



Federal Update
Professional Licensure, State Authorization, Distance Education
& Recent Supreme Court Decisions

October 10, 2024
NEXus Meeting

Meet the SAN Team



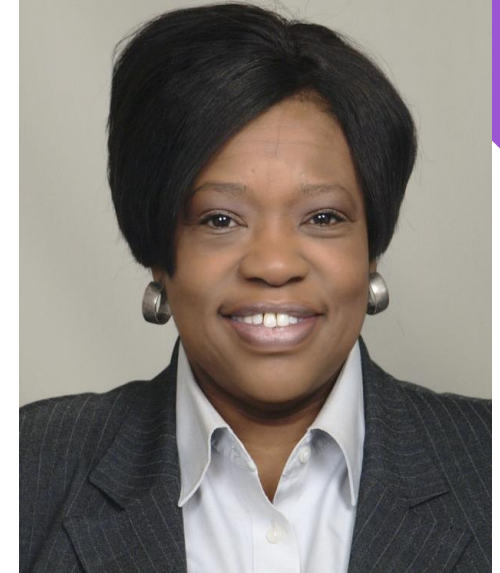
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Who we are

The State Authorization Network (SAN) empowers its members to successfully resolve postsecondary regulatory compliance challenges.

We provide expert analysis, resources and training to prepare for emerging issues, collaborate on compliance strategies, develop solutions and evaluate their efficacy.

Our members are digital learning and compliance professionals representing 800+ institutions and organizations nationally and across all sectors.



wcetsan.wiche.edu



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The State Authorization Network

The leader for guidance and support for navigating state and federal regulatory compliance for out-of-state activities of postsecondary institutions.



SAN members, log in for exclusive content.

[Login to Member Portal >](#)

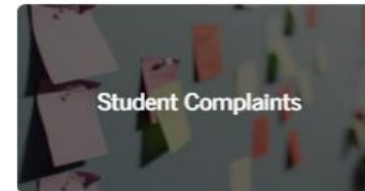
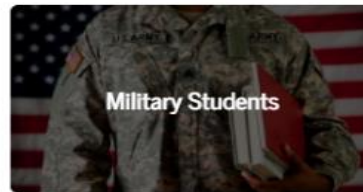
Learn more about SAN!

[The State Authorization Network \(SAN\) - Meeting an Important Need >](#)

Not a member?

[Join SAN Membership >](#)

Topic Areas





Federal Rules & Guidance

Federal Statutes, Regulations, & Guidance

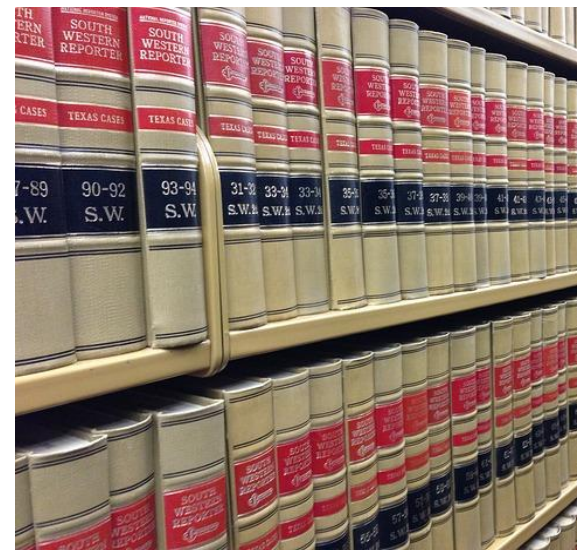
Federal Statutes - laws developed by Congress, typically with approval of the President.

Federal Regulations - rules developed by the Executive departments and agencies.

- To implement federal laws.
- Regulations have the force and effect of law and are therefore legally binding.

Guidance - represents ED's current thinking on a topic.

- Does not create or impose any requirements beyond those required under applicable law and regulations.
- Lacks the force and effect of law.



Rulemaking Process (Federal Regs)

Governed by the [Administrative Procedure Act](#) (APA) (5 U.S.C. Chapter 5)

MANY MANY STEPS!!!

- 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
- Department Prepares Proposed Rules
 - Issues reaching consensus generally become the proposed rules.
 - Issues not reaching consensus may be written by the Department.
- Department submits regulations to Office of Management & Budget (OMB) for review.
- Release of Notice of Proposed Rulemaking (NPRM); subject to public comment.
- Department must review all comments, prepare responses, and prepare final regulations.
- Department submits regulations to Office of Management & Budget (OMB) for review – AGAIN!
- Department releases 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.



ED Rulemaking in Action



Rulemaking 2021-2022

Final Rules Effective July 1, 2024

[Final Regulations for Financial Value Transparency & Gainful Employment](#)

[Financial Responsibility, Administrative Capability,](#)

[Certification Procedures, Ability to Benefit \(ATB\).](#)



Rulemaking 2023-2024

[Program Integrity and Institutional Quality](#)

Cash Management, State Authorization, Distance Education, Return to Title IV(R2T4), Accreditation, TRIO Programs

July 17, 2024 - [Update on Department of Education's Postsecondary Education Regulatory Work](#) - ED blog post, by James Kvaal, US Under Secretary of Education. The post shares the timeline for future proposed rules and to expect another rulemaking to address Third-Party Servicers.



New Regulations Effective July 1, 2024 Certification Procedures

Certification Procedures – 34 CFR 668.13 & 668.14

Program Participation Agreement (PPA)



- PPA is an agreement between postsecondary institutions and the U.S. Department of Education.
- The institution certifies compliance with specific obligations in order to participate in Title IV HEA Programs.
- The Department's goal was to strengthen the student protections within the PPA.
- The sub-issues for which we followed were among the new requirements being added to the PPA.

Related to Professional Licenses & Certification – PPA Certification

34 CFR 668.14(b)(32)(ii)

Raised the Bar When Offering Programs Leading to a License

For the program to be eligible for Title IV – the institution must satisfy state educational requirements

- Where the institution is located.
 - Where the student enrolled in distance education
 - On or after July 1, 2024.
 - Is located at the initial time of enrollment.
- OR
- Where the student attests that they intend to seek employment.

Related to Compliance with State Closure Laws - PPA Certification

34 CFR 668.14(b)(32)(iii)

**Does Reciprocity Fulfill the Requirement?
Yes, FOR NOW!**

For the program to be eligible for Title IV



(32) In each State in which:

- the **institution is located**;
- **students** are **located** at the **time of initial enrollment** who enrolled in distance education or correspondence courses

(iii) **Complies with all State laws related to closure including:**

- Record retention
- Teach-out plans or agreements
- Tuition recovery funds or surety bonds.



Negotiated Rulemaking Winter 2024

[Negotiated Rulemaking for Higher Education 2023-24](#)

Program Integrity and Institutional Quality

DID NOT REACH CONSENSUS!

*except TRIO



Rulemaking Issues

- Cash Management
- State Authorization
- Distance Education
- Return to Title IV (R2T4)
- Accreditation
- TRIO Programs *addressed by subcommittee



Notice of Proposed Rulemaking (NPRM)

Released 7/24/24

[Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs](#)

- Distance Education
- Return to Title IV (R2T4)
- TRIO Programs

Distance Education: Disallow Asynchronous Distance Education Courses for **Clock Hour** Programs

For institutions using the “clock hour” method of financial aid disbursement, they can no longer use asynchronous courses. Note that this has no impact on institutions that use the credit hour for financial aid purposes.

Distance Education: Define Distance Education Course

It is a course in which instruction takes place exclusively at a distance “notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences.”

Distance Education: Virtual Location

All students are currently assigned to a main campus, branch campus, or additional location. Propose:

Create new subset of additional location: a "**virtual location.**"

Assign students there who are enrolled in programs that are:

"...100 percent of an educational program through distance education or correspondence courses, not withstanding requirements for students to complete on-campus or residential periods of 90 days or less."

Return to Title IV: Attendance Taking

- **Require "attendance" taking** for ALL distance education courses:
 - Logins don't count.
 - Document every instance of "academic engagement," such as take a test, submit a paper, or participate in discussion on course content.
- Document student's withdrawal within 14 days of "last date of attendance."



What About State Authorization?

The [Department proposes creating section 600.9\(d\)](#) that (pages 5-6) would require that a state authorization reciprocity agreement include additional parameters for institutions to be authorized in other states.

The agreement and the institution would need to follow the proposed parameters for the institution to remain eligible for Title IV Federal Aid.

State Authorization: Reciprocity

- **Enforcement of certain state-specific laws**, regardless of participation in reciprocity.
 - Institutions are subject to applicable general-purpose state laws. (those enforceable on any business).
 - State laws related to closure, if any in a state. For each state, institutions in a reciprocity agreement would still need to follow each state's record retention or teach-out plans and pay into tuition recovery funds or surety bonds. (Unlike the 2024 regulations cited above, SARA would no longer cover these requirements.)

State Authorization: Reciprocity

- **Complaint process requirements** related to states and the national organization.
 - Permit students to complain directly to the state agency without first seeking resolution at the institution if permitted by state statutes and regulations.

State Authorization: Reciprocity

- **Limit of 500 students** enrolled by the institution in a state for two consecutive years for the institution to maintain state authorization through reciprocity.
 - More than 500 enrolled students would require individual state authorization for that state.
 - The language was brief and missing many implementation factors.

Rulemaking Next Steps



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Package #1: Distance Education, R2T4, TRIO Programs

- OMB/OIRA Review – June 17, 2024
- Proposed Regulations Released – July 24, 2024
- Comment period 30 days from the date of release of proposed regulations. (8/23/24)
- ED must review all public comments.
- OMB/OIRA review of Final Regulations.
- Release of Final Regulations
- If final regulations are released by November 1, 2024, the effective date is July 1, 2025.

Rulemaking Next Steps



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Package #2 or could be separated more: Cash Management, State Authorization, Accreditation

- OMB/OIRA Review –?
- Proposed Regulations Released - **“next year?” What about Unified Agenda date?**
- Comment period 30 days from the date of release of proposed regulations.
- ED must review all public comments.
- OMB/OIRA review of Final Regulations.
- Release of Final Regulations.
- Since proposed rules are not expected until Nov 2024, it is likely that the rulemaking process will not be completed until 2025 with an effective date of July 1, 2026.

Rulemaking Next Steps



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Things we are watching that affect the next steps:

[EO 12866 Regulatory Review](#) (OMB/OIRA)- tips us off that regulations have been prepared.

Election

Impact of Summer 2024 Supreme Court Decisions



U.S. Supreme Court Opinions

Judicial Review of Regulations

Loper Bright Enterprises & Raimondo and Relentless Inc. v. Department of Commerce.

- Overturned the Chevron Doctrine - agency interpretation deference to determine statutory authority if the Federal statute is ambiguous or silent.

Corner Post, Inc. v Board of Governors of the Federal Reserve System

- Directs that the 6-year statute of limitations for a legal challenge against the U.S. begins when the party (the plaintiff) is injured not when the regulation became final.

Take away – No regulations were immediately struck down. The rules are the rules until they are not. However, look for an increase in regulatory challenges in the near and long-term future!



Resources

SAN Website:

- SAN Getting Started with Compliance Management Gateway: <https://wcetsan.wiche.edu/resources/getting-started>
- SAN Federal Regulations Landing Page: <https://wcetsan.wiche.edu/resources/federal-regulations>
- SAN Professional Licensure Landing Page: <https://wcetsan.wiche.edu/resources/professional-licensure>
 - [Professional Licensure Handbook 2nd edition](#) (2024)

WCET Frontiers (Articles)

- [Ready or Not, Here It Comes! New Regulations When Offering Programs Leading to a License Effective July 1!](#)
WCET Frontiers, 7/9/24
- [Recent Supreme Court Decisions: Chevron, Loper Bright, and Corner Post... What Are These and How Do They Affect Distance Education?](#) WCET Frontiers; 7/18/24
- [Buckle up. ED is Off to the Races With Its NPRM](#); WCET Frontiers; 7/22/24

Your Questions?



Thank you!

Contact Us!

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