



**The Regulations and Guidance Lurking Around the Bend:
What the federal government has to say about serving
students in other states, third-party servicers, and
Artificial Intelligence**

SUNY Online Summit 2024
February 29, 2024

Agenda

- Who is SAN?
- Statutes, Regulations & Guidance
- 2023 Guidance affecting Distance Ed.
- Current Federal Regulations
 - State Authorization
 - Programs Leading to a License or Certification
- USED New Rulemaking
- USED Final Regulations
- Future Oversight of Artificial Intelligence?

Who is SAN?

- The [State Authorization Network](#) (SAN) empowers members to successfully resolve regulatory challenges to improve student protections in digital learning across state lines.
- We provide expert analysis, resources, and training to prepare for emerging issues, collaborate on compliance strategies, develop solutions, and evaluate their efficacy.

Topic Areas



wcetsan.wiche.edu

Federal Update

GOVERNMENT SHUTDOWN AVERTED..... again!



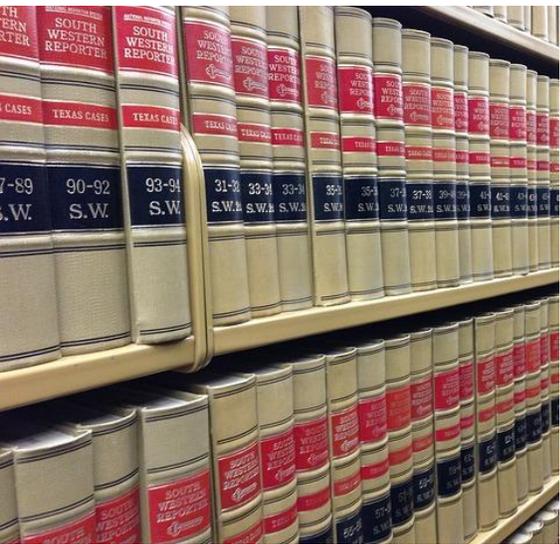
U.S. Department of Education activities, including rulemaking, may continue.

Continuing Resolution – Short-Term Funding Extension

New Deadlines:

- March 1 – Transportation, VA, Energy, Agriculture, Housing and Urban Development
- March 8 – 80 % of federal government including Education

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 the department or agency'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.

Guidance from USED in 2023



- [Accreditation and Eligibility Requirements for Distance Education](#) May 18, 2023 (COVID Waiver ended)
 - [Guidance on Accreditation and Eligibility Requirements for Distance Education](#); January 2021
- [Update to Third Party Servicer Guidance in GEN-23-03](#). May 16, 2023 (Guidance withdrawn – new guidance to be released “soon”.)
 - [Requirements and Responsibilities for Third-Party Servicers and Institutions](#); February 2023

Current Federal Regulations



Federal Regulations tie compliance to participation in Title IV HEA programs.

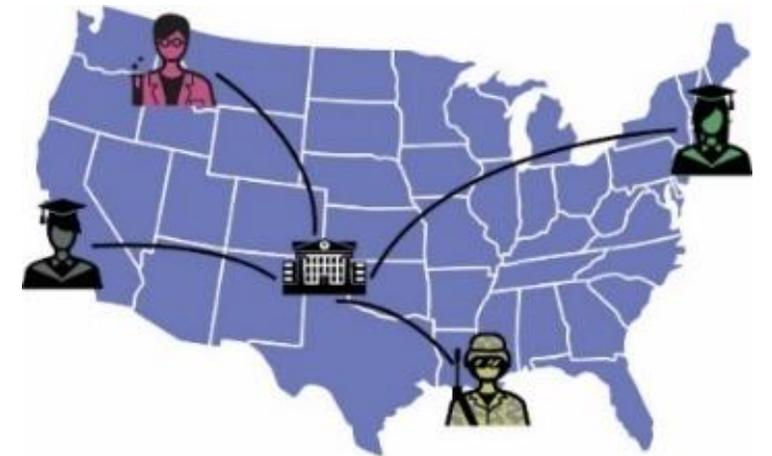
Such as:

- State Authorization
(34 CFR 600.9(c))
- Professional Licensure Notifications
(34 CFR 664.3(a)(5)(v) & 668.43(c))
- Contact information for filing complaints.
(34 CFR 668.43(b))
- Misrepresentation
(34 CFR 668.71)
- Student Identification Verification
(34 CFR 602.17(h))

Federal Regulations for State Authorization

Of Distance Education (34 CFR 600.9(c))

- Tied to Aid – Eligibility to disburse aid tied to the institution having approvals demonstrated by:
 - Direct approval by the state; or
 - Through a state authorization reciprocity agreement.
- Student Location
 - Defensible Process – Document & to be provided to the Secretary upon request
 - Determine at enrollment; or
 - Formal receipt of information from the student that the location has changed based on processes at the institution.



Federal Regulations for Professional Licensure

Notifications (34 CFR 668.43(a)(5)(v) and (c))



- 1.Regulations address **all modalities** (includes Face to Face and Online)
- 2.Educational Programs leading to a license required for employment in the occupation.
- 3.Important to know the information to be provided for public notifications.
- 4.Important to know what and when information is to be provided for direct/individualized notification.

The earliest effective date would be July 1, 2025.

USED New Rulemaking

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

Student Loan Debt Relief (loan forgiveness) - Rulemaking Fall 2023

Issue: student loan forgiveness. *Those topics are the authorities granted to the Secretary in HEA Section 432(a), which relate to the modification, waiver, or compromise of Federal student loans.*

Institutional Quality and Accountability - Rulemaking Winter 2024

Issues:

- Recognition of accrediting agencies, in [34 CFR part 602](#) and related parts.
- Institutional eligibility under [34 CFR 600.2](#) and [600.9](#) including State authorization and Reciprocity.
- Definitions related to “distance education” under [34 CFR 600.2](#) as it pertains to clock-hour programs and reporting for students who enroll primarily online.

Resources:

• [Major Changes to Distance Ed Proposed: Department of Education Back to Rulemaking Table](#); WCET Frontiers, January 18, 2024.

• [Major Changes to Distance Ed: Department of Education Rulemaking Week 2 Update](#); WCET Frontiers, February 13, 2024.

New USED Final Regulations

[Negotiated Rulemaking for Higher Education 2021-22](#)

October 10, 2023 [Final Regulations for Financial Value Transparency & Gainful Employment](#). These new regulations will become effective July 1, 2024.

October 21, 2023 [Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit \(ATB\)](#). These new regulations will become effective July 1, 2024.

Certification Procedures



- This issue is focused on the agreement between postsecondary institutions and the Department.
- The institution certifies compliance with specific obligations in order to participate in Title IV HEA Programs.
- The agreement is called a Program Participation Agreement (PPA).
- 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.

The Federal Register announcement includes the contact information for the Department staff member for more information addressing this issue. **For certification procedures: Vanessa Gomez. Telephone: (202) 987-0378. Email: Vanessa.Gomez@ed.gov.**

Related to Professional Licenses & Certification – PPA Certification

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

Raises the Bar When Offering Programs Leading to a License

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 **or**
- attests that they intend to seek employment,
- For each student who enrolls in a program on or after July 1, 2024.

(ii) Satisfies the applicable educational requirements

- for professional licensure or certification requirements **in the State**
- so that a student who enrolls in the program, and seeks employment in that State after completing the program,
- qualifies to take any licensure or certification exam
- needed for the student to practice or find employment in an occupation that the program prepares students to enter.

Related to Professional Licenses – Public Notifications

Language: 34 CFR 668.43(a)(5)(v) (bullets added for emphasis)

- (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,
 - a list of all States where the institution has determined,
 - including as part of the institution's obligation under § 668.14(b)(32),
 - that the program does and does not meet such requirements; and

* ED indicated if an institution is not enrolling students from a given state, it is not obligated to determine anything regarding that state.

Related to Professional Licenses – Direct Notifications

Language: 34 CFR 668.43(c) (emphasis added)

(c)(1) If the institution has made a determination under paragraph (a)(5)(v) of this section 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 institution in accordance with § 668.14(b)(32).

(2) If the institution makes a determination under paragraph (a)(5)(v) of this section 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**.

Related to Compliance with State Closure Laws - PPA Certification

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



Does Reciprocity Fulfill the Requirement? Probably Yes!

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.

Resources

- [New Federal Regulations, Part 1: Addressing Programs Leading to a License or Certification](#), WCET Frontiers, October 31, 2023
- [New Federal Regulations, Part 2: Addressing Compliance with State Closure Laws and the Impact on Interstate Reciprocity Agreements](#), WCET Frontiers, October 31, 2023
- [Deep Dive: Final Rules on Administrative Capability, Certification Procedures, Financial Responsibility, and Ability to Benefit](#), NASFAA, November 1, 2023
- [The U.S. Department of Education's Final Rule on Institutional and Programmatic Accountability – Regulations Summary](#), ACE, October 30, 2023

Resources for Final Regulations for Financial Value Transparency & Gainful Employment



NACUA (National Association of College and University Attorneys)

- Free NACUA Member Briefing on Oct 4, 2023 - [Financial Value Transparency and Gainful Employment Rule](#)
- Archived Webinar from November 30, 2023 for NACUA Members for a fee - [The Financial Value Transparency Wake-Up Call: Navigating a New Compliance and Business Landscape](#)

NASFAA (National Association of Student Financial Aid Administrators)

- [ED Releases Final Rule on Gainful Employment and Financial Value Transparency Framework](#)
- NASFAA Gainful Employment [web center](#)

Thompson Coburn (Law Firm with a Strong Higher Ed Division)

- [ED's New Financial Value Transparency and Gainful Employment Rule](#); Webinars held Nov 7
- [Projecting Debt to Earnings Rates Under ED's New Financial Value Transparency & GE Rule](#); Webinar Nov 14.
- Free Desk Guide: [ED's Final Financial Value Transparency and Gainful Employment Rule](#)

Artificial Intelligence

Federal Actions

- Executive Order 13859, February 11, 2019, “Maintaining American Leadership in Artificial Intelligence”
- Executive Order 13960, December 3, 2020, “Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government”
- National Artificial Intelligence Act of 2020
- AI in Government Act of 2020

White House Blueprint for an ai bill of rights

- Safe and effective systems
- Algorithmic discrimination protection
- Data privacy
- Notice and explanation
- Human alternatives, consideration, and fallback

WCET Recommendations

- Create clear, well-developed policies beyond academic integrity
- Ensure learner accessibility
- Create digital literacy centered on AI that includes a discussion of AI concerns such as algorithmic biases
- Regularly update curriculum in collaboration with industry experts
- Allocate institutional resources for training
- Engage as much of the campus community, including beyond the academic community, as possible, including students
- Create collaborative opportunities for faculty, students, and staff to explore and discuss AI
- Provide a secure environment around the use of AI that addresses data privacy and security

Resources for AI

[WCET Practice Webpage on Artificial Intelligence](#)

[Developing Institutional Level AI Policies and Practices: A Framework](#); WCET Frontiers; 12/7/23

[AI Education Policy & Practice Ecosystem Framework](#); 2023

[Championing Academic Integrity in the Age of AI: The International Day of Action for Academic Integrity](#); WCET Frontiers; 10/18/23

[The Promise and Challenges of AI in Higher Ed](#); WCET Frontiers; 8/31/23





Thank you

Contact Us!

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