's allocated. And it ends up getting played out in conversations like the one we had a couple of years ago.

Russ Poulin:

And there's actually a head scratching quote in the WVU audit that says exactly that. It doesn't matter what the outcomes were. And they said they didn't matter in the process. They had no complaints, outcomes were good. Luckily, that got turned around. And I think we that we've solved some of those things in regular and substantive definition. So, I think we helped. We've got along.

Ricky LaFosse:

Yeah, I think a big advancement would have been inclusion of asynchronous activities more explicitly in the regulations. And I know from what was proposed, one of the only changes that I recall it going into the final rules, David talked about credit hours and how you record time on task or contact hours, their clock hours for programs on that system.

Ricky LaFosse:

One of the updates through [inaudible 00:47:54] comment and the comments received was that asynchronous activities were also included under that definition, which actually happened after the rule was first proposed.

Ricky LaFosse:

And along those lines, I did want to ask, you kind of gave it away, but why would it be important once we have a proposed rule out for institutions to engage in that process. And then also, what key units maybe at institutions, I know there's a lot of variation institution to institution, but generally speaking, what key units should be involved in submitting comment. If you're personally interested, do you have to work elsewhere in your institution, or can you submit your own? Wondering if you could share any insights related to that comment submission process.

Ricky LaFosse:

You want to start with that, David or do you want me to?

David Schejbal:

Well, I mean, just very briefly, there's no restrictions on people contacting a negotiator and sharing comments. What the negotiator does with it is a separate question. But anybody can say, "Hey, here's what I think, go do this."

Ricky LaFosse:

And the why for getting involved with this is I remember I think that there's 6000 institutions that receive federal financial aid. Within those institutions, there's a variety of academic models. And so, one of the challenges is, is trying to write these broad enough that it fits all those and it's still a small group, and that we may get to a point where we thought, "Oh, we didn't address some subgroup out of all that." And so, it's very important that if you see something where you're left out or it's going to have a huge impact on your academic model that you need to speak up because no one will know about it unless those who are affected do speak up.

David Schejbal:

Yeah. And to build on what Russ said, one of the challenges is innovation in higher education. And if that innovation requires changing the teaching structure, the teaching model in terms of time on task. So, if you teaching two semesters a year, where students are coming to the classroom three days a week or Tuesdays and Thursdays for an hour and a half, and they're sitting there listening to a lecture talking with faculty, no issue, no problem with federal financial aid.

David Schejbal:

On the other hand, if you want to somehow incorporate prior learning, if you want to allow students to do a lot of self-directed learning and have engagement with faculty only when they really need it rather than on some prescribed schedule, then you run straight smack into the challenges with the regulatory space.

David Schejbal:

And so, institutions that want to do different stuff should pay a lot of attention to this because higher education is a highly regulated industry. And the law gets interpreted in very specific ways. And the interpretation happens at the department. But of course, the lawmaking process happens in Congress.

Ricky LaFosse:

Thank you. And we did have a question coming in related to what's published as part of that preamble are all comments, included their responses to comments. And to add to that question, from Cheryl, Andreas. I think it would also be helpful to know we have the final rules at the bottom as far as what's published in the Federal Register, but after this proposed rule, the NPRM comes out and you're submitting comments, you get the final rule. Why do we have the preamble? What else is there that might be useful to institutions looking to implement these final rules in addition to Cheryl's question.

Russ Poulin:

How about if I talk about the comments, you want to talk about what else might be there, David? In the comments what they'll do is that they'll do a comment response and then action, I think, is the third



one, I mean, get that word wrong. But what they'll do is that quite often, they'll receive 30, 50 comments about the same thing. And they'll say, we received several comments saying, we disagree with this about regular and that they'll try to summarize it, and they try to be very brief.

Russ Poulin:

And so, they'll do that. They'll give their response. And then they will say whether there's any changes that they've made because of that, and quite often, they'll just say, no changes, but they won't get back to you personally. They'll put it in there. They are supposed to have somewhere where they can point that they get to every comment that they come in.

Russ Poulin:

I remember when [inaudible 00:53:36] was very quick and cursory in terms of how they dealt with it. So, they don't have to give a full and complete response to it. But they are very good about responding to identifying them and responding to them within the final rules.

David Schejbal:

I'm not sure I have anything to add, Russ.

Russ Poulin:

I think that probably the only other thing would be that there are times where they talk about either their philosophy or what they're trying to get trying to accomplish with these or if they're seeing that there's a ... Well, sometimes it's within the comments that they see that there's misunderstandings about part of it that they try to do that. But as much as possible, they try to do it around the comments.

David Schejbal:

Yeah.

Ricky LaFosse:

Yeah, and it sounds like far more likely to clarify in the preamble that actually make a rule change at that point if they can avoid it, of course. All right, so I think, yeah, given the time here, I think I'm going to pass it back over to Cheryl to take us home with a few more slides about our resources and I just want to thank both Russ and David for being here and sharing their vast expertise with us on this process. Thank you so much.

David Schejbal:

Thank you.

Russ Poulin:

Thank you.

Ricky LaFosse:

We lost Cheryl. Cheryl, are you still with us?

Russ Poulin:

Ricky, you want to say a little bit about UPCEA and-

Ricky LaFosse:

Sure, yeah. I think she's stuck on mute. Just trying to see if I can do anything on my end here. Yeah, so kind of go over. Well, basically what's on the remaining slides here, we did want to point out for both memberships, UPCEA and SAN, there are ample resources devoted to this topic or negotiated rulemaking and the Department of Education, higher education governance, more broadly than that. And I think most valuably, in both cases, for me personally, there are these very active communities where members through a listserv and discussion board, in the case of UPCEA, it's called that CORE, CORE. The e is lowercase there.

Ricky LaFosse:

And in case of SAN, it's on WCET mix, there are different communities that you could subscribe to. And there's a lot of people who are devoting through their work and attention a lot of time to various compliance topics, usually in the online learning, and distance education space, but also specifically for SAN as a State Authorization Network, state authorization issues. And they've really expanded in both cases to a more rounded and I guess, comprehensive set of topic areas.

Ricky LaFosse:

And I just strongly encourage without the slides here, I think Googling or just searching online for both UPCEA and WCET|SAN will bring you to those relevant pages, and you can explore those resources and communities. And I strongly encourage you to do so.

David Schejbal:

I'll just add that it's also a great place, if you're a policy wonk or a policy wonk wannabe, and you want to talk to colleagues who have the same interest and share information, both associations are really good for that. And you'll get different levels of expertise. So, you'll get people who have been around the block a few times like Russ and me, and you'll have newbies who are just starting out. And so, there's no such thing as a bad question.

David Schejbal:

And I think the participants in those forums tend to be very open and very helpful. So, I would encourage anybody who's interested in this topic or any other topic that's brought up at either association to engage because those are really good forums to learn.

Russ Poulin:

I'm going through the slides here, Cheryl. So, SAN and UPCEA both will share the slides. It has our contact information if you have additional information beyond this, and just some background about UPCEA and SAN, State Authorization Network, part of WECT, a separate membership within WECT and just letting you know that let's see, I guess we could ... SAN has some sessions coming up, Sensational Word Session in December, International Compliances Best Practices in February and a SANs basic workshop. More coming up on that in March.

Russ Poulin:

And so, with that, maybe Cheryl's there and let's see. It keeps going in and out. But thank you, Ricky for hosting us. And thank you, David, for being part of this. And thank you, David. Thank you, Cheryl. We really tried to silence her, but there we are.

David Schejbal:

Thank you, everybody. And I put my email contact in the chat if anybody wants to reach out, happy to chat.

Ricky LaFosse:

All right, thanks, everyone. Thanks for attending. Like Russ alluded to, we will follow up with those resources. If you are an UCPEA member, you'll receive those through CORE. And then for those of you on SAN, Cheryl mentioned that they'd be posted on the website. So, thanks again so much for joining us and have a great day everyone. Bye-bye.

David Schejbal:

Thank you. Bye-bye.