

2022 U.S. Department of Education Negotiated Rulemaking Proposed Changes to Distance Ed Reciprocity and Professional Licensure Rules

U.S. Department of Education Negotiated Rulemaking

Purpose

- Affected stakeholders and Department representative serve as the Negotiated Rulemaking Committee who negotiate to develop the language for regulations to address participation in HEA Title IV programs.
- The committee must vote 100% in favor of the language of each issue, which is called consensus.
- If the committee does not reach consensus for an issue, the Department may write the regulations.

2021 - 2022 Department of Education Federal Rulemaking

- Affordability and Student Loans Committee: 12 issues – 4 issues reached consensus
- Institutional and Programmatic Eligibility Committee: 7 issues – 2 issues reached consensus

Institutional and Programmatic Eligibility Committee: Issue 6 - Certification Procedures (Section 32 (34 CFR 668.14(b)))

- **Program Participation Agreement (PPA)** – Terms & Conditions to participate in Title IV to protect the integrity of the Title IV financial aid process and provide consumer protection for students.
- **Introductory Language of 34 CFR 668.14(b)(32)**: In each state where the student is located as determined at the time of the initial enrollment, the institution must ENSURE that each program eligible for title IV HEA program funds -
 - **Professional Licensure Component (ii)**: SATISFIES state educational prerequisites for professional licensure or certification required for employment in an occupation.
 - Companion regulations:
 - 34 CFR 668.43(a)(5)(v): New public notifications proposed language removes “not made a determination” option.
 - 34 CR 668.43(c): Direct Notifications to prospective and enrolled students, no change was addressed by the Department.
 - Analysis:
 - For programs to be eligible for Federal Financial Aid, the institution curriculum must meet state educational prerequisites where the students are located.
 - There is no exception provided to serve students where the prerequisites are not met.
 - **Reciprocity Component (iii)**: Institutions must comply with all state consumer protection laws including both generally applicable State laws and those specific to educational institutions except where State requirements for obtaining authorization are inapplicable pursuant to a State authorization reciprocity agreement.
 - The intent of this language was shared by the negotiators to limit reciprocity to cover only a uniform state authorization application and a uniform fee while requiring institution to comply with state consumer laws in the state where the student is located.
 - Analysis:
 - The proposed language does not identify what is required by state laws and regulations for administrative purposes versus consumer protection to obtain authorization.

- Institutions could be subject to many state rules currently covered by reciprocity. (ex. state refund policies, tuition recovery funds, surety bonds, reporting, etc.)
- Students would have additional consumer protections in some states but may lose some protections offered via reciprocity.

- **Final Results**

- Consensus Reached: Issue 1: Ability to Benefit and Issue 7: 90/10 Rule.
- Consensus Not Reached: Administrative Capability, Gainful Employment, Financial Responsibility, Changes in Ownership, and Certification Procedures.
 - The Department shared every intention of writing rules for issues that did not reach consensus.
 - The Department was clear that it would not accept written comments until the NPRM.
 - Remember that Affordability and Student Loans Committee is still waiting for 4 consensus issues to be released as proposed regulations and the future is unknown for the remaining 8 issues that did not reach consensus.

- **Next Steps and Key Dates for the Federal Regulatory Process:**

- Spring/Summer 2022- likely release of consensus language as proposed regulations subject to public comment.
 - Required review by Office of Information and Regulatory Affairs (OIRA) must review the rules for economic impact.
 - Public Comment must be offered for at least 30 days.
 - The Department must review all public comments and prepare responses.
 - Prior to release of final rules, the Office of Information and Regulatory Affairs (OIRA) must review the rules again for economic impact.
- Unknown 2022 or 2023 - Release of proposed regulations written by the Department from issues that did not reach consensus. These proposed regulations will also be subject to public comment.
 - Steps regarding public comment, comment review, and economic impact assessment are the same as previously listed above. *4/22/22 OIRA reviewing first Borrower Defense language.
- November 1, 2022- Deadline for Final regulations to be released for a July 1, 2023, effective date.
- November 2, 2022-November 1, 2023 – Release of final regulations for a July 1, 2024, effective date.

Resources

- [More Federal Rulemaking Excitement for Distance Ed Fans...and Next Steps](#); WCET Frontiers, 3/24/22
- [Excited about March Madness? Proposed Section 32 Will Excite Distance Ed Fans](#); WCET Frontiers, 3/21/22
- [Federal Policy Surprises! Updates and Call to Action](#); WCET Frontiers, 2/22/22.
- [USED Federal Negotiated Rulemaking Webpage](#) – USED webpage for policy papers, recordings, notices.
- Federal Regulations: [34 CFR 668.43\(a\)\(5\)\(v\) & 34 CFR 668.43\(c\)](#)
- [SARA Policy Manual: See Section 5.2](#)
- [Office of Information and Regulatory Affairs \(OIRA\)](#)



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