

Professional Licensure Disclosures: Implementation Handbook for Institutional Compliance with the 2019 Federal Regulations ¹

Introduction

Welcome to the world of compliance with the professional licensure disclosure requirements under the 2019 Federal Regulations! If you are reading this, you have some interest in the requirements and how they may impact your institution or have been tasked with leading your institution's implementation efforts to be compliant or are motivated for some other reason to learn more about implementation of the new federally mandated professional licensure disclosure requirements. The objective of this handbook is slightly different from other documents written about the 2019 Federal Regulations because it is akin to a "road map" of a possible direction that should be taken to achieve and maintain compliance with the Federal requirements. The handbook discusses the motivations for an institution to conduct itself in a compliant manner, the relevant issues for professional licensure or certification disclosures, what programs are impacted by the regulations and deadlines, and then a five-step implementation guide which discusses the aspects of student location, data gathering, and general and individualized (direct) disclosures. Practice tips are provided along the way and at the end is a flow chart of the steps, as well.

The contents of the handbook are as follows:

Institutional Motivation

1. Federal regulatory obligations
2. State/reciprocity requirements
3. The student as consumer
4. The institution's moral obligation

The 2019 Federal Regulations: Relevant Issues for Professional Licensure or Certification Disclosures

What is a "professional licensure" program according to the 2019 Federal Regulations?

It Depends, all over again!

What is the effective date of the 2019 rules?

Implementation Guide

Step 1. Determine who is responsible for doing this work

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?
- b. How to gather the program data

¹ Note: 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 disclosures in the 2019 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 should not be considered legal advice. Legal questions should be directed to legal counsel.

The regulations require disclosures for programs leading to licensure or certification; for brevity's sake, the term "licensure" is used but be aware that it includes certification. Likewise, there are frequent references to the "compliance team" which in many institutions includes just one designated compliance professional. The "team" may be made up of other stakeholders that may be in different departments but who are compliance champions!

- c. Document review
- d. Contracting other institutional resources
- e. Student location
- f. Format for storing data
- g. Ongoing involvement

Step 3: Strategically prioritize state research

- a. Types of state research
- b. Where to start
 - 1. Requirements for an individual to be licensed
 - 2. Requirements for educational program approval
- c. How to effectively conduct state research

State research tips

Step 4: Compare the institutional data with the state requirements

- a. For individual licensure
- b. For educational program approval

Step 5: Disclosures: Levels of disclosures required for all programs that potentially lead to licensure regardless of modality

- a. General disclosures
 - General disclosure tips
- b. Individual disclosures (Direct disclosures)
- c. Individualized disclosure scenarios
 - Individualized disclosure tip

Conclusion

Addendum

- General practice tips
- Resources
- Flow chart of implementation guide steps for 2019 Federal Regulations

Institutional Motivation

While the focus of this paper is on the practical aspects of implementation of the 2019 Federal Regulations (“2019 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 should be addressed in conjunction with how to implement institutional state authorization compliance measures required by the many regulations at the Federal and state levels (which includes compliance with institutional reciprocity requirements under SARA²), and professional licensure disclosure regulations,

² NC-SARA is the National Council for State Authorization Reciprocity Agreements. NC-SARA, in collaboration with the four regional higher education compacts, was established to develop and implement an effective and efficient reciprocal state-level authorization process for postsecondary distance education, known as the State Authorization Reciprocity Agreement (SARA). SARA is an agreement among member states, districts and territories that established comparable national standards for the interstate offering of postsecondary distance education. The four regional compacts oversee the SARA Policies and Procedures Manual as well as the state application status. In Section 5.2 of the SARA Manual, the requirements for institutions regarding professional licensure disclosures are listed (which differ from the requirements in the 2019 rules). Each SARA member state has a State Portal Entity which oversees institutional issues for participating SARA institutions in that state.

particularly as required under the 2019 rules. A sampling of Federal regulations that govern the institution’s out-of-state activities include: 34 CFR §600.2 for the definition of “state authorization reciprocity agreement,” 34 CFR §600.9(c)(1)(i) and (ii) for state authorization requirements, 34 CFR §600.9(c)(1)(A-C) for student location policies, 34 CFR §668.72(c)2 for misrepresentation, 34 CFR §668.43(a)(5)(v) for general disclosures pertaining to professional licensure (all modalities...face-to-face, distance education, etc.), 34 CFR §668.43(c) for individualized or direct disclosures pertaining to professional licensure (applies to all modalities). Compliance with the 2019 Federal rules for general disclosures does not satisfy SARA requirements for professional disclosures. For details on the SARA requirements, visit section 5.2 in the SARA Manual. Also, institutions must still be in compliance with certain state laws of a general nature (secretary of state registration, workers compensation, etc.) and seek approval of professional licensure curriculum where required. To summarize, institutions must be in compliance with the applicable Federal rules and state requirements which include reciprocity/SARA requirements for SARA institutions, professional licensure program curriculum approval, and other general requirements.

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 illustrative.

1. Federal regulatory obligations: There are many laws that govern institutions of higher education including state authorization related requirements. An institution that receives Title IV funding under the Higher Education Act (“HEA”) must operate in compliance with the law or risk losing its federal funding. There are other requirements that are tied to federal funding eligibility besides the 2019 rules, such as federal misrepresentation regulations, borrower defense, etc. but they are outside the scope of this handbook. It is anticipated that the U.S. Department of Education (“ED”) will be auditing professional licensure disclosure compliance as part of institutional program reviews.

2. State/reciprocity requirements: Oversight of higher education is traditionally considered to be a state’s right. A state can choose whether and how to regulate 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 NC- SARA, member states were allowed to join via a regional compact and by agreeing to the terms and conditions of the NC-SARA State Responsibilities (<https://www.nc-sara.org/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.

While the 2019 Federal rules are satisfied by an institution’s compliant conduct at the state level, including under reciprocity/SARA, it is critical to recognize that conduct that is minimally in compliance with the 2019 Federal rules does not necessarily satisfy compliance with state (including reciprocity) requirements. To reiterate, there is a higher standard to meet for compliance with State reciprocity requirements under NC-SARA than is required under the 2019 rules. The ED emphasizes this in the Preamble of the 2019 rules:

Regarding the concern that, because institutions already have to do more than the proposed regulations would require to meet State or NC-SARA reporting requirements, an institution would solely follow the Federal standard, believing this standard supersedes state requirements, and could thus be found to be out of compliance in a State or with NC-SARA, **these final regulations do not absolve institutions from complying with state laws** nor do they require participation in reciprocity agreements or override the requirements of such agreements. (Emphasis added)

An excellent resource for all questions related to SARA can be found on the NC-SARA website (<https://nc-sara.org/>); there are informative documents and webinars available that address disclosures and reporting requirements. The most current SARA Manual and especially Section 5.2 should be required reading for all compliance team members and institutional leadership (at <https://www.nc-sara.org/resources/guides/>)!

3. The student as consumer: The requirement of professional licensure disclosures under the 2019 rules is one of the main consumer protection provisions under Title IV HEA, thus will likely be under scrutiny by both consumer groups and student advocates. Students that enroll in programs that are designed to lead or 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.

Some institutional leadership may question the rationale for doing state-by-state research when they can be in compliance with Federal general disclosure requirements by simply stating that the institution has not made a determination regarding the status of the various licensure programs relative to state professional board requirements in states where they have students. While this may appear to be a very efficient approach to avoid due diligence on the part of the institution for the licensure programs that it offers, any statements made by the institution must be full and accurate, or the institution may face claims of misrepresentation (Federal and State) and Federal Trade Commission actions. The 2019 rules also require specific individualized disclosures in this situation as well, which are discussed below. In the Preamble, the ED concedes that an institution that determines in which states its licensure programs align with state professional board requirements may actually have a marketing advantage because prospects and students have access to accurate information which allows them to make better informed educational and career decisions as a result.

4. The institution's moral obligation: It is the "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. The Preamble mentions that while it may be true that students have the same access to State licensure requirements as the institution, students may not have access to the requisite information to determine whether the program meets those requirements, without assistance from the program and curriculum experts at the institution. Students should be provided information regarding the program's alignment with licensure requirements so that those who enroll are making an informed enrollment decision.

Much information has been shared from a number of sources, especially from the WCET/State Authorization Network ("SAN") at <https://wcetsan.wiche.edu/>, since the 2019 Final Federal Regulations were released on November 1, 2019. To clarify, this handbook is focused on the practical aspects of implementing the professional licensure disclosure requirements of the 2019 Federal Regulations; while very important, compliance with SARA professional licensure disclosure requirements or Federal misrepresentation regulations are not discussed in any detail here. The ED stated clearly in the Preamble that **the 2019 Federal Regulations do not absolve or override state or reciprocity requirements.**

(Emphasis added) Institutions must comply with all applicable regulatory requirements. The Federal Regulations are not a free pass from state requirements including SARA, or any other applicable laws at the Federal level. To reiterate, compliance with the 2019 rules is not equivalent to compliance with state or reciprocity requirements under SARA.

The 2019 Federal Regulations: Relevant Issues for Professional Licensure or Certification Disclosures

As a basis for practical implementation, institutions need to be aware of the three elements of the 2019 rules for professional licensure disclosures:

- The new requirements apply to all programs leading to professional licensure regardless of the mode of delivery; the 2019 rules apply to both face-to-face and distance education students.
- Institutions must determine the states in which its students and prospective students are located for the purpose of disclosing state-specific professional licensure information;
- The disclosure requirements, both general and individualized (direct), must be provided for enrolled and prospective students.

When conducting state research to determine the status of a program leading to professional licensure, an institution needs to be aware of additional subtopics related to implementation of the 2019 rules for professional licensure:

- 1. 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**
- 2. If the institution's educational program curriculum satisfies the state professional 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).**

For detailed information that is important but outside the scope of this handbook, please read the WCET Frontiers postings (<https://wcetfrontiers.org/2019/11/04/final-fed-regs-for-state-auth-released/>) and review materials on the SAN website at <https://wcetsan.wiche.edu/>.

The ED has discussed in the Preamble to the 2019 rules 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. Indicative 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 must have a defensible policy.

Suggested elements of a defensible policy and procedure:

- Written: Clearly articulated objectives with version history (including author, policy approval process, etc.);
- 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.

What is a “professional licensure” program according to the 2019 Federal Regulations?

The 2019 rules do not define professional licensure per se under the *Definitions* section, nor is a list of professions provided. The professional licensure disclosures for eligibility for Title IV HEA funding are required by the 2019 Federal Regulations, but the educational programs that may lead to licensure that are implicated are based upon the various state professional board requirements. The language of the 2019 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 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:

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

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 disclosures. Each institution must research the state board requirements of each licensed profession in every state 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 that require disclosures. Each institution must do its own institutional research based upon the design and marketing of the institution’s programs to determine if they may lead to professional licensure in each state where students (and prospective students) of your institution are located (and where it is anticipated there will be students located in the future).

Remember: Non-compliance with Federal Title IV HEA regulations can jeopardize your institution’s eligibility for such federal funding.

What is the effective date of the 2019 rules?

The 2019 rules are effective July 1, 2020 which means that the institution must have required professional licensure disclosures, both general and individualized, in place by that date or risk ineligibility for Title IV funding. Fortunately, the 2019 rules are written in such a way that compliance with the general disclosure requirement can be quite simple if an institution has done some basic research. The individualized disclosures may be a bit more complicated for an institution that has not been keeping up with compliance requirements, such as gathering student location data. The details of the two types of required disclosures are discussed below.

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 2019 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 disclosures. 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. A few options for managing and accomplishing the collaborative tasks that are needed to achieve compliance are:

- Compliance professional works in collaboration with professional licensure department staff;
- Professional licensure department staff completes the work under the oversight of the compliance professional;
- Other options: general counsel's office assistance/participation and review; hire a consultant to manage the entire process..., etc.

Generally, the 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 programs at your institution that may lead to professional licensure and may be impacted by 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. 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 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. Some examples of helpful contacts include:

- Provost
- General Counsel
- Registrar
- Financial Aid (the professional licensure disclosures under the 2019 rules now fall within 668.43 which governs financial aid disclosures; collaboration may be welcomed)
- 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

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.

There are numerous resources on the SAN website that discuss how to determine your students' locations. In the Preamble to the 2019 rules, 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."

The three new 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 Preamble clarifies 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."

The 2019 rules imply that an institution has 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, the 2019 rules require that they be in place and consistently applied immediately. 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.

Remember: Non-compliance with Federal Title IV HEA regulations can jeopardize your institution's eligibility for such federal funding.

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, 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 2019 rules indicate that communication via email is acceptable and by generating this Program List to the student level, the institution will have a list of the student emails who 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 on an ongoing basis in other institutional activities. 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 2019 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 and creation of student notification upon relocation to another state.

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

Sharyl Thompson addressed the differences between professional program approval by a state professional licensing board and state authorization program approval in her SAN Talking Points entitled [*State authorization and Professional Licensure: The Intersection of State Authorization Agencies and Professional Licensing Boards*](#).³ She stated that “it is important to understand that program-by-program authorization is not the same as program approval by a state professional licensing board.” In addition, she wrote that:

Each state has different standards for occupations that require a professional license or certification. Some examples include P-12 teacher, school administrator, school counselor, school psychologist, mental health counselor, family therapist, social worker, psychologist, nurse, CPA, etc. The licensing boards have standards an academic program must meet in order for a graduate to be eligible for a license or certification, and also publishes criteria an individual graduate must meet to be eligible for a license. It is the responsibility of institutions to know both sides of the professional licensing standards for each state where their graduates may seek a license or certification.

Furthermore, the Preamble of the 2019 rules in discussing distance education states that “institutions are required to know what State requirements exist for an educational program to be offered to a student in a particular State, and the required approvals that constitute what is needed for **the program to be authorized by that State.**” (Emphasis added)

Institutions must conduct research on state professional licensing requirements to determine:

- 1. The requirements for an individual student to be licensed in that state, and**

³ <https://wcetsan.wiche.edu/resources/state-authorization-and-professional-licensure-0>

2. If the institution’s educational program curriculum satisfies the state professional 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).

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. Where to begin? Now that there is a Program List created (see above), there are some options. Be aware that the prioritization of state professional board research is a risk management decision and it is always wise to involve others up the hierarchy in the decision.

Possible considerations when deciding which states to research first:

- States from which the institution has received enforcement communications regarding noncompliance with professional 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 plans to heavily market any particular programs;
- States where the compliance team has past experience or a good relationship with the regulator;
- 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 (realizing that all programs may require this level of research ultimately), 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 a general internet search should 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 by the institution that you are reviewing to determine what 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.

2. Requirements for educational program approval: Regarding program/curriculum approval, the state professional board website may list the requirements if the program or curriculum must be approved before a graduate is eligible for licensure in that state. Again, 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 licensure board. If this information is not readily available on the website, a communication with the professional board may be necessary.

Remember that compliance with the 2019 rules is based upon meeting certain **state** requirements, such as program curriculum approval, even though the regulations were issued by the **Federal** government, and failure to be in compliance with Federal requirements (including professional licensure disclosures) can place an institution’s eligibility to participate in Title IV programs at risk.

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 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 is useful for managing this research data.

Once thorough research is completed, it may be an appropriate time to consider contacting the state professional 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 proof 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 boards are overworked and understaffed. Professional boards were not involved in the creation of the 2019 rule 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 for your communication may be helpful.

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 boards grant special status, such as exemptions, to programs that have a specialized accreditation, such as social work accreditation by the CSWE.

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.

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.

A prudent institution should provide information on non-educational requirements, even though this is not a requirement under the 2019 rules. Students will benefit from being made aware of requirements such as criminal background checks, age, residency, etc. This information should be provided to the students so that they can determine if they will meet the non-educational requirements prior to beginning 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, or a requirement under the 2019 rules 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 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 2019 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.

Mark those items that need clarification, are listed as gaps, or require additional research with either the 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: Disclosures: Levels of disclosure required for all programs that potentially lead to licensure regardless of modality

a. General disclosures

For the general disclosure requirement, there are three options that are permitted under 34 CFR §668.43 (a)(5)(v)(A) through (C) depending upon the level of information that your institution has for each program and the program's status in each state. It is probable that institutions will have some programs listed under each of these three categories or all in the third category, initially, to achieve immediate Federal compliance regarding general disclosures. (Remember that compliance with the 2019 Federal rules regarding general disclosures does not equate to compliance with reciprocity requirements for required disclosures under SARA.)

Under 2019 rules, institutions are 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.

The beauty of the general disclosure requirements under the 2019 rules is that an institution can 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. If the institution is unsure as to the licensing requirements and the status of its professional licensure educational programs in other states, it may be advisable to select this option while the detailed research is being conducted. As soon as there is updated information, the institution will need to revise the general disclosures. Remember that being out of compliance with the 2019 Federal rules may put your institution's Title IV eligibility at risk.

General disclosure tips:

1. General 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.
2. Disclosures should be full and accurate. If your institution has not made a determination as to the program's status in a particular state, it is acceptable to disclose that information and add what measures are being taken to obtain the information.
3. Once additional information is obtained, further disclosures may be required. As with any regulatory research, this is a fluid process as 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 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.

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

In addition to the general disclosures detailed above, the 2019 rules, under 34 CFR §668.43 (c) require an institution to provide a direct disclosure to **enrolled and prospective students** in writing if the program potentially leading to professional licensure either:

1. **Does not meet** the state educational requirements (2. general disclosure above), or
2. The institution **has not made a determination** for the state in which the student is located (3. general disclosure above).

The Preamble provided additional guidance as to "time of enrollment" and that an individualized disclosure must be provided via letter or email prior to the student making a financial commitment to the institution or signing an enrollment agreement. The institution needs to develop a policy and procedure that addresses what "time of enrollment" means in practice at the particular institution. This is another example of the latitude provided to institutions from the 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 2019 rules require individualized disclosures for currently enrolled, prospective students and relocating students under two circumstances.

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.

For prospective students, the institution must provide notice to the prospective student 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.

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, or the institution **has not made a determination**. 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.

Individualized disclosure tip:

While not specifically stated in the 2019 rules, institutions may find it beneficial to provide updated individualized disclosures to students (who have previously received an individualized disclosure because the institution had not made a determination) when the institution subsequently determines that the program meets the state requirements for licensure. Naturally, once this information is available, all locations of prior postings, should be updated as quickly as possible to reflect the revised information (if there is no single official location that is linked, see above). It is in the institution's best interest to promote its status in the states in which it has received approval from the professional boards: encourage the admissions staff at the institution to recruit students from states where the institution's professional licensure programs meet board requirements.

Conclusion

Professional licensure disclosures under the 2019 rules are an important consumer protection requirement. By not complying, institutions put their Title IV HEA eligibility and funding at risk.

It is the institution's responsibility to ensure that its programs that likely lead to professional licensure prepare a student to be eligible for licensure in the state where they are located. If institutions fail to do so, students may be ineligible for licensure which can have many negative repercussions for the student and institution. In addition, the educational program and its curriculum may be required to be approved by the respective professional board in a state, before the student may be eligible for licensure.

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 as to how an institution makes this determination, but it must be a defensible process.

General disclosures are required for programs that likely lead to licensure. These general disclosures will satisfy Federal requirements but DO NOT satisfy SARA disclosure 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; there are also circumstances that require sending updated individualized disclosures to students within 14 calendar days of the institution's determination of its status in a state.

Addendum

General Practice Tips:

1. Time is of the essence: Don't wait to start until you have a perfect plan.
2. 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.
3. 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 regulations change frequently.
4. Integrate enrollment data with program data, at the student level, for ease in providing and tracking both general and individualized disclosures.
5. For general disclosures and to be immediately in compliance with 2019 rules if no research has been conducted, begin with basic preliminary language on your departmental websites that the determination has not yet been made if the program curriculum meets the requirements for licensure in the following states (list the states individually).
6. 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.

Resources

WCET /SAN Documents

WCET/Frontiers provides ongoing updates on topics of interest to compliance professionals; watch for new releases that address regulatory issues. Two previous articles of interest are:

WCET Frontiers, Final Federal Regulations for State Authorization Released! 11-4-19
<https://wcetfrontiers.org/2019/11/04/final-fed-2019-rules-for-state-auth-released/>

WCET Frontiers, Professional Licensure Notifications & Disclosures for Out-of-State Courses/Programs
<https://wcetfrontiers.org/2018/02/07/professional-licensure-notifications-disclosures/>

SAN Professional Licensure Resources

<https://wcetsan.wiche.edu/resources/professional-licensure>

The following SAN resources require a SAN Member Login:

Common Professional Board National Links: <https://wcetsan.wiche.edu/resources/common-professional-licensure-board-links>

Licensed Professions per State with Board Links: <https://wcetsan.wiche.edu/resources/licensed-professions-state>

NC-SARA Resources

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

SARA Manuals and Handbooks
<https://www.nc-sara.org/resources/guides>

[Q&A from the June 10, 2019 Webcast Notifications – Still Required!](#)

By spring 2020, NC-SARA will have completed a list of state contacts from the professional licensure boards for:

- Nursing
- Education
- Counseling
- Psychology
- Social Work

Other Resources

Resources for Education Licensure
https://www.nasdtc.net/page/Approved_EPP_map

Resources for Nursing Licensure
<https://www.ncsbn.org/671.htm>

Author: Shari Miller



Shari provides practical higher education regulatory consulting services to educational organizations. She was Director of State Authorization for Northern Arizona University and was a founding member of the Arizona SARA Council. She has served on multiple NC-SARA working committees and serves as a mentor to participants of the SAN Basic Training. In 2016, she received the WCET *SANSational* Award for Innovation in Education for leading a project team that developed a technological solution to determine where NAU’s 30,000 students are physically located. She has presented at many higher education conferences. Shari, an attorney retired from active practice in Arizona, previously practiced health care law (including licensure).

State Authorization Network
WCET - WICHE Cooperative for Educational Technologies
<https://wcetSAN.wiche.edu> | 303.541.0210

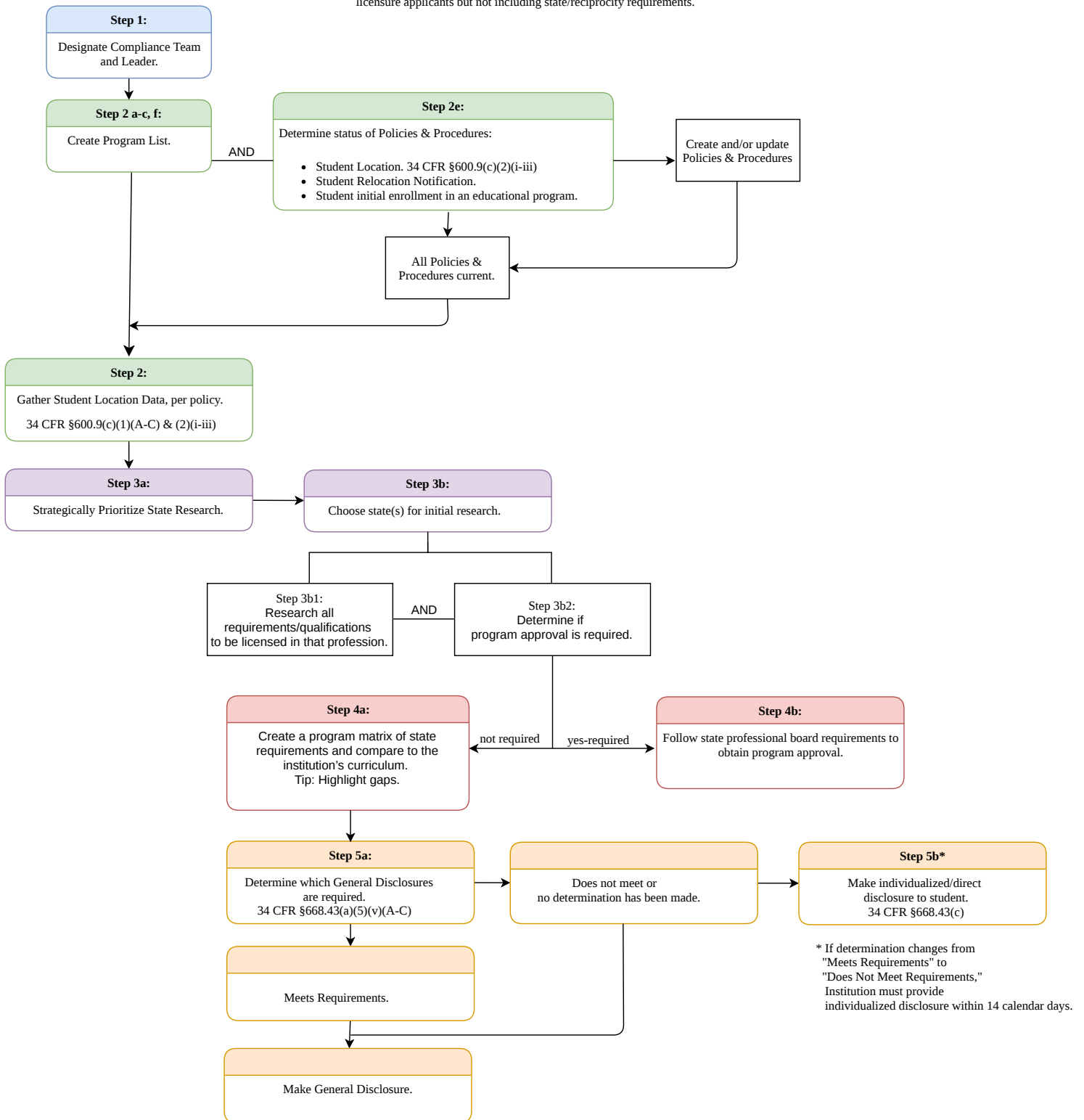


This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/)

Flow Chart of Implementation Guide Steps for 2019 Federal Regulations

To be used in conjunction with *Professional Licensure Disclosures:
Implementation Handbook for Institutional Compliance with
2019 Federal Regulations**

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



* If determination changes from "Meets Requirements" to "Does Not Meet Requirements," Institution must provide individualized disclosure within 14 calendar days.

This chart accompanies *Professional Licensure Disclosures:
Implementation Handbook for Institutional Compliance with 2019 Federal Regulations;*
please refer to the document for additional details and explanations.