Welcome to the SAN & NC-SARA Webinar Series

July 28, 2022

The webcast will begin shortly.

There is no audio being broadcast at this time.

This webcast will be archived to the SAN website.

State and Federal Building Blocks for Out-of-State Activity Compliance

STATE AUTHORIZATION NETWORK

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Who we are

The State Authorization Network (SAN) empowers members to successfully resolve regulatory challenges to improve student protections in digital learning across state lines.

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.

Join the State Authorization Network!

@wcet_info #wcetSAN wcetsan.wiche.edu

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Questions from the Audience

Please use the Q & A box for questions that we will address after the presentation.

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Presenters

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Agenda

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Possible Compliance Strategies

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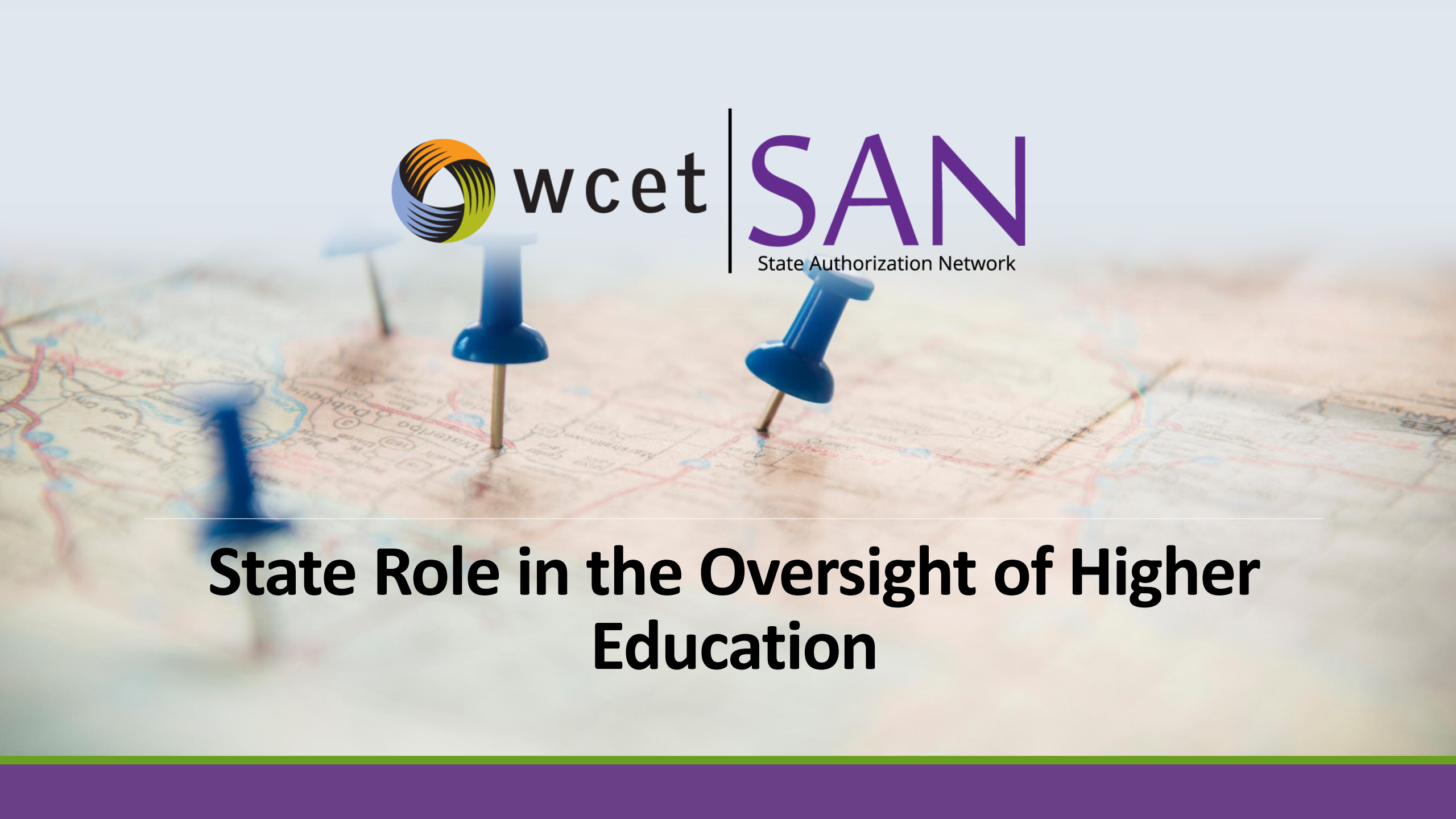

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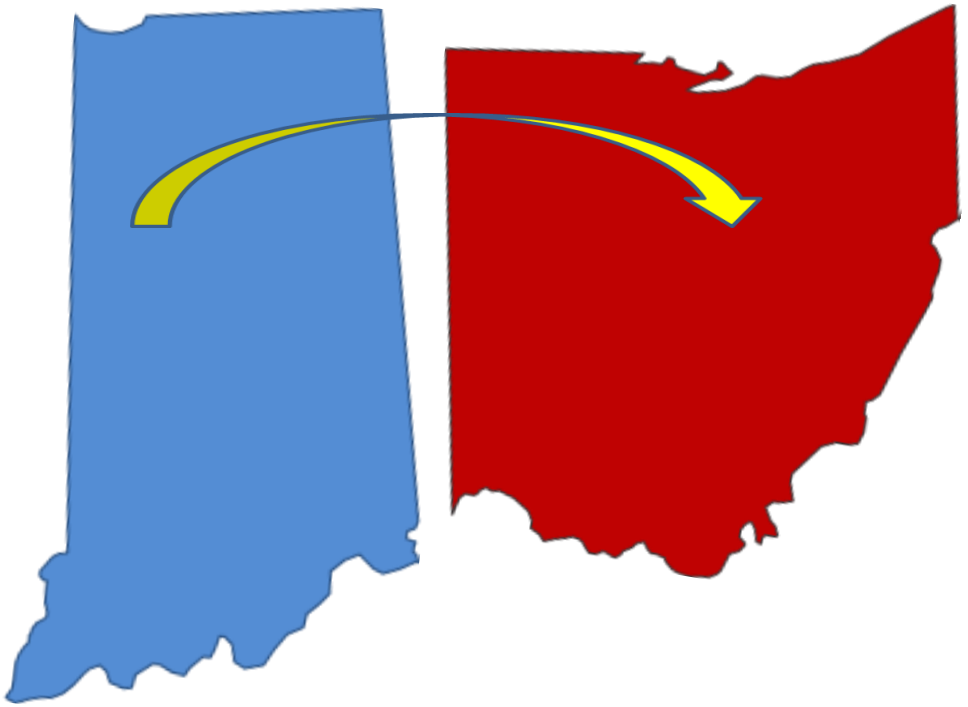
State Role in the Oversight of Higher Education

Foundational Principle –
focus on the location of the activity

For <u>any</u> activity of the institution that occurs in another State, it is the institution's responsibility to be compliant with the laws and regulations of that State. (or country)



Purpose of State Oversight

Why?

- Student consumer protections
- Other state interests

What?

States have jurisdiction over which entities offer degrees and activities within their borders.

Scope of State Authority Over Activities

States Vary Widely!

Examples include, but are not limited to:

- **State Institutional Approval** – Higher Education Agency or through reciprocity (SARA) for distance education related activities subject to the reciprocity agreement.
- **State Program Approval** - state licensing boards
- **State Registration** – State Secretary of State, Revenue, Treasury (doing business; agent for service of process)
- **Tax Implications** – Department of Taxation; withhold state income tax for employees (faculty/staff) working from another state and possible digital sales tax implications.
- **Workers Compensation Insurance** – Department of Labor or others primarily for employees, but also for field placements in Colorado and internship registration in New Hampshire.

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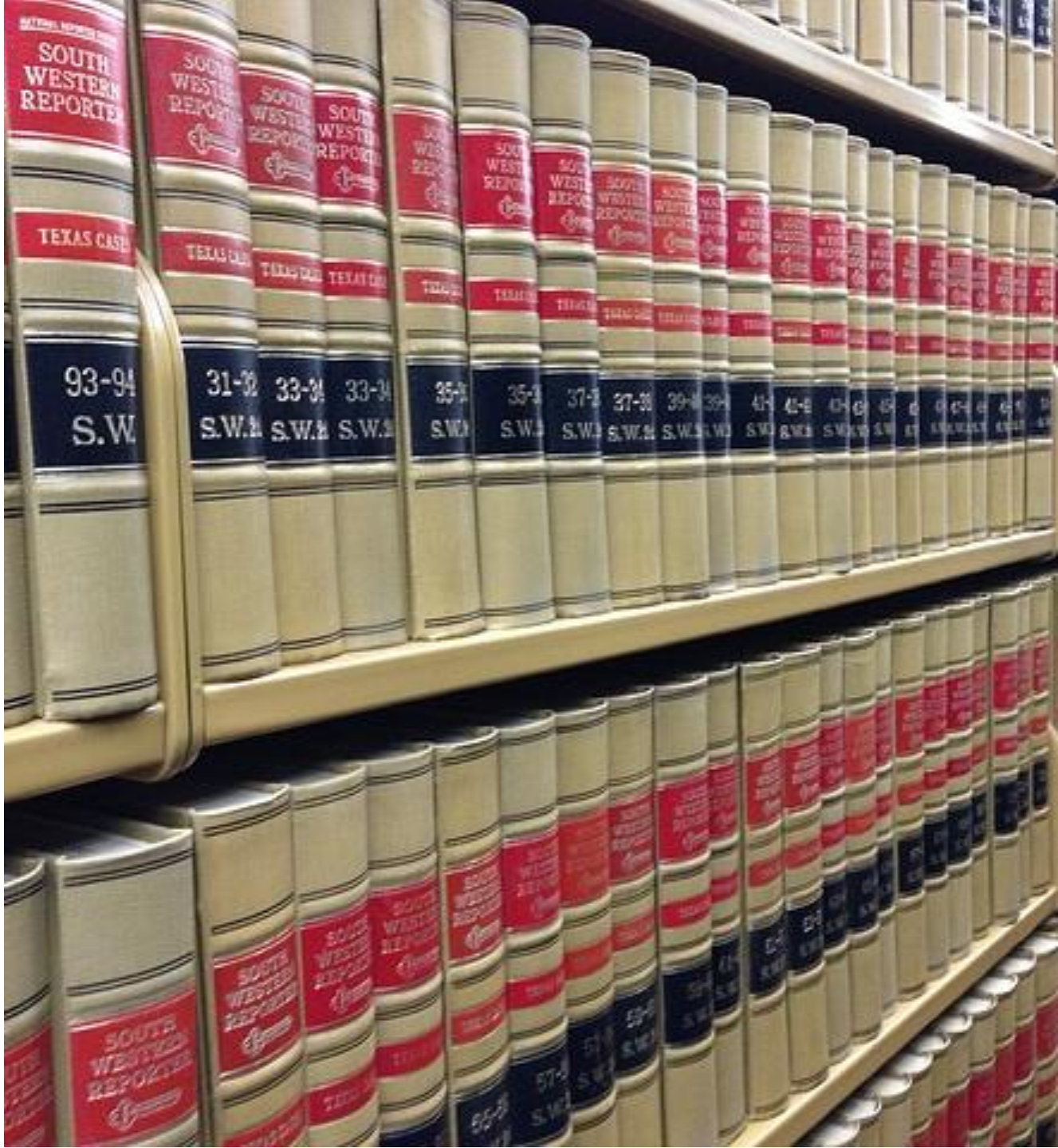
Possible Routes to State Compliance

Route 1 to compliance:

The state does not regulate the activity.

Important Points:

- Know where the activity takes place.
- Review the varied state requirements.
- Assess the applicability to your institution.



Route 2 to compliance:

The state does regulate the activity and has a process to comply.

Important Points:

- Know where the activity takes place (location of the activity).
- Review the varied state requirements.
- Assess the applicability to your institution.
- Develop a compliance strategy.
- Document the process for consistent implementation at the institution.

Route 3 to compliance:

The state does regulate the activity and participates in an interstate agreement.

Important Points about interstate agreements:

- Voluntary, state-led solutions.
- States are the members.
- Common terminology: “Compacts” or “reciprocal” agreement(s).
- Functions as tools to manage the 50-state challenge.
- Unique in structure and purpose.

Examples

- State Authorization Reciprocity Agreements (SARA)
  Scope: distance education
- Nurse Licensure Compact (NLC)
  Scope: Nursing License Portability
- Nonresident Income Tax
  Scope: State-by-state, income tax
- Tuition reciprocity agreements
- Etc.

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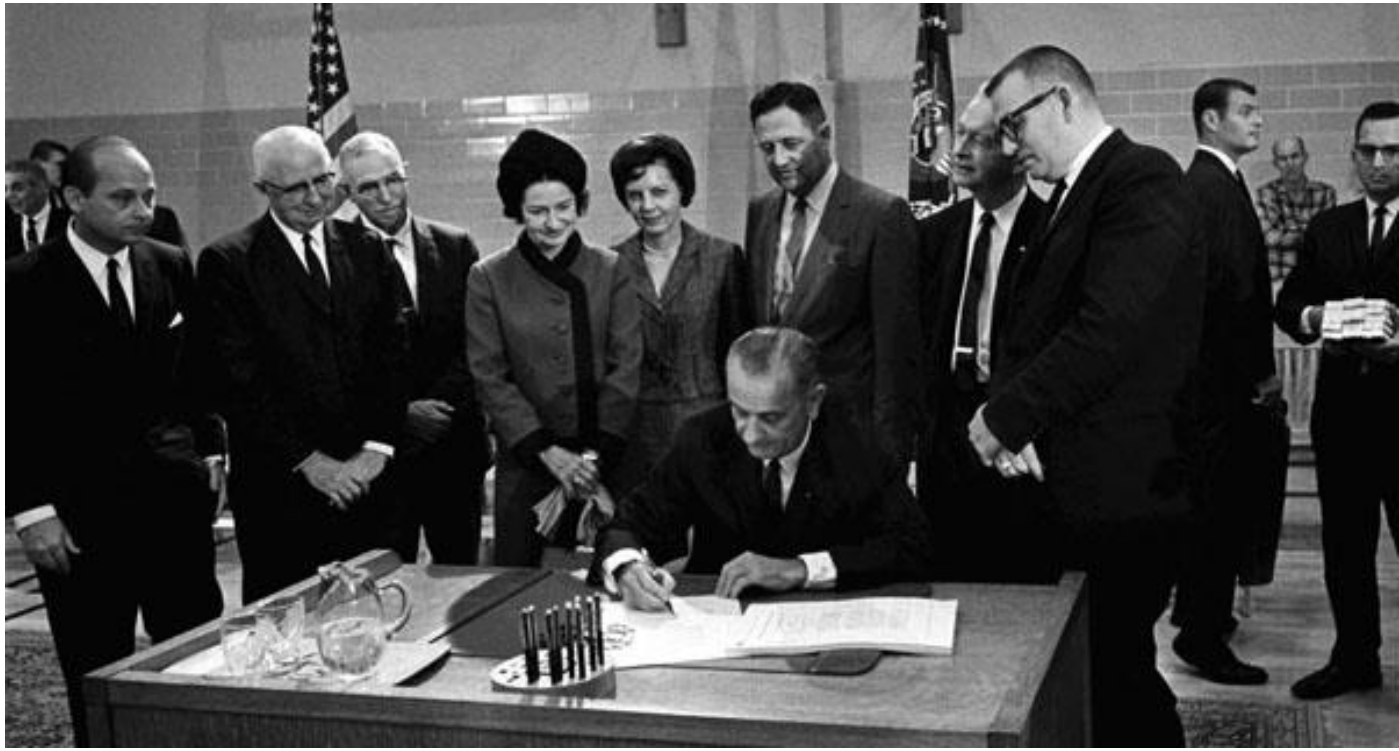
Federal Regulations and the Tie to State Compliance

The Higher Education Act of 1965 (HEA)

(P.L. 89-329; 20 U.S.C. 1001 et seq.)

- Federal law designed to strengthen the educational resources of the colleges and universities of the United States and to provide financial assistance to post-secondary students

- The HEA is the foundation for which the Federal regulations are developed to manage higher education.



Ten Steps of the USED Federal Rulemaking Process

1. Publish Notice
2. Select Negotiators
3. Prepare
4. Conduct First Main Committee Meeting
5. Negotiate Between and At Additional Meetings
6. The Goal: Consensus
7. Vote at Last Meeting
8. Publish Proposed Rules
9. Publish Final Rules
10. Calendar for Title IV rules

Federal Regulations tie compliance to participation in Title IV HEA programs.

Definition: State Authorization Reciprocity Agreement

34 CFR 600.2

State Authorization

34 CFR 600.9(c)

Professional Licensure Notifications

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

Contact information for filing complaints

34 CFR 668.43(b)

Misrepresentation

34 CFR 668.71
34 CFR 668.72

Student Identity Verification

34 CFR 602.71(h)

Consequences

Consequences for noncompliance may vary, but could include fines, accreditation problems, lawsuits, cease and desist letters, barring licensure for regulated professions, loss of participation in federal programs.

Obviously, all the above raise concern of bad publicity for the institution and disruption to student progress.

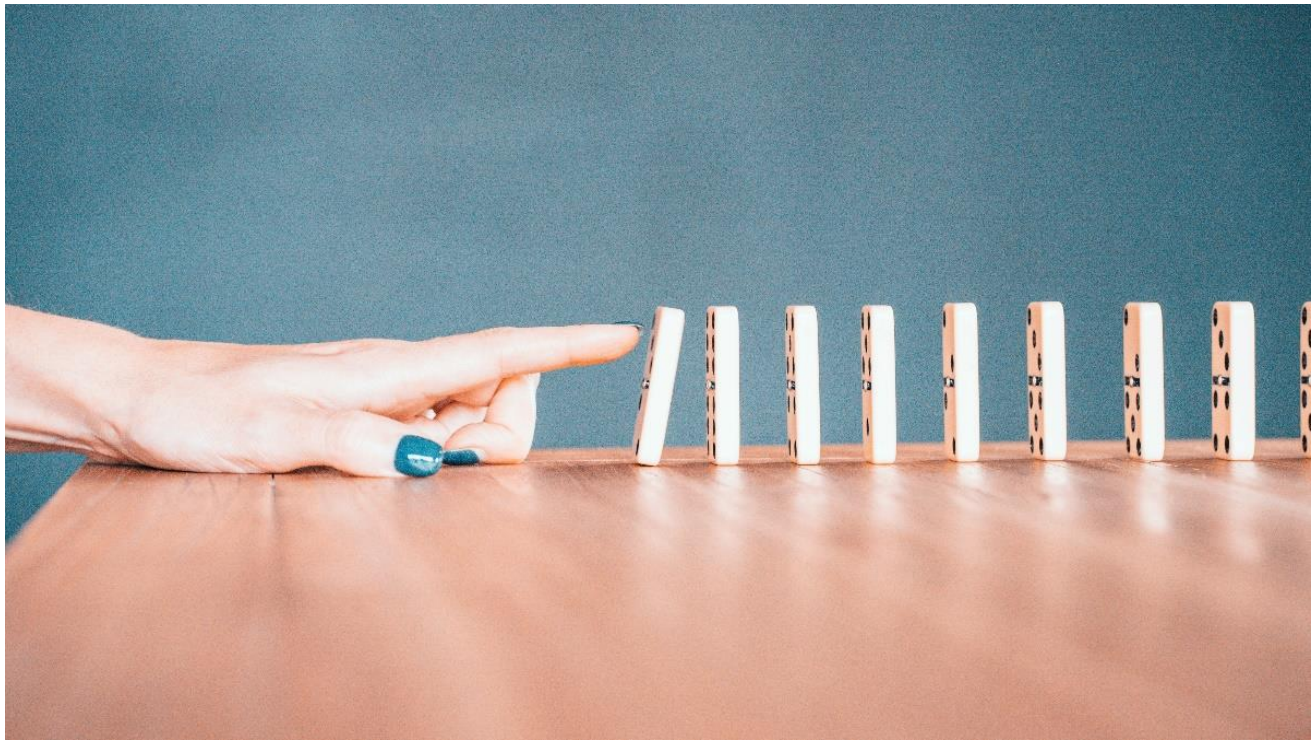


Photo by Bradyn Trollip on Unsplash

34 CFR 600.2 Definition of State Authorization Reciprocity Agreement

- Agreement between 2 or more states that allows institutions to provide educational activities in other states as directed by the agreement.
- States that volunteered to participate are to follow reciprocity agreement processes for distance education authorization.
- State may enforce its own general-purpose laws that would apply to any business.

34 CFR 600.9(c) State Authorization of Distance Education

Tied to Aid– Eligibility to disburse aid tied to the institution having approvals demonstrated by:

- Direct approval by the state; or
- Through a state authorization reciprocity agreement.

Student Location

- Defensible Process – Document & to be provided to the Secretary upon request
- Determine at time of enrollment; or
- Formal receipt of information from the student that the location has changed based on processes at the institution.

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 programs in all modalities (includes Face to Face and Online).

2. Important to understand the type of Educational Program subject to notifications. (Designed or Advertised for a license required for employment in a state)

3. Important to know the information to be provided for public notifications. (Curriculum meets, does not meet, no determination made as to state educational requirements in every state.)

4. Important to know what and when information is to be provided for direct/individualized notification. (Proposed and enrolled students)

What types of Educational Programs require notifications?

Programs that are:

Designed to meet educational requirements

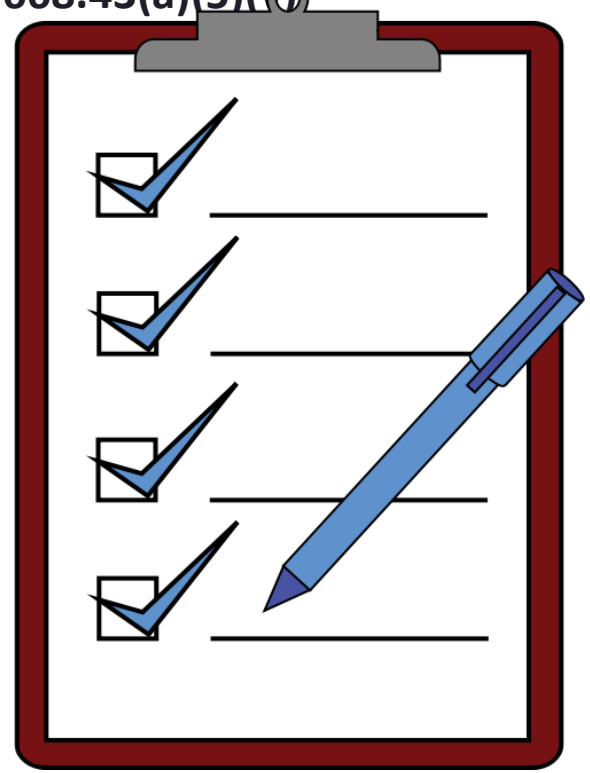
- for a **specific professional** license or certification
- and that license or certification is **required for employment** in an occupation

OR

Advertised as meeting the educational requirements for such license or certification.

Public Notifications

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



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/Individualized Disclosures

The Prospective Student

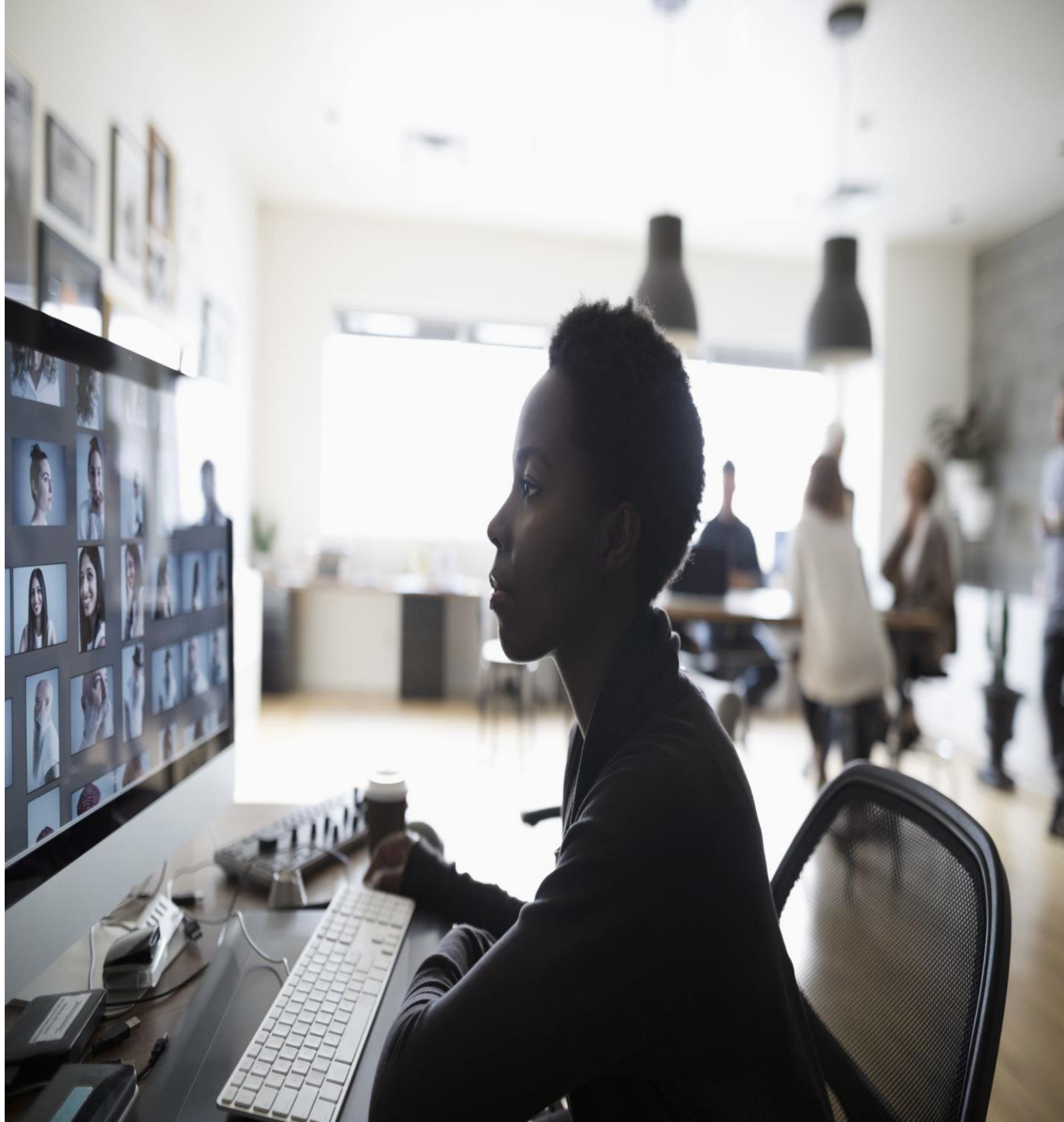
If the curriculum

(1) DOES NOT meet state educational requirements; or

(2) NO DETERMINATION has been made

Then, an institution must:

Send a notice to that effect to the student for the state where they are located prior to enrollment in the program.



Direct/Individualized Disclosures

The 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 institution must:**

Provide notice to that effect to the student within **14 calendar days** of the institution **making that determination**.

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Putting It All Together

Keys to Implementation

- Form your team(s); designate leads
- Assess the institution's operational footprint
- Acclimate yourself to state-by-state rules and related federal regulations pertinent to the footprint

    1. State Institutional Approval Quick Chart
    2. The State Authorization Guide

- Project Manage: establish internal communications, record your procedures, catalog documentation & decisions, share a calendar
- *Location, location, location!*

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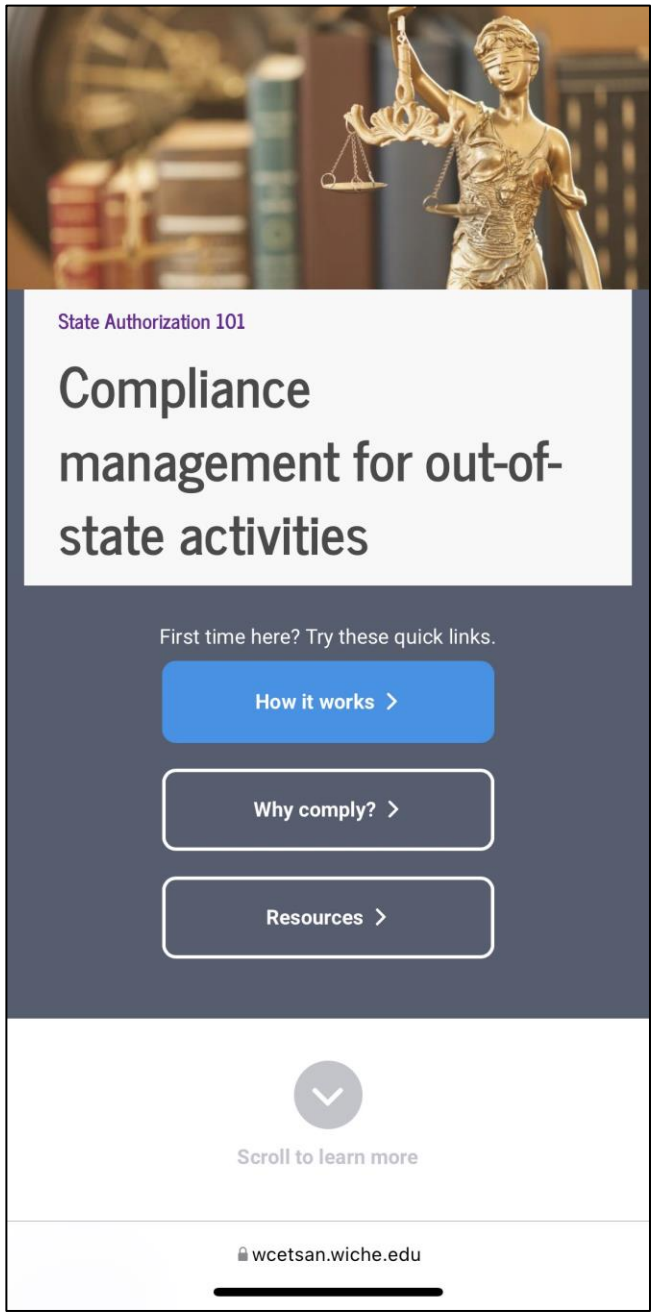
Resources for those new to the topic

For all these resources and more, join the State Authorization Network!



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

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Professional Licensing Resources

Check out these resources for implementation tips, strategies, and discussion!

SANsational
Innovative Solutions to State Authorization Challenges

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Special Interest Team: Professional Licensure

SAN Website: Professional Licensure Landing Page

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Frontiers

Resources by topic

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

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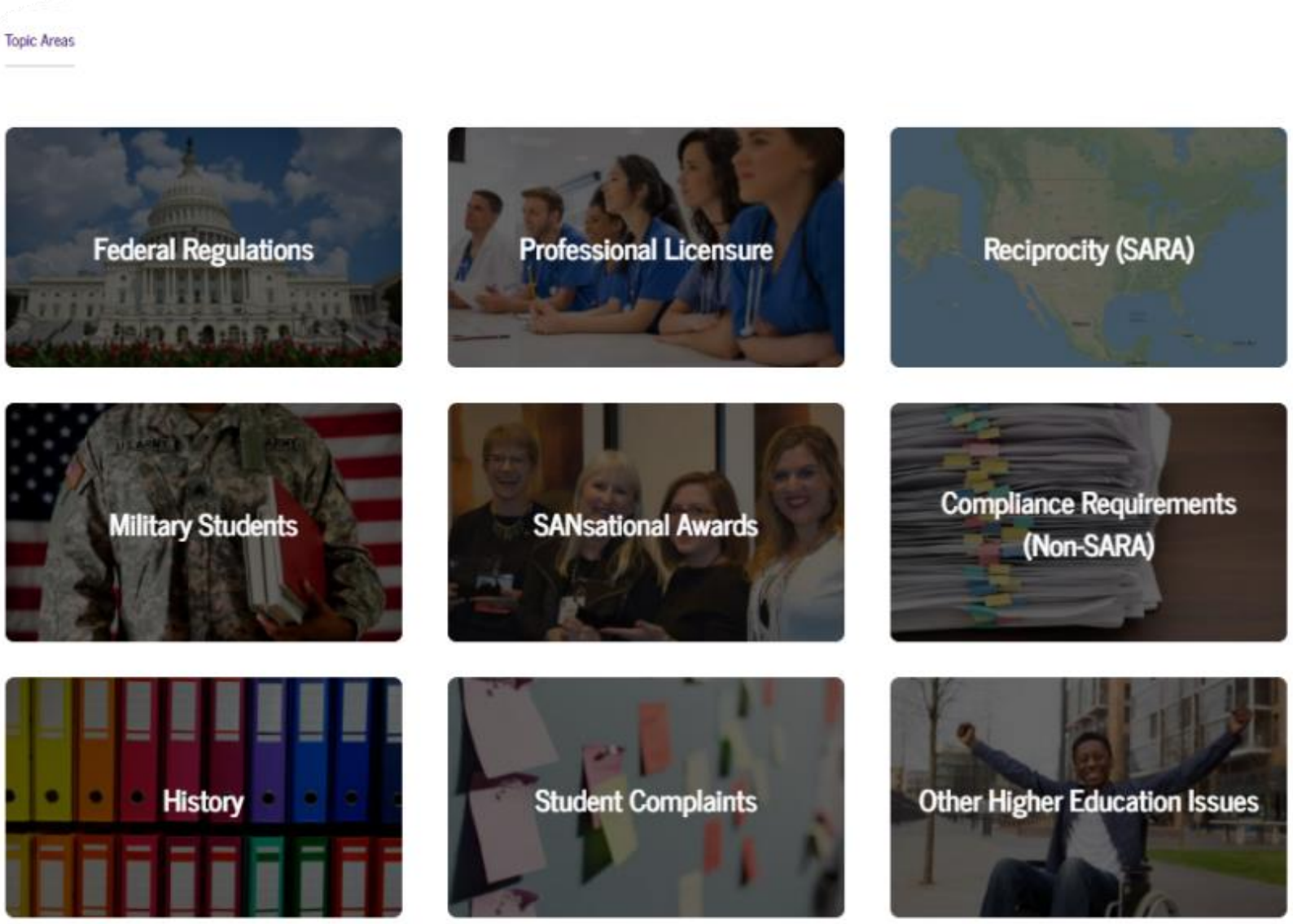

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Upcoming Events

SAN Advanced Topics Workshop (Virtual) – Succession Planning for Compliance Continuity

- *September 7-9, 2022. Time: 12pm-4pm ET each day*
- *More information can be found here and the home page of the SAN Website!*

WCET 34th Annual Meeting; Hilton Denver City Center; Denver , CO

- *October 19, 2022 – October 21, 2022 (SAN Coordinator Meeting October 18, 2022)*
- *More information can be found here and from the home page of the WCET Website!*

Your Questions!

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Thank you

to all our attendees today!

Contact us

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