

DHE & NEBHE Virtual Meeting on Professional Licensure Disclosures for Massachusetts SARA Institutions



MASSACHUSETTS
Department of
Higher Education

April 14, 2022

DHE Resources for MA SARA Institutions

- DHE SARA website:
<https://www.mass.edu/foradmin/sara/home.asp>
- MA-SARA Portal: <https://madhe.edvera.com/>
- MA-SARA Portal End User Help Guide:
<https://madhe.edvera.com/help>
- Phone: (617) 994-6910
- Email: SARAINquiries@dhe.mass.edu

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NEBHE & N-SARA

- **New England Board of Higher Education (NEBHE)**

- Founded in 1955 by the Governors of the New England states
- Policy Leadership, Regional Collaboration, Legislative Engagement, Transfer Initiatives, Regional Student Program (RSP), NorthStar Collective, and more

- **N-SARA**

- Six New England states, along with New Jersey and New York
 - Over 350 participating institutions, including 65 joining since March 2020
 - Work closely with 3 other regional compacts and the National Council for SARA (NC-SARA)
 - Outreach to all institution Presidents (or similar), newsletter for institutions, support for States, continuing education
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State Authorization Network

PROFESSIONAL LICENSURE RESPONSIBILITIES Understanding the Why

- I. State Authority
- II. Federal Regulations
- III. Programs subject to SARA policy

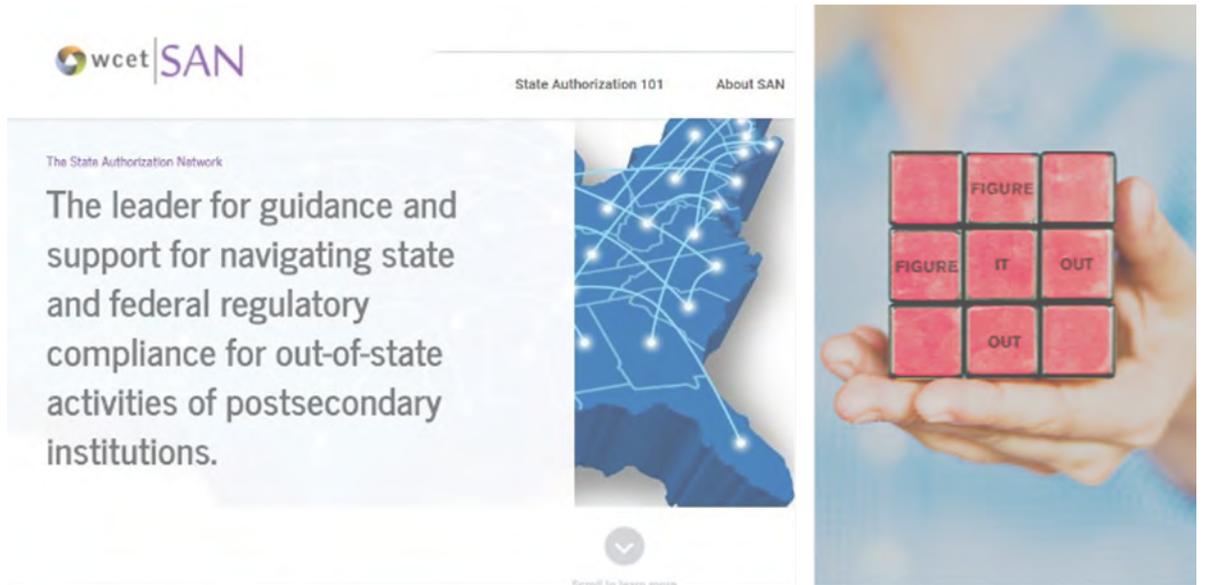
Cheryl Dowd, Senior Director, Policy Innovations
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Who we are

The State Authorization Network (SAN) empowers its members to successfully resolve postsecondary regulatory compliance challenges.

We provide expert analysis, resources and training to prepare for emerging issues, collaborate on compliance strategies, develop solutions and evaluate their efficacy.

Our members are digital learning and compliance professionals representing 800+ institutions and organizations nationally and across all sectors.



Resources for those new to the topic



State Authorization 101

Compliance management for out-of-state activities

First time here? Try these quick links.

- [How it works >](#)
- [Why comply? >](#)
- [Resources >](#)

Scroll to learn more

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How it Works - Resources

Are you relatively new to compliance requirements for out-of-state activities? Start Here!

- [Foundational Principles for State & Federal Out-of-State Activity Compliance - One page overview](#)
- [State Authorization and Crossing State Borders, Part 1: Institutional Approvals for Out-of-State Activities](#)
- [State Authorization and Crossing State Borders, Part 2: Additional Approvals and Professional Licensure](#)
- [10 Steps You Can Take to Begin the State Authorization Process](#)
- [State Institutional Approval Quick Chart - Chart to start research of state requirements.](#)
- [Professional Licensure Disclosures - Implementation Handbook & Flowchart](#)
- [WCET & SAN Webcast: Professional Licensure Notifications Now Required! See the recording, transcript, and Webcast Summary Document](#)
- [Out-of-State Student Complaint Options White Paper & Chart](#)
- [SAN Virtual Seminar 2020 HEA & Federal Rulemaking: The Impact on Institutional Compliance](#)
- [SAN Virtual Seminar 2018](#)

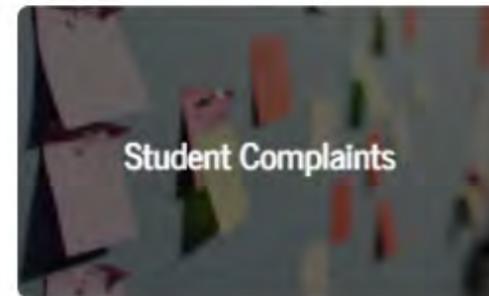
Resources by topic

- Research
- Regulation summaries
- Handbooks
- Talking points
- Sample tools
- More



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Topic Areas



State Authority

➤ Professional licensing

Respective by state/profession

Standards + enforcement of practice

Program approvals may be required

➤ Compacts

State led solutions

Enables portability of a license to another participating state

Thus far, all compacts are post-licensure



Federal Regulations

34 CFR 668.43 – Institutional Information

Professional Licensure Notifications – 668.43(a)(5)(v) & 668.43(c)

Compliance is tied to participation in Title IV HEA programs.

FOUR KEY ELEMENTS:

1. Regulations address all modalities (includes Face to Face and Online)
2. Important to understand the type of Educational Program subject to notifications.
3. Important to know the information to be provided for public notifications.
4. Important to know what and when information is to be provided for direct/individualized notification.



Which Programs Require Notifications?

34 CFR 668.43(a)(5)(v)

Educational Programs:

1. Designed to meet educational requirements
 - For a specific professional license or certification that is
 - Required for employment in an occupation, or
2. Advertised as meeting such requirement.
3. Information regarding whether completion of that program would be sufficient to meet licensure requirements in a state for that occupation.



Public Notifications



What exactly is required?

- A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;
- A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and
- A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification;

Direct Notifications

34 CFR 668.43(c)



Prospective Students:

If the institution indicates that it **does not meet or has not made a determination** where the **prospective student is located**; notice to that student to that effect must take place prior to the student's enrollment in the program. Prior to enrollment = prior to financial commitment.

Enrolled Students:

If the institution makes the determination that the program does not meet requirements in a state where an **enrolled student is currently located**, the institution must provide notice to that effect within 14 days of making that determination.

SARA Compliance

SARA Manual Section 5.2

Section 5.2 - Programs leading to Professional Licensure

- SARA has no effect on State professional licensing requirements.
- Any **Institution approved to participate in SARA** that offers courses or programs **designed** to lead to Professional Licensure or certification or **advertised** as leading to Licensure
- must **satisfy all federal requirements for disclosures** regarding such Professional Licensure programs under [34 §C.F.R. 668.43](#).
- For SARA purposes, these requirements will **also apply to non-Title IV institutions**.

For SARA purposes,

- institutions that are **unable, after all reasonable efforts, to determine** whether a program will meet state professional licensure requirements
- shall **provide** the student or applicant with current **contact information** for any applicable **licensing boards**,
- and advise the student or applicant to determine whether the program meets requirements for Licensure
- in the **State where the student or applicant is located**.

Professional Licensure Resources



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- Federal Regulations (requirements tied to Title IV financial aid): [34 CFR 668.43\(a\)\(5\)\(v\) & 34 CFR 668.43\(c\) - Institutional Information](#)
- [Professional Licensure Disclosures: Implementation Handbook for Institutional Compliance with the 2019 Federal Regulations.](#) Includes Flowchart!
- [SARA Policy Manual](#) - codifies existing SARA policy. See Section 5.2.
- SAN Website – [Professional Licensure Landing Page](#)
- SAN & WCET Webcast: [Professional Licensure Notifications Now Required!](#) See the recording, transcript, and webcast topical summary.
- WCET Frontiers: [One Year Anniversary of the Federal Regulations for Professional Licensure Notifications – How are you Celebrating?; July 1, 2021](#)

Professional Licensure Disclosure Requirements:

An Institutional Project Strategy

Compliance and **You!**

- Why is compliance important?
 - It's the law
 - Student as consumer
 - Institution's moral obligation
 - Marketing advantage
 - Individualized institutional approach
 - Risk tolerance
 - Defensible policies
-

Institutional Challenges

- Institutional leadership
 - Juggling many priorities
 - General counsel concern re: liability
 - Commitment to ongoing compliance responsibility
 - Policies and practices
 - DOE latitude
 - Other staff
 - Faculty pushback
 - Disclosures may be contrary to marketing dept's goals
 - Understanding compacts
 - Post rather than pre-licensure
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Institutional Challenges, cont.

- Compliance staff
 - Project management plus leadership skills
 - Where does the function reside?
 - Access to information
 - Subject matter experts
 - Data
 - ✓ Student location
 - ✓ Program content
 - Disclosure content and logistics
-

External Challenges

- Licensing Boards not part of the development of the notification requirements
 - Still not part of Neg Reg
 - Relationship between higher education and licensing boards
 - State licensing boards often do not have the staff to respond to inquiries
 - The importance of a well drafted email!
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Foundation of a Compliance Plan

- Data must be solid
 - Student location
 - Curriculum content
 - Verify applicability of assumptions used in existing reports
 - Develop a Program List for those that are ***Designed to meet*** or are ***Marketed as meeting educational requirements***
 - Broad swath to avoid liability
 - Face to face and distance ed
 - State definitions of licensed professions vary greatly
 - Eventually all 50 states
 - Documentation is critical
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Student Location Key Points

- The institution must have a policy for determining student location
 - The institution must have a policy for being notified when a student has relocated
 - The policies must be consistently applied across groups
 - The data needs to be accessible for compliance reporting
 - The practice across the institution **MUST** match the policy
 - If not, make revisions so that they align
 - There are plenty of resources available to help institutions create these policies
 - Not knowing where the students are located is not an option
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SARA: Modifications to Align with Federal Regs

5.2 Programs leading to Professional Licensure

SARA has no effect on State professional licensing requirements. Any Institution approved to participate in SARA that offers courses or programs designed to lead to Professional Licensure or certification or advertised as leading to Licensure must satisfy all federal requirements for disclosures regarding such Professional Licensure programs under 34 §C.F.R. 668.43. For SARA purposes, these requirements will also apply to non-Title IV institutions.

*For SARA purposes, institutions that are unable, **after all reasonable efforts**, to determine whether a program will meet state professional licensure requirements shall provide the student or applicant with current contact information for any applicable licensing boards, and advise the student or applicant to determine whether the program meets requirements for Licensure in the State where the student or applicant is located.*

SARA Differences from Federal Regs

- For all SARA institutions (Title IV and non-Title IV):
 - **General** disclosures are now required.
 - **Direct** disclosures are required when an institution knows that the program will not meet licensing requirements and when it does not know.
 - Institutions are required to provide **contact information** for professional licensing boards when the institution cannot determine, after all reasonable efforts, whether their course or program will meet the licensing requirements.
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Negotiated Rulemaking Update

- I. Quick Veterans Administrative Update
- II. Federal Regulations
- III. Programs subject to SARA policy

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Veterans Administration– to provide GI Bill Benefits



- H.R.7105 - Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Notifications found in [Section 1018](#))
- [REMOTE Act](#) – extended COVID related protections through June 1, 2022, and VA shared that institutions that provide the USED College Financial Plan (shopping sheet) exempt from providing 1018 notifications)
- VA Rulemaking – Proposed Regulations
 - [State Approving Agency Jurisdiction Rule](#), clarifies which state’s State Approving Agency has jurisdiction to approve courses.
 - [Modifications of Approval Requirements for Courses Designed To Prepare Individuals for Licensure or Certifications](#), for programs leading to a license or certification, the institution must meet all instructional

Department of Education Federal Negotiated Rulemaking Committee Institutional and Programmatic Eligibility

January 18-21; February 14-18; March 14-18, 2022

- Ability to Benefit
- Administrative Capability
- Gainful Employment
- Financial Responsibility
- Changes in Ownership
- Certification Procedures
- 90/10 Rule



Negotiated Rulemaking Committee

Institutional and Programmatic Eligibility



Issue #6 : Certification Procedures – NO CONSENSUS

Department of Education Proposed Language Week 3 (for which the negotiators voted)
34 CFR 668.14 (b)– Adding to the Program Participation Agreement

(32) In each State in which the institution is located or in which students enrolled by the institution are located, as determined at the time of initial enrollment in accordance with the requirements in 34 CFR 600.9(c), the institution must ensure that each program eligible for title IV HEA program funds—

- (i) Is programmatically accredited, if such accreditation is required by the State or a Federal agency; except that programmatic pre-accreditation is sufficient if acceptable according to the State or Federal agency;*
- (ii) Satisfies the applicable educational prerequisites for professional licensure or certification requirements in the State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and*
- (iii) Complies with all State consumer protection laws, including both general applicable State laws and those specific to educational institutions, except where State requirements for obtaining*

Negotiated Rulemaking Committee

Institutional and Programmatic Eligibility

Issue #6 : Certification Procedures



Department of Education Proposed Language Week 3 (for which the negotiators voted) **34 CFR 668.34(a)(5)(v) Revision to the Institutional Information**

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, a list of all States where the institution offers the program and where the program meets such requirements and a list of all States where it does not meet such requirements.

Note:

- “...has not made a determination...” has been removed.
- The Department has not addressed the individual notifications.

Timeline for USED Federal Rulemaking Process

- March 2022: Negotiators voted; 2 issues reached consensus; 5 issues did not reach consensus.
- Spring/Summer 2022: USED will release issues that came to consensus as proposed regulations subject to public comment.
- Unknown 2022-2023: USED may write the 5 issues that did not come to consensus and release as proposed regulations subject to public comment.
- November 1, 2022 – Final regulations released meeting this deadline become effective July 1, 2023.
- After November 1, 2022 – Final regulations released after Nov. 1, 2022, become effective July 1, 2024.



Federal Rulemaking Resources



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- [Excited about March Madness? Proposed Section 32 Will Excite Distance Ed Fans](#); WCET Frontiers, 3/21/22
- [Federal Policy Surprises! Updates and Call to Action](#); WCET Frontiers, 2/22/22.
- [Federal Negotiated Rulemaking Webpage](#) for all notices, recordings, initial proposal language, and transcripts.
- [SAN/WCET/WICHE/SREB/NEBHE,MHEC Letter](#) to the Negotiators about proposed changes to a state authorization reciprocity agreement.
- [SAN and UPCEA Webinar – The Federal Rulemaking Process](#) – webinar recording, slide deck, transcript