



MEMORANDUM

To: Chief Academic Officers, State-Operated Campuses and Community Colleges

From: David Cantaffa, Interim Senior Associate Provost, Academic Affairs, Office of the Provost
Cassandra Carudo, Staff Attorney – Student Affairs, SUNY Office of General Counsel

Date: May 13, 2024

Re: Professional Licensure Disclosures: Federal Regulation Amendment Effective July 1, 2024

Introduction

This guidance pertains to the recently finalized regulations by the U.S. Department of Education (“Department”) on “Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB)”, which modified the prior regulations that implemented *Title IV* of the Higher Education Act of 1965, as amended. The regulations outline certification procedures for Title IV participation for institutions. The amendments particularly impact the rules that require institutions to disclose information to students regarding degree programs that lead to licensure and/or certification, or are advertised as such, which are eligible for Title IV financial aid funds. **Your institution must take action related to this amendment to the regulations in order to come into legal compliance with the new regulations effective July 1, 2024.**

The stated intention of the regulation amendment is to protect students, particularly those receiving distance education, from undertaking the financial commitment of higher education without knowledge that their efforts will pay off in their intended licensed career paths in their designated U.S. State.

Please read this guidance to understand how these regulations will impact your institution and what actions must be taken to ensure full compliance. It should be noted that these amendments ***only impact students who begin enrollment in an academic program that leads to professional licensure or certification at your institution starting on or after July 1, 2024.*** These amendments are to the federal regulation which was previously effective July 1, 2020. SUNY

had previously provided guidance in relation to the 2020 regulation. There are significant changes in this new iteration of final regulations.

The functional units of your institution that may be impacted by these regulations include, without limitation: Academic Affairs, Admissions, Advisement, Distance Education, Enrollment Management, Financial Aid, Recruitment/Marketing, and Registrar.

Explanation of the Regulation Changes

Overview

For each Title IV eligible academic program that leads to professional licensure or certification at your institution, the institution must make a determination whether:

- it meets the educational requirements for licensure/certification in the U.S. State where the institution is located *and* the U.S. State where “distance education” students are located at the time of initial enrollment in the program,
- any U.S. State in which the program is advertised as meeting such requirements, and
- if applicable, where a student attests that they will be seeking licensure/certification after completion of the program (see *Exception* section below).

An important part of the amendment to the regulations is that an institution must determine if the academic program either “meets” or “does not meet” licensure/certification requirements in specific U.S. States, which is further explained below. There is no longer the option of merely stating it “has not determined” whether this is so. This is a major departure from what was allowable under the 2020 final regulations.

This regulation is potentially applicable to *all* Title IV eligible academic programs that lead to professional licensure or certification, not just programs offered exclusively via the distance education format. This is because for the purposes of this regulation the determination of “distance education” is from the student perspective. In other words, although a program may not be specifically offered via distance education, *if a student takes at least one course* (including a general education course) via distance education in their first term of enrollment in an academic program that leads to professional licensure or certification, that student is a student enrolled in distance education for the purposes of this final regulation.

What U.S. States does an institution need to make a determination of for each program?

An institution must make such a determination for the States where students in distance education programs (as defined above) are physically located at the time they enroll. This is how the regulation interprets “distance education” and actual location of the student. It is generally accepted that “upon enrollment” means when the student begins instruction rather than at the time of admission.

If a student changes their physical location to another state during their enrollment, the student is required to formally notify the institution in accordance with institutional policies. Once the institution receives this formal notification of a change in a student’s physical location, it is

required to make another determination regarding the change to the new state (if it has not already done so).

The preamble of the regulation states that “if an institution is not enrolling students from a given State, it is not obligated to determine anything regarding that State; it just cannot offer the program to anyone in that State.”¹ Thus, an institution does not have to affirmatively determine if its programs meet the requirements of every U.S. State, only those in which distance education students enroll from.

Institutional Location Policy

An institution must establish a student location policy and related processes that are applied consistently to all students. The Department stated in the preamble to the regulations that institutions have the flexibility to determine how to structure their policies with the amendment in mind. The Department hopes that the information collected from students during the application and enrollment process will aid in its determinations. The flexibility of the local policy allows institutions, for example, to include in its policy how it will make determinations regarding what will occur when a student moves to a different state during the enrollment process. This section of the preamble can be read in full [here](#).²

Generally, the policy for determining a student’s initial physical location for distance education purposes should be their physical location/address at the time of enrollment, but as stated, the structure of the campus level policy itself is meant to be flexible. For example, the procedure for updating or changing the student’s location may be determined by the campus to be through the registrar’s office rather than directly with the academic program itself. Any steps taken pursuant to the local policy should be documented.

What to do when a student moves to a different state after enrolling in a program

The Department does not apply these new regulations to students already enrolled when they move to another state. However, institutions must, when notified, make a determination about whether a student’s program meets their new state’s licensure/certification requirements and inform the student within 14 calendar days of making the determination.³ The institution does not have to cease offering the program to a student in this situation if the program does not meet the new state’s requirements so long as the student was already enrolled when they moved locations.⁴

When the institution has not determined whether the program meets the state’s requirements

If the institution has not determined whether its academic program meets the educational requirements for licensure of a particular U.S. State, it cannot advertise in nor enroll students

¹ Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB), 88 FR 74646, <https://www.federalregister.gov/d/2023-22785/page-74646>

² Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB), 88 FR 74643, <https://www.federalregister.gov/d/2023-22785/page-74643>

³ 34 CFR 668.43(c)(2).

⁴ Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB), 88 FR 74643, <https://www.federalregister.gov/d/2023-22785/page-74643>

located in that State (unless the exception explained below applies). In this case, the State effectively becomes a “does not meet” requirements location until the institution duly determines otherwise. Additionally, if the institution later determines that the program “does not meet” a state’s requirements, then it must provide written notice to the student within 14 calendar days of making that determination, and likewise may not allow that student to enroll if the student has not yet enrolled (unless the exception explained below applies).⁵

When the institution does not meet the educational requirements of the state

If the institution determines its academic program does not meet the educational requirements for licensure for a particular U.S. State, it cannot advertise that program nor enroll any new students physically located in that State (unless the exception explained below applies). If the institution at any time determines that the program “does not meet” a state’s requirements, then it must provide written notice to the student within 14 calendar days of making that determination, and likewise may not allow that student to enroll if the student has not yet enrolled (unless the exception explained below applies).⁶

Exception

The regulations articulate an exception wherein a student may enroll in an academic program that leads to professional licensure or certification at an institution even if the academic program does not meet the educational requirements of the State they physically reside in (or if the institution has not determined whether it does). This exception is available only if such a student signs a written attestation that verifies that they intend to seek licensure/certification in a State in which the institution has determined the academic program “does meet” educational requirements for licensure/certification.⁷

For example, if a student living in Pennsylvania is attending a SUNY institution via distance education for a nursing program (that is intended to lead to professional licensure) and the institution determines that its program does not meet the requirements for nursing in Pennsylvania, the institution may not offer that program to the student living in Pennsylvania unless this exception applies. If this student signs a written attestation that they intend to be licensed in New York in nursing, and the institution has determined that its program meets the educational requirements for nursing in New York, then this exception may apply and the institution may enroll the student.

This attestation cannot simply be a “check box” approach, but instead must be a robust process that is specifically drafted to reflect the circumstances of each student. Indeed, the student must identify the specific State they intend to seek licensure/certification in and the institution must determine that its program meets the requirements of that State. Institutions must be sure to document that the student was informed properly in making that attestation.

⁵ 34 CFR 668.43(c)(2); Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB), 88 FR 74646, <https://www.federalregister.gov/d/2023-22785/p-1198>.

⁶ 34 CFR 668.43(c)(2); Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB), 88 FR 74646, <https://www.federalregister.gov/d/2023-22785/p-1198>.

⁷ 34 CFR 668.14(b)(32).

When a State Changes its Licensure Requirements

The Department opined that when a State’s licensure requirement changes it does not expect that institutions should immediately discontinue programs for existing students. However, the Department does expect that the institution would come into compliance with these regulations “in short order or cease enrolling new students in that program.”⁸ The Department states that if an institution has an issue like this, they should reach out to the Department.

Note on Department Enforcement

The Department issued guidance around their enforcement of these provisions given the concerns pertaining to implementation. This guidance can be read in full [here](#).⁹

The Department will exercise discretion before taking action particularly in regard to 34 CFR 668.14(b)(26) and 34 CFR 668.14(b)(32) between July 1, 2024 and January 1, 2025. For this reason, an institution will be able to raise a defense to enforcement of the regulations if it faces challenges in complying due to reasons that are unique, time-specific, and outside the control of the institution.

The following are some examples of what may be considered defenses to compliance between July 1, 2024 and January 1, 2025:

- The institution is unable to obtain approvals for academic program changes to comply with the requirements related to licensure and certification.
- The institution is unable to obtain sufficient clarity from State licensing and certification entities about licensure and certification requirements.
- The institution is unable to access and use the Department’s systems.

The Department will consider these challenges prior to January 1, 2025 when determining whether to enforce these provisions against the institution, but the Department retains discretion to base its determination on the totality of the facts and circumstances of each individual case. The Department encourages institutions to document, prior to July 1, 2024, circumstances which may prevent their compliance with any requirement of the regulations by the effective date. The Department will review that documentation prior to making a determination on enforcement.

Key Provisions of the Regulation

⁸ Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit (ATB), 88 FR 74645, <https://www.federalregister.gov/d/2023-22785/page-74645>

⁹ <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-04-09/updates-new-regulatory-provisions-related-certification-procedures-and-ability-benefit>

Key parts of the amended regulations which can be found in full [here](#)¹⁰ are as follows:

“(32) In each State in which: the institution is located; students enrolled by the institution in distance education or correspondence courses are located, as determined at the time of initial enrollment in accordance with 34 CFR 600.9(c)(2); or for the purposes of paragraphs (b)(32)(i) and (ii) of this section, each student who enrolls in a program on or after July 1, 2024, and attests that they intend to seek employment, the institution must determine that each program eligible for title IV, HEA program funds—

(i) Is programmatically accredited if the State or a Federal agency requires such accreditation, including as a condition for employment in the occupation for which the program prepares the student, or is programmatically pre-accredited when programmatic pre-accreditation is sufficient according to the State or Federal agency;

(ii) Satisfies the applicable educational requirements for professional licensure or certification requirements in the State so that a student who enrolls in the program, and seeks employment in that State after completing the program, 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 laws related to closure, including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds;”¹¹

“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 has determined, including as part of the institution's obligation under § 668.14(b)(32), that the program does and does not meet such requirements; and

(c)(1) If the institution has made a determination under paragraph (a)(5)(v) of this section that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the institution in accordance with § 668.14(b)(32).

(2) If the institution makes a determination under paragraph (a)(5)(v) of this section that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.”¹²

¹⁰ <https://www.federalregister.gov/documents/2023/10/31/2023-22785/financial-responsibility-administrative-capability-certification-procedures-ability-to-benefit-atb>

¹¹ 34 CFR 668.14(b)(32)

¹² 34 CFR 668.43(a)(5)(v).

Please review the Question & Answer handout for more information. For any additional questions from SUNY State-Operated campuses, please contact Cassandra Carudo at Cassandra.Carudo@suny.edu, David Cantaffa at David.Cantaffa@suny.edu, or your specific campus counsels. SUNY Community Colleges may consult with David Cantaffa at David.Cantaffa@suny.edu or your institutional counsel with specific questions.