Federal Regulations: 
What happened in negotiated rulemaking?

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Presenting

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Agenda

• Negotiated Rulemaking Overview
• A Few Issues
  • State Authorization
  • Professional Licensure Notifications
  • Regular & Substantive Interaction
• Next Steps
• Other Issues & Questions
Negotiated Rulemaking
Accreditation and
Innovation

Define or revise regulations. 50+ issues identified. If don’t reach “consensus,” Department writes the rules. Three subcommittees named.

Negotiated Rulemaking Committee Structure

Education &
Innovation

Distance Learning & Ed Innovation
TEACH Grants
Faith-based Institutions

Distance Learning and Education Innovation
The subcommittee in ACTION
Distance Learning and Education Innovation

QUESTIONS? You can raise your hand!!

State Authorization for Distance Education

- Tied aid to state approval.
- Defined/recognized reciprocity.
- Confirmed primacy of “location.”
- How institution determines location.

34 CFR §600.2 State Authorization Reciprocity

The definition reverts to 2016 language

State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.
34 CFR §600.9 State Authorization
Ties to aid. Approval by state or reciprocity.

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State’s jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State’s requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State’s approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(A) For purposes of this subsection, an institution must make a determination, in accordance with the institution’s policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student’s location, including the basis for such determination; and

(C) An institution must make a determination regarding the State in which a student is located at the time of the student’s initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution’s procedures, that the student’s location has changed to another State.

34 CFR §600.9 State Authorization
Comparison of Main Provisions

<table>
<thead>
<tr>
<th>Comparison of Main Provisions</th>
<th>Delayed Regulation</th>
<th>Negotiated Rulemaking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date</td>
<td>Delayed to July 1, 2020</td>
<td>Probably July 1, 2020</td>
</tr>
<tr>
<td>Provide proof of approval in states with distance students</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Recognize reciprocity</td>
<td>Yes*</td>
<td>Yes*</td>
</tr>
<tr>
<td>Document complaint process</td>
<td>Yes</td>
<td>No**</td>
</tr>
<tr>
<td>Tied to student…</td>
<td>Residence</td>
<td>Location</td>
</tr>
</tbody>
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*The Ted Mitchell letter interpretation will be disputed.
**Solves the "California problem."
Professional Licensure

Required for current and prospective students.
Both general and direct notification requirements.
Expanded to ALL programs.

34 CFR §600.9  State Authorization

Comparisons

<table>
<thead>
<tr>
<th>Comparison of Notifications to Students</th>
<th>Delayed Regulation</th>
<th>Negotiated Rulemaking*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorization status in student's state</td>
<td>Yes</td>
<td>668.41(a)-(d)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>668.43</td>
</tr>
<tr>
<td>Complaint process for students</td>
<td>Yes</td>
<td>668.43</td>
</tr>
<tr>
<td>Tuition refund requirements</td>
<td>Yes</td>
<td>668.41(a)-(d)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>668.43</td>
</tr>
<tr>
<td>Adverse actions for an institution</td>
<td>Yes</td>
<td>???</td>
</tr>
</tbody>
</table>

*Relies on current notification process for all students; not a separate process for distance education students.

34 CFR §668.43  Professional Licensure

An institution must provide:

Notifications to all students in programs leading to professional licensure, regardless of modality, whether completion of the program will meet educational licensure requirements in a State for that occupation.
34 CFR §668.43 Professional Licensure
Institutional Information – General Disclosure

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

(5) The academic program of the institution, including—

Additional language (professional licensure disclosures):
(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

34 CFR §668.43 Professional Licensure
Institutional Information – General Disclosure

(A) A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;
(B) A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and
(C) A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification.

34 CFR §668.43 Professional Licensure
Institutional Information – Direct Disclosure

(c) Direct disclosures to students.

(1) If the institution has made a determination under paragraph (a)(5)(v) that the program’s curriculum does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program’s curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student’s enrollment in the program.
(2) If the institution makes a determination under paragraph (a)(5)(v)(B) that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

(3)(i) Disclosures under paragraphs (c)(1) and (c)(2) must be made directly to the student in writing, which may include through e-mail or other electronic communication.
34 CFR §600.9 Definitions
Distance Education and Technologies

Distance education: Education that uses one or more of the technologies listed in paragraphs (1)(i) through (1)(iv) of this definition to deliver instruction to students who are separated from the instructor or instructors, and to support regular and substantive interaction between the students and the instructor or instructors, either synchronously or asynchronously.

(1) The technologies that may be used to offer distance education include—
   (i) The internet;
   (ii) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
   (iii) Audio conferencing; or
   (iv) Other media used in a course in conjunction with any of the technologies listed in paragraphs (1)(i) through (1)(iii) of this definition.

RSI – An Instructor

(2) For purposes of this definition, an instructor is an individual responsible for delivering course content and who meets the qualifications for instruction established by the institution’s accrediting agency.

RSI – Substantive Interaction

(3) For purposes of this definition, substantive interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least two of the following—
   (i) Providing direct instruction;
   (ii) Assessing or providing feedback on a student’s coursework;
   (iii) Providing information or responding to questions about the content of a course or competency;
   (iv) Facilitating a group discussion regarding the content of a course or competency; or
   (v) Other instructional activities approved by the institution’s or program’s accrediting agency.
34 CFR §600.9 Definitions
RSI – Regular Interaction

(4) An institution ensures regular interaction between a student and an instructor or instructors by, prior to the student’s completion of a course or competency—

(i) Providing the opportunity for substantive interactions with the student on a predictable and regular basis commensurate with the length of time and the amount of content in the course or competency; and

(ii) Monitoring the student’s academic engagement and success and ensuring that an instructor is responsible for promptly and proactively engaging in substantive interaction with the student when needed, on the basis of such monitoring, or upon request by the student.

Negotiated Rulemaking Timeline

Ed Department review of language.
Release proposed language for comment.
Final language released by Nov 1 becomes effective July 1, 2020.

Negotiated Rulemaking Other Changes to Watch...

Accreditation.
- Changes to operations.
- More reliance on accreditation
- Innovation exemptions.
- Teach-outs.
Faith-based institutions.
Written arrangements.
Direct assessment.
...and many, many more.
Higher Education Act Reauthorization

A long time ago in an age called the 1960's:

Don't forget your School House Rock:

QUESTIONS????

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