



*CAAHEP/CHEA/Higher
Education Accreditation Update*

CAAHEP Summer Workshop
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Agenda

1. NACIQI
2. Recognition status
3. CHEA
4. States and accreditation
5. Negotiated Rulemaking
6. U.S. Department of Education regulatory agenda
7. Congress
8. Other federal agencies

Regulatory Triad



States



U.S. Department
of Education



Accreditation Agencies

U.S. Department of Education

- Key Staff:
 - Secretary of Education: Miguel Cardona
 - Under Secretary: James Kvaal
 - Deputy Under Secretary: Ben Miller
 - Chief Operating Officer, Federal Student Aid: Richard Cordray
 - Acting Assistant Secretary for Postsecondary Education: Michelle Asha Cooper
 - Assistant Secretary for Civil Rights: Catherine Lhamon



Policy Shift

- Hold **accreditors accountable** for:
 - Student outcomes
 - Consumer protection issues
- Return to the **regional/national** accreditor distinction
- Less flexibility for experimentation

ED ACCREDITATION

- National Advisory Committee on Institutional Quality and Integrity (“NACIQI”)
 - **Statutory Authority and Function:**
 - Established under the HEA to advise the Secretary of Education with respect to:
 - The establishment and enforcement of the standards of accrediting agencies.
 - The recognition of specific accrediting agencies.
 - The preparation and publication of the list of nationally recognized accrediting agencies and associations.
 - The eligibility and certification process for institutions of higher education under Title IV.
 - The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
 - Any other advisory function relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

ED Accreditation

- Upcoming NACIQI meeting:
 - **July 19-22, 2022** (virtual)
 - Agencies on the agenda include: CCNE, SACS, DEAC, COMTA
 - It will be the first meeting reviewing accreditors under the new regulations
 - Dashboard information will be considered as part of NACIQI's decision-making



ED Accreditation

- Upcoming NACIQI meeting (cont'd)
 - Administration policy update: “A representative from the Biden-Harris Administration will provide an update on the Administration’s higher education policy priorities.”
 - Accreditation Dashboard Subcommittee: “The NACIQI Accreditation Dashboard Subcommittee will provide a progress report.”
 - NACIQI Policy Discussion: “Committee discussions regarding any of the categories within NACIQI’s statutory authority in its capacity as an advisory committee.”

ED Accreditation

- Agencies with uncertain recognition status:
 - **Accrediting Commission of Career Schools and Colleges** (“ACCSC”)
 - Department staff recommended continued recognition for five years. NACIQI recommended continued recognition for three years.
 - The Senior Department Official (“SDO”) postponed making a decision on re-recognition.
 - SDO identified potential **compliance issues** relating to the Enforcement of Standards, Monitoring and Evaluation, and Student Achievement.
 - “Due to the emergence of information not previously considered in the record that is relevant to determining ACCSC’s compliance with the Secretary’s recognition criteria and that was not considered during the Department staff review.”
 - In particular, information regarding the SDO closure of California College of San Diego, CollegeAmerica Phoenix, Independence University, and Stevens-Henager College.
 - The closures were announced one day after the July 2021 NACIQI meeting.
 - Recognition status extended until a final decision is made by the SDO.

ED Accreditation

- Agencies with uncertain recognition status (cont'd):
 - **Accrediting Council for Independent Colleges and Schools (“ACICS”)**
 - On December 12, 2016, Secretary King terminated ACICS’s recognition
 - The decision was reversed by Secretary DeVos, granting the agency one year to come into compliance with the recognition criteria.
 - Secretary DeVos concluded that the previous administration did not consider the full record.
 - On June 2, 2021, the SDO terminated ACICS’s recognition
 - The SDO found that ACICS failed to meet the recognition criteria relating to accreditation standards, application of standards in reaching an accreditation decision, ensuring consistency in decision-making, and monitoring and reevaluation of accreditation institutions.
 - Appealed SDO decision to the Secretary
 - A decision by the Secretary has been pending since the fall of 2021.

ED Accreditation

- SDO decision appealed to the Secretary
 - Commission for Nursing Education Accreditation (“CNEA”)
 - CNEA accreditation may not be used to establish eligibility to participate in a title IV program.
 - CNEA’s “primary purpose would be the accreditation of programs at title IV participating institutions to enable graduates of those programs to sit for occupational licensure exams in certain states.”
 - SDO denied recognition because CCNEA did not meet the “**separate and independent requirement.**”
 - Secretary DeVos **reversed the SDO decision** holding that “There is no Separate and Independent Requirement for a [s]ection 602.14(a)(2) Agency.”
 - Secretary DeVos also reversed the SDO findings that CNEA did not meet the Fiscal Capability and Conflict of Interest standards.

ED Accreditation

- DCL GEN-22-07 *Written Arrangements Between Title IV-Eligible Institutions and Ineligible Third-Party Entities Providing a Portion of an Academic Program*
 - “It has come to [the Department’s]attention that institutions and their accrediting agencies do not always accurately account for the percentage of a program that is provided by an ineligible entity, including in written arrangements where the ineligible entity provides services or activities related to credit or clock hours that should be attributed to the ineligible entity, but that are instead attributed to the eligible institution.”
 - “[A]n institution’s accrediting agency is not permitted to evaluate an ineligible entity’s offering of distance education in the context of a written arrangement for Title IV purposes if it does not also accredit that entity.”
 - “When an institution offers distance education for the first time, under 34 CFR § 668.8(m) it must obtain approval from a recognized accrediting agency that has distance education within the scope of its recognition from the Secretary.”

ED Accreditation

- **Accreditation Handbook:**
 - Updated in February of 2022
 - “The purpose of this Handbook is to provide clarity to the public regarding existing requirements under the law and regulations, as well as additional clarity on guidance to accrediting agencies on the documentation for submission of a petition from an agency seeking recognition from the U.S. Secretary of Education under the Higher Education Act of 1965, as amended (HEA).”
 - Changes include updating the documentation required to:
 - Demonstrate an agency’s student achievement standards
 - Document actions taken against institutions or programs that do not meet agency standards
 - Assess whether agencies have adequate staff and financial resources in compliance with applicable regulations

ED Accreditation

- **COVID-19 flexibilities** (recognized agencies):
 - The Department is “permit[ing] on a temporary basis – but not require –accrediting agencies to perform virtual site visits during this period (even if their existing procedures do not provide for virtual visits).”
 - If an “agenc[y] implements virtual visits, they should follow-up with in-person visits to meet the statutory and regulatory requirements to perform regular on-site inspections.”
 - “The Department is offering accrediting agencies the discretion to extend the term of accreditation, for a reasonable period of time during the COVID-19 interruption, for an institution that is undergoing renewal of accreditation and was scheduled to have a site visit during a COVID-19 interruption.”
 - “[T]he Department is waiving the normal process by which accrediting agencies are required to develop, seek public comment, and enact new policies for the limited purpose of allowing agencies to implement the changes, so long as the policy changes are approved by the agency’s board (or other decision-making body).”

ED Accreditation

- **GAO Report- *Expert Views of U.S. Accreditation***
 - “Oversight Roles, Communication, and Measuring Academic Quality Could Impede Oversight“
 - Recommendations
 - Modifying oversight roles and responsibilities
 - Strengthening communication and transparency
 - Using academic quality measures and expanding accreditation options

CHEA

- CHEA standards and procedures were updated in October of 2021:
 - Changes include:
 - Requiring accreditors to “demonstrate[] that it requires an institution or program to meet all standards within a specified period of time **not to exceed four years.**”
 - Prior rule did not mandate a specified period.
 - Requiring accreditors to “demonstrate[] that it manifests a commitment to diversity, equity, and inclusion.”
 - Requiring accreditors to “demonstrate[] it ensures ethical practices in its operations.”

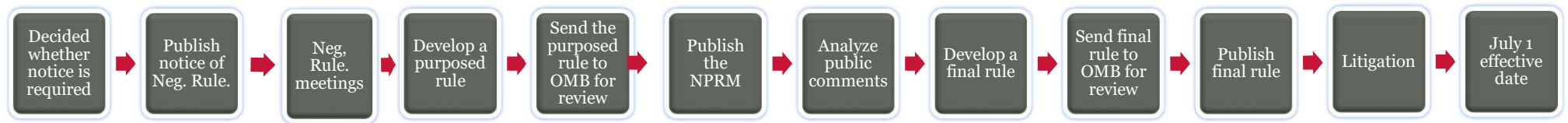
The CHEA logo is displayed within a light blue rectangular box. The letters 'CHEA' are in a dark teal, serif font, centered within the box.

States and Accreditation



- Florida -SB 7044:
 - The bill prohibits a **public postsecondary institution** from being accredited by the same accrediting agency or association **for consecutive accreditation cycles**.
 - Institutions must seek accreditation from identified regional accreditors and if they are denied by the regional accreditor, they may seek accreditation from any USDOE-approved accreditor that is different from their current accreditor.
 - The bill authorizes a public postsecondary institution to remain with its current accrediting agency or association if the institution is not granted candidacy by an accrediting agency or association before its next reaffirmation or fifth-year review date.
 - “Prior to this legislation, accrediting agencies had a monopoly on Florida colleges and universities and were able to hold a hand over the operations of educational institutions and remove objectivity from the process.” Press release from Gov. Ron DeSantis.

Regulatory Process



Negotiated Rulemaking

- What is negotiated rulemaking?
 - The Higher Education Act requires the Department to use negotiated rulemaking to develop NPRMs for programs authorized under title IV unless the Secretary determines that doing so is impracticable, unnecessary, or contrary to the public interest.
 - A negotiated rulemaking allows Department staff and stakeholders to develop a proposed rule together, facilitated by a mediator.
 - A negotiating committee usually meets for three sessions at roughly monthly intervals. Each session usually lasts three days.
 - If **consensus is reached** on a proposed rule, the Department uses that regulatory language in its NPRM.
 - Consensus means that there is no dissent by any member of the negotiating committee.
 - If **consensus is not reached**, the Department it may develop a new regulatory language for all or a portion of its NPRM.

Negotiated Rulemaking

- On May 24, 2021, the Department announced its intent to establish Negotiated Rulemaking committees to prepare proposed title IV regulations.
- “The Department is committed to advancing equitable outcomes for all students.”
- Established two negotiated rulemaking committees:
 - Affordability and Student Loans Committee (October-December)
 - Institutional and Programmatic Eligibility Committee (January-March)



Negotiated Rulemaking

- Negotiated Rulemaking Committees Comprised of Representatives:
 - Student loan borrowers
 - Minority-serving institutions
 - State Attorneys General
 - Private nonprofit institutions
 - Public institutions
 - State higher education authorizing agencies
 - Accreditors
 - Military service members and veterans



Negotiated Rulemaking

- Negotiated Rulemaking Committees Comprised of Representatives (cont'd):
 - Legal assistance organizations
 - Proprietary institutions
 - Independent students
 - Individuals with disabilities
 - Dependent students
 - Financial aid administrators



Negotiated Rulemaking

Institutional and Programmatic Eligibility Committee	Affordability and Student Loans Committee
Ability to Benefit (consensus not reached)	Total and Permanent Disability (consensus reached)
Administrative Capability (consensus not reached)	Closed School Discharge (consensus reached)
Gainful Employment (consensus not reached)	Public Student Loan Forgiveness (PSLF) (consensus not reached)
Financial Responsibility (consensus not reached)	Borrower Defense Adjudication Process (consensus not reached)
Changes in Ownership (consensus not reached)	Borrower Defense Post Adjudication (consensus not reached)
Certification Procedures (consensus not reached)	Borrower Defense Recovery From Institutions (consensus not reached)
90/10 Rule (consensus reached)	Predispute Arbitration (consensus not reached)
	Income Driven Repayment (consensus not reached)
	False Certification Discharge (consensus not reached)

Negotiated Rulemaking

- Institutional and Programmatic Eligibility Committee
 - **Administrative Capability:**
 - To provide adequate **career services**.
 - To make reasonable efforts to provide students with **clinical or externship opportunities** required for completion of a credential or licensure in the recognized occupation.
 - To not engage in **misrepresentation or aggressive recruitment**.

Negotiated Rulemaking

- Institutional and Programmatic Eligibility Committee (cont'd)
 - **Gainful Employment:**
 - To re-establish and update the 2014 GE regulations and include:
 - **A new earnings threshold metric.**
 - Modifications to both the numerator and denominator of the eligibility equation.
 - Limit institutions' ability to challenge or appeal data.
 - Changes to the CIP Code classification used to determine programs.
 - **Financial Responsibility:**
 - To revise the set of conditions that automatically require posting of financial protection.
 - To revise the set of conditions that may require posting of financial protection.
 - **Including accreditor actions**
 - To clarify that the Department may independently assess whether the auditor's concerns have been addressed or whether the opinion of doubt reflects a lack of financial responsibility.

Negotiated Rulemaking

- Institutional and Programmatic Eligibility Committee (cont'd)
 - **Change in Ownership:**
 - To narrow the definition of a non-profit institution.
 - To clarify the definition of a non-profit institution by providing non-exhaustive examples of certain arrangements that are generally not considered to meet that definition.
 - To clarify the reporting requirements for a change in ownership.



Negotiated Rulemaking

- Institutional and Programmatic Eligibility Committee (cont'd)
 - **Certification Procedures:**
 - To require an **institution to comply with all state consumer protection laws**, both generally applicable state laws and those specific to educational institutions, in each state in which the institution is located, or in which it has students
 - For **GE programs**, to limit title IV eligibility for a program to the lesser of:
 - The **minimum number of hours required for training** as established by the state in which the institution is located; or
 - **If at least half the states license the occupation, the national median** of the minimum number of hours.
 - To ensure that **all programs that require programmatic accreditation and/or licensure/certification meet those requirements.**
 - To provide additional events that will lead to provisional certification.

Negotiated Rulemaking

- Institutional and Programmatic Eligibility Committee (cont'd)
 - **90/10 Rule:**
 - To implement **revisions to the definition of federal education assistance funds** under the 90/10 rule mandated by statutory changes included in The American Rescue Plan. (90% inclusions)
 - To modify the forms of revenue included as **federal funds**. (90% inclusions)
 - Title IV & GI Bill funds, Department of Defense Tuition Assistance, and potentially other programs to be named in the Federal Register.
 - To modify the forms of revenue included as **non-federal funds** (10% exclusions)
 - State portion of any matching grants, WIOA funds, HEERF grants, non-title IV education or training programs, and programs taught off-campus, under certain conditions.
 - **Ability to Benefit:**
 - To clarify how institutions demonstrate they are offering an eligible career pathways program.
 - To clarify how states demonstrate that their “State process” application meets statutory requirements.

Negotiated Rulemaking

- **Notice of Purposed Rulemaking** (“NPRM”) published in the *Federal Register* on July 13, 2022.
- Issues: Borrower Defense to Repayment, Class Action and Arbitration Waivers, PSLF, Interest Capitalization, Total and Permanent Disability Discharges, Closed School Discharges, False Certification.
- The proposed “new regulations to make critical improvements to student loan discharge programs and to make student loans more affordable for borrowers.” (ED press release)
- The Department has indicated that a 30-day period for submitting comments regarding the proposed regulations will be open following the official publication.

Negotiated Rulemaking

- Summary of Major Provisions
 - **Borrower Defense to Repayment:**
 - Establishing a uniform process for reviewing and resolving BDR claims, no matter when the underlying student loan was disbursed.
 - Clarifying the acts and omissions of institutions that could support a BDR claim.
 - Implementing a reconsideration process for claims that are not granted.
 - Reviving a process for adjudication of claims for groups of borrowers.
 - Formalizing the role of State Attorneys General and other state officials in initiating and supporting individual and group claims.
 - Enunciating a separate process by which ED will seek recoupment from institutions for discharged loans.

Negotiated Rulemaking

- Summary of Major Provisions (cont'd)
 - **Arbitration and Class Action Waivers:**
 - Prohibiting the use of mandatory pre-dispute arbitration agreements and class action waivers.
 - Requires college to disclose records regarding arbitration and judicial decisions pertaining to BDR claims.
 - **Closed School Discharges:**
 - Providing automatic discharges to any borrower within one year of a college's closure for any borrower (1) who did not complete, was still enrolled 180 days before closure, and (2) who does not accept and complete a teach out.

Negotiated Rulemaking

- **Effective at the earliest July 1, 2023:***
 - Total and Permanent Disability
 - Closed School Discharge
 - Eliminate Interest Capitalization
 - PSLF
 - Borrower Defense
 - Pre-dispute Arbitration
 - Income Driven Repayment
 - False Certification Discharge
 - Change in Ownership
 - 90/10 Rule

* Per Master Calendar statutory requirements, a final rule must be published by November 1 in order to be effective July 1 of the following year.

Negotiated Rulemaking

- Effective at the earliest **July 1, 2024**:*
 - Gainful Employment
 - Factors of Financial Responsibility
 - Standards of Administrative Capability
 - Certification Procedures
 - Ability to Benefit

* Per Master Calendar statutory requirements, a final rule must be published by November 1 in order to be effective July 1 of the following year.

Title IX

- **Title IX** of the Education Amendments of 1972 (“Title IX”)
 - **NPRM issued** on June 23, 2022
 - The proposed rule:
 - Would **not require a live hearing** for evaluating evidence, meaning that if a school determines that its fair and reliable process will be best accomplished with a single-investigator model, it can use that model.
 - Would permit the “**single-investigator**” model.
 - Would **not require cross-examination** by the parties for this purpose but would permit a postsecondary institution to use cross-examination if it so chooses or is required to by law.
 - Would clarify that Title IX’s protections against discrimination based on sex apply to discrimination based on **sexual orientation and gender identity**.
 - Would clarify that Title IX’s prohibition of discrimination based on sex includes protections against discrimination based on **sex stereotypes and pregnancy**.

Section 504

- Section 504 of the Rehabilitation Act of 1973 **prohibits discrimination on the basis of disability** in public and private programs and activities that receive federal financial assistance, including postsecondary institutions.
- In May, the Department’s Office for Civil Rights announced that it “will solicit public comments to help decide **how best to improve current regulations** to assist America's students with disabilities.”
- “As we observe the 45th anniversary of these important regulations this month, it is time to start the process of updating them.” (Assistant Secretary for Civil Rights Catherine E. Lhamon)
- Issues surrounding mental health is a focus for the Department.

Other ED Announcements

- PPA signature requirement
- Expanded Second Chance Pell (for-profit exclusion)
- **Other expected regulatory changes:**
 - Family Educational Rights and Privacy Act (“FERPA”)
 - Religious Liberty and Free Inquiry Rule
 - Workforce Innovation and Opportunity Act (“WIOA”)



Student Loan Relief

- Student loan payment “pause period” extended to August 31, 2022
- *Sweet v. Cardona*
- Proposals for universal debt relief



Congress

- Congress voted to **increase the maximum Pell Grant** to \$6,895, a \$400 increase above the FY 2021 enacted level (for-profit exclusion)
- Pending legislation: The *Build Back America Better Act* (H.R. 5376)
- HEA reauthorization
- Potential impact of the November election

FTC

- The Federal Trade Commission (“FTC”) enforces section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.
- Under section 5 of the Federal Trade Commission Act, the FTC can seek civil penalties if it proves that:
 - The company knew the conduct was unfair or deceptive in violation of the FTC Act; and (notice)
 - The FTC had already issued a written decision that such conduct is unfair or deceptive. (prior determination)



FTC

- October 2021 announcement
 - The FTC announced that it is making a number of critical changes to its approach to address “the rampant abuse of students, veterans, their families, and taxpayers” by for-profit colleges.
 - Changes include:
 - Resurrecting its **Penalty Offense Authority**, found in section 5 of the FTC Act.
 - “FTC will be enhancing its enforcement cooperation with other oversight agencies.”
 - In addition, the **FTC sent notices to the 70 largest for-profit institutions** outlining certain unlawful practices that the FTC has previously found to be unfair or deceptive.

FTC

- The FTC determined that the **following acts or practices are deceptive or unfair** and, thus, are unlawful under Section 5 of the Federal Trade Commission Act:
 - To misrepresent the **demand for people who have graduated** from, or completed courses at, a specific institution;
 - To misrepresent graduates' **employment prospects**, the **ease with which** they'll be able to get a job, or the employment opportunities in any field in which a course of instruction is offered;
 - To misrepresent the **types of jobs available** to graduates or for which they **would be qualified**;



FTC

- The FTC determined that the **following acts or practices are deceptive or unfair** and, thus, are unlawful under Section 5 of the Federal Trade Commission Act:
 - To misrepresent the **number or percentage** of people attending any course or completing any program or degree who **have obtained employment**, or the field or nature of that employment;
 - To misrepresent how much grads will or may **earn**;
 - To misrepresent the **qualifications necessary** to get jobs in the fields for which an institution offers training, including whether experience or additional **education is required** or advantageous; and
 - To misrepresent the institution's capabilities for **helping students find employment** or the assistance actually given to grads, including the existence of job placement services.

Cybersecurity

- Gramm-Leach-Bliley Act, Safeguards Rule (GLBA)
 - GLBA requires financial institutions to protect customer financial information. (e.g. FAFSA information)
 - Colleges are considered “financial institutions”
 - GLBA is enforced by the Federal Trade Commission and is required under **Program Participation Agreements**.
 - Non-compliance can result in a find of a lack of **Administrative Capability**, placement on **Heightened Cash Monitoring**, and a loss of access to FSA systems.



Cybersecurity

- Changes to GLBA
 - The **updated rule requires** a financial institution to:
 - Prepare a **written risk assessment**.
 - Design and implement **safeguards to control** risks.
 - Designate a qualified individual responsible for overseeing and implementing a financial institution's information security program.
 - Submit an information security report in writing, regularly and at least annually, to a financial institution's board of directors.
 - Update requirements must be implemented by **December 9, 2022**.

16 C.F.R. Part 314

Resources

- NACIQI meeting: <https://www.govinfo.gov/content/pkg/FR-2022-05-05/html/2022-09582.htm>
- Accreditation Handbook: <https://www2.ed.gov/admins/finaid/accred/accreditation-handbook.pdf>
- CHEA Recognition Policies and Procedures: <https://www.chea.org/chea-standards-and-procedures-recognition>
- SB 7044: <https://www.flsenate.gov/Committees/BillSummaries/2022/html/2828>
- Title IX NPRM: <https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf>
- Unofficial NPRM on Student Loan and Affordability:
https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprm1preambleregriafinal.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Questions



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