

# SAN & WCET Member Webinar Question Responses

November 15, 2023

## “Waze” to Find the Detours and Fast Lanes to Understand New U.S Department of Education Guidance and Regulations

### 1. Which Regulations? in the Certification Procedures Issue: 34 CFR 668.14(b)(32)(ii) & (iii)

For purposes of institutions participating in Title IV HEA programs.

- **Programs leading to a license** – certification that the institution meets state educational requirements.
  - Plus related notification requirements 34 CFR 668.43(a)(5)(v) & (c)
- **Complying with state closure laws.**

### 2. What is the effective date of these Final rules?

July 1, 2024 (final rules were released 10/31/23) \*there is no direct information about early implementation. The PPA renewal cycle will vary per institution.

## Professional Licensure Topic - Program Participation Agreement (PPA)

### 1. What is required of the institution in regard to programs leading to a license or certification?

In order to serve the students in the program:

- The institution must satisfy educational requirements where the institution is located. **AND**
- The institution must satisfy state educational requirements where the student is located at the initial time of enrollment **OR** where the student attests that they will seek employment.

### 2. Are you saying that an institution cannot serve a student in a state unless the institution meets state educational requirements?

Yes, the institution must meet state educational requirements **OR** have an attestation by the student that they intend to seek employment at another specifically identified state.

### 3. What is an attestation?

Documentation that the institution maintains that the student has indicated a different state for which they will seek employment. Institutions should maintain documentation of a process to show how students were fully informed to make this attestation which could be written or electronic. This attestation is based on time of initial enrollment. The attestation is not collected annually or at a different time period over the course of their program.

### 4. Must the institution meet state educational requirements where the student attests they intend to seek employment?

Yes, the institution must meet state requirements to that specifically identified state.

### 5. What if the institution currently has students in states where the institution does not meet state educational requirements?

The regulations indicate for students who enroll in a program on or after July 1, 2024. The regulation is not applied retroactively to currently enrolled students.

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**6. What if the institution cannot meet state educational requirements in each state?**

The student cannot be served in that state unless the student attests that they will seek employment in a different state for which the institution can meet the educational requirements of that state OR the institution can show that the student may obtain employment through the use of a professional compact or multi-state agreement for which the state where the student is located and where the institution is located are members to the agreement or compact that would provide access to license mobility and employment.

**7. What is a professional multi-state agreement and professional licensing compact?**

These are agreements developed by states to facilitate licensed practitioners to become employed in another state that is a member to the agreement or compact. Rules in each agreement or compact vary. This type of reciprocity is not related to the institution's participation in SARA.

**8. Will the Department provide examples of attestations?**

Not likely as we have not seen them provide sample language for other issues in the past. However, they have expressed interest in the ability to determine that the student was made aware of their options. Document!

**9. What if the student moves or the state licensure laws change?**

The Department acknowledged that laws change, and students move. For purposes of this regulation, the Department indicated that the focus is on the initial time of enrollment. If the student moves or laws change and the program no longer meets state educational requirements where the student is located, the Department indicates it would be ideal to try to meet the new requirements, but at the least, not serve new students in that state where the institution does not meet state educational requirements.

**10. If a student who attests to a certain state changes their mind, must the institution obtain a new attestation?**

No, as per the reasoning above, the focus is on the initial time of enrollment including if the student attests to a specific state and changes their mind where they intend to seek employment or state requirements change.

**11. How does the Department define enrolled?**

The Department indicates it is the same structure to determine location at initial time of enrollment as was released in regulation effective July 1, 2020. The institution is to develop its processes as needed to serve their institution's community. Processes may be different by institution, but there must be a process applied consistently at the institution and is documented to share with the Secretary upon request.

**12. Is there a minimum number of students in a state that would cause the institution to have to make this determination?**

The minimum number of students is 1. If the institution intends to offer programs to even a single student in a state, the institution must meet these requirements.

**13. What if a license is required in some states but not others?**

The Department is concerned about meeting state educational requirements if they exist. Suggestion, document that serving students in those specific states does not require a license.

**14. Is time of initial enrollment tied to enrollment in the program or the institution?**

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The language of the regulation references another regulation indicating: “.....the State in which a student is located at the time of the student's initial enrollment in an educational program.”

**15. The question asks about the possibility that there could be students in a class under different rules?**

Yes, for a few years this could happen. The Department wants those currently enrolled in programs not to encounter barriers to completion. However, a new student would be protected by the new requirements.

**16. What if the student does not know where they want to seek employment?**

The Department believes that the stakes are high enough that protections are needed so that the student financially investing in a program leading to a license is not left with a “useless credential” and more likely to default on their loans. Therefore, the institution must provide protection by satisfying education requirements where the institution is located and for distance education programs, where the student is located or use of the attestation or professional compact/multi-state agreement option.

**17. What about students who are seeking the degree for reasons other than licensure? (Example - someone who already has licensure based on their master's degree but want a doctorate for that credential (and the doctorate doesn't meet)?**

Generally, the Department articulated in the preamble that they disagree with the suggestion that students may not be interested in a license and believe it is reasonable to assume that a student who enters a program that prepares students for a license wants to work in that program. If you are saying that the additional degree is not “needed for the student to practice or find employment in an occupation” which is the phrase used in the regulation then the institution is not required to certify for that program.

**18. If a student is in a state where a program leads to licensure, but does not wish to use Title IV, can the student still participate in the program?**

The Department has indicated this requirement is in preparation for the first student who will use Title IV funding so if your institution is eligible for Title IV funding, your school will need to comply with this requirement, regardless of whether the student wishes to use Title IV.

**19. Does failure to meet the educational requirement of a state really mean that a school cannot offer the program in that state, or that a student from that state cannot be packaged for Title IV aid?**

Yes, the program will not be eligible for Title IV aid in that state UNLESS the institution finds that they can obtain an attestation from the student that they intend to seek employment in a different state where the institution does meet state educational requirements or correctly points to an applicable multi-state licensure agreement or professional compact for the student to obtain a license in the state where they are located.

**20. For teacher ed particularly, many of those reciprocity-type agreements are not necessarily dual reciprocity. Also, they often may still include additional coursework/tests a teacher would have to take in the new state. Would we be able to say that our program meets the requirements, through reciprocity but indicate that there are additional requirements?**

The [Teacher Education multi-state agreement](#) managed by NASDTEC is different than the [Interstate Teacher Mobility Compact](#). An institution must become knowledgeable on all components of these different types of agreements in order to use them. If there are additional jurisdictional requirements based upon the agreement, if the student can get a provisional license in order for time to complete the requirements, the Department has considered that acceptable. The bottom line is connecting the dots for the student to be employed in short order

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through the provisional license if there are additional jurisdictional requirements. A time period to gain experience in the state where they are first licensed would not be acceptable. SAN members have access to the list of currently existing compacts and those under development [National Associations for State Licensure Research](#) – far right column of the chart.

**21. So for students from out of state who enroll in our on-campus licensure programs CAN receive financial aid because our program leads to licensed employment in our institution's state, regardless of whether or not that student can be licensed in their home state. Is that what you mean that this does not apply to on campus programs?**

This regulation does apply to on-campus licensure programs as the institution must meet state educational requirements where the institution is located. The education will take place where the institution is located for the face-to-face student including those that come from another state to receive face-to-face instruction. The regulation pertains to the distance education student where they will receive instruction at time of initial enrollment.

**22. For licenses such as a CPA that require 150 credit hours, that credit limit is far about at least our UG program degree requirement. Does this mean no student can enroll in our UG Accountancy program as it will not satisfy licensure requirements in any state due to the credit limits?**

The regulations are focused on a program that is intended to upon completion lead to the licensure or certification exam. Your program upon completion is not intended to lead to the licensure or certification exam due to completion of additional requirements after completion of the educational program. Suggestion: Document!

**23. And “time of initial enrollment” is still defined as “prior to financial commitment,” correct?**

No. Time of initial enrollment is to be determined by the institution when determining the location of the student. The institution should develop a defensible process and implement it consistently at the institution. It should be documented and made available to the Secretary of Education upon request. The “prior to financial commitment” refers to preamble language from Nov 1, 2020, when the state authorization of distance education regulation and licensure notification regulations were released. That phrase referred to when the student is considered a “prospective student” for a direct notification. The Department had indicated the “prospective student prior to enrollment” meant prior to an enrollment agreement and absent an enrollment agreement, prior to enrollment in the program.

**24. How should we think about programs versus courses? Many on ground programs include a few DE courses- if a student goes home to another state for the summer and takes DE courses, does that initiate the need to meet all the requirements for licensure in the student's home state?**

The Department indicated that the institution is to certify in the PPA the determination of meeting state educational requirements to serve a student in a state at the initial time of enrollment. The regulation does not address the student after that time as indicated in response to previous questions.

**25. So...if a student from Pennsylvania comes to our campus in West Virginia (either living on campus or as a commuter) for a program of study and intends to go back to Pennsylvania to work do we have to meet the education requirements in that state?**

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The institution is responsible for meeting state educational requirements where the institution is located. The Department indicated in the preamble that the face-to-face student is included in this regulation through the requirement that the institution must meet the state educational programs of that location.

**26. So if it applies only to distance and correspondence, does this mean we no longer have to do this for our on-campus programs?**

This is not only about distance and correspondence although the largest impact is on those modalities. The face-to-face students are provided protection through the requirement that the institution satisfy the educational requirements where the institution is located. Additionally, the public notifications refer to all modalities.

**27. How much of a program must be offered online in order to be considered "distance ed" in this context?**

That is a good question! There are four definitions of Distance Education in the Code of Federal Regulations as well as a May 2023 Dear Colleague letter and description in the FSA Handbook. I should point out that those last two items carry no legal authority by themselves and must point directly to or more fully explain a specific statute or regulation. So.... stay tuned!

### Professional Licensure Topic Notifications

**1. Is a public notification regulation required for all modalities?**

Yes, the Department uses the same language as the currently effective regulation to identify the type of educational program that must provide a public notification. The modified language of the public notification cites the regulation located in the PPA previously discussed. We know that face-to-face students are addressed in that new PPA regulation as the institution is required to meet state educational requirements where the institution is located.

**2. If the new location of the student is a State in which the institution is unable to determine whether the program meets the educational requirements at the time of initial enrollment, other than informing the student directly, must the institution also update public disclosures?**

The Department would expect the institution to notify the enrolled student and update public notifications if where the enrolled student is located no longer meets state educational requirements.

**3. Is there any clarification on "advertised" as being "required for employment in an occupation"? Especially considering the emphasis on talking about careers after programs and Gainful Employment, it feels this could expand the concern over what is being "advertised."**

It is very important to have communication with marketing to share information about programs that is accurate. Information that inflates the ability of the student to complete and then seek employment could be seen as misrepresentation as well.

**4. So we can still have "not determination" as a category or should we select does not meet with an explanation that we are unable to make a determination?**

The Department is requiring that there be two lists of states where the institution has made a determination of meets or does not meet. The institution will likely be maintaining an unpublished list of "no determination" as the institution is to send an individualized notification to that effect to prospective students. The Department included the language "a list of all states where the institution has determined." That appears to be a specific decision to make a determination related to those two options.

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**5. Could an institution just say "does not meet" for all programs? And take the chance of not enrolling students vs the alternative of making a mistake?**

It is difficult to understand the goal of this tactic. The institution should make the business decision where to serve students based upon the information and research that they have to meet state educational requirements or obtain attestations or rely upon professional compacts or licensing multi-state agreements. That is an institution choice.

## **Complying with State Closure Laws**

**1. If an institution offers distance education in every state, then it is to say that the institution has to provide a surety bond in every state the requires one, correct? Assuming so, how do we know what states require them and what the calculations for the requirements are?**

As we discussed, if your institution participates in reciprocity it is very likely that your institution is not subject to these additional requirements related to state-specific closure laws due to the provisions of the reciprocity agreement which provide the uniform requirements for oversight of the institution. If ultimately the institution must comply with state-specific closure laws, the institution will have to research the state requirements. SAN offers the [State Institutional Approval Quick Chart](#) that assists institutions that do not participate in reciprocity a shortcut to all of the state requirements for state institutional approval to offer activities in a state. A column on the far right has been added to list any specific closure laws that states believe they may enforce on institutions that participate in reciprocity. We have not seen any states come forward to indicate that they intend to enforce these laws on institutions that participate in reciprocity and offer activities in their state.

**2. Does closure pertain to institutional closure or also closure of programs in states, either in-person or via distance education, such as if we determine that we can no longer offer a program to students in certain states due to the previously discussed federal regs?**

It appears that the regulation is addressing institutional closure. The concern is the institution closing without recourse for the student.

## **General Questions:**

**1. As we revise (or in some cases establish) location policies, what are some good tips to include and cover?**

The institution will wish to determine what is best for that institution's community by including key stakeholders (registrar, admissions, financial aid, institutional research, provost, legal). Some institutions will consider initial time of enrollment to be the first day of the term. There could be advantages to that to determine location tied to the campus if the student is face-to-face. However, this is a decision that should be made with all stakeholders involved. Document and apply consistently. Several [SANSational Award winners](#) over the years have established good practices for determining location which you may review for ideas.

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