

Neg Reg Expands Professional Licensure Disclosure Rules in Consensus on State Authorization

April 24, 2019

In another important development, the Neg Reg negotiators reached [consensus](#) on revisions to the department's long-delayed state authorization rules. While the distance learning community has been keenly aware of these discussions, the [consensus rule](#), which draws heavily on provisions in the department's [2016 state authorization rule](#), proposes a significant change in disclosure obligations applicable to *all* programs offered by Title IV-participating institutions, whether online or classroom-based.

The Neg Reg Committee retained a version of the student and prospective student professional licensure disclosures similar to those under the 2016 rules, but extended the professional licensure disclosure requirements to all programs, regardless of the method of delivery. This means the disclosure requirements apply to *all* an institution's on-ground programs, in addition to those offered online. This is a significant change from the 2016 rule, which only required professional licensure disclosures for an institution's distance education programs.

Under the consensus rule, institutions offering programs, regardless of mode of delivery, that are either (1) designed to meet educational requirements for a specific licensure or certification that is required for employment in an occupation or (2) advertised as meeting such requirements must inform both prospective and currently enrolled students of the specific states in which:

- The institution determined its curriculum meets the state educational requirements for licensure or certification
- The institution determined its curriculum *does not* meet the state educational requirements for licensure or certification
- The institution has not made a determination that its curriculum meets the state educational requirements for licensure or certification

The consensus rule requires institutions to make their professional licensure disclosures through their catalogs or website and, in certain cases described below, in writing directly to prospective and enrolled students via email or other electronic communication:

- **Direct disclosures to prospective students:** if the institution has determined that its program's curriculum does not meet the state educational requirements for licensure or certification in a state in which a prospective student is located, or if the institution has not made such a determination, the institution must provide notice to that effect to the prospective student prior to enrollment.
- **Direct disclosures to currently enrolled students:** if an institution determines its program's curriculum does not meet the requirements in a state where a current student is located, the institution must notify that student within 14 calendar days of making such a determination.

It is important to recognize that making a false or misleading disclosure regarding the ability of a student to obtain licensure or practice a trade or profession in a particular state may lead to violations of the [Title IV misrepresentation rules](#), which carry serious penalties and are highly attractive to whistleblower actions, as well as FTC investigations or private lawsuits from students.

The consensus rule contains several other state authorization pieces.

Eligibility: First, the committee retained the long-debated state authorization requirements at 34 C.F.R. [§ 600.9\(c\)](#). This provision requires that institutions satisfy any requirements under state law to offer distance learning programs in any state in which the institution is not physically located or is otherwise subject to the state's jurisdiction. Because this requirement is located in 600.9, it is a condition of institutional eligibility, and therefore must be satisfied in order to disburse Title IV aid to students enrolled in those distance education programs. Alternatively, an institution would be deemed to satisfy this requirement if it offers distance education programs in a state that is a member of a state authorization reciprocity agreement (as defined under the regulation) that covers the institution.

Reciprocity: After some debate, the committee ultimately retained the definition of “state authorization reciprocity agreement” from the 2016 rule after attempts to craft a new definition stalled, largely because of the objections of one negotiator, over the level of control state authorization agencies and state attorneys general should exert over such agreements. Under the definition promulgated in 2016 and retained in this rulemaking, a state authorization reciprocity agreement may not prohibit any member state from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

Student location: The committee also agreed to move away from the 2016 rule’s residency standard that required institutions to determine in which state a student qualifies as a resident. Instead, the consensus rule requires institutions to determine in which states students are located for the purpose of issuing state-specific disclosures, such as those regarding eligibility to sit for licensure. The consensus rule also establishes when an institution must determine a student’s location – at the time of the student’s initial enrollment in an educational program and when the student notifies the institution their location has changed – but leaves the institutions to establish their own procedures for making that determination.

Other disclosures: Finally, the committee concluded that several of the other disclosures required under the 2016 rule – such as the refund policy and complaint process disclosures – were already required by existing ED regulations in 668.43. The committee therefore eliminated the 2016 rule versions of those other disclosures, and the consensus rule instead requires institutions to comply with the long-standing versions in 668.43.

The committee’s consensus rule on state authorization will be published in a notice of proposed rulemaking in the coming months, at which point the public can provide comments on the consensus rule before it becomes final. Stay tuned for more developments.

Nancy Anderson focuses on regulatory issues affecting higher education institutions, including compliance with federal, state and accrediting agency requirements.

Caitlyn Shelby advises postsecondary institutions, K-12 schools and education companies on matters involving accreditation, state authorization and the provision of online education, and monitors legislative and regulatory developments in these areas.

Paul Thompson counsels schools and technology companies that provide services to schools on regulatory challenges in the education sector.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#). Copyright © 2026