



Final Federal Regulations & State Authorization: Ready, Set, Go!

June 11, 2020

Please Note:

The webcast will begin at the top of the hour.
There is no audio being broadcast at this time.



**National Council for
State Authorization
Reciprocity Agreements**

MHEC • NEBHE • SREB • WICHE

Welcome!

- Please use the **Question and Answer** box for questions.
 - ❖ You may type your question in your Q&A box and click send/enter.
 - ❖ If your control panel is closed, simply move your cursor on screen to open it again.
- This PowerPoint and any other resources referenced will be emailed in the next week to all who registered and made available on our website.

Presenters

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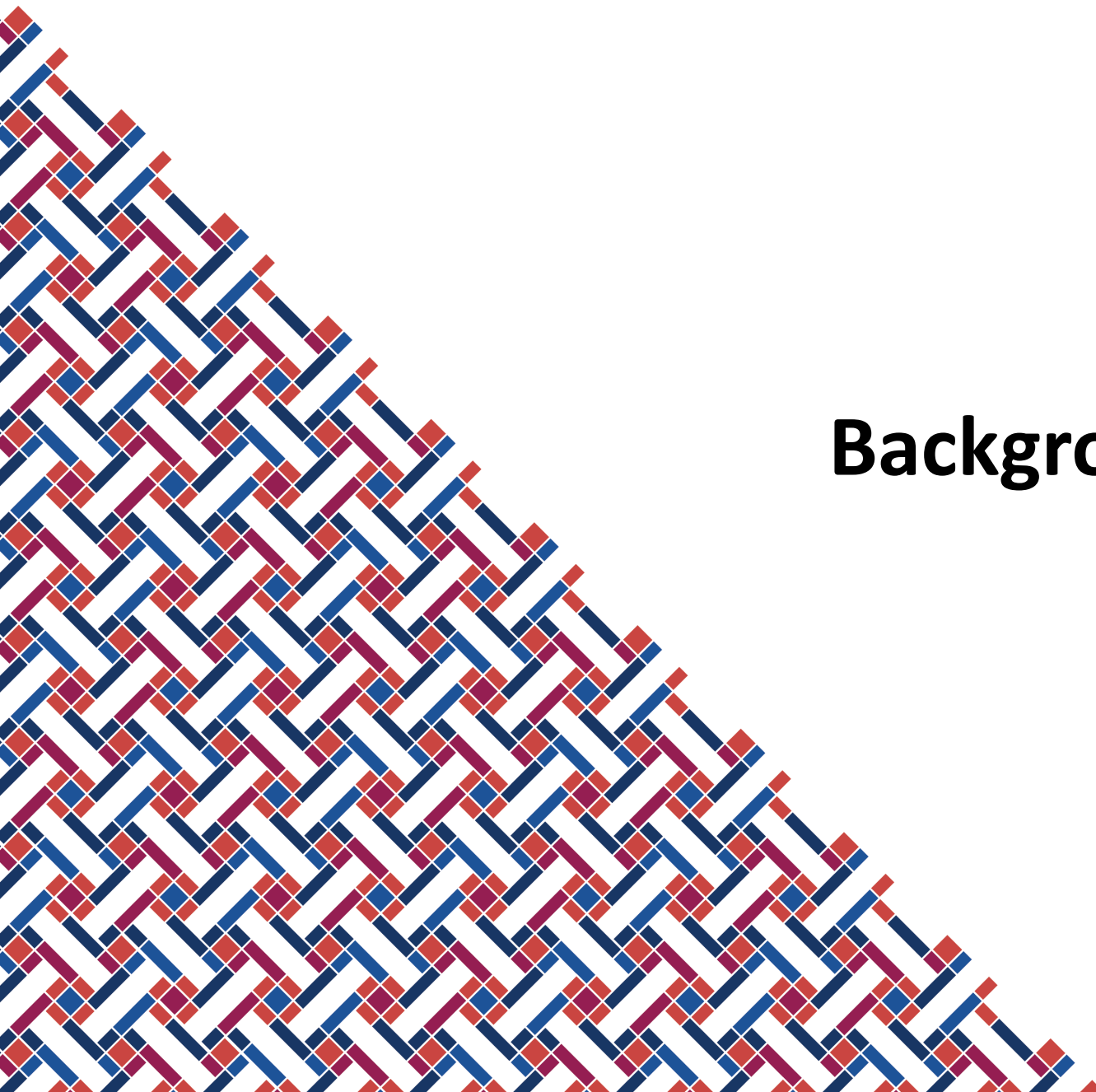


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Agenda

- Background on the Federal Distance Ed Rule
- New Authorization Requirements
- New Disclosure Requirements
- SARA Modification for Disclosure/Impact for SARA
- Compliance Recommendations
- Questions and Discussion



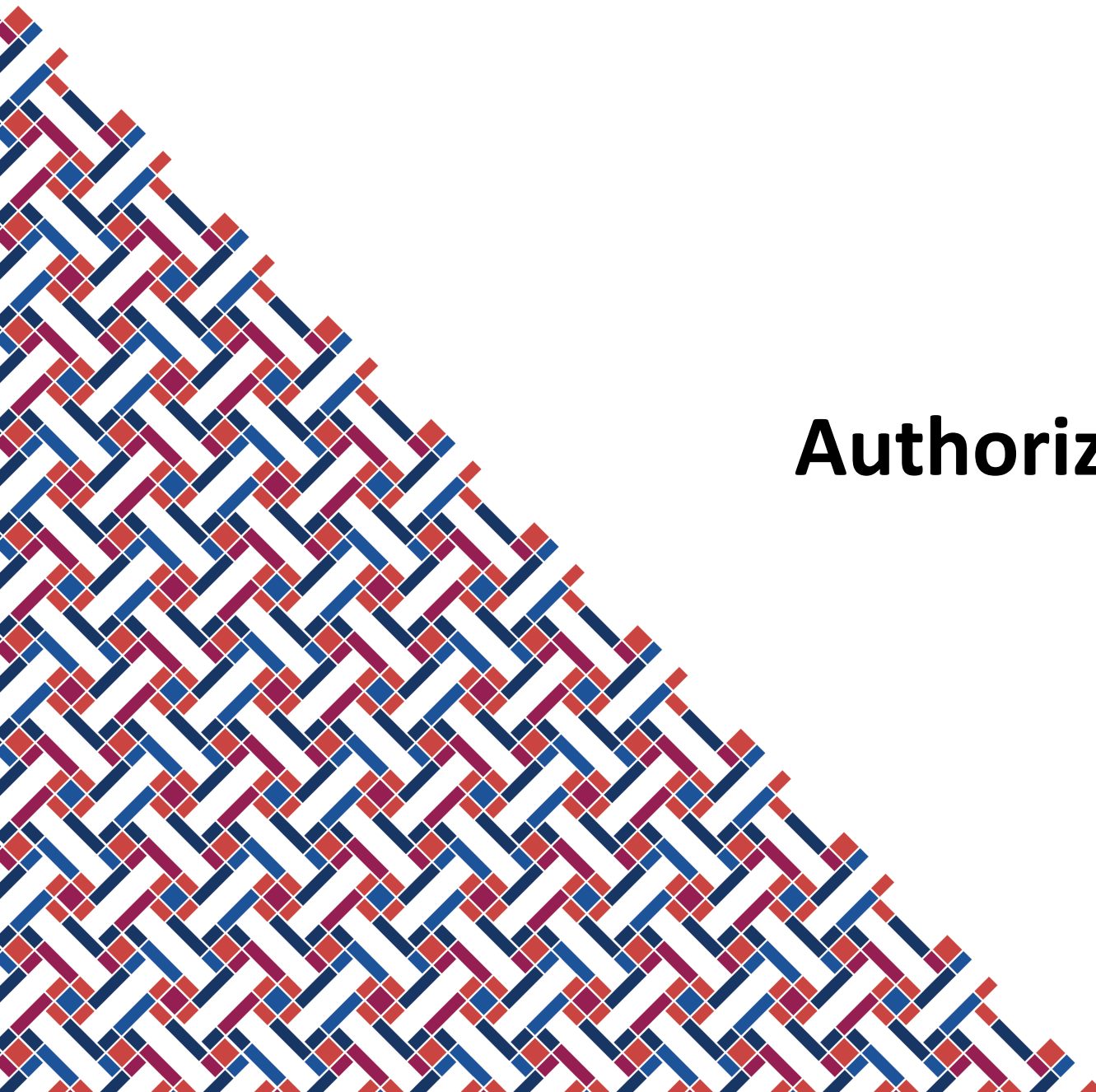
Background

Background

- Current federal distance education rule promulgated under the Obama administration in 2016
- Placed on hold by Secretary DeVos
- Legal challenge and 2016 version of the state authorization regulations, ordered into effect by a federal court decision in May 2019

Background

- ED's April 2019 negotiated rulemaking, to the surprise of many, reached consensus on the two key requirements of the state authorization rule
 - November 1, 2019 – final regulations published
 - July 1, 2020 effective date – less than a month away!



Authorization



*"We would like to request a change of venue to
an entirely different legal system."*

Authorization

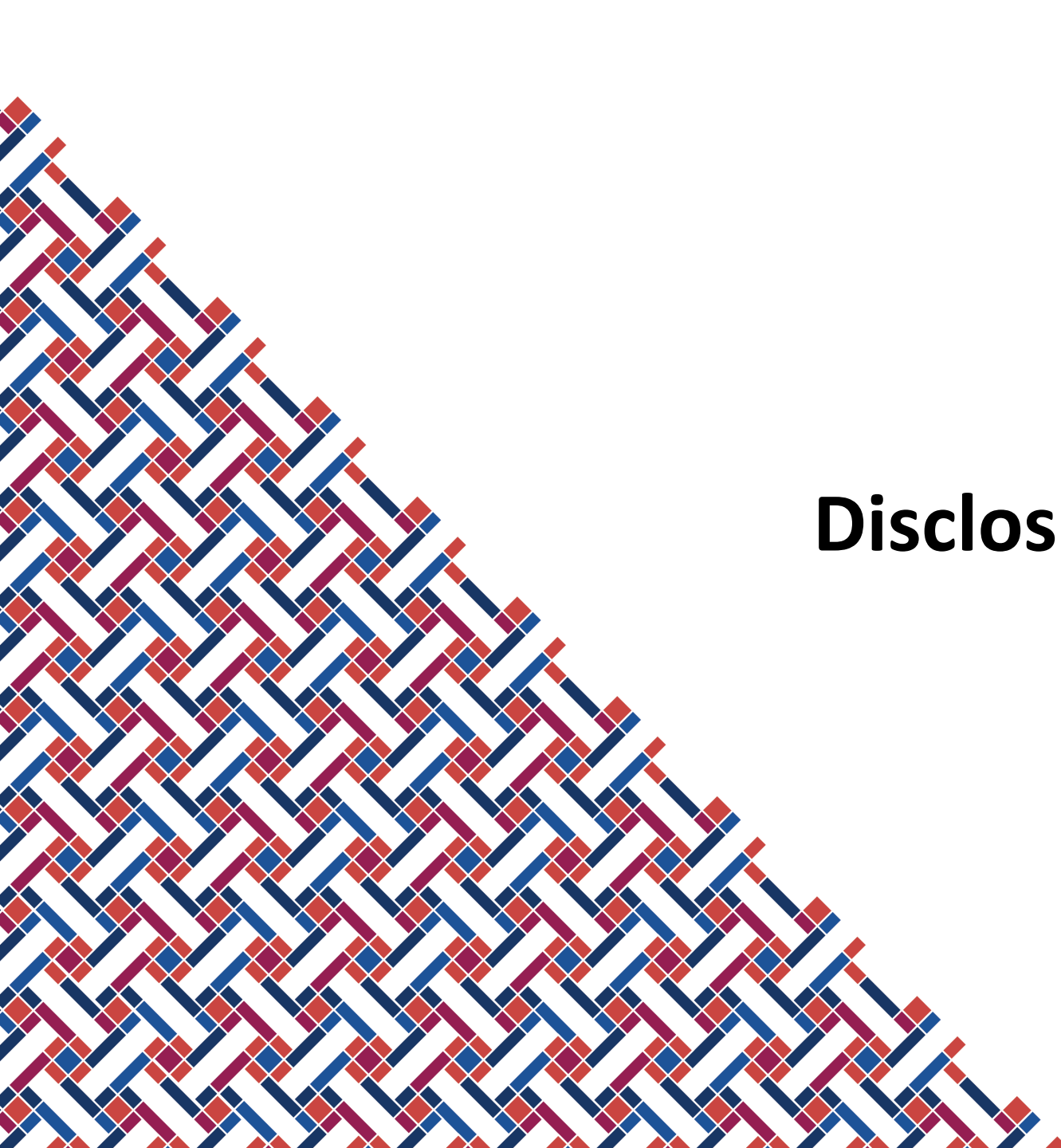
- Institutions must obtain any required state authorizations for distance education programs as a condition of eligibility to offer federal student aid to students located in such states
or
- participate in a state authorization reciprocity agreement that covers the institution's activities in the relevant state or territory
 - Currently, SARA is the only qualifying reciprocity agreement

Authorization

- The final rule eliminates the 2016 rule's requirement that institutions offering distance education courses to students in other states be able to demonstrate that such state has a process for resolving student complaints.
- Additional considerations ...

Authorization

- Penalties: institutional eligibility vs. program eligibility?
- How does the regulation define a State?
 - States and some U.S. territories
 - American Samoa, Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
 - the District of Columbia, Puerto Rico and the U.S. Virgin Islands have joined SARA
- Documenting authorization



Disclosures

Disclosures

Moved from 668.50 to 668.43

- Public disclosures for educational programs offered via distance education *and* in person:
 - Authorization by the state or through reciprocity
 - Complaint process where the institution's main campus is located, or the state where the student is located, or SARA
 - Adverse actions initiated by State entities
 - Adverse actions initiated by accrediting agencies
 - Refund Policies required by a State for an institution to comply
 - AND Professional licensure

Disclosures

- A clarifying note on adverse actions initiated by accreditors and State entities:
- “... disclosure is required only for enforcement actions and prosecutions, including those resulting from allegations of fraud or misrepresentation, where the institution can discern (based on the nature of the allegations and the progress of the case) that, if a final judgment is rendered against the institution, the institution’s accreditor would take an adverse action against the institution, its State authorization would be revoked, or its title IV participation would be limited, suspended, or terminated.”

Professional Licensure Disclosures

- Professional licensure disclosures
- Under the final rule, institutions offering programs that are either (1) designed to meet educational requirements for a specific vocational certification that is required for employment in an occupation or (2) advertised as meeting such requirements must inform both prospective and currently enrolled students of the specific states in which:

Professional Licensure Disclosures

- The institution has determined its curriculum meets the state educational requirements for licensure or certification
- The institution has determined its curriculum **does not meet** the state educational requirements for licensure or certification
- The institution **has not made a determination** that its curriculum meets the state educational requirements for licensure or certification

General publication and direct disclosures in certain cases ...

Professional Licensure Disclosures

- The final rule requires institutions to make the required professional licensure disclosures “readily available.”
 - publishing the required disclosures in their catalogs or on their website.

Professional Licensure Disclosures

- Direct disclosures to prospective and enrolled students via email or other electronic communication
 - if the institution has determined that its program's curriculum does not meet the state educational requirements for licensure or certification in a state in which a prospective student is located, or if the institution has not made such a determination, the institution must provide notice to that effect to the prospective student prior to entering the enrollment agreement
 - No acknowledgement from student required (like in the 2016 rule)

Professional Licensure Disclosures

- Direct disclosures to prospective and enrolled students via email or other electronic communication
 - Institutions are expected to notify a student within 14 calendar days of learning that their program does not lead to licensure in a state where those students are located

Let's unpack all that



"You were right—they've got one at the hotel."

Professional Licensure Disclosures

What types of programs are covered?

- When does a program lead to licensure?
- When is a program advertised as leading to licensure?

Professional Licensure Disclosures

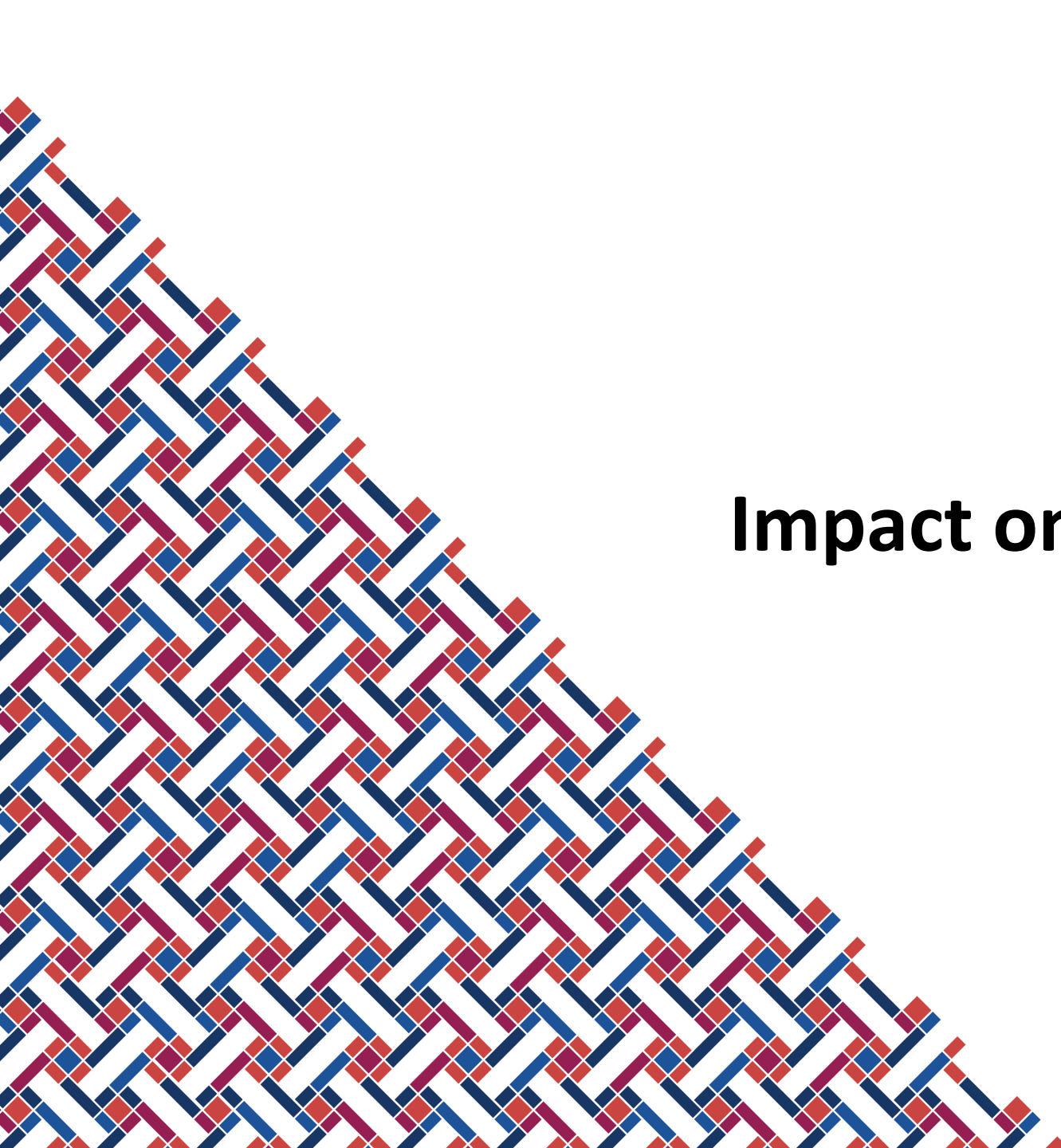
Location, Location, Location

- ED moved away from the 2016 rule's residency standard that requires institutions to determine each student's state of residency, but in practice, the rule imposes new requirements on schools to assign and track student location.
- 3 points when an institution must determine a student's location –
 - prospective students (pre-enrollment, students seeking information to apply)
 - at the time of the student's initial enrollment in an educational program and
 - when the student notifies the institution their location has changed

Professional Licensure Disclosures

Location, Location, Location

- Institutions have discretion to establish their own procedures for making that determination and how.
- Document the change of address process and consistently apply their policies and procedures regarding student location to all students, including those enrolled in on-ground programs.
 - Institutions may make different determinations for different groups of students, such as undergraduate versus graduate students.



Impact on SARA

Modifications to Align with Federal Regulations

NEW Language

5.2 Programs leading to Professional Licensure

SARA has no effect on State professional licensing requirements. Any Institution approved to participate in SARA that offers courses or programs designed to lead to Professional Licensure or certification or advertised as leading to Licensure must satisfy all federal requirements for disclosures regarding such Professional Licensure programs under 34 §C.F.R. 668.43. For SARA purposes, these requirements will also apply to non-Title IV institutions.

For SARA purposes, institutions that are unable, **after all reasonable efforts**, to determine whether a program will meet state professional licensure requirements shall provide the student or applicant with current contact information for any applicable licensing boards, and advise the student or applicant to determine whether the program meets requirements for Licensure in the State where the student or applicant is located.

Impact on SARA

- For all SARA institutions (Title IV and non-Title IV).
- **General** disclosures are now required.
- **Direct** disclosures are required when an institution knows that the program will not meet licensing requirements and when it does not know.
- Institutions are required to provide **contact information** for professional licensing boards when the institution cannot determine, after all reasonable efforts, whether their course or program will meet the licensing requirements.



Compliance Strategies

Strategies for a Successful Compliance Program

- Identify stakeholders and establish communication channels
- Develop a list of programs/offerings by state
- Develop a policy for treating student location at enrollment
- Be sure you have a way to assign locations to students in school records and make changes as necessary
- Consider your professional licensure disclosure strategy
- Annual or regular review updates

Questions & Discussion



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CooleyED Blog

<https://ed.cooley.com/>

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References

NC-SARA website: <https://nc-sara.org/>

Still have questions?

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