



Professional Licensure Requirements



Implementation Handbook for Institutional Compliance
with the Federal Regulations

(Second Edition)¹



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Introduction

Welcome to the Second Edition of the *Professional Licensure Requirements: Implementation Handbook for Institutional Compliance with Federal Regulations*. This Handbook is similar in format to the original that was written in 2020 (in response to the release of the 2019 Department of Education Federal Regulations) and includes a discussion of the requirements under the most recent Final Regulations which were released on October 31, 2023, relating to [Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit \(ATB\)](#). This Handbook addresses the new professional licensure requirements under Certification Procedures, which expand institutional responsibilities related to programs that lead to a professional license or certificate.² These federal rules directly link institutional compliance with state laws and regulations to eligibility to participate in federal financial aid under Title IV of the [Higher Education Act of 1965](#), HEA programs. The rules now reference both licensure and disclosures in the same section.

Please note that the scope of this Handbook is limited to discussion of the Department of Education (ED) regulations that relate to the additional institutional responsibilities concerning professional licensure, including previous disclosure requirements as amended, and as mandated in the Certification Procedures (released as Final Regulations on October 31, 2023, at 34 CFR § 668.14(b)(32)(ii)). Also, this Handbook is a reorganization of existing content and compilation of valuable analysis by others especially SAN and its professional licensure special interest team, NC-SARA, Higher Education Pros, Thompson Coburn, Hogan Lovells, as well as review of the Preamble to the Final Regulations. After discussion of the regulatory requirements, there are other useful resource links and boxes with practical tips, a Professional Licensure Regulatory Query for PPA Certification to aid implementation and two charts at the end of the Handbook.

Lastly, the Handbook does not address in detail the other very important institutional compliance requirements that were released in the same set of Final Regulations on October 31, 2023, including Financial Responsibility Standards of Administrative Capability or Ability to Benefit or other requirements under Certification Procedure regulations which includes programmatic accreditation and institutional closure requirements. Please see the [SAN Resource page](#) for information on these important topics.

¹ The information and suggestions presented here are offered up as possible practices for an institution to pursue as it strives to achieve and maintain compliance with the professional licensure certification and disclosure requirements in federal regulations. This is not a one-size-fits all solution because each institution is so unique; however, please use what is appropriate and practical for your institution. The information is not legal advice. Legal questions should be directed to your institution's legal counsel. An edition number has been added to reflect the ongoing promulgation of federal rules relating to higher education.

² For brevity's sake, the term "licensure" is used but be aware that it is shorthand for certification or any other type of credential that is required for an individual to work in a certain profession, as determined by a state regulatory body. This does not include credentials issued by a private organization, such as in information technology. The term "state" encompasses states, territories and other locations under the jurisdiction of ED.

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Explanation of Terms

▶ **Attestation**

An attestation is documentation that the institution maintains to demonstrate that the student located in a state that does not meet educational requirements has exercised the option to enroll based upon providing an attestation statement at the time of initial enrollment in the program that they intend to move to work in a specific state in which the institution does satisfy educational requirements.

Institutions should maintain documentation of a process to show how students were fully informed to make this attestation which could be written or electronic (but not verbal). For purposes of compliance with the federal rules only, the attestation must be collected solely at the time of initial enrollment into the program and **NOT** annually or at a different time period over the course of the students' program. The institution is not prevented from obtaining attestations at other times, for its own use.

▶ **Compact and multi-state agreements (for professional licensing purposes)**

An interstate compact is a legally binding agreement between two or more states. Similar to a contract, a compact establishes a formal, legal relationship among states to address common problems or promote a common agenda. Compacts are versatile policy tools that can be leveraged for any issue where states have a need to coordinate. Rules in each agreement or compact vary. This type of reciprocity is not related to the institution's participation in the State Authorization Reciprocity Agreements (SARA).

▶ **Certification rules**

The requirements of the Final Regulations that were released on October 31, 2023, regarding Certification Procedures, found at 34 CFR § 668.14(b)(32). The Handbook addresses only the licensure and disclosure requirements of this rule.

▶ **Department of Education**

Referred to as *ED*.

▶ **Distance education vs. face-to-face**

Vanessa Gomez from ED in an email to SAN clarified a working definition as follows: *For a program to be considered strictly face-to-face, it should not have any distance education component to it—namely, no course in the program should be offered through distance education. Distance education is defined as “education that uses one or more of the technologies listed in paragraphs (2) (i) through (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.” (34 CFR § 600.2) That being said, the requirements in 34 CFR § 668.14 (b)(32) apply only to the situation at the*

time of the student's initial enrollment, not throughout the student's enrollment in the program. In other words, if at the time of a student's initial enrollment the student was enrolling solely in on campus coursework, then the student would not be considered "enrolled by the institution in distance education or correspondence courses" under 34 CFR §668.14 (b)(32). On the other hand, if the student was enrolled in at least one online course during that first semester, then that would make the student "enrolled by the institution in distance education" and the institution subject to 34 CFR § 668.14 (b) (32).²

▶ **Higher Education Act of 1965**

Referred to as *HEA*. When passed in 1965, the Higher Education Act was "intended to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education."

▶ **Preamble**

The prefacing remarks from ED that accompany the Final Regulation that is published in the Federal Register; it lists the submitted comments from stakeholders and ED's discussion plus any revisions made to the proposed rule. The language in the Preamble is not legally binding, unlike the language in the Final Regulation; rather it is considered ED guidance and rationale underlying the Final Regulations, and subject to change without the benefit of negotiated rulemaking.

▶ **Previous rule**

The federal regulations that were published in 2019 that addressed professional licensure disclosure requirements under 34 CFR § 668.43 (a) (5) (v) and 34 CFR § 668.43 (c) that became effective July 1, 2020.

▶ **Program Participation Agreement (PPA)**

This is a legally binding contract between ED and the institution that is signed by both parties allowing the institution to provide Title IV funds to its students. There are a number of requirements that the institution certifies that it is meeting to serve students within the Title IV program. The institution certifies that it is in compliance with all the requirements (of which there are many including the recent addition of professional licensure requirements to this section of the rules). Failure to comply with the obligations of the PPA is a breach of the institution's fiduciary duty when administering federal funds and may jeopardize the institution's eligibility to receive Title IV. [Federal Register: Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit \(ATB\)](#)

² SAN has explained that the online course could even be a general education or elective course which will trigger the need for compliance with state educational requirements. <https://wcetsan.wiche.edu/resources/ready-or-not-here-it-comes-new-regulations-when-offering-programs-leading-license>.

▶ **Prospective student**

The 2019 Preamble to the previous rules provided guidance as to what constitutes a prospective student for disclosure purposes, and indicated that an individualized disclosure must be provided via letter or electronic format (e.g., email) prior to the student making a financial commitment (such as a tuition payment) to the institution or signing an enrollment agreement and if there is no enrollment agreement, then prior to enrollment in the program. Each institution needs to develop a policy and procedure that addresses the definition of a prospective student and how communications from the institution (including disclosures) are managed.

▶ **State Authorization Reciprocity Agreements (SARA)**

SARA is an agreement among member states, districts and territories that established comparable national standards for the interstate offering of postsecondary distance education for the purpose of reciprocity for state institutional approval for distance education. The four regional compacts oversee the status of state applications and the SARA Policy Manual, with support from NC-SARA. Each SARA member state has a State Portal Entity which oversees institutional issues for participating SARA institutions in that state. NC-SARA is the National Council for State Authorization Reciprocity Agreements. In partnership with four regional compacts, NC-SARA helps states, institutions, policymakers, and students understand the purpose and benefits of participating in SARA. Today, more than 2,400 institutions in 49 member states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands all voluntarily participate in SARA.

▶ **Time of initial enrollment (in the program)**

This concept is used to determine the student's location at a fixed point in time when they initially enroll in the educational **program**. The institution has latitude to develop its processes as needed to serve the institution's community. Processes may vary by institution, but they must be applied consistently across similarly situated students and the process must be documented to share with the Secretary of ED, upon request.

Institutional Motivation

While the focus here is on the practical aspects of implementation of the Federal Regulations (“Rules”), compliance professionals sometimes are faced with the question of “why” an institution of higher education should act in compliance with the various regulations that govern its out-of-state activities (known collectively as “state authorization compliance”). This issue is an important philosophical decision that only institutional leadership can make; it goes hand-in-hand with the level of risk that institutions accept regarding their commitment to compliance. It also lays the foundation for how an institution chooses to implement institutional state authorization compliance measures required by the many regulations at the federal and state levels (which include compliance with institutional reciprocity requirements under SARA), and professional licensure requirements at the federal and state level (which may include certification and disclosure regulations, state program approval and satisfying educational requirements).²

Please note that institutions that are SARA participants must be in compliance with SARA policies in the most current SARA Policy Manual. Also, institutions must still be in compliance with certain state laws of a general nature (secretary of state registration, workers compensation, etc.), ensure that the institution’s educational program meets state requirements for licensure and seek approval of professional licensure curriculum where required. Regardless of whether the institution participates in SARA, the institution must be in compliance with the applicable federal rules and state requirements including state program approval, where required, and other applicable general laws.

To encourage institutional leadership’s acceptance of and willingness to participate in compliance governing its out-of-state activities, the following institutional motivations may be beneficial.

1. Federal regulatory obligations: There are many laws that govern institutions of higher education including federal rules and state authorization related requirements. An institution that chooses to participate in programs under Title IV, HEA must operate in compliance with the federal requirements or risk losing its eligibility for federal funding. The certification rule governing the PPA requirements in Title IV establishes a direct contractual link between institutional compliance at the state level and eligibility for Title IV. Lack of compliance by the institution not only jeopardizes its Title IV funding but may directly affect students’ ability to pursue degrees that lead to professional licensure and related employment.

The new certification rule raises the bar for institutions offering professional licensure programs and “harmonizes” with the previous disclosure requirements (in § 668.43). The guiding light for every affected institution in its decision making should be the ED public policy rationale for the certification requirements under § 668.14 (b)(32); ED’s objectives are to protect students from enrolling in programs that cannot meet their education goals and stop the expenditure of taxpayer resources

² There are many other requirements that are tied to federal funding eligibility besides the certification and disclosure rules, such as federal misrepresentation regulations, borrower defense, gainful employment, public disclosures for veterans’ affairs, etc. but they are outside the scope of this Handbook. For a detailed analysis, see SAN Resource page.

for such programs, whereas the equally important disclosure requirements send information to students prior to enrollment (in the program) about where they will or will not be able to have a program meet educational requirements for licensure or certification. Institutions must determine that each academic program eligible for Title IV funds satisfies the requirements for professional licensure in the state where it is located or where students in distance education are located, or in certain limited cases when there is a student attestation (discussed later), as determined at the time of initial enrollment in the program (in accordance with 34 CFR § 600.9 (c) (2)), or it cannot offer that program in that state until it does satisfy the educational requirements.

Throughout the 2023 Preamble, ED has consistently reinforced its commitment to “improving upon the existing regulations related to certification procedures...to protect the integrity of Title IV, HEA programs and to protect students from predatory or abusive behaviors.” It also states that “the certification procedures regulations in §§ 668.13, 668.14, and 668.43 will create a more rigorous process for certifying institutions to participate in the title IV [sic], HEA programs. We expect these regulations to better protect students and taxpayers through the Program Participation Agreement (PPA), our written agreement with institutions.”³ “The Department is concerned that students who use title IV [sic] funds to pay for programs that lack the necessary approvals for licensure or certification in the States where the student wishes to work will end up incurring debt and using up lifetime eligibility for loans and grants that cannot be put toward the occupations for which they are being prepared.”⁴ ED states that this also creates the risk for significant taxpayer losses if it results in approved borrower defense to repayment claims.⁵ The 2023 Preamble further indicates that, “institutions are not required to participate in the Title IV, HEA programs, both overall and on a programmatic level...”⁶

As of July 1, 2024, professional licensure programs must satisfy the educational requirements as directed by the PPA or they will not be eligible for Title IV funding. This Rule is **not** applied retroactively. During an institutional program review by ED, compliance with the certifications made in the PPA will be audited which now additionally includes the heightened professional licensure requirements including disclosures.

³ Preamble, p. 74568, Federal Register: Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB).

⁴ Ibid, p. 74645.

⁵ Ibid, p. 74643.

⁶ Ibid, p. 74646.

2. State institutional approvals/reciprocity requirements: Oversight of higher education is traditionally considered to be a state’s right. A state can choose whether and how to regulate (and approve) institutions within its borders. When the concept of reciprocity was introduced as an option for regulating participating institutions of higher education, depending upon a state’s regulatory scheme, state legislation was required in most states. Legislation signed by the state’s governor was enacted to enable a state to adopt the terms and conditions of reciprocity membership to govern state authorization requirements for distance education. States strategically considered whether to voluntarily become a member of SARA. Every two years each state must make that same voluntary decision when it renews its SARA membership.

Institutions also have options as to how to maintain compliance with state authorization requirements so that the institution is eligible for Title IV, HEA funding. One option is to seek authorization in every state where the institution has a physical presence; this is what compliant institutions did prior to being able to participate in reciprocity under SARA. With the advent of reciprocity via SARA, member states were allowed to join via a regional compact and by agreeing to the terms and conditions of [SARA State Responsibilities](#). Member states were then granted authority to allow eligible institutions within their state to apply to become SARA participants. Because institutional SARA participation is totally voluntary, not all institutions choose to participate even if they may meet SARA requirements, for various strategic reasons.

An excellent resource for all questions related to SARA can be found on the [NC-SARA website](#); there are informative documents and webinars available that address disclosures and reporting requirements. The most current [SARA Policy Manual](#) should be required reading for all compliance team members and institutional leadership! The SARA Policy Manual is subject to updates similar to the federal and state regulations, so be sure to review the most current online version.

It should be noted that while SARA is a reciprocity agreement, it is different than the agreements for professional licensure that are discussed in the Compact and Multi-state Agreement section. Also, institutional approval is different than professional licensure program approval that may be required by certain state professional licensure boards. This is discussed in detail under *Types of state research*, below.

3. The student as consumer: As ED has articulated in the 2023 Preamble, the certification rules “strengthen consumer protections for student borrowers.” Students that enroll in programs that are designed to lead to or are marketed as leading to professional licensure by an institution have an expectation that the institution will honor its agreement by providing a program that will actually allow a student to be eligible for licensure in the state where the student is located. Failure to provide that quid pro quo for tuition dollars has caused some institutions to face legal action for breach of

contract by students. Institutions need to recognize that students are savvy consumers who expect to receive value for their tuition dollars.

4. The institution's moral obligation: It is the appropriate and right thing - to ensure that students may successfully achieve their educational objectives at your institution by having been provided full and accurate information about the programs in which they may enroll. Both the 2019 and 2023 Preambles clearly state that the challenging burden of sorting through licensing requirements should be placed on the institution that will be making the determinations again and again across multiple states, instead of on the student, and that the institutions should be the ones to work with states to determine if their programs have met or satisfied the necessary requirements for licensure since they know their content and curricula; in addition, the institution "is receiving significant sums of Federal resources to administer the Federal aid programs."⁷ Students should be provided information regarding the program's alignment with licensure requirements so that those who enroll in a program are making an informed enrollment decision and are prepared to work in their chosen profession upon program completion.

⁷ Preamble, p. 74648.

The Federal Regulations: Relevant Issues for PPA Professional Licensure Certifications and Disclosures

1. Past and present

The current certification rules build upon the previous disclosure rules by adding the new requirement of institutional certification of compliance via the PPA as well as revised disclosure requirements. Institutions must comply with the requirements in 34 CFR § 668.14(b)(32) to be eligible for Title IV funding for its professional licensure programs.

For a program to be eligible for Title IV:

- ▶ The institution must satisfy state educational requirements in each of the following states
 - Where the institution is located (this applies to both face-to-face and distance education students).
 - Where the student enrolled is in distance education
 - On or after July 1, 2024, and
 - Is located at the time of initial enrollment (in the program).
 - OR
 - Where the student attests that they intend to seek employment

The new requirements then mandate that the institution must determine that **each program** eligible for Title IV funds:

- ▶ Is programmatically accredited (if the state or a federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares students);²
- ▶ Satisfies applicable educational requirements for professional licensure 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 exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter.

Please note that the two bullets above, addressing specialized accreditation and satisfying state educational requirements, are two separate elements in addition to successfully passing the requisite exam to obtain a state license and fulfilling any other requirements that the state professional licensure board requires. There has been confusion at institutions that passage of the requisite exam, including national exams, is all that is necessary for state licensure. It is imperative that the institution research each state's requirements because many states have additional requirements beyond passage of a national professional licensure exam.

² See the SAN website for additional information.

The changes from the previous rules regarding the disclosures of an institution's determination of whether the academic program meets the educational requirements for licensure are:

- a. The institution is not required by the certification rules to list as a general (public) disclosure if the institution has “not yet determined” if its academic program requirements meet the state professional licensure board’s educational requirements; however, institutions will still want to keep such a list internally to help guide its research going forward. Most importantly, in the past, institutions could use the lack of determination as a “way to buy time” to complete the research and that **option no longer exists**.
- b. To ensure that students who enroll in and complete a professional licensure program and seek employment in the state are qualified to take any required licensure exam to practice or seek employment in that licensed occupation, institutional curriculum must actually **satisfy the educational requirements** as described above for any professional licensure programs in a state:
 1. Where the institution is located (for both face-to-face and distance education students), **and**
 2. Where it has distance education students enrolled, **or**
 - ▶ Where a student, at time of initial enrollment into the program, indicates they intend to practice (via written attestation).

Disclosures that have not changed (34 CFR § 668.43(a)(5)(v))

- a. General (public) disclosures are still required for states where programs do and do not meet the educational requirements. SARA requirements differ and the SARA Policy Manual should be consulted online for the most up-to-date requirements.
- b. Individual (direct) disclosures are still required for prospective students **prior to enrollment** in a program who are located in states that **do not meet** educational requirements or the institution has **not made a determination**.
- c. Individual (direct) disclosures are still required for currently enrolled students within 14 calendar days if the program status changes to “**does not meet**” educational requirements.

When conducting state research to determine the status of a program leading to professional licensure, an institution needs to be aware of the nuanced subtopics related to implementation of the rules for professional licensure:

- a. **The licensure requirements for an individual student to be licensed in that state, to ensure that the program prepares the individual student to be licensed; and**

b. If the institution’s educational program curriculum satisfies the state professional licensure board’s requirements so that a graduate of the institution is eligible to be licensed in that state (which may require state professional licensure board approval of the program curriculum/content).

The ED has discussed in the 2019 Preamble that its intent is not to overly burden institutions in their efforts to maintain compliance, and the drafters have purposefully provided certain latitude on how institutions may conduct their compliance activities. As an example of this intent, the Preamble states regarding the requirement for determining student location that “institutions may... develop procedures for determining student location that are best suited to their organization and the student population they serve.” (See below for discussion on the requirements for determining student location). To take this to a practical level and as is repeated in almost every SAN program, the institution

SUGGESTED ELEMENTS OF A DEFENSIBLE POLICY AND PROCEDURE

- ▶ **Written:** Clearly articulated objectives with version history (including author, policy approval process, etc.) and clearly stated definitions;
- ▶ **Approval:** By institutional leadership;
- ▶ **Communicated:** Distributed and promoted across the institution, and training provided to stakeholders (including new employees in key roles);
- ▶ **Practice follows policy:** Written documentation is kept that demonstrates that the procedure being followed is as required by the policy;
- ▶ **Documentation:** Clear, written and should be stored with other important compliance documents, in case of an audit;
- ▶ **Annual review:** Is the policy still relevant and does the practice still align with the policy? If not, revise one or both.

must have a defensible policy. This institutional discretion is still applicable with the certification rules as is the need for clear and defensible policies and procedures for implementation.

2. What constitutes a “professional licensure” program: Federal versus State regulations?

The federal rules do not provide a list of educational programs that lead to professional licensure. Interestingly, the PPA certifications and professional licensure disclosures for eligibility for Title IV, HEA funding are required by the federal rules, but the educational programs that may lead to licensure that are implicated are based upon the various state professional licensure board requirements. The boards were not involved in the negotiations, unfortunately. The language of the rules, 34 CFR §

668.43 Institutional information, under (a)(5)(v) provides the two elements of a program likely to lead to professional licensure where it refers to an educational program “**designed to meet educational requirements** for a specific professional license that is **required for employment** in an occupation, or is **advertised as meeting such requirements...**” (Emphasis added) Thus, an institution must certify compliance with the PPA requirements (34 CFR § 668.14(b)(32)) and provide the required disclosures regarding whether completion of the educational program would be sufficient to meet the respective state licensure requirements for that occupation, if the program is either:

THE REGULATORY ELEMENTS OF A “PROFESSIONAL LICENSURE” PROGRAM IN CHECKLIST FORMAT

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) (*the rules governing the PPA*)
- ▶ That the program does and does not meet such requirements; (*this is addressed under Step 7*) (Explanatory italics added)

- a. Designed to meet the educational requirements,
 - 1) For a specific license and
 - 2) Is required for employment in an occupation, or
- b. Marketed or advertised as meeting educational requirements.

3. It Depends, all over again!

Institutions and their educational programs are individually unique, and each state’s regulatory requirements are unlike any other state’s requirements, which prompted the familiar state authorization phrase, “It Depends!” This phrase applies equally to implementation of the professional licensure certification requirements under the PPA and the disclosures. Each institution must research the state professional licensure board requirements of each licensed profession in every state where it serves students to determine whether the institution’s educational programs fall within the State’s regulatory oversight for professional licensure. Unfortunately, it is not possible (and definitely not prudent) to borrow a colleague’s list of its institution’s programs that lead to licensure to use as a

shortcut to create your institution's list of professional licensure programs. Each institution must do its own institutional research based upon the design and marketing of the institution's programs to determine if the programs may lead to professional licensure in each state where students (and prospective students) of your institution are located (and possibly where it is anticipated there will be students located in the future), and where a student attests to seeking employment. This research should be conducted on a regular basis within the institution especially when new programs are being added or others are being changed or renamed. Note that institutions are no longer required to research all states unless they are serving students there.

Remember: Non-compliance with Federal Title IV, HEA regulations can jeopardize your institution's eligibility for such federal funding and may have direct consequences for your students enrolled in professional licensure programs.

4. What is the effective date of the most current rules?

The certification rules are effective July 1, 2024. The previous rules required disclosures, both general and individualized, to be in place or risk ineligibility for Title IV funding, so institutions should already be in compliance with that earlier requirement. The certification rules are stricter in that institutions are prohibited from enrolling students into a professional licensure program that has not satisfied educational requirements for a professional licensure program in a state. The institution **must satisfy educational requirements to enroll students** in states where it offers professional licensure programs. The only exception is if the student makes an attestation that they intend to practice their profession in a different state in which the institution does meet such educational requirements. Unlike the previous rules that could jeopardize an institution's Title IV funding, failure to comply with the certification rules also prohibits the institution from being able to enroll students in programs where the institution has not satisfied educational requirements. This provision will apply to new program enrollees on or after July 1, 2024. As stated earlier, the rule is not retroactive. The effective date may fall in the middle of the term of a PPA, but the institution must be in compliance on July 1, 2024 regardless of its PPA renewal date.


Details on attestations and the two types of required disclosures are discussed below.

5. PPA Practice Considerations

Institutions should be aware of some special circumstances related to PPA certification that may have a direct impact on students who are enrolled in professional licensure programs.³

- ▶ From non-binding guidance communications with ED, if a student is enrolled in one or more distance education courses during their first term, they are deemed to be a distance education

³ From Winter is Here but Summer is Coming: Preparing for July 1, 2024, Licensure Compliance, January 31, 2024, Higher Education Licensure Pros LLC, Winter is Here but Summer is Coming: Preparing for July 1, 2024, Licensure Compliance | Midwestern Higher Education Compact (mhec.org)



student. If the student is enrolled in no distance education courses and will be enrolled in all program courses face-to-face on campus during their first term (remember, the key is at time of initial enrollment in the program), that student is deemed to be located on-campus.

- ▶ If a student in a program moves after their initial time of enrollment to a state that “does not meet” educational requirements, the student may stay enrolled in that program, but an individual disclosure will be required, and the student and the program would remain Title IV eligible.
- ▶ If a state or territory changes requirements so that the institution’s program no longer meets educational requirements for licensure, the institution is not required to disenroll the students located in the jurisdiction BUT, it cannot enroll any new students in that jurisdiction until it is able to meet the new educational requirements for licensure there.

Implementation Guide

Step 1. Determine who is responsible for doing this work

Each institution has its own approach to complying with legal requirements related to their out-of-state activities. In the Title IV rules, there are two considerations that warrant discussion: Content and process. Compliance professionals possess wide-ranging institutional knowledge which enables them to be effective process leaders, ensuring that verbiage and processes are followed consistently so that the institution remains in compliance with the respective requirements. When it comes to content related to professional licensure and curriculum design, the academic departments that house the licensure programs are usually responsible for its creation and management. Collaboration between process and content experts is necessary for a successful compliance initiative, especially as it relates to professional licensure requirements. It is common for the compliance professional to function as the leader of the compliance project management team, with the team composed of other subject matter experts at the institution. As the rules continue to expand the scope of compliance and affect more departments at the institution, it may be prudent to create a Title IV Team that is dedicated to managing and accomplishing the collaborative tasks that are needed to achieve compliance. Possible collaborative roles for compliance may include:

- ▶ Compliance professional works in collaboration with professional licensure department staff;
- ▶ Compliance professional and financial aid staff work in tandem regarding PPA certifications;
- ▶ Professional licensure department staff completes the work under the oversight of the compliance professional;
- ▶ Other options: general counsel's office assistance/participation and review; outside consultants to research or manage the entire process..., etc.

Generally, communications to regulatory agencies/professional licensure boards are conducted by the compliance professional to ensure consistent messaging and to eliminate unnecessary duplicate communications with the already busy regulators.

Step 2: Gather institutional data by creating a list of ALL educational programs that potentially could lead to licensure (both face-to-face and distance education)

a. What programs should be included?

The compliance professional, in concert with academic leadership must develop a list of educational programs likely to lead to licensure. Each state has its own list of professions that require licensure, and the list can be quite extensive such as in New York. Consequently, it is important to cast a broad net to ensure that all the potential professional licensure programs at your institution that may be impacted by certification and disclosure requirements are included in this data gathering phase.

b. How to gather the program data

Because compliance professionals are used to working across the institution, this experience is beneficial for information gathering regarding the professional licensure program list (“Program List”). **Remember to create a Program List across all delivery modalities including on campus or face-to-face programs as well as distance education offerings**

c. Document Review

Before any contacts are made with other staff at your institution, it is helpful to review the information resources, such as the catalog, student handbook, and program websites to familiarize yourself with the verbiage that is used for each licensure program. Most catalogs follow a specific format which makes it easier to locate relevant information. While doing a keyword search would seem like an efficient method of determining which programs should be on the Program List, it is not an effective exercise because the catalogs are not created for the ease of the compliance professional, and consistency in terminology is generally not an objective in the creation of the catalog. It pays to spend the time actually reading through the catalog and making lists and taking notes to support the determination of what may be a professional licensure program. The selection process should be defensible.

Look for two pieces of information for each program across all modalities in this document review:

- ▶ **Is the program listed as having been designed to meet the educational requirements for a specific license required for employment in that profession, or**
- ▶ **Is the program marketed or advertised to meet the educational requirements for a license?**

If a program meets either of these, it will need to be added to your Program List. It is also helpful to indicate why the program has been added to the list, so that you can explain your rationale to others who may be reviewing the list as it is refined in this process

Some programs are straightforward such as Registered Nurse, but other programs are more general in nature and may be used as the educational foundation for a particular license, such as criminal justice and law enforcement. Be vigilant about how these more general programs are described and marketed so that they are included on the Program List, if appropriate

Other documents to review include the application and the enrollment agreement (if any), for language referring to professional licensure. Also, scrutinize institutional messaging (including social media posts) and marketing materials used by third-party vendors and online program managers. Your institution may have other documents worth reviewing and it is better to be overly broad at this step.

d. Contacting other institutional resources

Having become familiarized with the various forms of messaging and documents that describe and market the programs at your institution, it may be beneficial to contact the departments for additional details regarding the programs and related curricula. If your institution has created a Title IV Team, many of its members possess critical knowledge; if there is no such Title IV Team, other helpful contacts may include:

- ▶ Provost
- ▶ General Counsel
- ▶ Financial Aid (the professional licensure requirements are part of a financial aid audit and collaboration is critical)
- ▶ Registrar
- ▶ Institutional Research
- ▶ Curriculum Design
- ▶ Marketing Department
- ▶ Accreditation team
- ▶ The deans of the various schools or departments for professional programs such as health professions, education, law, social work, engineering, business (accounting), interior design, criminal justice, etc.
- ▶ Any other individuals who may possess useful knowledge about available reports such as an IT professional who is responsible for managing databases, etc.

It may be more efficient to have a large meeting with the stakeholders because often the synergy of the group elicits useful information. Remember: Keep your supervisor informed and work together to develop a strategy for communicating with stakeholders to ensure leadership backing and buy-in.

e. Student location and other necessary processes

An institution must develop a defensible policy and process for determining the location of the student, including at the time of initial enrollment in a program and when there is any change of location as indicated by the formal receipt of information from the student. This has been required for years and is the foundation needed for a solid compliance program.

There are numerous resources on the SAN website that discuss how to determine your students' locations. In the 2019 Preamble, the institution is granted much latitude in determining how it will gather student location data and "may develop procedures for determining student location that are best suited to their organization and the student population they serve... it is in the interest of both institutions and students to have understandable, explicit policies that pertain to the maintenance of student location determinations."

Three subsections under § 600.9(c)(2)(i)-(iii) provide additional guidance for institutions when determining a student's location:

- ▶ Subsection (i) requires that, "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." The 2019 Preamble clarified that different procedures may be used for different groups of students, such as undergraduate and graduate students, but consistent application within a group is required.
- ▶ Subsection (ii) additionally requires that "the institution must, upon request, provide a written documentation of its determination of a student's location, including the basis for such determination," and
- ▶ Subsection (iii), the 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 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."

Institutions must have policies and procedures for determining student location and notification by the student of his/her relocation to another state. If your institution does not have such policies, this should be an immediate priority because the previous rules required that they be in place, consistently applied and be available to ED upon request. The main point regarding the determination of student location, as with any compliance policy and process, is that it must be defensible, as discussed above.

With the expanded requirements of satisfying licensure requirements for a professional program offered in a state (where the institution is located, where there are distance education students, or if a student attests to an intent to work in a different state upon program completion), the institution is no longer required to complete research in all states/territories, but it also must not advertise or market any professional licensure programs in states where the curriculum does not satisfy the educational requirements for licensure.

Note that if an already enrolled student moves to a state/territory that does not meet educational requirements for their professional licensure program, the institution is not required to disenroll them and they may continue to receive Title IV funding, and the institution's program is still eligible for participation in Title IV. However, the institution is not permitted to enroll other students into the same program in that state until its program curriculum satisfies the educational requirements for professional licensure in that state.

NECESSARY INSTITUTIONAL PROCESSES

The rules provide latitude for institutions to develop processes that meet the institution's unique needs. The institution should have a process in place for the following:

- ▶ Determining who is a prospective student;
- ▶ Determining student location;
- ▶ Determining student relocation;
- ▶ Establishing a definition for time of initial enrollment in a program;
 - Determining when each program has its time of initial enrollment;
- ▶ Determining what programs lead to licensure;
- ▶ Determining if the professional licensure program curriculum satisfy the licensure requirements from the state professional licensure board for that license in each state where the institution is located and has students enrolled in distance education;
- ▶ Student attestation and documentation at time of initial enrollment in the program;
 - Determining a process for when a student changes from one licensure program to another;
- ▶ Public and individual disclosures;
- ▶ Reviewing which programs the institution may choose to offer that are not eligible for Title IV

Remember: Non-compliance with Federal Title IV HEA regulations can directly jeopardize your institution's eligibility for federal funding and impact your student's educational program.

f. Format for storing data:

Initially, the information gathered for the Program List may result in a simple list on a spreadsheet. Once it is refined, a best practice is to have a dedicated report of the Program List attributes created in the institution's report repository so that it can be easily replicated with current data. The Program List should interface with the student information system and customer relations management system to capture all enrolled and prospective students (by student location) in programs on the Program List, in real time. By accessing student level data including official email address and student location at the time of enrollment in the program, the institution will have a listing of all students by state who are enrolled in a program potentially leading to licensure and who should be receiving the professional licensure disclosures. The previous rules indicated that communication of disclosures via email is acceptable and by generating this Program List to the student level, the institution will have a list of the student emails that are to receive the required disclosures by state. Once the emails are sent with the appropriate disclosure(s), retain evidence of the email content, list of recipients, etc. Remember: **Documentation, documentation, documentation!**

Institutions that have created this type of Program List report for compliance purposes have found collateral benefits of the data in other areas such as student services, career services, etc.

g. Ongoing involvement:

As other staff at the institution are made aware of the need for this data, it may result in the involvement of the compliance team in other institutional activities on an ongoing basis. One aspect that may be useful is being part of the curriculum approval process. What process does the institution use to approve new or revised curriculum? Is there a form for new or revised programs that has a check box for programs that may lead to professional licensure? If so, that information should be made readily available to the compliance team. If not, compliance with the rules is a good reason to have one added, along with routing to the compliance team. Likewise, when the institution is preparing for an accreditation review, it is very beneficial to have a compliance professional as part of that team. Another area for continued involvement is in the marketing approval process to ensure that the Program List is updated and complete. The compliance team may be asked to participate in policy and procedure development for topics such as student location tracking, receipt of student notification upon relocation to another state, and student attestations, and will derive benefit from its involvement.

Developing a system to address the constant changes at the institution whether it be staff or curriculum or urls on any compliance related postings is a critical element of a successful compliance program. A policy and procedure on the frequency of url review and updating is useful. Other suggestions include an annual audit process (consistently applied and documented) of the Program List and any new programs or curriculum changes to programs that may cause the program to fall within the realm of professional licensure (which includes both face-to-face and distance education offerings).

Step 3: Strategically prioritize state research

a. Types of state research

As discussed earlier, each state determines the scope of licensure for institutions operating within its borders. Regarding higher education and professional licensure oversight, this can include possibly three distinct areas of state regulation by multiple state agencies:²

1. The professional licensing board in a state may require that an academic program curriculum leading to licensure must meet the boards' requirements for a graduate to be eligible for a license, and
2. The professional licensing board publishes criteria including state educational requirements that an individual graduate must meet to be eligible for a license.

² The term "higher education agency" covers all the various titles for state agencies that grant state authorization/approval to operate within its state whereas the term "professional licensure board" covers all the various titles for the state agencies that regulate the many professions that require state licensure within its state.

3. Generally, for non-SARA institutions, the higher education agency grants initial state authorization approval (which may involve the review of all programs offered in that state, not just those related to professional licensure).

Each state may have different standards and requirements for occupations that require a professional license. The Preambles of both sets of rules have made it clear that the institution, not the student, bears the burden of researching educational requirements for licensure. All institutions **must conduct research** on state regulatory requirements for professional licensing requirements to determine:

1. The requirements for an **individual student to be licensed** in that state, and
2. If the institution's educational program curriculum meets the state professional licensing board's requirements so that a graduate of the institution is eligible to be licensed in that state (**which may require state board approval of the program curriculum/content**).

The third possible area for state research is dependent upon whether the institution is a SARA participant or not; if not, additional research may be needed to obtain initial state authorization which is different than professional licensure program approval and satisfying professional licensure educational requirements. If the institution is a SARA participant, it is advised that the institution ensures that its presence in a state does not exceed the scope of SARA and that the institution is complying with SARA Policies, even though its distance education activities outside of professional licensure requirements are most likely covered by SARA.

See b.2 below for a discussion on the collaboration between state higher education agencies and state professional licensure boards, as demonstrated in Kentucky. The focus of this Handbook is on professional licensure research, not research relating to state authorization approval.

b. Where to start?

Conducting research on both licensure requirements and program requirements for each profession that potentially leads to licensure across the country is a daunting task and institutions have outside resources to assist with it, whether it's helpful guidance or actually hiring an outside service to research and track state professional licensure requirements. See the **Resources** list below.

Now that there is a Program List created (see above), there are some options for first steps. Be aware that the prioritization of state professional licensure board research may be a business decision and it is always wise to involve institutional leadership in the decision, including the general counsel when any type of risk assessment is needed.

Possible considerations when deciding which states to research first prior to enrolling students in that state include:

- ▶ Border states;
- ▶ States from which the institution has received enforcement communications regarding noncompliance with professional licensure board requirements or from where a student has been denied the opportunity to sit for a licensure exam or be licensed;
- ▶ States where a favored program has high enrollment based upon current student location data;
- ▶ States with an extremely large enrollment across multiple programs based upon student location data;
- ▶ States where there has been aggressive enforcement activity by one or more professional board(s);
- ▶ States where the institution has future plans to heavily market any particular programs (remember, the institution cannot market its program to a state unless the program satisfies educational requirements);
- ▶ States where the compliance team has past experience or a good relationship with the regulator;
- ▶ States where there are many prospective students;
- ▶ If there is no clear decision from the above options, sometimes the decision is based upon which institutional contact in a department that offers licensure programs will champion the work of the compliance team and ensure a first success for the institution.

Based upon the most immediate need, start the research by determining if that program is indeed required to be licensed in that state. This is not always easy or straightforward, but an internet search may help in determining if licensure is required in a state.

1. Requirements for an individual to be licensed: Once a direction has been selected, proceed to the state professional board website that regulates the licensure program offered that you are reviewing to determine what educational qualifications a licensure applicant must possess. For example, some states do not allow a BSW to be licensed, but an MSW may be licensed. This is important information for the student in a social work program.

It is also critical to document if there are any non-educational circumstances that could prevent licensure, such as age, residency, criminal history, etc

2. Requirements for professional licensure educational program approval: The majority of states do not require a separate professional licensure program approval process but it is within a state's right to regulate activities within the state, and some do choose to conduct a professional licensure program review and require program approval, as shown with the example from Kentucky, below. This involves the additional review of professional licensure program/curriculum and approval by the

professional licensure board and is distinct from institutional state authorization approval. To offer professional licensure programs in states that require professional licensure program approval, an institution must seek and obtain the professional licensure board's approval of the curriculum and design of the professional licensure program **AND** satisfy educational requirements for licensure to comply with the certification rule. The **two requirements must both be met** for an institution to be deemed to have satisfied educational requirements for an individual to be licensed in that state.

A thorough review of the website is the best place to start to determine if the educational program content must be approved by the state professional licensure board; the website may list the requirements if the program or curriculum must be approved before a graduate is eligible for licensure in that state. If this information is not readily available on the website, communication with the professional licensure board may be necessary.

Kentucky is one such state that requires program approval for its educator preparation in the [Division of Educator Preparation, Assessment, and Internship](#). It lists the following information about the standards required for program approval:

*The Education Professional Standards Board has the authority and responsibility to “set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel” for Kentucky pursuant to KRS 161.028(1)(b). **Programs that could lead to educator certification or licensure in Kentucky must be approved by the EPSB.** The EPSB’s process for approving educator preparation programs is generally set forth in Kentucky Administrative Regulations (KAR). Specific requirements for educator preparation programs located out-of-state and on-line are set forth in 16 KAR 4:03*

In order for the EPSB to approve educator preparation programs which are located out-of-state or are exclusively offered on-line, the educator preparation program will have to demonstrate compliance with the following Kentucky requirements:

- ▶ Demonstrate that the program of preparation has been accredited or approved, as applicable, by the provider’s state of origin;
- ▶ Demonstrate that the program of preparation has been regionally accredited;
- ▶ Demonstrate that the program of preparation has been accredited by the Council for Accreditation of Educator Preparation (CAEP);
- ▶ Demonstrate that the program of preparation is not based only upon the completion of a written or verbal assessment;
- ▶ Demonstrate that the program of preparation has a selection and admission process that meets the requirements of 16 KAR 5:020;
- ▶ Demonstrate that the program of preparation complies with 16 KAR 5:040 as it relates to the admission, placement, and supervision of teacher educator candidates in student teaching subject to the field experience limitations set forth under SARA.

OR

- ▶ Demonstrate that advanced teacher programs of preparation reflect alignment with Teacher Leader Model Standards as required in 16 KAR 1:016.

OR

- ▶ Demonstrate that the educator administration programs of preparation reflects the applicable Kentucky Administrative Regulation (Chapter 3).

For those out-of-state providers and on-line providers seeking program approval from the EPSB will need to submit documentation demonstrating compliance with the requirements set forth...

The documentation will be reviewed in accordance with Section 22 of the 16 KAR 5:010 with a recommendation presented to the full EPSB. The EPSB will then approve, approve with conditions, or deny approval of the program at one of the Board's regularly scheduled Board meetings. EPSB staff will communicate that decision to the program provider seeking approval of that program.

Please note that the EPSB is also responsible for setting standards necessary to ensure the consistency and quality of classroom and field experiences including early practicums and student teaching experiences in accordance with KRS 161.028(1)(b)(5). The EPSB approves these field experiences and student teaching as part of educator preparation programs. The EPSB does not review and approve field experiences and student teaching separate from educator preparation programs. Emphasis added.

While the majority of states currently do not have a separate program approval process for certain programs that lead to professional licensure, it is within the state's right to do so. It is imperative that institutions verify if program approval is required in states where it offers professional licensure programs to students. Again, program approval is not the same process as state authorization approval; in some states such as Kentucky, there is coordination between the licensure board and its higher education agency, the Kentucky Council on Postsecondary Education (CPE), before either entity approves the institution.) Kentucky also coordinates its approval of nursing programs by the Kentucky Board of Nursing and state authorization approval by the CPE. However, there are other professional licensure boards in Kentucky that do not approve programs such as social work but have educational requirements that must be satisfied to license individuals in that field.

Each state has unique requirements on whether it requires academic program approval for professional licensure programs as well as specific educational requirements that must be satisfied for an individual to be licensed, and these are separate and distinct from any requirements relating to state

authorization approval of an institution. The key point is that if the state requires program approval for a licensure program and the institution has students enrolled in that program in the state, it must have the program approved **AND** satisfy educational requirements for the individual to be licensed, to be in compliance with the certification rules.

Remember that compliance with the rules is based upon satisfying certain **state** requirements, such as program curriculum approval, even though the rules were issued by the **federal** government, and failure to be in compliance with federal requirements (including professional licensure certifications and disclosures) can place an institution's eligibility to participate in Title IV programs at risk as well as jeopardize a student's educational program.

c. How to effectively conduct state research

As with any activity involving regulatory research, it is critical that the compliance professional independently conducts his/her own research by visiting professional licensure board webpages and reading relevant state regulations such as practice acts, reviewing professional board meeting minutes, using resources such as SAN, etc. before contacting the regulator for assistance. A spreadsheet or shareable and secure database is useful for managing this research data.

As a best practice, once thorough research is completed, it may be an appropriate time to consider contacting the state professional licensure board via email for confirmation of your opinion, based upon the research (it helps to quote the relevant verbiage) or for additional guidance if unsure after thorough research. If it is necessary to communicate via phone, follow up with an email confirming the content of the call. The email serves as evidence of the contact and guidance given, so be sure to save each communication in an organized fashion (i.e. retrievable when needed).

Similar to state higher education regulatory agencies, state professional licensure boards are overworked and understaffed. Professional boards were not involved in the creation of the federal regulations so it is possible that an individual staff member is unaware of the purpose of an institution's inquiry regarding professional licensure requirements. A brief explanation of the purpose of your communication may be helpful.

Whether an institution chooses to confirm its understanding of the licensure requirements in a state is a matter of risk assessment. Institutional counsel and/or senior leadership may prefer a risk-averse approach and choose to contact the boards for 100% certainty. Other institutions may feel comfortable in the confidence of the assessments of the institutional staff and program determinations. Neither approach is inherently superior to the other. The institutional leadership should determine the approach they would like to take, being mindful that an error in determination will fall to the institution and expose it to liability for the consequences. Either way, thorough documentation is critical regarding how and by whom the determinations are made.

STATE RESEARCH TIPS

1. While not to be relied upon for all information, some professional licensure association websites can provide a general level of information that may be helpful, especially for contact information or even links to the professional board websites. See below in Resources.
2. Some states' professional licensure boards grant special status, such as exemptions, to programs that have a specialized accreditation, such as social work accreditation by the CSWE.
3. Consider hiring an outside consulting service to conduct the research for your institution.

Step 4: Compare the institutional data to the state requirements

One easy approach is to use a basic spreadsheet to manage this research data. If the institution has IT resources available, a dedicated and interactive regulatory information management system can be created to house all the data (and it can be integrated with the student information system and the customer relationship management system); ease of access by institutional staff is also an important consideration if pursuing an IT solution. This system is also a good repository for compliance documents such as copies of faculty licenses, etc. Be aware of who has which type of access to the documents (view, edit, etc.) Having IT involvement in creating a repository also enhances security.

a. For individual licensure:

Create a matrix by program with each educational requirement that a candidate for licensure must possess on one axis. Compare the institution's curriculum with the state educational requirements and highlight any gaps.

Institutions must be aware of the risk in enrolling students who have some non-educational impediment to licensure and should provide information on non-educational state requirements. Students will benefit from being made aware of requirements such as criminal background checks, age, residency, etc. As a best practice, this information should be provided to the prospective students so that they can determine if they will meet the non-educational requirements prior to enrolling in the professional licensure program.

b. For educational program approval:

As has been mentioned numerous times, some state professional licensure boards require program curriculum approval before allowing a graduate to be licensed, even if the graduate has met all the other requirements. This is NOT a new requirement and institutions that fail to seek approval of their educational programs face penalties from the professional boards, which can be serious and costly.

In addition, the regulatory staff in the board offices frequently communicate with their counterparts in other board offices, which can impede an institution's ability to quickly seek approval from other agencies, as the institution's visibility is increased, and the boards are suspect about the institution's motivation and commitment to compliance. Failure to comply can put the institution in jeopardy on a number of levels such as claims of misrepresentation, SARA non-compliance, etc.; plus, the institution must make the general disclosure that the program does not meet licensure requirements under the rules. Do not try to ignore this step!

For programs that must receive professional board approval in a state, create a matrix by program with a list of each of the educational program curriculum requirements listed in a box on the vertical axis and the institution's programs across the horizontal axis (add extra columns for each program that is licensed by a particular professional licensure board, such as RN, APRN, etc.) For example, a state nursing board may require that the institution's program hire faculty licensed in the state where the students are located. The list of faculty teaching in that state can be entered under the program and some mark to indicate their licensure status. Compare the state requirements to your institution's curriculum, item by item. Highlight any gaps, such as lack of required state licensure, for follow-up with the department.

It is helpful to review the boards' definitions and scope of practice acts and ensure that the terms have the same meaning at your institution when analyzing the state educational requirements.

Mark those items that need clarification, are listed as gaps, or require additional research with either the academic department or the regulator; ask the department first for clarification before contacting the regulator. Again, best practices suggest that all communications be via email to ensure a paper trail. Be thorough and persistent!

Step 5: Do Compacts and Multi-state agreements apply?

The Department of Education's overriding policy concern behind the rules is that students who complete a professional licensure program are able to meet licensure requirements in their state and work in their chosen field. The 2023 Preamble discusses an alternative for institutions to consider for satisfying state educational requirements, via a multi-state agreement such as through reciprocity (this is different than institutional approval via SARA). Reciprocity or the use of a multi-state compact means that the student has satisfied licensure qualifications (full or provisional, where provisional licensure is an option) in one member state (e.g., their home state) and is using the agreement between the various states to be able to work (practice) in another member state, without separately seeking licensure in that other state. The objective of these types of agreements is to enhance interstate professional mobility for those who have achieved initial licensure, not to satisfy federal professional licensure requirements.

A key distinction is “licensure” versus the “privilege to practice.” The regulations are clear that the institution’s program curriculum must satisfy the educational requirements for licensure; whereas the concept of using a multi-state compact or professional reciprocity agreement to be able to practice outside the home state is mentioned only in the 2023 Preamble and does not carry the weight of law. The terms and requirements of these types of agreements can vary considerably so it is imperative that the institution understands the nuances and is able to make direct and applicable comparisons when using this method to demonstrate compliance with the regulations. If the institution chooses to use this method, it is critical that it **document, document, document** the steps it took to reach its decision that its curriculum satisfies educational requirements for a professional licensure program. Also, remember, because the Preamble is simply guidance, it is open to interpretation and may change over time if ED releases differing guidance. The institution may be liable if its determination is not supported by sound data and factual analysis.

Regarding licensure through reciprocity, the 2023 Preamble states that “in such situations the student obtains a license in a different State, but there is an agreement that allows them to use that license elsewhere. We believe that such situations would address the Department’s policy concern, provided that the student obtain a license that through reciprocity allows them to work in the State covered by the requirements in § 668.14 (b)(32) (ii). This could include both a full license as well as a provisional one.” The reference to “provisional licensure” refers to situations such as in teacher preparation where the student must complete a minimal number of courses that address state history or culture, if they are seeking a pathway to licensure via the new teacher Education Compact. In ED guidance, it stated “in order for reciprocity to meet the requirement for a program to satisfy the applicable educational requirements for licensure, the completion of the program must qualify the student to sit for a required licensure or certification exam, or find employment in an occupation immediately upon completion of the program.”³ Thus, this provides another option for the institution to consider when analyzing its program curriculum relative to state educational requirements for licensure.

The concept of reciprocity or compacts has been growing in recent years. SAN provides for its members current resources regarding compacts and reciprocal agreements on its [website](#). Information on the various occupational licensure compacts can also be found here:

[What are Interstate Compacts? – National Center for Interstate Compacts | The Council of State Governments \(csg.org\)](#)

Step 6: Attestations

Based in ED’s public policy philosophy about the goal of employment for students in professional licensure programs, and new in the certification rules is the limited option for an institution to enroll a student after July 1, 2024 in a professional licensure program in a state in which it **does not meet**

³ Certification Procedures Regulations Questions and Answers

educational requirements **only** if the student makes an attestation at the time of enrollment in the program that they intend to move to work in a specific state in which the institution does satisfy educational requirements. Stated another way, for students who enroll in a program on or after July 1, 2024, your institution is not to enroll students in programs in states where the institution does not satisfy state educational requirements in the state where the student is located at the time of initial enrollment unless there is a written attestation from the student that identifies a different state where they will seek employment and the institution can satisfy educational requirements in that state.

The 2023 Preamble lists some keys for institutions regarding attestations. First, the institution needs to have a systematic approach regarding the attestation process which should include a written policy and process. The attestation document alone is not sufficient per the 2023 Preamble. ED will be looking for supporting information that demonstrates that the institution has been transparent and clear about the eligibility for the student to enroll in a state in which it does not satisfy educational requirements, to show that the student did understand and voluntarily made an informed decision about their attestation. The student chooses the state where they intend to work, not the institution. Documentation of how the information was provided to and understood by the student is critical. There should be evidence of student interaction, not just an electronic “click-through” process. In addition, an institution will need to ensure the attestation is in writing and well documented because ED may request to see it during a program review. The attestation must indicate which specific state that the student has selected and intends to move to for employment and the institution’s professional licensure program curriculum must satisfy the destination state’s educational requirements for licensure. Institutions must be vigilant that their process for attestations does not come across as forcing a student to choose a particular state as their intended state for employment; it is the student’s decision. Also, the attestation is NOT a waiver of institutional liability and must not be written as such. The institution (not the student) is still responsible for making the determinations about which states its programs meet educational requirements.

Institutions must have policies and processes that address the various times of initial enrollment in programs. Some programs may not begin until after completion of general education requirements, such as in the junior year whereas others may begin in the student’s first year. When students move between the programs when changing a major, based upon the time of initial enrollment, the requirements may be triggered for disclosures as well as the opportunity for an attestation. According to ED guidance, when a student who is switching programs is enrolling in a distance education program and the institution determines that the program will not meet educational requirements for licensure in the state where the student is currently located, the institution cannot enroll the student in the program. Note that the only way a student can be enrolled in a professional licensure program that is eligible for Title IV funding in a state that does not satisfy state educational requirements at time of initial enrollment in the program is via an attestation.

ATTESTATION TIPS AND SUGGESTED ELEMENTS

- ▶ The goal of the regulation is that each student receives the education that will enable them to work in their chosen profession.
- ▶ Institutions should have a defensible written policy and process for receiving student attestations.
- ▶ The attestation must be in writing from the student, either a hardcopy or electronic format that is from the student's email account.
 - If electronic, the institution must be able to reproduce the contents of the email upon request by ED.
- ▶ Institution must show how it provided information to the student so that the student understands and makes an informed decision about the attestation.
- ▶ The process should demonstrate actual interaction with the student.
- ▶ The student must indicate which specific state the student plans to seek employment where the institution does meet educational requirements.
- ▶ Institution must be able to show that its program meets educational requirements in the state where the student intends to work.
 - The student voluntarily chooses the state where they intend to work, not the institution.
- ▶ The process must be more robust and transparent than an automated "click-through" sequence or checkbox.
- ▶ Institution must be able to "connect the dots" to demonstrate how the student understood and made an informed consent to the attestation.
- ▶ The attestation is NOT a waiver of liability for the institution.
- ▶ The language of the attestation should be clear and direct (use the language in the regulation when possible).
- ▶ The institution cannot "force" or strongarm the student in the attestation process, to circumvent the goal of the regulation.
- ▶ No new attestation is required if the student moves or changes their mind about the location for future employment.
- ▶ If the student changes programs, a new attestation and individual disclosure may be required.

Documentation is critical!

Step 7: Disclosures: Levels of disclosure required for all programs that potentially lead to licensure regardless of modality

a. General (public) disclosures

For the new general disclosure requirement, there are now two options that are required under 34 CFR §668.43 (a)(5)(v) for each professional licensure program and the program's status in each state where students are served. (Remember to review SARA requirements for disclosures that are listed in the most current SARA Policy Manual.)

Under the previous rules, institutions were required to disclose (by potential licensure program) a list of all states for which the institution:

1. Has determined that its curriculum **meets** the state educational requirements for licensure or certification;
2. Has determined that its curriculum **does not meet** the state educational requirements for licensure or certification; and
3. Has **not made a determination** that its curriculum meets the state educational requirements for licensure or certification

Unlike under the previous rules, where an institution could immediately be in compliance with general disclosures (at the federal level) by opting to list that it has not made a determination if its curriculum meets the state educational requirements for its programs that lead to licensure, the certification rules have eliminated that option. If the institution is unsure as to the licensing requirements and the status of its professional licensure educational programs in other state, it must list that state as "does not meet" educational requirements. Naturally, the institution may keep its own internal list of states where research is still needed but there are only two required lists now: *Meets* and *Does not Meet*. As soon as there is updated information, the institution will need to immediately revise the general disclosures and pay attention to the individual/direct disclosure requirements. Remember that being out of compliance with the federal rules may put your students and your institution's Title IV eligibility at risk.

Under the current rules, institutions are required to publicly disclose (by potential licensure program) a list of all states for which the institution:

1. Has determined that its curriculum **meets** the state educational requirements for licensure or certification;
2. Has determined that its curriculum **does not meet** the state educational requirements for licensure or certification.

GENERAL (PUBLIC) DISCLOSURE TIPS

- ▶ General or public disclosures may be posted on the website, in the catalog, etc. but be cognizant that any revisions will have to be made to all locations where the information resides; if possible, have a single approved location for the official general disclosures and link the other postings to it so that the information is accurate and current, rather than having to remember all the locations where all the changes need to be made.
- ▶ Once additional information is obtained, further disclosures may be required. As with any regulatory research, this is a fluid process as rules and regulations change, programs change, etc. A good practice is to review disclosures on an annual basis at a minimum, or more frequently if the institution is actively conducting professional licensure board research on programs (to comply with the time limit for individualized disclosures). When updated information is received from a professional licensure board in a state, the applicable disclosures (general and individualized) must be updated immediately.
- ▶ Institutions are not required to make a determination regarding compliance in a state unless they are serving students there.

b. Individualized disclosures (also referred to as direct disclosures)

In addition to the general disclosures detailed above, 34 CFR §668.43 (c) requires an institution to provide a direct disclosure to prospective students and currently enrolled students. Each institution needs to develop a policy and procedure that addresses the definition of a prospective student and how communications from the institution (including disclosures) are managed. This is another example of the latitude provided to institutions by ED which allows the institution to determine its own policies and procedures (so long as they are defensible). Whether delivered via email or postal service, documentation must be retained to prove that the direct disclosure was made prior to the student's enrollment in the program. (See information above on developing defensible policies and procedures.)

c. Individualized disclosure scenarios

The rules require individualized disclosures for prospective, currently enrolled and relocating students under the following circumstances.

For **prospective students**, the institution must provide notice prior to the time of enrollment in the program if the institution has either:

1. Made a determination that the program's curriculum **does not meet** the state educational requirements for licensure in the state in which a prospective student is located, or

2. **Has not made such a determination** whether the program’s curriculum meets the educational requirements for licensure in the state where the prospective student is located.

For **currently enrolled students**, the institution must provide a written individualized disclosure within **14 calendar days to a student** if:

1. The institution makes a determination that the program’s curriculum **does not meet** state educational requirements for the state in which an enrolled student is located, or
2. The institution **later determines that the program does not meet** the educational requirements for licensure in a state where the student is located.

Some regulatory experts have questioned the practicality and futility of this section from the previous rules regarding prospective students in light of the certification rules requirement that an institution may not enroll a student into a Title IV program that does not meet educational requirements (unless the student provides an attestation). Regardless, the institution must make the disclosure but in practice, it will not be able to enroll the student, unless the institution can demonstrate that a compliant attestation was received.

For **relocating students**, an individualized disclosure must be sent to the student upon formal notice of relocation as specified in the institution’s policy on student relocation when a student relocates to a state where the program **does not meet** the educational requirements for licensure. Due to the 14-calendar day timeframe for providing notice, the compliance team would be advised to do research immediately upon learning of the relocation of the student. Note that the institution is not required to disenroll the student in this situation and the program is still eligible for Title IV aid; however, the institution is prohibited from enrolling any new students in this state, until the curriculum of the educational program is deemed to satisfy the educational requirements of the state.

INDIVIDUALIZED (DIRECT) DISCLOSURE TIPS

- ▶ For prospective students, prior to enrollment (financial commitment) in program.
- ▶ For enrolled students, within 14 calendar days of making the determination of
 - A change in the state licensure requirements where the student is located, or
 - A change in the student’s location to a state that does not meet educational requirements.

Conclusion

The Department of Education has clearly demonstrated its commitment to consumer protection of students and protection of taxpayers with the release of its additional certification rules (for the Program Participation Agreement) and amendment of the disclosure regulations.² The consumer protection objectives for these regulations can be used as a guiding tool when approaching the implementation of the rules by institutions. They are:


1. To protect students from enrolling in programs that cannot meet their education goals and stop the expenditure of taxpayer resources for such programs,
2. To provide the required important disclosure information to students prior to enrollment so that they are informed about where they will or will not be able to have a program meet educational requirements for licensure or certification.

As of July 1, 2024, failure to comply will directly jeopardize institutions' Title IV, HEA eligibility and funding as well as putting students at risk if their professional licensure programs do not satisfy educational requirements. Institutions are no longer able to offer Title IV eligible professional licensure programs in states where their curriculum does not meet educational requirements for licensure, unless the student has made an attestation that they will be working in a state where the institution's program does satisfy educational requirements for licensure. Institutions may now consider alternative means of satisfying educational requirements via compacts and multi-state professional licensure reciprocity agreements (these are different than SARA), so long as the student is able to work immediately.

It is the institution's responsibility to research and ensure that its professional licensure programs prepare a student to be eligible for licensure in the state where the institution is located and in any state where a distance education student enrolled in the program is located at the initial time of enrollment (in the program). If the program does not satisfy educational requirements for licensure in the state where the student is located, as of July 1, 2024, the institution may not enroll students into the program until it does satisfy the educational requirements for licensure; the only exception is in the case of a compliant attestation.

Institutions are no longer able to state they have not made a determination about their professional licensure programs yet continue to enroll students in those states. This is a significant change from the previous rules. In addition, the educational program and its curriculum may be required to be approved by the respective professional licensure board in a state, before the student may be eligible for licensure.

² 134 CFR § 668.14 (b)(32) and 34 CFR § 668.43 (a) (5) (v) and 34 CFR § 668.43 (c)



To do the research needed for professional licensure disclosures, institutions must know where their students are located. This is not a new requirement. The ED allows certain latitude in the development of this policy as well as those for defining initial time of enrollment in the program and attestations, but they must be defensible processes. For attestations, institutions must demonstrate how they informed the student of the attestation process, prior to the student making the written attestation. A simple electronic click through process is not acceptable. Documentation may be requested by ED.

General (public) disclosures are required for programs that likely lead to licensure and should include a list of states that meet educational requirements and those that do not. These general disclosures will satisfy federal requirements but the institution should review the current SARA Policy Manual to determine if the disclosures meet SARA requirements.

For any programs that do not meet requirements in a state **or** when the institution has not made such a determination, an individualized or direct disclosure is required for prospective students; for currently enrolled students, institutions must send updated individualized disclosures to students within 14 calendar days of the institution's determination that it does not meet educational requirements in that state, which may include a relocating student to a "does not meet" state.

Addendum

GENERAL PRACTICE TIPS

1. Time is of the essence: Don't wait to start until you have a perfect plan.
2. It is imperative that leadership including your institution's general counsel be involved in business decisions associated with implementation of the institution's compliance strategy.
3. Learn the curriculum elements of the programs that lead to professional licensure, and work with a department specialist to align the curriculum with state requirements, when necessary.
4. Determine if the state professional licensure regulatory agency requires program approval.
5. Change happens: Create a process for continuous updating of institutional research relating to state information, urls change frequently, etc. Create a process for maintaining current regulatory information as rules and regulations change frequently.
6. Integrate enrollment data with program data, at the student level, for ease in providing and tracking both general and individualized disclosures.
7. Be aware of the times of initial enrollment for all of the licensure programs so that disclosures and attestations are addressed in a timely manner, especially if students move between programs.
8. The institution must have two general (public) disclosure lists of the states in which each educational program leading to licensure:
 - a. Where the program's educational requirements meet educational requirements;
 - b. Where the program's educational requirements do not meet the state licensure requirements.
9. If there are current disclosures on other documents, such as the application or enrollment agreements, etc., it is critical that the messaging is consistent and it is advisable to have a designated location for official disclosures, such as on the website. Having disclosures in multiple locations, while laudable, is an administrative nightmare when they need to be updated. Also, any revisions should be date stamped so the reader is aware of when the disclosure was updated. It is also advisable to keep a list of the changes and the dates that the changes were made and a reason for the change. This should be kept with the policies and procedures for student location determination, etc. and any other compliance documentation.
10. Individual (direct) disclosures are still required for prospective, currently enrolled and relocating students under certain circumstances and due to the short 14 business day time requirement for disclosures to enrolled/relocating students, an institution should react quickly if there is a change of its status in the state where a student is located, or if the new state of residence does not meet educational requirements.

GENERAL PRACTICE TIPS CONTINUED

11. The 2023 Preamble allows for institutions to use professional licensure reciprocity or compacts to demonstrate satisfaction with educational requirements. Proceed cautiously if using this route and document each step. Also, institutions may satisfy educational requirements, even if one or two courses are still required for a student using a compact with a provisional license (if available), such as in teacher preparation, where state history or culture courses are required to obtain a full license, so long as the student is able to work immediately while taking the extra course(s).
12. A good strategy is to use the identical language from the regulation whenever possible in policies, communications, etc. which ensures consistency in interpretation and usage.

Professional Licensure Regulatory Query for PPA Certification

The Department of Education’s ultimate goal in the rules is for the appropriate employment for graduates of professional licensure programs. It (ED) states in the 2023 Preamble that the objectives for the language in 34 CFR § 668.14 (b)(32) are:

1. To protect students from enrolling in programs that cannot meet their education goals and stop the expenditure of taxpayer resources for such programs,
2. To provide the required important disclosure information to students prior to enrollment so that they are informed about where they will or will not be able to have a program meet educational requirements for licensure or certification.

Key point: The regulations require these actions at the time of initial enrollment for Title IV eligible professional licensure programs. Institutions are not required to participate in Title IV but if they do, they must be in compliance with the regulations; failure to comply may result in your institution facing fines, repayment of disbursed funds, and possibly a loss of access to federal financial aid (Title IV). This may put your students in jeopardy.

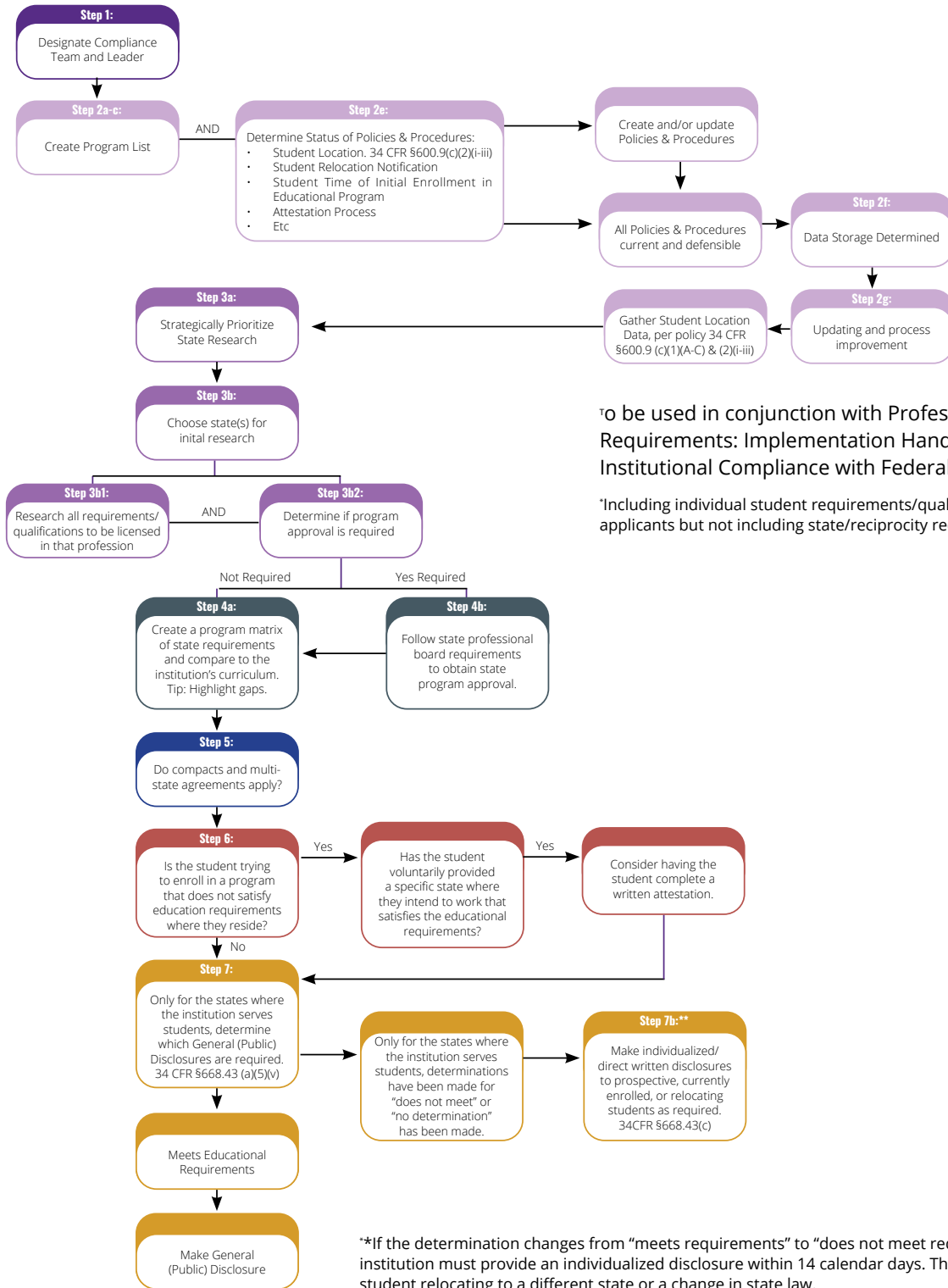
Query for Professional Licensure Programs Eligible for Title IV Funding	Yes	No	Action	Step in Handbook for Details
Is this a prospective student?	General (public) disclosure for does/ does not meet; individual disclosure where does not meet or have not determined.	N/A	Go to Program details below for next steps.	Step 7: Disclosures: Levels of disclosure required for all programs that potentially lead to licensure regardless of modality and prior to enrollment in the program.
Is this a current program enrollee?	Individual disclosure if there has been a change and the program does not meet state educational requirements where the student is located. Disclosure is due within 14 calendar days from when the institution makes the determination.	N/A	Go to Program details for next steps.	Step 7: Disclosures: Levels of disclosure required for all programs that potentially lead to licensure regardless of modality.

Query for Professional Licensure Programs Eligible for Title IV Funding	Yes	No	Action	Step in Handbook for Details
Does the program currently meet Title IV eligibility?	Follow Implementation Guide.	May not enroll new students into Title IV program on or after 7-1-24 until program is eligible.		Steps 1-3.
Does the program require programmatic accreditation as a condition for employment in the occupation, or pre-accredited program?	Must comply before enrolling new students into program on or after 7-1-24.	N/A		See language for specific requirements and SAN Resources and 34 § 668.14 (b)(32)(i) for additional details.
Does the program lead to licensure in state where institution is located?	To be eligible for Title IV, must satisfy educational requirements for the program before enrolling new students on or after 7-1-24.	See distance education query, below.		Step 2: Gather institutional data... and Step 4: Compare the institutional data to state requirements.
Does the program satisfy licensure requirements in state where institution is located?	List state(s) on public disclosures.	On or after 7-1-24, cannot enroll new students in program until it satisfies educational requirements.		Step 3: Strategically prioritize state research and Step 4: Compare the institutional data to the state requirements.
Is the program offered via distance education to one or more students in other states?	Must determine if the programs leads to professional licensure in those states.	N/A		Step 2: Gather institutional data..., Step 3: Strategically prioritize state research and Step 4: Compare the institutional data to state requirements.
Does the program <i>lead</i> to professional licensure in other states?	Must determine if program curriculum satisfies educational requirements for licensure in each state where distance education students are located.	N/A		Step 4: Compare the institutional data to state requirements.
Does the program curriculum satisfy educational requirements in each state where it is offered via distance education?	Include state(s) on general (public) disclosure list.	Review Compacts and Multi-state agreements and Attestation to see if it applies.	Verify that students have received the correct disclosures about not satisfying educational requirements for licensure.	Step 5: Do Compacts and Multi-state agreements apply? and Step 6: Attestations.

Query for Professional Licensure Programs Eligible for Title IV Funding	Yes	No	Action	Step in Handbook for Details
Did the institution use an alternative method to satisfy state educational requirement via a multi-state agreement or through reciprocity in the other state?	Document process for making the determination; include states on general (public) disclosure list.	N/A	Proceed with caution. This was addressed only in the Preamble which has no legal authority and is guidance from ED, which can change quickly.	See Step 5: Do Compacts and Multi-state agreements apply?
May the student enroll? Distance education student indicates desire to enroll on or after 7-1-24 in program that does not meet licensure requirements where student is located.	Student must provide written attestation to enroll in a Title IV eligible professional licensure program in a state where it does not satisfy educational requirements (on or after 7-1-24).	N/A	Document the attestation, to be able to reproduce, if requested by ED.	See Step 6: Attestations
May the student enroll? Prospective distance education student (located in a does not meet state) submits an oral attestation.	Not a valid attestation.	N/A	Must be in writing or in electronic form; document to be able to reproduce, if requested by ED.	See Step 6: Attestations.
May the student enroll? Distance education student (located in a does not meet state) does not indicate a specific state that they intend to seek employment at time of initial enrollment in program when submitting written attestation.	Not a valid attestation even though written.	N/A	Attestation must indicate the specific state where the student intends to work in the profession and be submitted in writing/ electronic form and preserved, to be able to reproduce, if requested by ED.	See Step 6: Attestations.
May the student enroll? Distance education student (located in a does not meet state) submits written attestation and indicates the one specific state where they intend to work.	Student may enroll in a state that doesn't meet educational requirements after making a voluntary fully informed written attestation of their intention to seek employment in a state that the institution's curriculum satisfies (meets) the educational requirements for licensure for that profession.		Determine if the educational program satisfies (meets) the educational requirements for licensure in the intended state. Document the attestation and the process for obtaining it, to be able to reproduce, if requested by ED.	See Step 6: Attestations.

Query for Professional Licensure Programs Eligible for Title IV Funding	Yes	No	Action	Step in Handbook for Details
Is attestation process clearly explained to distance education student prior to student making the attestation?	Keep detailed documentation of the process used for explaining attestation and its consequences to student, to provide to ED upon request.		Revise the attestation process to ensure that the student is fully aware of what they are agreeing to by attesting; keep detailed documentation to demonstrate compliance to ED, if requested.	Avoid unintentional attestations caused by click through processes where student is not fully informed of the consequences of their actions; before accepting an attestation that was “dropped off” follow up with student to ensure the student is aware of the significance of the attestation.
Must institution gather attestations after the initial time of enrollment?	Not required by the rules but institutions may if they choose.	Not required	Attestations under Title IV are only required at the time of initial enrollment in the program.	See Step 6. Attestations
What if after enrolling in the program, the student moves to a state where the program does not satisfy educational requirements?	N/A	N/A	Only required by ED at time of initial enrollment in the program.	Individual disclosures are required; student may continue to receive Title IV so long as it is after the initial time of enrollment; new attestations are not required by the regulations.
May the student enroll? Student decides to enroll in a different professional licensure program that does not satisfy educational requirement in the student’s state.	If a previous attestation was provided, obtain a new one specific to this program and state. Individual disclosure may be required.			

Flow Chart: Implementation Guide Steps for 2024 Federal Professional Licensure Regulations



to be used in conjunction with Professional Licensure Requirements: Implementation Handbook for Institutional Compliance with Federal Regulations*

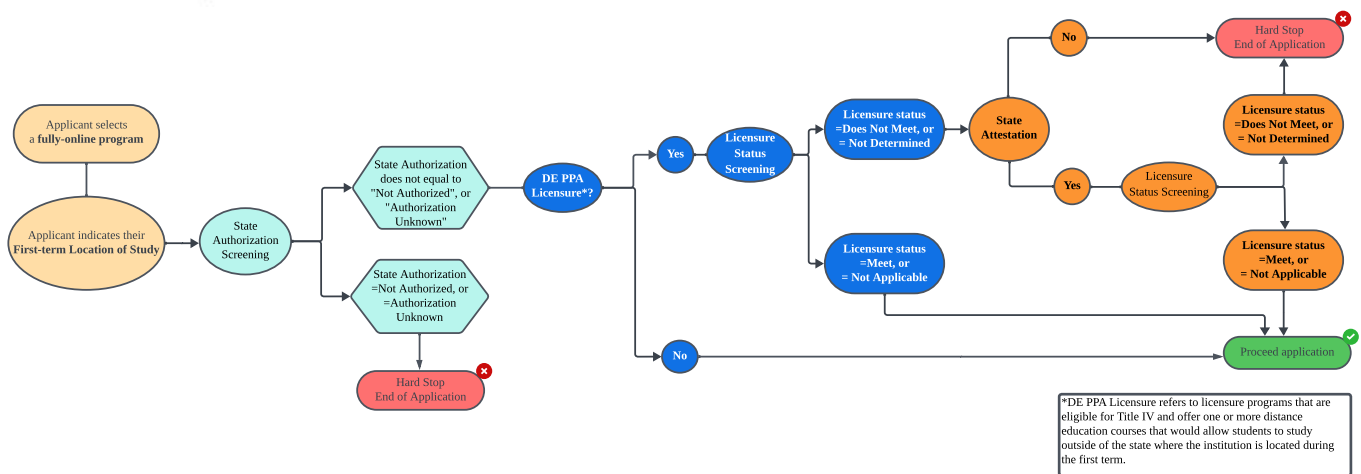
*Including individual student requirements/qualifications for licensure applicants but not including state/reciprocity requirements.

*If the determination changes from "meets requirements" to "does not meet requirements," the institution must provide an individualized disclosure within 14 calendar days. This may result from a student relocating to a different state or a change in state law.

Flow Chart: University of Kentucky Compliance Screening Process Designed in Application Systems – Fully Online Programs



Compliance Screening Process Designed in Application Systems - Fully Online Programs
by Ping Jiang, PhD - University of Kentucky



This is an example of how one SAN and SARA participating institution, the University of Kentucky, manages the professional licensure compliance process flow for domestic students at its institution. Please note that the review of professional licensure program approval is part of its overall State Authorization Research Framework (which takes place before this process), so it is not specifically listed as a separate step in the Compliance Screening Process.

Resources

SAN Professional Licensure Resources

- ▶ [SAN Compliance Resources to Address Federal Regulations for Programs Leading to a License \(2024\)](#) - Complete Index of links to SAN compliance resources for professional licensure to prepare for July 1, 2024, effective date and beyond.
- ▶ [SAN Website Professional Licensure Landing Page](#)

NC-SARA Resources

- ▶ NC-SARA Homepage
<https://nc-sara.org/>
- ▶ SARA Policy Manuals and Handbooks
<https://www.nc-sara.org/resources/guides>
- ▶ Professional Licensure Resource
<https://nc-sara.org/resources/professional-licensure>

Department of Education FAQs

[Certification Procedures Regulations Questions and Answers](#)

Council of State Governments

[What are Interstate Compacts? – National Center for Interstate Compacts | The Council of State Governments \(csg.org\)](#)

Higher Education Licensure Pros

<https://www.higheredlicensurepros.com/>

Thompson Coburn LLP

<https://www.thompsoncoburn.com/insights/blogs/regucation>

[ED's Evolving State Authorization and Professional Licensure Requirements \(thompsoncoburn.com\)](#)

Hogan Lovells

[Webinar New ED Rules \(hoganlovells.com\)](#)

Other Resources

Resources for Education Licensure

https://www.nasdtec.net/page/Approved_EPP_map

Resources for Nursing Licensure

<https://www.ncsbn.org/671.htm>



