SAN Professional Licensure New Regulations  FAQ
Originally developed after the SAN & WCET November 2023 webinar. Updated by the SAN Special Interest Team.

May 14, 2024

Regulations
Which U.S. Department of Education (Department) regulations are we to know about and reference in professional licensure programs?
- Certification Procedures under 34 CFR 668.14(b)(32)
- Institutional Information under 34 CFR 668.43(a)(5)(v) & 668.43(c)

How have the rules regarding professional licensure programs changed?
- Whereas previous regulations focused on disclosing information to students and prospective students, recent changes will impact an institution's ability to enroll students located in other states into professional licensure programs that are conducted, in whole or in part, via distance education.
- Title IV institutions will, specifically, need to certify that professional licensure programs satisfy applicable licensure, certification, and programmatic accreditation requirements in all states where students are located at the time of initial enrollment. If such requirements are not satisfied (or if this has not been determined), the institution can only enroll impacted students if they have first attested that they intend, after graduation, to seek employment in a state where requirements are known by the institution to be satisfied.
- Existing public and individualized licensure notifications remain largely unchanged except that public notification pages no longer need to include a list of states where it has not been determined whether educational requirements for professional licensure are satisfied. Maintaining lists of states where requirements are satisfied and are not satisfied continues to be required. Additionally, all individualized notification and disclosure requirements under 668.43(c) remain in place.

What is the effective date of these rules?
- July 1, 2024 (final rules were released 10/31/23)

Will there be a grace period for coming into compliance?
- Sort of. In Federal Student Aid guidance published on April 9, 2024 (GE-24-03), the Department noted that should an institution face “challenges in meeting compliance due to reasons that are unique, time specific, and outside the control of the institution,” the Department will consider such challenges in evaluating compliance prior to January 1, 2025, but they “retain the discretion to base determination on the totality of circumstances and the specific facts of each case.” Institutions that feel that they would qualify for the grace period would need to provide substantial evidence as to the reason and the work completed to date. If you fear that your institution will be unable to come into compliance by July 1, it is strongly recommended that you work with financial aid units and legal counsel to document the circumstances that are preventing your compliance. Note that the documentation itself should be developed prior to the July 1, 2024, effective date to receive full consideration.
Do these regulations apply to currently enrolled students or just new students?
- These regulations apply to students who enroll in your institution’s professional licensure programs on or after July 1, 2024. It is important to note that for a few years it is likely that you will have students under two different sets of federal regulations relating to professional licensure. 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.

Who is enforcing this? What are the repercussions?
- These regulations are from the U.S. Department of Education. Failure to comply with these regulations may result in your institution facing fines, repayment of disbursed funds, and possibly a loss of access to federal financial aid (Title IV).

Student Location

Are we required to have a policy on student location?
- Best practice says yes, however the language in the federal regulation relating to the determination of student location notes that an institution must make a determination “regarding the State in which a student is located by the institution’s policies or procedures . . .” 668.43(c)(3)(ii)(A). It is important to note that any policy or procedure that your institution develops must be 1) applied consistently to all students regardless of level, program, or modality; 2) documented; and 3) must be made available to the Secretary upon request. Note: this is not a new requirement; this regulation went live in 2020.

Your institution will need to determine what is best for that institution's community by including key stakeholders (registrar, admissions, financial aid, institutional research, provost, legal). It’s important to remember that the need to track student location goes beyond professional licensure programs—these policies and procedures must be applied to all students enrolled at your institution. Knowing where your students are located when engaged in education delivered by your institution, whether they are online or participating in experiential learning, is an integral part of state authorization. Again, these policies and procedures for determining student location should be made with all stakeholders involved and must be documented and applied consistently. Several SANsational Award winners over the years have established good practices for determining location which you may review for ideas.

Modality

Do these regulations for professional licensure programs apply to all of our professional licensure programs or only those offered via distance or correspondence education?
- These regulations apply to all professional licensure programs offered by your institution, regardless of modality. While your programs offered via distance and correspondence education may see the largest impact, 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 requirements for public notifications and prospective student notifications—34 CFR 668.43(a)(5)(v) & 668.43(c), effective July 1, 2020—apply to all modalities.

What if the program is only offered on campus and there are no “online” components in the major?
- According to the Department correspondence with Cheryl Dowd, in order 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.” If that is indeed the case for your program, “the
requirements in 34 CFR 668.14(b)(32) apply only to the situation at the time of the student's initial enrollment.” The Department continues:

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). (emphasis added).

For example, if a student at a university in Nebraska would like to enroll in a face-to-face program leading to a license but lives across the river in Iowa and takes a single course online, according to the Department, that online course would require the university to satisfy applicable educational requirements in Iowa.

Again, this regulation does apply to on-campus licensure programs as the institution must meet state educational requirements where the institution is located (note: Some institutions may have locations in multiple states). 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. However, suppose a student is taking a single distance education or correspondence course in their first term. In that case, the student is considered to be “enrolled in distance education” by the Department and educational requirements for licensure would need to be satisfied where they are physically located at the time of initial enrollment unless the student has submitted an attestation showing their intent to seek employment in a different state where requirements are satisfied.

How much of a program must be offered “online,” and what if the student takes classes online before moving to campus for a face-to-face program?

According to a representative from the Department, if a student enrolled in a professional licensure program takes at least one class through an alternative modality in their first term, this will trigger the requirement that the program meet state educational requirements where the student is located, and thus the student would need to receive notifications based on their location at the time of initial enrollment. Specifically, the Department contact shared “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.”¹ So if that online class starts before their face-to-face course then yes, the institution would be required to satisfy state educational requirements at the time of the initial enrollment in the program which for this example is where the student participates in the online course and also send any applicable notifications.

Professional Licensure Programs & Educational Requirements

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.

---

¹ VG to Cheryl, 12/5 mix post
correspondence education?
- This applies to all professional licensure programs offered by your institution, as described in regulation designed or advertised to meet requirements necessary for a specific license required for employment, regardless of modality. If your program is strictly offered face-to-face (and there is no distance education or correspondence coursework and no possibility that a student could participate in an online course in their first semester), you may not end up sending any notifications or ever require any attestations, but you are still required to provide a public notification that includes a list of all states where your program does and does not meet educational requirements for licensure. 668.43(a)(5)(v). But, “for students that plan to enroll in programs or courses via distance or correspondence coursework in a different State than where the institution is located, the institution must determine that the program meets the licensure/certification requirements in the State where the student is located at the time of initial enrollment. If such determination is not made or if the institution has determined the program does not meet such requirements, it should not be advertising the program to students located in that State or enrolling them into the program.”^2

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 one. If the institution intends to offer programs to even a single student in a state, the institution must meet these requirements.

Are you saying that an institution cannot serve a student in a state unless the institution meets state educational requirements? Can we still admit students from states where we do not meet licensure requirements?
- Correct. The institution must meet state educational requirements OR have an attestation by the student that they intend to seek licensure and employment at another specifically identified state where your institution does meet state requirements (either through education provided or through licensure reciprocity, licensing compacts, or multi-state agreement).

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.

Can my institution use its state belonging to a licensed profession reciprocity agreement (e.g., NASDTEC) as a means of being able to say that our educational program leads to licensure in another state?
- According to a communication from the Department:
  [N]othing prohibits an institution from demonstrating that certification/licensure is met through a reciprocity agreement. It is, however, incumbent upon the institution to make such a determination, with the institution held accountable, and potentially liable, for doing so erroneously. Such situations would be acceptable provided the student obtains a license through reciprocity that allows them to work in their State immediately. This could include both a full license as well as a provisional one. For example, if a student is able to work in their home State with a provisional license while they complete State specific course(s), this situation is acceptable. A situation where reciprocity is conditioned upon a graduate having worked in the profession for a certain number of years before being permitted to sit for the required licensure and/or certification in the other State would mean that the program does not satisfy the requirement of 668.14(32)(ii).^3

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

^2 VG to Jennifer Lewis @USM 4/16
^3 Vanessa Gomez to Jennifer Lewis @USM 4/16
- These are agreements developed by and between states to facilitate licensed practitioners becoming employed in another state that is a member to the agreement or compact. Rules in each agreement or compact vary, however the student must obtain licensure in the institution’s home state in order to be eligible for reciprocity. This type of reciprocity is not related to the institution’s participation in SARA or other state authorization agreements. For teacher education programs in particular, 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?
- It depends. 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: institutions need to be able to connect the dots for the student to be employed in short order through reciprocity or a provisional license. Please note that if a student is required to work for a period of time in the state that issued the initial license before they would be eligible to apply for reciprocity or a provisional license, this would be viewed as a barrier to licensure by the Department and would be considered noncompliant.

What if the institution currently has students in states where the institution does not meet state educational requirements?
- The new regulations with enrollment restrictions only apply to students who would be enrolling in a program on or after July 1, 2024. These restrictions do not apply retroactively to currently enrolled students. If a program will no longer satisfy requirements in states where students are located after initial enrollment (including when students move to new states), direct notifications of these limitations must still be provided to impacted students within 14 days per existing regulations.

What if the institution cannot meet state educational requirements in each state?
- If an institution cannot meet the state educational requirements for licensure in a state, the institution cannot admit students in said state to the program unless the students can attest that they will be seeking licensure and employment in a state where the institution does meet the educational requirements for licensure. It would also be possible to admit students from a state where the institution does not meet educational requirements for licensure if they can demonstrate that the student may obtain employment through the use of a professional compact or multi-state agreement that the state where the student is located and the state where the institution is located are members to the agreement or compact.

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. You are still required to notify students within 14 days of making this determination; however, no attestation is required for students past initial enrollment.
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 notifications?

- The Department would expect the institution to notify the enrolled student (per 668.43) and update public notifications if where the enrolled student is located no longer meets state educational requirements.

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

- The Department is concerned about meeting state educational requirements if they exist. We recommend documenting that, in those specific states, the practice of a certain profession does not require a state license.

What if I really cannot determine what the requirements in a state are?

- Your institution will be unable to enroll students located in that state into that professional licensure program without an attestation about them seeking future employment and licensure in a state where your program does meet educational requirements (see section on Attestations, below).

Who is responsible if the state changes its requirements halfway through the student’s program and the student is no longer able to get licensed after completion of the program?

- While you/your institution are the responsible party when it comes to notifying the student of this change (see 668.43 and the section below on Public and individualized Notifications), ultimately (and unfortunately) it will be the responsibility of the student to make a decision on what to do next. You may want to develop an action or advising plan to assist students who come into this situation.

Can these determinations be made on a case-by-case basis as students apply? (For instance, we don’t have any students in Idaho this year, but if we get an applicant from there next year can we do the research then?)

- Yes. However, you will need to be very careful about how you advertise the program in a state where you have not made a determination and your process for making said determination after application. Will you be able to get that information in enough time for a student to be accepted, make a decision, and commit to your institution?

If a student is in a state where a program does not lead to licensure, but the student does not wish to use Title IV, can the student enroll in the program?

- No. 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. The issue here is that for purposes of the program being eligible for title IV, certain responsibilities are to be met by the institution. Specifically, this professional license certification for Title IV is in the Program Participation Agreement. The regulation directs that for the program to be eligible for Title IV HEA program funds the institution is to satisfy state educational requirements where the institution is located and where the student enrolled in distance education is located at the time of initial enrollment (unless an applicable student attestation or applicable multi-state agreement/compact in order to satisfy this subsection). This is eligibility for the program. There is not a provision to choose that the student is not going to receive federal aid.
How should we think about programs versus courses? For example, many on-the-ground programs include a few online courses. If a student goes home to another state for the summer and takes online courses that term, does that initiate the need to meet all the requirements for licensure in the student's home state?

- No. 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. However, it’s important to remember in a situation like this, that the student should update their location for that term and that would then require that your institution send a direct notification within 14 days of that address being updated.

What if a student from Pennsylvania (PA) comes to our campus in West Virginia (WV) (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 Pennsylvania?

- It depends. Your institution is responsible for meeting state educational requirements where the institution is located or where the student is located when they are taking classes. So, for this example, if the student is ONLY taking classes in WV and will not be engaging in any online education in their first term enrolled in the program, then no, the program does not have to meet PA licensure requirements. However, should this student be taking at least one course online in their first semester, and thus one can assume from home in PA, then yes the program must meet PA licensure requirements, or the student must complete an attestation (see below). Don’t forget - you may have informed the student of this prior to their enrollment. Under 668.43(c)(1) prospective students must receive a direct notification if they are located in a state where the education provided would not meet educational requirements for licensure.

Does failure to meet the educational requirement of a state really mean that a school cannot offer the program to students in that state?

- Correct. The institution cannot deliver the program to students located in a state where said program does not meet the educational requirements for licensure unless the student attests that they will seek licensure and employment in another state where the program does meet requirements or the state participates in an applicable multi-state licensure agreement or professional compact through which the student may be able to apply for reciprocity (once they have received licensure in the institution’s home state).

Attestations

What is an attestation?

- An attestation is written documentation signed by the student certifying that they understand that the education being provided will not allow for them to sit for the licensing exam in their field in the state where they are currently located and that they (the student) intend to seek future licensure and employment in another state where the education provided in your program does meet state requirements and they specify what state that will be. Attestations are for specific situations where a student, at the time of initial enrollment, residing in one State, has concrete plans to move to another state in order to seek licensure and employment after graduation. Institutions should maintain documentation of a process to show how students were fully informed to make this attestation which could be written or electronic. The attestation is not collected annually or at a different time period over the course of their program. Attestations must be retained per institutional records retention policies.

Are attestations separate or different from the notifications?
- Yes. Direct and/or general notifications are meant to inform the students (prospective and current) and the general public of the applicability of the program’s education to state licensure requirements. The attestation, however serves as an official record that the student has knowingly enrolled at an institution where the education being provided will not qualify them to sit for the applicable professional licensure exam in the state where they are located, and thus voluntarily attests that they will instead be seeking licensure in a state where the institution’s education does meet state licensure requirements. In providing or discussing attestations with students, institutions should take federal regulations on Misrepresentation and their accreditor’s standard or criteria on Ethics into consideration.

What should be included in an attestation?
- The Department has not given us any directives as to what specifically should be included in an attestation; however, it should include information that clearly explains why the student is being asked to sign it and the information necessary for the student to make an informed decision. Other information that must be included would be having the student indicate the state where they intend to seek employment after graduation, their signature (electronic or otherwise), the date that the attestation was signed, and ways the student can get more information on the topic. At several points, the Department has expressed interest in the ability to determine that the student was made aware of their options. Document your attestation process and make sure that attestations are retained as part of your student records.

Will the Department provide examples of attestations?
- No. The Department will not be providing examples of attestations.

What if the student changes their mind about future employment? Must the institution obtain a new attestation?
- No. The Department’s focus is on the time of initial enrollment in the program. If the student changes their mind or the state changes their requirements, you’re not required to seek, or retain, a second attestation.

What about students who are seeking the degree for reasons other than licensure (e.g., someone who already has a license in the field, or wants a doctorate for that credential), or attests that they will not be seeking licensure? Is the institution required to meet licensure requirements in that state or make the student sign an attestation?
- Yes. Your institution is still responsible for meeting the state educational requirements for licensure or collecting an attestation from the student stating that they intend to seek future licensure and employment in another state where the education provided in your program does meet state requirements. According to the preamble to the regulations and Department representative Vanessa Gomez in a communication with the University of Southern Mississippi, “requirements apply to programs so if a program is designed or advertised as leading to licensure or certification, the program must meet the licensure/certification requirements in the State the student attests they will seek employment in, even if the student says they are not going to seek licensure.” Again, regardless of the student’s intention to seek licensure or not, your institution’s program must meet educational requirements in the state where the student is located, or you must have a signed attestation that they will be seeking licensure in a state where the education provided does meet requirements.

---

4 From page 74.646: “We disagree with the suggestion that students may simply not be interested in the license. Overall, it is reasonable to assume that a student who enters a program that prepares students for an occupation that requires licensure or certification wants to work in that program. We also believe it is too easy for institutions to tell students information verbally about whether they could be licensed or certified that will then result in the potential for the filing of a borrower defense to repayment claim that will be challenging to adjudicate.”

5 Thanks to Jennifer Lewis from USM!
What if the student does not know where they want to seek employment or obtain licensure?
- 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.

Defining “initial enrollment”

How does the Department define “initial enrollment”?
- 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.

Is the “time of initial enrollment” tied to enrollment in the program or the institution?
- For the purposes of these regulations, “initial enrollment” refers to initial enrollment in the program and not the institution. Indeed, the language of this regulation references the regulation on state authorization, 34 CFR 600.9 (c)(2)(ii) that reads “…..the State in which a student is located at the time of the student's initial enrollment in an educational program.”. For this reason, it is important to remember that a continuing student who changes their major and/or enrolls in a professional licensure program after already being admitted to the institution may need to receive notifications and possibly be asked to sign an attestation based on their location.

Is “time of initial enrollment” the same as “prior to financial commitment”?
- 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 apply it consistently to all students 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 refers 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.

Public and Individualized Notifications

Is a public notification required for programs offered in all modalities? Even the face-to-face programs?
- Yes. Notifications are required for all programs that lead to licensure or certification, regardless of modality. 668.43(a)(5)(v) requires that an institution provides a list of all States where the institution “has determined. . . that the program does and does not meet” licensure requirements. The Department does not differentiate based on modality in these regulations and uses the same language as the current (7/1/2020) regulation to identify the type of educational program that must provide a public notification. Remember - if a student enrolls in a single “online” course in their first semester aligning with the initial time of enrollment, that student is considered an “online” student by the Department and may be subject to required notifications and you may need to get an attestation prior to initial enrollment in the program.
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 and admissions about sharing accurate program information and intended outcomes. Information that inflates the ability of the student to complete the program and then seek employment could be seen as misrepresentation.

Can institutions continue to use "unable to determine" as a category in our public notifications 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 the determination of “meets” or “does not meet.” You may, though, still publish a list of states where you have been unable to make a determination. However, it is very important to remember that you cannot offer the program in states where you have made no determination without a state level reciprocity agreement or getting an attestation from a student about future employment. Additionally, 668.43(c)(1) still requires that if you have programs/states that are listed as “unable to determine,” that you send a direct notification to prospective students upon inquiry.

Public and Individualized Notifications Quick Guide:

<table>
<thead>
<tr>
<th>Current Students</th>
<th>Prospective Students</th>
<th>General public</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Yes, Meets</strong></td>
<td>No Comms required</td>
<td>No Comms Required</td>
</tr>
<tr>
<td><strong>No, Does Not Meet</strong></td>
<td>Direct Notification</td>
<td>Direct Notification</td>
</tr>
<tr>
<td><strong>Unable to Determine</strong></td>
<td>Direct Notification</td>
<td>Direct Notification</td>
</tr>
</tbody>
</table>

Note: We thank the members of the SAN Special Interest Team for Professional Licensure for their great work in updating the FAQ document initially created following the SAN and WCET webinar in November 2023.

Disclaimer: The information and analysis in this document are our best understanding of the regulations as of the date of the document. The analysis is based upon the preamble of the Federal Register announcement of the final regulations and the email communications with the U.S. Department of Education’s designated contact for Certification Procedures. We still anticipate the FAQ document that the U.S. Department of Education stated in early 2024 and again in April 2024 that they would provide.

This analysis should not be considered to be or used as legal advice. Institutions must make implementation determinations based on the institution’s analysis practices. Legal questions should be directed to legal counsel.

wcetsan.wiche.edu