

Professional Licensure Notifications Now Required!

Webcast 8/20/2020

Answers to your questions by topic area.

Please note that these responses provide general information and not legal advice. Institutions should weigh these responses to develop processes at the institution under the direction and confirmation of your General Counsel to meet acceptable legal risk.

Regulation Foundation:

The basic principle of these notifications is transparency for students. The Federal regulations are tied to the institution's participation in Title IV programs. For SARA Purposes, section 5.2 indicates "these requirements will also apply to non-Title IV institutions." The regulations were the result of the Department of Education's 2019 Negotiated Rulemaking that came to consensus. Russ Poulin, Executive Director, WCET, served on the subcommittee that helped write the regulations. The [Federal Register announcement of the regulations](#) provides further details, definitions, and examples for implementation of the regulations. Some implementation issues must be addressed with your general counsel.

Available resources:

- WCET | State Authorization Network (SAN) Website: <https://wcetSAN.wiche.edu>
- Professional Licensure Disclosures: Implementation Handbook for Institutional Compliance with the 2019 Federal Regulations. <https://wcetsan.wiche.edu/resources/professional-licensure-disclosures-implementation-handbook>
- Federal Regulations for Notifications:
 - [34 CFR 668.43\(a\)\(5\)\(v\)](#) - Institutional Information (public notifications for programs leading to professional licensure or certification for all modalities)
 - [34 CFR 668.43\(c\)](#) - Institutional Information (individualized notifications for programs leading to professional licensure or certification for all modalities)
- NC-SARA Website: <https://nc-sara.org>
 - NC-SARA Manual: <https://nc-sara.org/resources/guides>
 - Professional Licensure Directory (contact information in each state for state boards of Counseling, Nursing, Psychology, Social Work, Teacher Education); <https://nc-sara.org/professional-licensure-directory>

Effective Dates:

- **Effective Date of Federal Regulations:** July 1, 2020.
- **Effective date of revised NC-SARA Manual Section 5.2:** Version 20.2 of the manual codified existing SARA Policy as of June 15, 2020.

Applicable Educational Programs requiring notifications:

- **For Federal regulations – ALL educational programs described in the regulation regardless of modality (on-ground and online)**

- **For SARA compliance – courses or programs subject to SARA Policy as per the SARA Manual.**
- **34 CFR 668.43 (a)(5)(v)** - Institutions should develop an institution process to carefully review academic programs through the lens of the specific regulatory language for consistent application to identify programs that require notifications.
- Educational programs that are
 - **Designed** to meet educational requirements
 - for a **specific professional** license or certification that is
 - **required for employment** in an occupation, or
 - **Advertised** as meeting such requirement.
 - information regarding whether **completion of that program** would be sufficient to **meet licensure requirements in a State** for that occupation. (in the 3 list format described in the rest of the regulation)
- So, for each program you need to ask the questions:
 1. Was the educational program **designed to meet educational requirements for a specific professional license or certification**?
 2. Is the **license or certification required for employment** in the occupation?
 3. Is **completion of the program** sufficient to **meet STATE licensure requirements**?
 4. Or did the institution **advertise** that the program meets requirements?

Responsibilities based upon applicability to Compacts/Reciprocity, Accredited Programs, Third Party Providers

- Compacts such as NASDTEC and NLC address post licensure. These notifications are for pre-licensure. Please review the following paper: [Professional Licensure Compacts: Myth v. Fact](#)
- Notifications are required even when the program is accredited. Accreditation does not absolve an institution from providing disclosures for that program.
- Institutions determining whether they are responsible when they work with 3rd Party Providers or with partnerships may want to consider how the impact on participation in Title IV Federal Financial Aid programs.

Public Notifications: (34 CFR 668.43(a)(5)(v))

- Must address **all 50 states and territories** whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—
 - List of states where the curriculum **DOES** meet state educational requirements.
 - List of states where the curriculum **DOES NOT** meet state educational requirements.
 - List of states where the institution **HAS NOT MADE A DETERMINATION**.
- For Federal regulation compliance the only required notification is one of these three responses in each state and territory of each applicable educational program.
- If some states **DO** require a license for a particular occupation/employment capability and others **DO NOT**, the issue is transparency. The institution will want to make a determination how they will address if a particular state does not require a license to obtain employment.
- Frequency of institution review of state requirements – there is no time frame listed in the regulations. However, the institution will want to develop a routine of review to ensure that information does not become stale amounting to misrepresentation ([34 CFR 668.72](#)) An institution may want to date stamp the public notifications subject to approval of upper administration/general counsel.
- **HAS NOT MADE A DETERMINATION** is an acceptable notification per the Federal regulations and confirmed in the Federal Register announcement. Yes, maintaining review of all requirements in all states is labor intensive,

but we know students will be reviewing. Best to develop a strategy especially around larger programs at the institution.

- 34 CFR 668.41(d) indicates that the public notifications can be satisfied by internet website that is reasonably accessible to the individuals to whom the information must be disclosed.
- If the curriculum meets “most” but not all state educational requirements, then the curriculum DOES NOT meet state educational requirements... even 98% covered or just one course short. A yes answer could be perceived as misleading see Federal regulations for Misrepresentation 34 CFR 668.72.

Direct notifications: (34 CFR 668.43(c))

- **Required to Prospective Students:** if the institution indicates DOES NOT meet state educational requirements or NO DETERMINATION where the prospective student is located, a notice to that effect must go to the student prior to enrollment in the program.
 - **Prior to enrollment in the program means:** Federal Register announcement indicates “The Department expects the institution will provide this disclosure prior to the student signing an enrollment agreement or in the event that an institution does not provide an enrollment agreement, before the student makes a financial commitment to the institution.” Ask yourself, are the students submitting funds that commit them to be a student in the program at the institution?
 - If the student does not initially enroll in the program leading to professional licensure or certification when initially enrolling at the institution, the institution will need to determine what that means within their processes and procedures. The intent of the regulation was notification whether the out-of-state student was able to return to their state with their education to seek licensure in that state.
- **Required to an Enrolled Student:** if the institution indicates DOES NOT meet the state educational requirements in the location where the student is currently enrolled in the program, the notice to that effect must be provided within 14 calendar days of the institution making that determination.
- **Specificity of the Notification:** the regulation is intended to be individualized as the language specifically addresses to the prospective or enrolled student. Additionally, the regulation speaks to the specific program and the specific state where the enrolled or prospective student is located as providing “notice to that effect” to the student.
- **Determination of Location of the student:**
 - The term “Location” is used to indicate where the student is physically as that is the basis for state protection. This term was substituted in the new regulations as in the previous regulations, no longer effective, the term residence was not always accurate. A person can be a “resident” for purposes of voting, drivers license etc, but be “located” in yet another state. The term location more specifically aligns with state regulations.
 - The regulation specifically states that notification for Prospective Students is the location prior to enrollment in the program.
 - Institutions must track location at time of enrollment which is also required in 34 CFR 600.9(c). This process of determination of location must be documented (can be internal documentation) and made available to the Secretary upon request.
 - Change of Location: Institutions must have processes to track students. The regulations direct that the institution must also indicate location upon formal receipt of information from the student, in accordance with the institutions procedures that the student’s location has changed to another state. Example: Ask yourself... do you ask where the student will be located at time of registration each term

to comply with state regulations in another state? Do you ask where the student will be located when participating in an internship or clinical placement?

- Institutions will want to build processes to track prospective students and then enrolled students prior to enrollment, time of enrollment, and upon a formal receipt of a change of location.
- What if the student expresses interest in becoming licensed in a completely different state? The institution obligation is as indicated in the regulation and not tied to an aspirational location of the student.

Researching the Requirements:

- Institutions may want to develop an institutional policy to consistently address programs, research strategies, and notification distribution across the institution.
- There is no one compendium of state requirements for all states for all professions.
- SARA provides the contact information in each state for five professions.
- National Associations of State Boards often provide links to their state licensing boards to gain access to requirements in each state. State laws/practice acts directing state educational requirements.
- SAN provides members with links to many national associations of state boards.
- SAN provides members with links to State sites that provide hyperlinked lists of what professions are licensed in the state.

SARA Manual Section 5.2 Responsibilities:

- **Regarding questions about SARA Manual Section 5.2 applicability to Courses as well as programs subject to SARA policy** - The disclosures align with the federal requirements to cover programs. Courses are included to ensure that institutions consider appropriate notifications. An example could be course bundling advertised as leading to a license.
- **Regarding questions about the language of “after all reasonable effort” in order to indicate that the institution has not made a determination about the curriculum meeting state educational requirements and how it will be documented and enforce** - When an institution has researched compliance requirements and has attempted to contact the professional licensing boards when the available information is not clear, then an institution will meet SARA policy requiring “all reasonable efforts.” Reasonable effort should be determined and documented by the institution.
- **Regarding when to share the contact information for the state licensing board when the institution has not made a determination about the curriculum meeting state educational requirements** - The intent is for this contact information to be included with the direct disclosure to the student.

WCET Meeting is now Virtual! <https://wcet.wiche.edu/events/annual-meeting>

The 2020 Seminar Series Topics:

- October 6 - 15, on Tuesday - Thursday of each week: Inclusiveness in Higher Education: From Notion to Action
- November 2 - 12, on Monday, Tuesday, and Thursday of each week: The Value of Higher Education and What the Future of Education Could Be



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